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individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

SERINA MAIRE BLACKMON, KAYLA
MARIE HEITZENRODER, AND MALLORIE
CHRISTINE MATTESON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

M & S SECURITY SERVICES
INCORPORATED; and DOES 1 through 100,

Defendants

Case No. BCV-23-103332

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND PAGA SETTLEMENT**

Date: August 27, 2024

Time: 8:30 a.m.

Dept: T2

WHEREAS, this Action is pending before this Court as a putative class action lawsuit brought by Kayla Marie Heitzenroder, the Named Plaintiff (“Plaintiff” or “Named Plaintiff”) against Defendant M & S Security Services Incorporated (“Defendant”); and

WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the settlement of the Action in accordance with the Class Action and PAGA Settlement Agreement (the “Settlement Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement and final resolution of the Action upon the terms and conditions set forth therein; and the Court having read and considered the Settlement Agreement and the exhibits annexed thereto;

1 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

2 1. This Order incorporates by reference the definitions in the Settlement Agreement,
3 and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
4 Agreement. Per the Parties' Settlement Agreement, the Court hereby conditionally certifies the
5 following Settlement Class: all persons who were employed by Defendant in California as hourly-
6 paid or non-exempt employees during the Class Period. The Class Period is June 16, 2022, to
7 August 27, 2024.

8 2. Upon Final Approval, and subject to Defendants' payment of all sums required
9 herein, the claims released by the Class Members will include the Claims set forth in the Class
10 Action Lawsuit for periods of time during employment with Defendant in California as non-exempt
11 hourly employees during the Settlement Class Period, including, but not limited to:

- 12 a. For Participating Class Members: Upon the funding of the entire Gross Settlement
13 Amount and Employer Taxes, all Participating Class Members, on behalf of
14 themselves and their respective former and present representatives, agents, attorneys,
15 heirs, dependents, administrators, devisees, legatees, executors, trustees,
16 conservators, guardians, personal representatives, successors, and assigns, whether
17 individual, class, representative, legal, equitable, direct or indirect, or any other type
18 of any capacity, shall and do hereby forever release, discharge, and agree to hold
19 harmless the Released Parties from all claims during the Class Period that were
20 alleged, or reasonably could have been alleged, based on the facts stated in the
21 Operative Complaint for the Class Period or ascertained in the course of the Action
22 including any and all claims for: (1) failure to provide compliant meal periods or pay
23 meal period premiums in lieu thereof, (2) failure to provide compliant rest periods or
24 pay rest period premiums in lieu thereof, (3) failure to provide accurate and complete
25 wage statement, (4) failure to pay all wages due in a timely fashion at discharge or
26 resignation, (5) failure to pay at least minimum wage, (6) failure to pay applicable
27 overtime and double time wages, (7) unreimbursed work expenses, (8) failure to
28 provide suitable seating, (9) failure to timely pay wages during employment, and
(10) unfair and unlawful business practices arising out of the violations referenced in
the Action ("Released Class Claims"). To the extent based on facts alleged on the
Operative Complaint or the PAGA Letter, the Released Class Claims encompass, but
are not limited to, all claims pursuant to the applicable IWC Wage Order (including
Wage Order 4-2001), and Labor Code §§ 201, 201.3, 202, 203, 210, 226, 226.3,
226.7, 510, 512, 558, 1197, 1197.1, 1198, and 2802. Except as set forth in Section
5.2 of the Agreement, Participating Class Members do not release any other claims,
including claims for vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance, disability, social security,
workers' compensation, or claims based on facts occurring outside the Class Period.
- b. For Aggrieved Employees: All Non-Participating Class Members who are Aggrieved

1 Employees are deemed to release, on behalf of themselves and their respective
2 former and present representatives, agents, attorneys, heirs, administrators,
3 successors and assigns, the Released Parties from all claims for PAGA penalties that
4 were alleged, or reasonably could have been alleged, based on the PAGA Period
5 facts stated in the Operative Complaint and the PAGA Notice, including, e.g., any
6 and all claims for PAGA Penalties for (a) Meal Period Violations, (b) Rest Period
7 Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wages,
8 (e) Failure to Pay Wages Promptly During Employment and/or Upon Termination,
9 and (f) Failure to Provide Accurate Wage Statements.

7 “Released Parties” means: Defendant and each of its former, future, and present parent, joint
8 venturers, and affiliated corporations and partnerships; their directors, officers, shareholders,
9 owners, members, managers, partners, customers, employees, agents, attorneys, insurers,
10 predecessors, successors, assigns, subsidiaries; and any other individuals, entities, successors,
11 assigns, or legal representatives who could be liable for any of the Released Claims.

