

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

Tentative Ruling

Plaintiffs James Gregory Conquest’s and Ilana Ramos’s (collectively “Plaintiffs”) motion for preliminary approval of class and Private Attorneys General Act (“PAGA”) settlement is UNOPPOSED and GRANTED, as follows.

Moving counsel’s notice of motion does not provide notice of the Court’s tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact opposing counsel to advise them of Local Rule 1.06, the Court’s tentative ruling procedure, and the manner to request a hearing.

Background

On June 28, 2022, Plaintiff Conquest filed a notice with the Labor & Workforce Development Agency (“LWDA”) alleging that Defendants Triple Canopy, Inc., Constellis Integrated Risk Management Services, Inc., and Triple Canopy — A Constellis Company (“Defendants”) violated Labor Code sections 201-203, 226, 226.3, 226.7, 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, pursuant to Labor Code section 2699. (Clark Decl., ¶ 3.) On the same day, Plaintiff Conquest also filed a class action complaint in the Action alleging six causes of action for failure to: (1) pay all wages, including minimum and overtime wages; (2) timely pay final wages; (3) provide accurate itemized wage statements; (4) reimburse for business expenses; (5) pay reporting time pay; and (6) unfair business practices. (*Id.*, ¶ 4.)

On June 24, 2022, Plaintiff Ramos filed a notice with the LWDA, pursuant to Labor Code section 2699, against Defendants Triple Canopy and Constellis Integrated Risk Management Services alleging that they violated Labor Code sections 201- 204, 210, 226, 226.3, 226.7, 246, 432, 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802. (Clark Decl., ¶ 5.) On June 17, 2022, Ramos also asserted an intent, through legal counsel, to pursue certain non-wage and hour claims against Triple Canopy relating to the separation of her employment from Triple Canopy (the “Ramos Dispute Letter”). The Parties entered into a tolling agreement pending mediation. (*Id.*, ¶ 6.) The Parties participated in a full-day mediation on January 18, 2023. (*Id.*, ¶ 9.) On June 2, 2023, Plaintiffs filed their First Amended Complaint as part of this settlement proceeding. (*Id.*, ¶¶ 7-8.) The Operative Complaint added Ramos as a Plaintiff, added Ramos’s counsel as Plaintiffs’ counsel, and added both Plaintiffs’ underlying claims based on alleged Labor Code violations as asserted in the Plaintiffs’ PAGA Notices on both a class and representative basis. (*Id.*, ¶ 7.)

On July 14, 2023, on the Court’s own motion, the Court continued the hearing on this matter to address a number of issues. In response to the Court’s concerns, the Parties amended the Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims (“Settlement Agreement” or “Agreement”). (Hawkins Supp. Decl., ¶ 2, Exh. 1 (“Amended SA”); Clark Decl., ¶ 10, Exh. 1 (“SA”).) Concurrent with the filing of their original motion, Plaintiffs

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

submitted the proposed settlement to the LWDA. (Clark Decl., ¶ 11, Exh. 2.) Plaintiffs also submitted the supplemental briefing and Amended Agreement to the LWDA. (8-10-23 Proof of Service.)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at pg. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class Actions* (6th ed. 2022) § 13:10.)

Provisional Class Certification

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

If the class has not yet been certified, part of the motion for preliminary approval will include a request for provisional certification for purposes of settlement only. (See Cal. Rule of Court, Rule 3.769.) Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. (See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)

Here, Plaintiffs seek provisional certification of the following Class: “all current and former non-exempt hourly-paid Protective Security Officers who performed any on-post work for Triple Canopy on its Northern California and Central California Department of Homeland Security Contracts from June 11, 2020 through the earlier date of April 24, 2023 or the date of preliminary approval of the settlement by the Court. Individuals other than the Plaintiffs who have filed their own lawsuit (excluding the Action defined above) alleging the same or similar claims released by this Settlement Agreement and/or individuals who have previously released such claims against Defendants shall be excluded from the Class.” (Amended SA, ¶ 4.)

Plaintiffs argue that provisional class certification is appropriate because (1) the proposed Class of approximately 851 Class Members is sufficiently numerous and is easily identifiable from Defendants’ records; (2) Plaintiffs’ claims are typical of those of the Class and their interests are co-extensive with the interests of the Class because they all worked for Defendants in a protective security officer role, have been injured in the same manner, and seek the same relief; (3) Plaintiffs are adequate Class Representatives because there is no conflict between them and the rest of the class and Plaintiffs have retained qualified and experienced counsel. (Mot., pp. 27:18-29:8.) The Court finds Plaintiffs’ arguments persuasive and provisionally certifies the class for settlement purposes for the reasons specified in Plaintiffs’ moving papers.

