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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KONSTANTINOS MOSHOGIANNIS,

CASE NO. 5:10-cv-05971 EJD

Plaintiff(s),

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR CONDITIONAL
SETTLEMENT CLASS CERTIFICATION
AND PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

SECURITY CONSULTANTS GROUP,
INC.,

[Docket Item No. 21]

Defendant(s).

Presently before the court is Plaintiff Konstantinos Moshogiannis' unopposed motion for conditional settlement class certification and preliminary approval of class action settlement. See Docket Item No. 21. For the reasons stated below, the motion is granted.

I. BACKGROUND

A. Plaintiff's Allegations

Defendant Security Consultants Group, Inc. ("Defendant") employed Plaintiff as a security officer at two locations in San Jose from on or about June 9, 2007, to on or about May 3, 2010. See First Am. Compl. ("FAC"), Docket Item No. 14, at ¶ 4. At the first location, Plaintiff was scheduled to work from 6:30 a.m. until 6:00 p.m. from Monday to Thursday, with a one-and-one-half hour uncompensated meal break between 1:30 p.m. and 3:00 p.m. He was not compensated for overtime. *Id.*, at ¶ 5.

At the second location, Plaintiff was scheduled to work from 8:45 a.m. to 5:00 p.m. from

1 Monday to Friday, with no meal breaks and no rest breaks. Id., at ¶ 6.

2 After Plaintiff worked for four hours on May 3, 2010, Defendant required him to report to
3 the gun range for a firearm test. Id., at ¶ 7. Plaintiff did not qualify due to carpal tunnel syndrome.
4 Id. He was therefore discharged from employment, but was not paid for his four hours of work that
5 day. Id. In addition, the final paycheck he received on May 10, 2010, did not compensate Plaintiff
6 for all of his wages. Id., at ¶ 8. Plaintiff further claims that all of the paychecks he received during
7 employment failed to include the total number of hours worked. Id., at ¶ 23.

8 **B. Procedural History**

9 This action was originally commenced in Santa Clara Superior Court on November 5, 2010.
10 On behalf of himself and a proposed class, Plaintiff claimed that Defendant committed a number of
11 employment-related violations contrary to state and federal labor statutes. Specifically, Plaintiff
12 alleged Defendant: (1) failed to pay overtime compensation in violation of the Fair Labor Standards
13 Act (“FLSA”), California Labor Code § 510 and 29 U.S.C. § 216(b), (2) failed to timely pay wages
14 at discharge in violation of California Labor Code § 203, (3) failed to include required information
15 on employee paystubs in violations of California Labor Code § 226, and (4) failed to provide rest
16 and meal breaks in violation of California Labor Code § 226.7. Plaintiff further alleged Defendant
17 violated California’s Unfair Competition Law, Business and Professions Code § 17200 et. seq. and
18 requested enhanced civil penalties and attorneys fees pursuant to the California Labor Code § 2698
19 et. seq.

20 On December 30, 2010, Defendant removed the case to this court, and Plaintiff filed the FAC
21 on March 7, 2011. Between May 13th and May 16, 2011, the parties executed a Class-Action
22 Settlement Agreement and Release (“CASA”), a copy of which is attached to the supplemental
23 declaration of Plaintiff’s counsel. The proposed settlement includes the following settlement class
24 members:

25 All natural persons employed by Defendant Security Consultants
26 Group, Inc. in California as security personnel during the time from
27 January 1, 2007, through the date of preliminary approval of this
28 Settlement.

1 Pursuant to the CASA, the gross settlement amount is \$683,130.00, from which payments
2 are to be made as follows: (1) 30%, or \$204,939.00, as attorney’s fees to Class Counsel, plus
3 reasonable litigation costs estimated to be \$5,000.00, (2) up to \$7,500.00 as enhancement award to
4 Plaintiff, (3) an estimated \$20,000.00 as reasonable costs to the Claims Administrator, (4)
5 \$25,000.00 to the State of California Labor and Workforce Development Agency, (5) an
6 unidentified amount to pay Defendant’s payroll taxes and the amount distributed to class members,
7 and (6) \$395,691.00, as the “Net Settlement Amount” used to pay the timely and valid claims of the
8 class members after the previously-stated items are deducted.