12 In addition to the releases listed above, Named Plaintiff personally, shall be deemed to have,
13 and operation of the Judgement in this action shall have, agreed to be bound by the following
14 release:

- 15 c. Heitzenroder and her respective former and present spouses, representatives, agents,
16 attorneys, heirs, dependents, administrators, devisees, legatees, executors, trustees,
17 conservators, guardians, personal representatives, successors, and assigns, whether
18 individual, class, representative, legal, equitable, direct or indirect, or any other type
19 of any capacity, shall and does hereby forever generally release, discharge, and agree
20 to hold harmless the Released Parties from any and all charges, complaints, claims,
21 liabilities, obligations, promises, agreements, controversies, damages, causes of
22 action, suit, rights, demands, costs, losses, transactions, occurrences, or debts or
23 expenses (including attorney fees and costs), known or unknown, at law or in equity
24 which she may now have or may become aware of after the signing of this
25 Agreement, including, but not limited to: (a) arising out of or in any way connected
26 with their employment with Defendant, including the Released Claims, (b) all claims
27 that were, or reasonably could have been, alleged, based on the facts contained, in
28 the Operative Complaint; (c) all PAGA claims that were, or reasonably could have
been, alleged based on facts contained in the Action, Plaintiffs Serina Maire
Blackmon, Kayla Marie Heitzenroder, and Mallorie Christine Matteson’s PAGA
Notice, or ascertained during the Action and released under **Error! Reference
source not found.**, below, and (d) any and all transactions, occurrences, or matters
between the Parties occurring prior to the date this Agreement is fully executed.
Without limiting the generality of the foregoing, this release shall include, but not
limited to, any and all claims under: (a) the Americans with Disabilities Act; (b) Title
VII of the Civil Rights Act of 1964; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. §
1981; (e) the Age Discrimination in Employment Act; (f) the Fair Labor Standards
Act; (g) the Equal Pay Act; (h) the Employee Retirement Income Securities Act, as
amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the

1 Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil
2 Rights Act of 1966; (m) the California Fair Employment and Housing Act; (n) the
3 California Constitution; (o) the California Labor Code; (p) the California
4 Government Code; (q) the California Civil Code; and (r) any and all other federal,
5 state, and local statutes, ordinances, regulations, rules, and other laws, and any and
6 all claims based on constitutional, statutory, common law, or regulatory grounds as
7 well as any other claims based on theories of wrongful or constructive discharge,
8 breach of contract or implied contract, fraud, misrepresentation, promissory estoppel,
9 or intentional infliction of emotional distress, negligent infliction of emotional
10 distress, or damages under any other federal, state, or local statutes, ordinances,
11 regulations, rules, or laws. This release is for any and all relief, no matter how
12 denominated, including, but not limited to, back pay, front pay, vacation pay,
13 bonuses, compensatory damages, tortious damages, liquidated damages, punitive
14 damages, damages for pain and suffering, and attorney fees and costs. (“Plaintiff’s
15 Release.”) Plaintiff’s Release does not extend to any claims or actions to enforce
16 this Agreement, or to any claims for vested benefits, unemployment benefits,
17 disability benefits, social security benefits, workers’ compensation benefits that arose
18 at any time, or based on occurrences after signing this Agreement. Heitzenroder
19 acknowledges that Heitzenroder may discover facts or law different from, or in
20 addition to, the facts or law that Heitzenroder now knows or believes to be true but
21 agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all
22 respects, notwithstanding such different or additional facts or Heitzenroder’s
23 discovery of them.

- 24 i. Plaintiff’s Heitzenroder Waiver of Rights Under California Civil Code Section 1542.
25 For purposes of Plaintiff’s Release, Heitzenroder, being aware of California Civil
26 Code section 1542, as well as any other statutes or common law principles of a
27 similar effect, hereby forever expressly waives and relinquishes the provisions,
28 rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

“A general release does not extend to claims that the creditor or releasing party
does not know or suspect to exist in his or her favor at the time of executing the
release and that, if known by him or her, would have materially affected his or
her settlement with the debtor or released party.”

Heitzenroder specifically acknowledges that she is aware of and familiar with the
provisions of the above Civil Code section 1542. Heitzenroder may hereafter
discover facts in addition to or different from those which she now knows or believes
to be true with respect to the subject matter of all the claims referenced herein, but
agree that, upon the funding of the entire Gross Settlement Amount and Employer
Taxes, Heitzenroder shall and hereby does fully, finally, and forever settle and
release any and all claims against the Released Parties, known or unknown,
suspected or unsuspected, contingent or non-contingent, that were asserted or could
have been asserted upon any theory of law or equity without regard to the subsequent
discovery of existence of such different or additional facts, through the date on
which the Agreement is fully executed.