Class Representatives & Class Counsel

Plaintiffs James Gregory Conquest and Ilana Ramos are preliminarily appointed as the Class Representatives. (Amended SA, ¶ 10.) James Hawkins, Gregory Mauro and Michael Calvo of James Hawkins APLC; R. Craig Clark and Alicja Urtnowski of Clark Law Group; and Walter Haines of United Employees Law Group are preliminarily appointed as Class Counsel (“Counsel”). (*Id.*, ¶ 6.)

Fair, Adequate, and Reasonable Settlement

Before approving a class action settlement, the Court must find that the settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement.” (*Id.*) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Id.* at p. 1802.)

Originally, the Settlement Agreement provided for a Gross Settlement Fund (“GSF”) of \$965,000. (SA, ¶¶ 18, 44.) However, Plaintiffs have clarified in the supplemental briefing it was expressly agreed by the Parties that \$25,000 of that amount would be designated as a payment to Plaintiff Ramos as consideration for her release of her individual claims raised in the Ramos Dispute Letter. (Supp. Brief, p. 6:10-18; Beldner Decl., ¶ 4; Clark Supp. Decl., ¶ 10.) In response to the Court’s concerns, the Parties have revised the Agreement to separate the negotiated \$25,000 settlement of Plaintiff Ramos’s individual claims to avoid Class confusion. (Supp. Brief, p. 6:11-13.)

Under the terms of the Amended Agreement, Defendant denies liability, but agrees to pay a GSF of \$940,000. This is a non-reversionary settlement and the Parties agree that no portion of the GSF will revert to Defendants. (Amended SA, ¶ 44.)

The following amounts will be paid from the GSF:

- Class Counsel’s attorney’s fees up to 33.33% of the GSF or \$313,333.33;
- Class Counsel’s litigation expenses not to exceed \$30,000;
- Enhancement Payments to Plaintiffs not to exceed \$20,000 or \$10,000 each;
- Settlement Administration costs not to exceed \$14,000;
- PAGA Payment of \$100,000, 75% of which (or \$75,000) will be paid to the LWDA and 25% of which (or \$25,000) will be distributed to Aggrieved Employees on a pro-rata basis.

(Amended SA, ¶¶ 46, 47, 48, 49.) All applicable payroll taxes and withholdings, including the employer’s share will also be paid from the GSF. (*Id.*, ¶¶ 18, 54.) Defendant’s employer-side payroll taxes is estimated to be \$17,060.83. (Nava Decl., ¶ 3.) Plaintiffs argue that the inclusion of Defendant’s employer-side payroll taxes is not improper or unlawful and was mutually agreed upon by all Parties so that Defendants could have certainty as to the precise settlement amount, which was necessary for Defendants to obtain approval to globally settle the claims that are being resolved. (Supp. Brief, pp. 4:15-5:16; Beldner Decl., ¶ 6.) While the Court prefers for employer-side payroll taxes to be paid separately from the GSF, Plaintiffs’ justification is sufficient and the Court will not require additional revisions to the Agreement.

The remaining amount – the Net Settlement Fund (“NSF”) – will be distributed to participating Class Members. (Amended SA, ¶ 20.) “Each Class Member’s share of the NSF (“Individual Settlement Payment(s)”) will be calculated initially for purposes of mailing the Notice by

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

multiplying the NSF by a fraction, the numerator of which is the Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Class Members. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be calculated by multiplying the NSF by a fraction, the numerator of which is the Settlement Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class Members, individually and collectively." (*Id.*, ¶ 50.) The Aggrieved Employees' portion of the PAGA Payment will be distributed on a pro rata basis. (*Id.*, ¶ 49.)

For tax purposes, the Individual Settlement Payments will be allocated as 25% for unpaid wages, 25% for civil or statutory penalties, 25% for statutory or other non-wage damages, and 25% for interest. (Amended SA, ¶ 51.) 100% of each Aggrieved Employee's share of the PAGA Payment will be allocated for penalties. (*Ibid.*, Class Notice, p. 4.) Participating Class Members will have 180 days to cash their checks. (Amended SA, ¶ 68.) The Settlement Administrator will transmit the funds for any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date to the California Controller's Unclaimed Property Fund in the name of the Class Member. (*Id.*, ¶ 68.)

