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10 Classes and Collective

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 HAROLD JONES, et al.,

14 Plaintiffs,

15 vs.

16 CERTIFIEDSAFETY, INC.

17 Defendants.  
18

**Lead Case No. 3:17-cv-02229-EMC**

Consolidated with 3:17-cv-03892-EMC (*Crummie*)

Related to: 3:18-cv-04379-EMC (*Ross*)

3:19-cv-01338-EMC (*Jones II*)

3:19-cv-01380-EMC (*Jones III*)

3:19-cv-01381-EMC (*Jones IV*)

3:19-cv-01427-EMC (*East*)

3:19-cv-01428-EMC (*Jones V*)

19 **[PROPOSED] ORDER GRANTING FINAL**  
20 **APPROVAL OF SETTLEMENT**

21 Date: May 28, 2020

Time: 1:30 p.m.

Courtroom: 5 (17th Floor)

Judge: Honorable Edward M. Chen

22  
23 *Jones* Complaint filed: April 21, 2017  
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Attorneys for Plaintiffs and the Settlement Classes and Collective

1 Plaintiffs' Motion for Final Approval of Class and Collective Action Settlement in the above-  
2 captioned Actions came on for hearing on May 28, 2020 at 1:30 p.m. in Courtroom 5 of the above-  
3 captioned Court, the Honorable Edward M. Chen presiding. Defendant Certified Safety  
4 ("Defendant") did not oppose the motion.

5 Plaintiffs in these Actions allege causes of action under the Fair Labor Standards Act  
6 ("FLSA"), 29 U.S.C. §§ 201, *et seq.*; the California Labor Code and Business and Professions Code  
7 §§ 17200, *et seq.*; as well as Washington, Illinois, Minnesota, Alaska, and Ohio wage and hour laws.  
8 Plaintiffs assert the FLSA cause of action on behalf of themselves and the Opt In Plaintiffs (the  
9 "Collective") for Defendants' alleged failure to compensate for all hours worked, including legally-  
10 mandated overtime premiums and/or minimum wages. Plaintiffs assert state law causes of action  
11 under California, Washington, Illinois, Minnesota, Alaska, and Ohio law, on behalf of themselves  
12 and respective California, Washington, Illinois, Minnesota, Alaska, and Ohio Rule 23 Classes (the  
13 "Rule 23 Classes"), for failure to compensate for all hours worked; failure to pay overtime and  
14 minimum wages; failure to authorize, permit, and/or make available meal and rest periods; failure to  
15 reimburse for necessary business expenditures; waiting time penalties; failure to provide accurate,  
16 itemized wage statements; and related violations. Plaintiffs also bring claims for penalties pursuant  
17 to § 2699(a) of the California Private Attorney General Act ("PAGA") and penalties pursuant to §  
18 2699(f) of the PAGA.

19 After conditional certification of the FLSA Collective, extensive discovery and investigation,  
20 the filing of a series of related actions to allege additional state law and joint employer claims, and a  
21 prior mediation, the Parties entered into private mediation before respected neutral mediator Paul  
22 Grossman to try to resolve the claims. As a result of the mediation on April 23, 2019, the Parties  
23 reached agreement on the terms of a settlement. The Parties then executed the Stipulation of Class,  
24 Collective, and Representative Action Settlement, as amended (the "Settlement"), filed at ECF 206-  
25 2 (Amendment filed at ECF 215-2).

26 A hearing was held before this Court on January 8, 2020 for Plaintiffs' Motion for Preliminary  
27 Approval of Class and Collective Action Settlement. The Court granted the motion. *See* ECF 216.  
28 Before the Court is the last stage of the settlement approval process: final approval of the Settlement.

1 Plaintiffs have separately moved for approval of attorneys' fees and costs and service awards for the  
2 Class Representatives.

3 At the final approval hearing, Winston & Strawn LLP appeared for Defendant and Schneider  
4 Wallace Cottrell Konecky LLP appeared for Plaintiffs and the Classes and Collective.

5 Having reviewed the papers and documents presented, having heard the statements of counsel,  
6 and having considered the matter, the Court HEREBY ORDERS as follows:

7 1. The Court has jurisdiction over the claims of the Rule 23 Class Members and  
8 Collective Members asserted in this proceeding and over all Parties to the action.

9 2. The Court finds that zero Rule 23 Class Members have objected to the Settlement and  
10 zero (0) Rule 23 Class Members have requested exclusion from the Settlement. Additionally, 429  
11 Collective Members have filed timely and valid opt-in forms.

12 3. The Court hereby GRANTS FINAL APPROVAL of the terms and conditions  
13 contained in the Settlement as to the Rule 23 Classes. The Court finds that the terms of the Settlement  
14 are within the range of approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure and  
15 applicable law.