3. Named Plaintiff is hereby appointed and designated, for all purposes, as the

1 representative of the Class and Representative Action, and the following attorneys are hereby
2 appointed and designated as counsel for the Named Plaintiff, the Class Representatives and the
3 Class: Dan Ginzburg, Emmanuel M. Starr, and Theodore Tang of Frontier Law Center (“Class
4 Counsel”). Class Counsel are authorized to act on behalf of Participating Class Members with
5 respect to all acts or consents required by, or which may be given pursuant to, the Settlement, and
6 such other acts reasonably necessary to consummate the Settlement. Any Objecting Class Member
7 may enter an appearance through counsel of such Class Member’s own choosing and at such Class
8 Member’s own expense.

9 4. The Court finds on a preliminary basis that the Settlement appears to be fair,
10 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The
11 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
12 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all
13 Class Members when balanced against the potential outcomes of further litigation relating to
14 liability and damages issues. The Court further finds that the Settlement has been reached as the
15 result of serious and non-collusive, arms-length negotiations by Defendant and Plaintiff (the
16 “Settling Parties”).

17 5. A hearing (the “Settlement Hearing”) shall be held before this Court on
18 _____ at _____ determine all necessary matters concerning the
19 Settlement, including: whether the proposed settlement of the Action should be finally approved by
20 the Court; whether a Judgment, as provided in the Settlement Agreement, should be entered herein;
21 whether the plan of allocation contained in the Settlement Agreement should be approved as fair,
22 adequate and reasonable to the Class Members; and to finally approve Class Counsel’s Fees Award
23 and Cost Award, the Class Representative’s Enhancement award, payment to the Labor and
24 Workforce Development Agency and the Settlement Administration Costs.

25 6. The Court hereby approves, as to form and content, the Notice, attached as Exhibit 1
26 to the Settlement Agreement. The Court finds that distribution of the Notice, substantially in the
27 manner and form set forth in the Settlement Agreement and this Order, meets the requirements of
28 due process, is the best notice practicable under the circumstances, and will constitute due and

1 sufficient notice to all persons entitled thereto

2 7. The Court hereby appoints ILYM Group as Settlement Administrator and hereby
3 directs the Settlement Administrator to simultaneously mail or cause to be mailed to Class Members
4 the Notice (Exhibit 1) by first class mail at their last known address within fourteen (14) days of
5 receiving a Class Information from Defendants.

6 8. Any Class Member (as defined by the Settlement Agreement) may choose to opt-out
7 of the Settlement or object to the Settlement as provided in the Notice by following the instructions
8 for requesting exclusion from the Settlement Class or objecting to the settlement. Class Members
9 will have forty-five (45) days from the date of mailing the Notice in which to postmark objections
10 or a notice of opting out. This deadline shall be extended by 14 days for all class members whose
11 notice is re-mailed. Prior to the initial mailing, the Settlement Administrator will check all Class
12 Member addresses against the National Change of Address database and shall update any addresses
13 before mailing. All Class Members who do not timely and properly notify the Settlement
14 Administrator of their desire to opt-out of the Settlement, shall become bound by all determinations
15 of the Court, the Settlement Agreement and Judgment.

16 9. Any Class Member who did not opt-out may appear at the Settlement Hearing and
17 may object or express his/her views regarding the Settlement and may present evidence and file
18 briefs or other papers that may be proper and relevant to the issues to be heard and determined by
19 the Court as provided in the Notice. However, if a Class Member requests exclusion, the Class
20 Member shall not be heard or entitled to object, and no papers or briefs submitted by any such
21 person shall be received or considered by the Court. To object to the settlement a Class Member
22 must file with the Court and serve on the Settlement Administrator and Counsel for the Settling
23 Parties, not later than forty-five (45) calendar days after the date that the Settlement Administrator
24 first mails the Class Notice, a written statement objecting to the Settlement and setting forth the
25 grounds for the objection. This deadline shall be extended by fourteen (14) days for all Class
26 Members whose notice was re-mailed. The written statement of objection must indicate whether the
27 Class Member intends to appear and object to the Settlement at the Final Approval Hearing. The
28 Court retains final authority with respect to the consideration and admissibility of any Class

1 Member objections. Counsel for the Parties shall file any response to the objections submitted by
2 objecting Class Members at least five (5) court days before the date of the Final Fairness and
3 Approval Hearing.

4 10. As of the date this Order is signed, all dates and deadlines associated with the Action
5 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

6 11. In the event the Settlement does not become effective in accordance with the terms
7 of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled or
8 fails to become effective for any reason, this Order shall be rendered null and void and shall be
9 vacated and the Parties shall revert to their respective positions as of before entering into the
10 Settlement Agreement.

11 12. The Court reserves the right to adjourn or continue the date of the Settlement
12 Hearing and all dates provided for in the Settlement Agreement without further notice to Class
13 Members and retains jurisdiction to consider all further applications arising out of or connected with
14 the proposed Settlement.

15 Date:

16 _____
Hon. T. Mark Smith
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