Upon final approval by the Court, Plaintiffs and each Participating Settlement Class Member will release the Released Parties from the "Class Released Claims" from June 11, 2020 through April 24, 2023. (Amended SA, ¶ 71.) "Released Claims" generally means "all claims that have been or could have been reasonably alleged or asserted in the PAGA Notices and any of the pleadings..." (*Id.*, ¶ 28.) The Amended Agreement specifically defines "Class Released Claims" as "[a]ny and all claims or causes of action brought pursuant to Labor Code sections 201-204, 210, 226, 226.3, 226.7, 246, 432, 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 asserting an alleged failure to pay (or correctly pay) wages of any type, failure to timely pay wages during and/or at the conclusion of employment, failure to provide compliant meal and/or rest breaks (and or premiums in lieu thereof), failure to provide accurate wage statements, failure to provide sick days and/or written notice of the same, failure to reimburse for work-related business expenses, failure to maintain accurate payroll records and/or provide signed copies of employment-related documents, failure to provide a day's rest in seven, or unfair business practices in violation of Business and Professions Code section 17200 et seq. and any related claims that could have been brought under the Fair Labor Standards Act, from June 11, 2020 through the earlier date of April 24, 2023 or the date of preliminary approval of the settlement by the Court." (*Id.*, ¶ 28.a.) Similarly, upon final approval by the Court, each Aggrieved Employee and the LWDA will release the Released Parties from claims for civil penalties under PAGA for the "PAGA Released Claims" from June 24, 2021 through April 24, 2023. (*Id.*, ¶ 72.) The "PAGA Released Claims" are defined as "[a]ny and all claims or causes of action based on the factual allegations in the Action and/or alleged in Plaintiffs' PAGA Notices for civil penalties under PAGA for alleged violations of Labor Code sections 201-204, 210, 226, 226.3, 226.7, 246, 432, 510, 512, 551, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, from June 24, 2021 through the earlier date of April 24, 2023 or the date of

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

preliminary approval of the settlement by the Court.” (*Id.*, ¶ 28.b.) While the Class Released Claims definition would have been clearer if Plaintiffs’ had included language limiting the release to claims that could have been reasonably alleged based on the operative complaint, the language in paragraph 28 and subparagraph 28.a, read together, are sufficient to appropriately limit the scope of the release. Finally, only Plaintiffs are subject to a general release. (*Id.*, ¶ 73.) The Amended Agreement eliminates the original Agreement’s release of Civil Code section 1542 by Class Members and Aggrieved Employees. (Supp. Brief, p. 6:19-20.)

The moving papers demonstrate that the settlement was reached after extensive investigation and arms-length negotiations by the parties. (Clark Supp. Decl., ¶¶ 8-9.) Counsel attests that at all times, the Parties’ negotiations were adversarial, non-collusive, and at arm’s length. (*Id.*, ¶ 9.) Prior to mediation, Plaintiffs’ counsel conducted a thorough investigation and conducted significant informal discovery into the facts and legal issues. (*Id.*, ¶ 25.) For example, Defendants produced raw timekeeping and payroll data for a 20% sampling of Class Members and Aggrieved Employees, personnel and payroll data for Plaintiffs, relevant Collective Bargaining Agreements and other of Defendants’ policies and documents which applied to the employment of Plaintiffs and the Class Members and Aggrieved Employees, and data relating to the number of Class Members and Aggrieved Employees, the number of shifts worked during the Class Period and PAGA Period, the average hourly rate of pay for each Class Member, and other data specific to the Class Members and Aggrieved Employees which allowed Plaintiffs to conduct a full damage analysis. (*Ibid.*) On January 18, 2023, the Parties attended a full-day mediation session with Jason Marsili. (Clark Supp Decl., ¶ 9.) Through the mediation, the Parties reached a global resolution of all claims asserted in the Conquest Action, the PAGA Notices submitted by Plaintiffs, and the individual claims raised in the Ramos Dispute Letter. (*Ibid.*) While the settlement of Plaintiff Ramos’s individual claims was originally included in the Agreement, the Parties amended the Agreement and will separately settle those individual claims. (*Id.*, ¶ 10.)

Plaintiffs’ counsel closely scrutinized and considered all this information during settlement negotiations and developed an estimate of Defendants’ exposure. (Clark Supp. Decl., ¶¶ 25, 27.) Plaintiffs estimate Defendants’ exposure to be \$10,915,099.30, including \$3,265,761 for Plaintiffs’ meal break claim, \$3,651,146.40 for Plaintiffs’ rest period claim, \$1,278,036.78 for Plaintiffs’ off-the-clock claim, \$2,127.50 for Plaintiffs’ reimbursement claim, \$2,002,377.60 for Labor Code section 203 penalties, and \$715,650 for Labor Code section 226 penalties. (*Id.*, ¶ 27.) Plaintiffs note that while the complaint alleged various unreimbursed expenses, Plaintiffs’ investigation uncovered that the exposure on that claim was small because (1) while some employees claim that Defendants required them to pay costs associated with laundering and up-keep on their uniforms, Defendants are not liable for those costs for uniforms that require minimal care; and (2) while Plaintiffs alleged phone and mileage reimbursements, Plaintiffs’ investigation revealed that almost all Class Members drove company vehicles and very few used their personal cell phones due to company policies prohibiting their use. (*Id.*, fn 2.) Plaintiffs did not estimate a separate exposure for Plaintiffs’ failure to maintain accurate records claim because

