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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 11 2023

BY 
RAFAEL HERNANDEZ, DEPUTY

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12

13 TODD WESTPHAL, JOHN MORTIMORE,
14 MANUEL PEREZ, and CHRISTOPHER
HIGGINS,

15 Plaintiffs,

16 v.

17 SOUTHWEST GAS CORP., SOUTHWEST GAS
18 UTILITY GROUP, INC., SOUTHWEST GAS
HOLDINGS, INC., and DOES 1 through 20,
19 inclusive,

20 Defendants.

Case No. CIVDS1813554

Assigned to the Hon. David Cohn,
Department S26

~~[PROPOSED]~~ **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, AND SETTING OF FINAL
APPROVAL HEARING**

Hrg. Date: May 11, 2023
Hrg. Time: 8:30 am
Location: Dept. S26

Action Filed: June 1, 2018



1 On June 1, 2018, Plaintiffs filed their Complaint against Defendants in this Court. On October
2 2, 2018, Plaintiffs filed a First Amended Complaint, and filed a Second Amended Complaint (“SAC”)
3 on September 1, 2020. The class action alleges minimum wage violations and other related claims on
4 behalf of current and former employees of Defendants. Plaintiffs’ class action is based on: (1) their
5 interpretation that the California Supreme Court’s December 22, 2016 decision in *Augustus v. ABM*
6 *Securities Services, Inc.*, 2 Cal. 5th 257, 260 (2016), holds that rest periods cannot be “on call”; and (2)
7 their interpretation that the decision by the California District Courts of Appeal’s 2019 decision in
8 *Ward v. Tilly’s, Inc.*, 31 Cal.App.5th 1167, 1187 (2019) that unpaid, on-call shifts spent under the
9 control of the employer must be compensated. Plaintiffs contend that Defendants require employees to,
10 among other things, receive a minimum wage for time spent on-call and under the control of the
11 employer. Defendants deny any liability and contend they complied with all laws.

12 Plaintiffs and their counsel have engaged in extensive discovery and investigation relating to the
13 facts. The parties exchanged documents pertinent to the claims alleged and defenses asserted,
14 including Plaintiffs’ personnel files, workplace manuals and employee handbooks, organizational
15 charts, an operations assessment report, job descriptions, payroll and wage data information, emergency
16 procedures and rules, and multiple agreements and policies, among other documents.

17 Before the Parties reached a settlement, Plaintiffs conducted an extensive investigation of
18 Defendants’ wage and hour practices, particularly regarding payment for time spent on call. The
19 investigation included interviews of employees and review of relevant documents, including workplace
20 manuals, emergency procedures, rules and employee handbooks. In addition to Defendants’ wage and
21 hour policies and practices, Plaintiffs reviewed extensive payroll and timecard data for the shifts
22 worked by each putative Class Member. This discovery allowed Plaintiffs to thoroughly evaluate
23 liability and to estimate damages, and provided a sufficient basis upon which to negotiate a settlement.
24 The resolution was the result of arms-length negotiations following a full-day mediation session with
25 highly skilled and experienced mediator Honorable Carla M. Woehrle (ret.) on June 30, 2022.

26 Plaintiff has moved this Court for an order: (1) preliminarily and conditionally certifying the
27 class for purposes of settlement; (2) preliminarily approving the class action settlement; (3) preliminarily
28 appointing Plaintiffs Todd Westphal, John Mortimore, Manuel Perez, and Christopher Higgins as the

1 Class Representatives for purposes of settlement; (4) preliminarily appointing Gilbert & Sackman, a
2 Law Corporation as class counsel for purposes of settlement; (5) preliminarily approving the application
3 for payment to class counsel of reasonable attorneys' fees and costs; (6) preliminarily approving the
4 payment of an "enhancement award" to each of the four class representatives; (7) preliminarily
5 approving settlement administration services to be provided by CPT Group; (8) approving the form and
6 content the proposed class notice; (9) directing that the notice of settlement be mailed by first class mail
7 to the Settlement Class members; and (10) scheduling a final fairness approval hearing.