9 The amount payable to a class member from the Net Settlement Amount is to be calculated
10 by adding together an “Initial Calculation Amount” and a “Supplemental Calculation Amount,” if
11 any. The “Initial Calculation Amount” is determined by first dividing the Net Settlement Amount
12 by the total number of compensable workweeks for the entire class and then multiplying the dollar
13 value per compensable workweek by the number of compensable workweeks worked by each
14 participating class member. If not all class members submit timely and valid claims, a Supplemental
15 Calculation Amount will be determined for all participating class members by first subtracting the
16 total Initial Calculation Amount for all participating class members from the Net Settlement
17 Amount, dividing the resulting figure by the total number of compensable workweeks worked by
18 participating class members, and then multiplying the individual class member’s number of
19 compensable workweeks by the supplemental amount per work week.

20 In exchange for the monetary compensation calculated above, all non-excluded class
21 members will release Defendant from “all wage-and-hour claims of every nature or description,
22 including claims for injunctive relief,” related to the allegations in the FAC.

23 II. LEGAL STANDARD

24 A class action may not be settled without court approval. Fed. R. Civ. P. 23(e). When the
25 parties to a putative class action reach a settlement agreement prior to class certification, “courts
26 must peruse the proposed compromise to ratify both the propriety of the certification and the fairness
27 of the settlement.” Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). At the preliminary
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1 stage, the Court must first assess whether a class exists. *Id.* (citing Amchem Prods. Inc. v. Windsor,
2 521 U.S. 591, 620 (1997)). Second, the court must determine whether the proposed settlement “is
3 fundamentally fair, adequate, and reasonable.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th
4 Cir. 1998). If the court preliminarily certifies the class and finds the proposed settlement fair to its
5 members, the court schedules a fairness hearing where it will make a final determination of the class
6 settlement. Okudan v. Volkswagen Credit, Inc., No. 09-CV-2293-H (JMA), 2011 U.S. Dist. LEXIS
7 84567, at *6 (S.D. Cal. Aug. 1, 2011).

8 III. DISCUSSION

9 A. Class Certification

10 Pursuant to the Federal Rules, there are four preliminary requirements for class certification:
11 (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. See Fed. R.
12 Civ. P. 23(a)(1)-(4). If these are satisfied, the court must then examine whether the requirements of
13 Rule 23(b)(1), (b)(2), or (b)(3) are satisfied. Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2548-
14 49 (2011).

15 The Rule 23 requirements are more than “a mere pleading standard.” *Id.* Indeed, the class
16 representations are subjected to a “rigorous analysis” which compels the moving party to
17 “affirmatively demonstrate...compliance with the rule - that is, he must be prepared to prove that
18 there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” *Id.*

19 1. Rule 23(a)

20 Rule 23(a)(1) provides that a class action may be maintained only if “the class is so
21 numerous
22 that joinder of all parties is impracticable.” Fed. R. Civ. P. 23(a)(1). In this context,
23 “impracticability” is not equated with impossibility; it is only an apparent difficulty or
24 inconvenience from joining all members of the class. Harris v. Palm Springs Alpine Estates, Inc.,
25 329 F.2d 909, 913-14 (9th Cir. 1964). Moreover, satisfaction of the numerosity requirement is not
26 dependent upon any specific number of proposed class members, but “where the number of class
27 members exceeds forty, and particularly where class members number in excess of one hundred, the
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1 numerosity requirement will generally be found to be met. Int'l Molders' & Allied Workers' Local
2 164 v. Nelson, 102 F.R.D. 457, 461 (N.D. Cal. 1983).

3 According to the declaration of Plaintiff's counsel, Defendant has identified approximately
4 254 putative settlement class members, which Defendant will confirm by providing the names and
5 addresses of the class members to GCL should upon preliminary approval. In light of the purported
6 size of the class, the court finds the numerosity requirement to be satisfied.

7 Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R.
8 Civ. P. 23(a)(2). In the wake of Wal-Mart, commonality now requires "the plaintiff to demonstrate
9 that the class members 'have suffered the same injury.'" Wal-Mart, 131 S. Ct. at 2551 (quoting
10 Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 157 (1982)). The claims of all class
11 members "must depend on a common contention," which is "of such a nature that it is capable of
12 classwide resolution - which means the determination of its truth or falsity will resolve an issue that
13 is central to the validity of each one of the claims in one stroke." Id.