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

those penalties overlap with Labor Code section 226. (*Id.*, ¶ 27.) The \$940,000 GSF represents approximately 8.6% of Defendant's estimated exposure.

Plaintiffs recognized that there were significant risks that support a reduced, compromise amount, including the risk that (1) some of Plaintiffs' claims would be barred by the CBA exemptions in Labor Code sections 512 and 514, foreclosed by the security officer exception in Labor Code section 226.7(f)(1), or pre-empted by the Labor Management Rights Act; (2) Plaintiffs would be unable to establish liability for allegedly unpaid overtime wages; (3) Plaintiffs would be unable to prove liability for failure to provide compliant meal and rest breaks, or that proving that liability would require an individualized inquiry; (4) Plaintiffs would not recover waiting time and wage statement penalties because Plaintiffs may not be able to establish Defendants' intent; (5) Defendants' challenged policies may not support class certification or a class-wide liability finding, which would preclude class-wide awards of penalties; (6) lengthy appellate litigation could ensue both as to liability and certification issues, with its own associated risks and costs. (Mot., pp. 23:11-25:6.)

Counsel attests to their extensive experience in similar cases. (Hawkins Decl., ¶ 9; Clark Decl., ¶¶ 32-33, Exh. 3; Haines Decl., ¶ 3) Counsel also attests that, in their opinion, the settlement is fair, reasonable, and in the best interests of the class. (Hawkins Decl., ¶ 11; Clark Decl., ¶ 34; .) Based on the foregoing, the Court preliminarily finds, subject to the final fairness hearing, that the Settlement is within the ballpark of reasonableness and is entitled to a presumption of fairness and that all relevant factors support preliminary approval.

PAGA Payment

The Agreement provides for a PAGA Payment of \$100,000, 75% of which (or \$75,000) will be paid to the LWDA and 25% of which (or \$25,000) will be included in the amount allocated to the Settlement Class and distributed to the Aggrieved Employees on a pro-rata basis. (Amended SA, ¶¶ 23, 49.) The Aggrieved Employees are defined as "all current and former non-exempt hourly-paid Protective Security Officers who performed any on-post work for Triple Canopy on its Northern California and Central California Department of Homeland Security Contracts" during the PAGA Period, which is defined as the period from June 24, 2021 through April 24, 2023. (*Id.*, ¶ 5.) The Agreement and the Class Notice make clear that Aggrieved Employees cannot opt out of the PAGA portion of the Settlement and will receive their portion of the Aggrieved Employee portion of the PAGA Payment and release their PAGA claims, as discussed above. (*Id.*, ¶ 62; Hawkins Supp Decl., Exh. 4 ("Class Notice"), pp. 2, 3, 5.)

Defendants estimate that there are approximately 671 Aggrieved Employees who worked a total of 14,313 PAGA Pay Periods. (Clark Decl., ¶ 13.) Plaintiffs do not provide an estimate of Defendants' maximum PAGA exposure, merely stating that "in theory, Defendants' potential PAGA exposure could amount to millions of dollars." (Mot., p. 25:14-15.) Assuming 14,313 PAGA Pay Periods and an initial violation rate of \$100, the Court concludes that Defendants'

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

maximum PAGA exposure is at least \$1,431,300. However, Plaintiffs recognized that as a practical matter, they were likely to recover far less, even if they prevailed at trial, given the Court's broad discretion to reduce PAGA penalties. Plaintiffs also acknowledged that several potential issues impacting manageability created a risk that the Court could strike the PAGA claim as unmanageable. (Mot., p. 25:15-26.) Here, the PAGA allocation represents approximately 10.64% of the GSF. The Court finds the allocation reasonable under the circumstances and it is preliminarily approved. In moving for final approval, Plaintiffs are expected to provide an estimate of Defendants' PAGA exposure and discuss how Plaintiffs valued the PAGA claim.