8 No opposition has been filed to Plaintiffs' motion, which came for hearing before the Court on
9 May 11, 2023. Counsel for all parties were present at the hearing.

10 This Court, having considered Plaintiffs' notice of motion, supporting memorandum of points
11 and authorities and the declaration of counsel, the Settlement Agreement, the proposed Class Notice,
12 and the oral argument presented to the Court, and in recognition of the Court's duty to make a
13 preliminary determination as to the reasonableness of any proposed class action settlement, and to
14 conduct a fairness hearing as to good faith, fairness, adequacy, and reasonableness of any proposed
15 settlement, HEREBY ORDERS and MAKES DETERMINATIONS as follows:

16 **ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS, AND**
17 **APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL**

18 The Court finds that provisional certification of the following class for settlement purposes only
19 is appropriate under Code of Civil Procedure § 382: "All current and former hourly California non-
20 exempt employees of Defendants who were scheduled to be "on call" at any time during the Class
21 Period (i.e., June 1, 2014 to November 28, 2017)."

22 The Court finds that the Settlement Class meets the ascertainability and numerosity requirements
23 because at least 107 class members have been identified through Defendants' records. The commonality
24 requirement is also met. In the absence of class certification and settlement, each individual Settlement
25 Class member would be forced to litigate core common issues of law and fact.

26 Because the Plaintiffs' and Settlement Class members' claims all arise from the same events and
27 course of conduct, and are based on the same legal theories, the typicality requirement is also satisfied.
28 The adequacy of representation requirement is also met here because the representative plaintiffs have

1 the same interests as all members of the Settlement Class and there is no conflict of interest. Moreover,
2 counsel at Gilbert & Sackman, ALC, is adequate and competent Class Counsel.

3 The Court further finds that common issues predominate over individual issues in the litigation
4 and that class treatment is superior to other means of resolving this dispute. Employing the class device
5 here will not only achieve economies of scale for Settlement Class members with relatively small
6 individual claims but will also conserve the resources of the judicial system by avoiding the waste and
7 delay of repetitive proceedings and prevent the inconsistent adjudications of similar issues and claims.

8 For all of these reasons, the Court ORDERS that the class be conditionally certified for purposes
9 of settlement only.

10 The Court finds that Plaintiffs Todd Westphal, John Mortimore, Manuel Perez, and Christopher
11 Higgins are adequate class representatives and appoints them such. Gilbert & Sackman, ALC, shall be
12 appointed as Class Counsel and shall be responsible for communicating with Class Members where
13 necessary and providing input on substantive and procedural issues during the litigation.

14 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

15 The Court has reviewed the Settlement Agreement and the proposed Class Notice documents,
16 which are attached as exhibits to the supporting declaration of Joshua F. Young. The Court finds, on a
17 preliminary basis, that the Settlement Agreement falls within the range of reasonableness of a settlement
18 that could ultimately be given final approval by the Court. The Court also finds, on a preliminary basis,
19 that the Settlement Agreement appears to be the product of intensive, non-collusive, arm's length
20 negotiations between well-informed counsel, and is thus presumptively valid.

21 It appears to the Court that on a preliminary basis, the settlement amount of \$3,500,000 is fair
22 and reasonable to all Settlement Class members when balanced against the probable outcome of further
23 litigation relating to liability and damages issues. It further appears that extensive investigation,
24 research and mediation have been conducted such that the parties' counsel at this time are able to
25 reasonably evaluate their respective positions. It further appears that the settlement at this time will
26 avoid substantial costs, in addition to those which have already been incurred by both sides, as well as
27 avoid the delay and risks that would be presented by the further prosecution of this litigation.

1 The Court, therefore, preliminarily and conditionally approves the Settlement, including: (1) the
2 proposed incentive fee to each named plaintiff in the amount of \$10,000 in addition to their pro rata
3 share of the settlement amount; (2) the proposed attorney's fees and costs (\$1,155,000 in reasonable
4 attorney's fees and \$30,000 in estimated costs) from the settlement amount; and (3) payment of
5 reasonable settlement administration costs (estimated at less than \$25,000) from the Settlement.