14 In response to this court's request for supplemental briefing, Plaintiff clarified that "since
15 both of the unpaid-overtime and continuing-wage claims are, in fact, derived from the same policy
16 regarding the missed-breaks claim," specifically "Defendant's company-wide policy to understaff its
17 security posts," the requirement of common contention is satisfied.¹ Having considered this matter
18 in light of Wal-Mart, the court concurs with Plaintiff's statement. Thus, because all of Plaintiff's
19 class claims are premised on Defendant's alleged policies - either one resulting in inadequate
20 staffing, one excluding statutorily-imposed information on paystubs, or one leading to the untimely
21 presentation of final wages at discharge - and because those policies applied to all putative class
22 members as well as Plaintiff, this case meets the commonality requirement of Rule 23(a)(2).

23 Rule 23(a)(3) requires that the representative party's claim be "typical of the claim . . . of the
24 class." Fed. R. Civ. P. 23(a)(3). "Under this rule's permissive standards, representative claims are
25 typical if they are reasonably co-extensive with those absent class members; they need not be
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27 ¹ The court thanks both parties for the excellent and incredibly helpful supplemental brief
28 filed at the court's request.

1 substantially identical.” Hanlon, 150 F.3d at 1020. Here, Plaintiff’s personal claims are similar to
2 those of any and all absent class members since, as a security officer employed by Defendant in
3 California, he was subject to Defendant’s policies inasmuch as all other similarly situated
4 employees. For this reason, Plaintiff has satisfied the typicality requirement.

5 Finally, Rule 23(a)(4) requires a showing that “the representative parties will fairly and
6 adequately protect the interests of the class.” Fed. R. Civ. Proc. 23(a)(4). Constitutional due
7 process is central to this determination. “[A]bsent class members must be afforded adequate
8 representation before entry of judgment which binds them.” Hanlon, 150 F.3d at 1020 (citing
9 Hansberry v. Lee, 311 U.S. 32, 42-43 (1940)). Two questions must be resolved by the court: “(1) do
10 the named plaintiffs and their counsel have any conflicts of interest with other class members, and
11 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
12 class?” Id. Based on the information presented, the court answers the first question in the negative,
13 since Plaintiff shares the desire of all class members to be compensated for the violations alleged in
14 the FAC. As to the second question, the court is satisfied that Plaintiff’s counsel has and will
15 continue to pursue this action vigorously on behalf of Plaintiff and the proposed class members,
16 considering counsel’s experience in labor law and class action litigation.

17 **2. Rule 23(b)**

18 Subsection (b)(3) of Rule 23 is most relevant to this case. Under that portion of the rule, the
19 court must find “that questions of law or fact common to class members predominate over any
20 questions affecting only individual members, and that a class action is superior to other available
21 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “The
22 predominance inquiry focuses on the relationship between the common and individual issues and
23 tests whether the proposed class [is] sufficiently cohesive to warrant adjudication by representation.”
24 Vinole v. Countrywide Home Loans, Inc., 571 F.3d 935, 944 (9th Cir. 2009) (internal citations
25 omitted).

26 As explained in the discussion addressing the Rule 24(a)(2) commonality requirement, the
27 fact that all proposed class members were subject to Defendant’s policies weighs in favor of finding
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1 the requirements of Rule 23(b)(3) satisfied. It appears the only individual determination necessary is
2 the amount of damages due to each class member, which itself does not defeat class certification.
3 Yokoyama v. Midland Nat'l Life Ins. Co., 594 F.3d 1087, 1094 (9th Cir. 2010). Thus, the court
4 finds that common issues sufficiently predominate.

5 For superiority, the court must consider “whether maintenance of this litigation as a class
6 action is efficient and whether it is fair,” such that litigating this case as a class action is superior to
7 other methods of adjudicating the controversy. Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d
8 1168, 1175-76 (9th Cir. 2010). As Plaintiffs note, the alternatives to class certification are either (1)
9 dozens of separate administrative proceedings followed by de novo trials in the superior court,
10 which would be time-consuming and inefficient, or (2) the large majority of class members will
11 never have their claims determined on the merits, an outcome which is certainly not desirable. For
12 these reasons, a class action is a superior method of resolving the claims of class members. This
13 requirement is satisfied.

