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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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12 TED STILWELL and STEWART ROSS, on
13 behalf of themselves and all others similarly
situated,

14 Plaintiffs,

15 vs.

16 FIRST ALARM, and Does 1 through 50,

17 Defendants.
18

19 And related cross-complaints.
20

Case No. 2015-1-CV-281763

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

21 The above-entitled matter came on regularly for hearing on Friday, May 10, 2019, at 9:00
22 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding.

23 The Court reviewed and considered the written submissions filed by the parties and issued a
24 tentative ruling on Thursday, May 9, 2019. No party contested the tentative ruling; therefore, the
25 Court orders the tentative ruling be adopted as the Order of the Court, as follows:

26 **I. INTRODUCTION**

27 This is a class action lawsuit arising from various alleged wage and hour violations.
28 Plaintiffs Ted Stilwell and Stewart Ross (collectively, "Plaintiffs") allege defendant First Alarm

1 (“Defendant”) failed to reimburse its California employees for all work-related expenses
2 incurred in driving personal vehicles for work, failed to provide employees with signed
3 commission plans and obtain signed receipts for the commission plans, and failed to furnish
4 employees with accurate wage statements. (Third Amended Complaint (“TAC”), ¶ 5.)

5 The TAC, filed on September 9, 2016, sets forth the following causes of action:

- 6 (1) Failure to Reimburse for Work-Related Expenses in Violation of Labor Code § 2802;
7 (2) Violation of California Labor Code § 226; (3) Unlawful, Unfair and Fraudulent Business
8 Practices Pursuant to Business & Professions Code § 17200, et seq.; and (4) Private Attorneys
9 General Act of 2004: Labor Code Section 2698.

10 The parties have reached a settlement. Plaintiffs now move for preliminary approval of
11 the settlement.

12 **II. REQUEST FOR JUDICIAL NOTICE**

13 Plaintiffs request judicial notice of the Declaration of David Hood in Support of
14 Defendant First Alarm’s Motion for Summary Judgment. The request is GRANTED.
15 (Evid. Code, § 452, subd. (d).)

16 **III. DISCUSSION**

17 **A. Provisions of the Settlement**

18 The case has been settled on behalf of the following class:

19 [A]ll individuals who are currently or were formerly employed as sales
20 representatives for First Alarm during the class period and who have not opted
out of the class.

21 (Decl. of Robin G. Workman (“Workman Decl.”), Ex. D (“Settlement Agreement”), p. 3:1-3.)

22 The class period is June 11, 2011, to March 31, 2019. (Settlement Agreement, p. 2:27.)

23 Pursuant to the settlement, defendant First Alarm (“Defendant”) will pay a non-
24 reversionary total of \$275,000. (Settlement Agreement, p. 3:19-22.) The settlement payment
25 includes incentive awards of \$20,000 for plaintiff Stilwell and \$7,500 for plaintiff Ross. (*Id.* at
26 pp. 8:25-9:1.) It also encompasses attorneys’ fees and costs of \$100,000, settlement
27 administration costs of \$7,000, and a PAGA allocation of \$5,000 (\$3,750 of which will be paid
28 to the LWDA). (*Id.* at pp. 8:18-22 and 9:8-21.) For checks that are not cashed within six

1 months, the funds will be distributed to a *cy près* recipient – Legal Aid at Work. (*Id.* at p.
2 15:10-17.) Payments to class members will be made based on workweeks.

3 **B. Fairness of the Settlement**

4 Plaintiffs assert the settlement is a product of arms'-length negotiations conducted
5 between the parties and facilitated by a day-long settlement conference. Plaintiffs state the
6 \$275,000 settlement constitutes around 30% of an estimated potential value of \$881,164 for the
7 claims presented. There are approximately 45 class members and each will receive an average
8 payment of about \$3,000.

9 The Court finds the settlement is fair. It provides for some recovery for each class
10 member and eliminates the risk and expense of further litigation.

11 **C. Incentive Award, Fees, and Costs**

12 Plaintiffs request class representative incentive awards of \$20,000 for plaintiff Stilwell
13 and \$7,500 for plaintiff Ross.

14 The rationale for making enhancement or incentive awards to named plaintiffs is
15 that they should be compensated for the expense or risk they have incurred in
16 conferring a benefit on other members of the class. An incentive award is
17 appropriate if it is necessary to induce an individual to participate in the suit.
18 Criteria courts may consider in determining whether to make an incentive award
19 include: 1) the risk to the class representative in commencing suit, both financial
20 and otherwise; 2) the notoriety and personal difficulties encountered by the class
21 representative; 3) the amount of time and effort spent by the class representative;
22 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
23 enjoyed by the class representative as a result of the litigation. These "incentive
24 awards" to class representatives must not be disproportionate to the amount of
25 time and energy expended in pursuit of the lawsuit.

26 (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks,
27 brackets, ellipses, and citations omitted.)

28 Plaintiffs have filed a declaration from Stilwell detailing his participation in the case.
Prior to final approval of the settlement, Ross must also submit a declaration regarding his
participation. The Court will make a determination regarding the incentive awards at that time.
The Court notes the amount requested for Stilwell – \$20,000 – is significantly higher than is
normally awarded, and is approximately seven times greater than the average payment to class
members.

1 The Court also has an independent right and responsibility to review the requested
2 attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
3 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel
4 requests attorneys' fees and costs in the amount of \$100,000. Plaintiffs' counsel shall submit
5 lodestar information (including hourly rates and hours worked) prior to the final approval
6 hearing so the Court can compare the lodestar information with the requested fees. Plaintiffs'
7 counsel shall also submit information regarding actual costs incurred.


8 **D. Class Notice**

9 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
10 3.769(f).) The notice generally complies with the requirements for class notice. (Settlement
11 Agreement, Ex. A.) It provides basic information about the settlement, including the settlement
12 terms, and procedures to object or request exclusion. However, the notice states class members
13 who want to object to the settlement must mail a written objection to the settlement
14 administrator. The notice must be changed to make clear that class members may appear at the
15 final approval hearing to object without filing or serving any papers and without providing any
16 advance notice. The amended notice shall be provided to the Court for approval prior to its
17 mailing.

18 **E. Conclusion**

19 The motion for preliminary approval of class settlement is GRANTED, subject to the
20 modification to the notice. The final approval hearing is set for August 16, 2019, at 9:00 a.m. in
21 Department 5.

22
23 Dated: May 10, 2019


Thomas E. Kuhnle
Judge of the Superior Court