6 **APPROVAL OF DISTRIBUTION OF CLASS NOTICE**

7 The Court finds that the proposed Class Notice form, which is attached as an exhibit to the
8 supporting declaration of Joshua F. Young, fairly and adequately advises potential class members of the
9 terms of the proposed settlement, the process for the class members to opt out of the class, the process
10 for class members to compute and challenge their pro rata share of the settlement, the process to file
11 objections to the proposed settlement, and their right to appear at the Fairness Hearing to be conducted
12 on the date set forth below.

13 The Court finds the proposed distribution of the Class Notice, including distribution of such
14 notice by first class mail to each identified Settlement Class member at his or her last known address;
15 database search done prior to mailing; and skip tracing and re-mailing as to any notices that are returned
16 by the post office of such returned notice, to comport with all constitutional requirements, including
17 those of due process, and is the best notice practicable under the circumstances.

18 The Court confirms the selection of CPT Group as the Administrator of the settlement claims
19 process, the reasonable costs of which will be paid from the settlement amount.

20 Accordingly, good cause appearing, the Court hereby approves the proposed Class Notice and
21 adopts the following dates and deadlines:

22 23 24 25 26 27 28	Within fifteen (15) calendar days after entry of the Court's Order of Preliminary Approval:	Defendants will produce the Class List and Data to Class Counsel and to the Administrator in a readable Microsoft Excel Spreadsheet which shall include for each Class Member: identifying information in Defendants' possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods. Young Decl., Ex. 1 at ¶ 4.2.
	Within fourteen (14) calendar days after receiving the information from Defendants:	Administrator shall mail the Notice Packet to all Class Members, via first class United States mail, using the most current mailing address. Young Decl., Ex. 1 at ¶ 3.4.2.

1 2	Within thirty (30) calendar days after Class Notice is mailed:	Last day for members of the Settling Class to file written objections with the Court or submit a written request for exclusion from the settlement. Young Decl., Ex. 1 at ¶ 1.44.
3 4	Not later than sixteen (16) court days before the final approval hearing:	Plaintiffs file Motion for Final Approval of Class Action Settlement. Young Decl., Ex. 1 at ¶ 6.
5	Within ninety (90) calendar days after Effective Date: ¹	Checks sent to Class Members. Young Decl., Ex. 1 at ¶¶ 4.3-4.4.
6 7	30 calendar days after checks sent to Class Members:	Administrator Report to be filed with Court. Young Decl., Ex. 1 at ¶ 3.8.6.
8	180 calendar days after checks issued:	Checks valid for 180 days after issuance. Young Decl., Ex. 1 at ¶ 4.4.1.

1 “Effective Date” means the date by which the Settlement is finally approved as provided in the Settlement Agreement and the Court’s Final Approval Order becomes binding. Young Dec., Ex. 1 at ¶ 2.13.

FINAL APPROVAL FAIRNESS HEARING


The Court hereby grants Plaintiffs' motion to set a hearing for final approval of the Settlement Agreement on 9/14/23, at 9:00 a.m. in Department 5:20 of this Court. Members of the Settlement Class who object to the proposed settlement may appear and present such objections at the Final Approval Fairness Hearing in person or by counsel, provided that any objecting Settlement Class members submit a written statement containing the name and address of the objecting Settlement Class member and the basis of that person's objections, together with a notice of the intention to appear, which must be postmarked no later than 30 days from the date on which the Notice is sent out by the Administrator. No person shall be heard, and no briefs or papers shall be received or considered, unless the foregoing documents have been filed and served as provided in this Order and she or he appears at the Final Fairness hearing, except as this Court may permit for good cause shown.

Class Counsel shall file a memorandum of points and authorities in support of the final approval of the Settlement Agreement and their request for approval of the attorney's fees and costs no later than 16 court days prior to the hearing.

IT IS FURTHER ORDERED that, if for any reason the Court does not grant final approval of the Settlement Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and the rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

IT IS SO ORDERED.

DATED: 5/11/23, 2023


DAVID COHN
The Honorable David Cohn
San Bernardino Superior Court Judge