14 Since a sufficient showing has been made as to all of the requirements contained in Federal
15 Rule of Civil Procedure 23, the motion for conditional certification of a settlement class will be
16 granted.²

17 **B. Preliminary Fairness Determination**

18 Pursuant to Rule 23(e), the court must examine the proposed settlement and make a
19 preliminary finding of fairness. A class action settlement may be approved only based on a finding
20 that the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. Proc. 23(e)(1)(C). The burden
21 to demonstrate fairness falls upon the proponents of the settlement. Staton, 327 F.3d at 959; see also
22 Officers for Justice v. Civil Svc. Comm’n. of the City and County of San Francisco, 688 F.2d 615,
23 625 (9th Cir. 1982). The relevant factors for consideration include: the strength of the plaintiff’s
24 case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining

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26 ² The court also finds satisfied the collective action requirement contained in 29 U.S.C. §
27 216(b). See Flavel v. Svedala Indus. Inc., 875 F. Supp. 550, 553 (E.D. Wis. 1994) (“The ‘similarly
28 situated’ requirement, in turn, is considerably less stringent than the requirement of [Rule 23(b)(3)]
that common questions ‘predominate’” (internal quotations and citation omitted)).

1 class action status throughout the trial; the amount offered in settlement; the extent of discovery
2 completed; the stage of the proceedings; and the experience and views of counsel. Staton, 327 F.3d
3 at 959. “[S]ettlement approval that takes place prior to formal class certification requires a higher
4 standard of fairness.” Hanlon, 150 F.3d at 1026.

5 The court is satisfied that the proposed settlement is fair considering the representations
6 made in this motion. First, it is apparent this settlement was reached after the parties conducted a
7 significant amount of informal discovery in the form of document exchange and interviews. Second,
8 this case has been pending for over a year and would likely require extensive formal discovery and
9 additional litigation concerning the adequacy of the proposed class as well the amount of damages.
10 Proceeding to settlement now would obviously avoid that result and assures that each class member
11 will receive payment on their claim within a relatively short period of time. Third, it is obvious the
12 agreed settlement amount represents a compromise of the parties based on the perceived strengths
13 and weaknesses of their respective positions, and was determined with regard to Defendant’s
14 position as a privately-held entity in a niche industry. Finally, Plaintiff’s counsel has recommended
15 accepting the settlement. For these reasons, the motion for preliminary approval of class action
16 settlement will be granted.

17 **C. Notice of Class Certification and Settlement Administration**

18 Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances,
19 including individual notice to all members who can be identified through reasonable effort.” Rule
20 23(e)(1) requires reasonable notice to all class members who would be bound by the proposed
21 settlement. The notice must explain in easily understood language the nature of the action,
22 definition of the class, class claims, issues and defenses, ability to appear through individual
23 counsel, procedure to request exclusion, and the binding nature of a class judgment. Fed. R. Civ. P.
24 23(c)(2)(B).

25 Here, the parties agree to retain Gilardi & Co., LLC (“GCL”) to serve as settlement claims
26 administrator. According to the brochure provided, GCL staff has over 20 years in claims
27 administration and has administered hundreds of labor and employment class actions. The
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1 administration costs incurred will be paid from the settlement fund. During the period of
2 administration, GCL will provide counsel for all parties weekly reports showing the number of
3 claims received, including any opt-outs and objections. GCL will also provide a declaration to
4 Plaintiff's counsel detailing the notice process and number of claims, opt-outs and objections
5 received at least ten days before the filing of a Motion for Final Approval fo the Settlement.

6 The CASA describes also the claims process as follows:

- 7 1. Within 15 days of an order granting preliminary approval, Defendant will provide to
8 the Claims Administrator the names, last-known addresses and Social Security
9 number of the class members, along with data indicating the number of compensable
10 workweeks for each class member.
- 11 2. Within 15 days of receiving the information from Defendant, GCL will mail to all
12 class members, by regular mail, the Settlement Notice, Claim Form, and instructions.
13 GCL will complete a national change of address search before sending out the claims
14 packets, and will use reasonable diligence to obtain a current address for all returned
15 packets within ten days of the return.
- 16 3. Class members will have 45 days from the mailing of the claims packet to submit a
17 claim form, which will act as the member's consent to "opt in" as a party plaintiff in
18 this settlement. GCL will notify all claimants who submit defective claims forms and
19 will allow 15 days for correction or until the end of the 45 day claims period,
20 whichever is later.
- 21 4. If a class member submits both a claim form and a request for exclusion, the request
22 for exclusion will be rejected. If a class member does not respond or fails to properly
23 request exclusion, the members will be deemed bound by the terms and conditions of
24 the settlement, but will not be deemed to have waived or released claims under the
25 FLSA. If 10% or more of class members elect not to participate in the settlement,
26 Defendant will have the right to rescind the settlement.
- 27 5. If a class member disputes the number of compensable workweeks listed on the claim
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form, the class member shall have 30 days within which to provide a written statement and any documentation to GCL in support of their dispute. GCL will then consult with Plaintiff’s counsel on the disputed claim, but GCL’s decision shall be final and will not be appealable.