Proposed Class Notice

The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rule of Court, Rule 3.769.) "Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement." (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

The Court raised several concerns regarding the Class Notice. (7-14-2023 Minute Order.) The Parties revised the Class Notice to address the Court's concerns and to be consistent with the terms of the Amended Agreement. (Supp. Brief, p. 8:4-12; Class Notice.) The Court finds Plaintiffs' revised proposed Notice to the Class fairly appraises the Class Members of the terms of the proposed settlement and their rights as prospective class members.

Class Counsel Fees and Costs

The Agreement originally provided for an attorneys' fee award of up to \$347,400, or 36% of the GSF. (SA, ¶¶ 7, 46.) In continuing this matter, the Court noted that the requested award is higher than the average recognized by some authorities and indicated that "absent compelling argument that the particular circumstances of this case required more work, carried more risk, or resulted in a better outcome than similar cases where the Court found an award of one-third of the common fund was appropriate, the Court is not inclined to approve an award of more than one third of the GSF." (7-14-2023 Minute Order.) The Parties renegotiated the attorneys' fee provision and the Amended Agreement now provides for an award of 33.33% of the GSF, or \$313,333.33. (Amended SA, ¶¶ 7 and 46.) The requested award will be divided between Class Counsel as follows: 33.33% to Clark Law Group, 16.67% to United Employees Law Group, and 50% to James Hawkins APLC. (Clark Supp Decl., ¶ 23.) Counsel attests that Plaintiffs have consented to, reviewed, and signed, the fee splitting agreement. (*Ibid.*)

The requested award is preliminarily approved with the expectation that Class Counsel will

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

provide justification for this award in moving for final approval, including information necessary to perform a lodestar analysis. (See *In re Activision Sec. Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1379; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 & fn. 13.; *Martin v. Ameripride Servs.* (S.D. Cal. June 9, 2011), 2011 WL 2313604 at *22 (collecting cases); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal 2010) 266 F.R.D. 482, 491 (same); see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 & n.11.)

The Amended Agreement also provides for reimbursement of Class Counsel’s litigation expenses not to exceed \$30,000. (Amended SA, ¶ 46.)) The Court also preliminarily approves this allocation for costs and litigation expenses with the expectation that Counsel will provide declarations, in moving for final approval, that show actual costs and any applicable allocation between Class Counsel’s firms.

Settlement Administrator

Apex Class Action Settlement Administrators is appointed by the Court to act as the Settlement Administrator. (SA, ¶ 3.) The Agreement allocates up to \$14,000 for settlement administration costs. (*Id.*, ¶¶ 33, 48.) The maximum allocation is reasonable and preliminarily approved.

Class Representative Enhancement Payments

The Settlement Agreement provides for an enhancement award of up to \$10,000 to each Plaintiff. Plaintiffs argue these enhancement awards should be preliminarily approved given Plaintiffs’ service as Class Representatives and the risk they assumed. (Mot., pp. 30:10-31:12.) Plaintiff Conquest attests to the nature of his participation and estimates that he has spent approximately 40 hours prosecuting this case. (Conquest Decl., ¶¶ 5, 6, 11.) While Plaintiff Ramos provides a description of her efforts, she fails to provide an estimate of the amount of time she has spent prosecuting this case, merely asserting that she has spent “many hours.” (Ramos Decl., ¶¶ 5, 8.) In moving for final approval, Plaintiff Ramos shall submit a declaration attesting to the nature of her individual participation in this case, including a description of her specific actions and an estimate of time she committed to prosecution of the case. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

Final Approval Hearing

The Court will again review and consider the terms of this settlement at the time of the final approval hearing.

Hearing on Motion for Final Approval of Settlement is scheduled for 02/02/2024 at 09:00 AM in Department 28 at Gordon D. Schaber Superior Court.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

If either party is unavailable on **February 2, 2024 at 9:00 a.m.**, the parties shall meet and confer to identify three other Fridays at 9:00 a.m. that work for the parties to schedule the hearing. They shall then submit those dates to the Court via email at Dept28@saccourt.ca.gov, and the Court will reschedule the hearing accordingly.

The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

The Court shall sign the proposed order included with Plaintiffs' supplemental briefing, edited to reflect the final approval hearing scheduled above.

To request oral argument on this matter, you must call Department 28 at (916) 874-6695 by 4:00 p.m. the court day before this hearing and notify the opposing party/counsel of oral argument. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

*If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. **The signed form must be filed with the clerk prior to the hearing.***

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

*To join by Zoom link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept28>
To join by phone dial (833) 568-8864 ID 16039062174*

Counsel for Plaintiffs is directed to notice all parties of this order.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2022-00322538-CU-OE-GDS: James Gregory Conquest vs. Triple Canopy Inc
09/01/2023 Hearing on Motion for Preliminary Approval of Settlement in Department 28**

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.