- 6. GCL will be responsible for issuing settlement payments and calculating and withholding all required state and federal taxes.
- 7. Class members wishing to object to the settlement or the provision of attorney’s fees and costs must submit to the Clerk of the Court, GCL, and serve on counsel for each party, a written statement detailing their objection within 15 days after Plaintiff’s counsel files the Motion for Final Approval of Settlement. An objecting class member must state on the objection whether the member intends to appear and object to the settlement at final approval hearing, or will be deemed to have waived the objection.

The court finds the procedure described above meets the standards of Rule 23. Moreover, the Notice to Class of Proposed Settlement of Class Action (“Notice”) and the Claim Form, attached as Exhibits 3 and 4 to the declaration of Plaintiff’s counsel respectively, are hereby approved with the following modifications:

- 1. All references in the Notice to the location of a final approval hearing shall be to Courtroom 4 of the United States District Court as opposed to Courtroom 1.
- 2. All references in the Notice to the street address of the courthouse shall be “280 South First Street,” as opposed to “280 South First Avenue.”
- 3. Under the section entitled “How to Obtain Additional Information,” the second sentence of the first paragraph should state: “For more detailed information, you may review the pleadings, records, and other papers on file in the lawsuit, which materials may be inspected at the Clerk’s Office, United States District Court, *280 South First Street, San Jose, California 95113.*”
- 4. All deadlines and the hearing date set forth in the Notice shall conform to this Order.

1 IV. ORDER

2 In light of the preceding discussion, the motion for approval the motion for conditional
3 certification of a settlement class and preliminary approval of class action settlement is GRANTED
4 as follows:

5 1. This action is certified as a class action for settlement purposes only pursuant to
6 subsections (a) and (b)(3) of Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b).

7 2. The CASA is preliminarily approved as fair, reasonable, and adequate pursuant to
8 Federal Rule of Civil Procedure 23(e).

9 3. Named plaintiff Konstantinos Moshogiannis is approved to act as class representative
10 for settlement purposes only.

11 4. Alan Harris and Abigail Treanor of Harris & Ruble are appointed as class counsel
12 pursuant to Federal Rule of Civil Procedure 23(g).

13 5. Gilardi & Co., LLC is approved to act as claims administrator for settlement purposes
14 only. The court directs the mailing of the Notice and Claim Form by first-class mail to the
15 Settlement Class in accordance with the schedule and procedures set forth in the CASA. Members
16 of the Settlement Class who wish to challenge the compensable workweeks used to calculate their
17 share of the settlement must then provide written evidence to support their challenge to the claims
18 administrator postmarked within 45 days of the date of mailing of the Notice. The claims
19 administrator shall have full discretion to resolve any such disputes.

20 6. The content of the Notice and Claim Form are approved pursuant to subsections
21 (c)(2)(B) and (e) of Federal Rule of Civil Procedure 23.

22 7. A hearing on the final approval of class action settlement shall be held before this
23 court on **June 15, 2012, at 2:00 p.m.** Class counsel shall file brief(s) requesting final approval of
24 the CASA, an award of reasonable attorneys' fees and costs, and an award of reasonable class
25 representative enhancement fees not later than 35 calendar days before the final approval hearing.
26 All other applicable dates shall be established by the CASA.

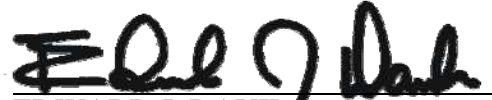
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The Case Management Conference scheduled for February 10, 2012, is VACATED.

IT IS SO ORDERED.

Dated: February 8, 2012


EDWARD J. DAVILA
United States District Judge