16 4. The Court finds that: (1) the settlement amount is fair and reasonable as to the Rule  
17 23 Class Members when balanced against the probable outcome of further litigation relating to class  
18 certification, liability and damages issues, and potential appeals; (2) significant discovery,  
19 investigation, research, and litigation have been conducted such that counsel for the Parties at this  
20 time are able to reasonably evaluate their respective positions; (3) settlement at this time will avoid  
21 substantial costs, delay, and risks that would be presented by the further prosecution of the litigation;  
22 and (4) the proposed Settlement has been reached as the result of intensive, serious, and non-collusive  
23 negotiations between the Parties. Accordingly, the Court finds that the Settlement was entered into in  
24 good faith with respect to the California, Washington, Illinois, Minnesota, Alaska, and Ohio Classes.

25 5. The Court hereby makes final its earlier conditional certification of the Rule 23  
26 Classes, in accordance with the Settlement, for purposes of this Settlement only. The Rule 23 Classes  
27 are defined as follows:

- 28 • The "California Rule 23 Class" means all current or former Safety Attendants and Safety

1 Foremen employed by CertifiedSafety, or who attended pre-employment training conducted  
2 by CertifiedSafety, in the State of California at any time from April 21, 2013 to January 22,  
3 2020.

4 • The “Washington Rule 23 Class” means all current or former Safety Attendants and Safety  
5 Foremen employed by CertifiedSafety in the State of Washington at any time from April 21,  
6 2014 to January 22, 2020.

7 • The “Minnesota Rule 23 Class” means all current or former Safety Attendants and Safety  
8 Foremen employed by CertifiedSafety in the State of Minnesota at any time from March 12,  
9 2016 to January 22, 2020.

10 • The “Illinois Rule 23 Class” means all current or former Safety Attendants and Safety  
11 Foremen employed by CertifiedSafety in the State of Illinois at any time from March 14, 2016  
12 to January 22, 2020.

13 • The “Ohio Rule 23 Class” means all current or former Safety Attendants and Safety Foremen  
14 employed by CertifiedSafety in the State of Ohio at any time from April 23, 2016 to January  
15 22, 2020.

16 • The “Alaska Rule 23 Class” means all current or former Safety Attendants and Safety  
17 Foremen employed by CertifiedSafety in the State of Alaska at any time from April 23, 2016  
18 to January 22, 2020.

19 6. Pursuant to the agreements of the Parties, Workweeks worked by Safety Attendants  
20 or Safety Foremen while members of a labor union are not included within the purview of the  
21 Settlement. Likewise, Safety Attendants or Safety Foremen who have only worked for Defendant as  
22 members of a labor union are not included in the Settlement.

23 7. The Court hereby confirms its approval of the terms and conditions contained in the  
24 Settlement as to the Collective of Opt In Plaintiffs as set forth in its January 22, 2020 order. See ECF  
25 216. The Court has already found that the terms of the Settlement represent a fair and reasonable  
26 resolution of a *bona fide* dispute, and are within the range of possible approval, pursuant to the FLSA  
27 and applicable law.

28 8. The Court has also already found that: (1) the settlement amount is fair and reasonable

1 as to the Collective when balanced against the probable outcome of further litigation relating to class  
2 certification, potential individual arbitrations, liability and damages issues, and potential appeals; (2)  
3 significant discovery, investigation, research, and litigation have been conducted such that counsel  
4 for the Parties at this time are able to reasonably evaluate their respective positions; (3) settlement at  
5 this time will avoid substantial costs, delay, and risks that would be presented by the further  
6 prosecution of the litigation; and (4) the proposed Settlement has been reached as the result of  
7 intensive, serious, and non-collusive negotiations between the Parties. Accordingly, the Court finds  
8 that the Settlement was entered into in good faith with respect to the Collective.

9         9.         In accordance with the Court’s previous orders, the Collective is defined as “all current  
10 and former hourly, non-exempt Safety Attendants and Safety Foremen, of CertifiedSafety, Inc., in  
11 the United States, during the time period October 1, 2014 until January 22, 2020.”

12         10.        The Court hereby FINALLY APPOINTS Plaintiffs Jones, Crummie, Ross, and East  
13 as Class Representatives for the California Rule 23 Class; Plaintiffs Jones and Knight as Class  
14 Representatives for the Washington Rule 23 Class; Plaintiff Jones as Class Representative for the  
15 Minnesota Rule 23 Class; Plaintiff Jones as Class Representative for the Illinois Rule 23 Class;  
16 Plaintiff Turner as Class Representative for the Ohio Rule 23 Class; and Plaintiff Azevedo as Class  
17 Representative for the Alaska Rule 23 Class. All of the Plaintiffs represent the nationwide Fair Labor  
18 Standards Act Collective.

19         11.        The Court hereby FINALLY APPOINTS Schneider Wallace Cottrell Konecky LLP  
20 Class Counsel for the Rule 23 Classes and the Collective.

21         12.        The Court finds that the approved Notices of Settlement (submitted to the Court at  
22 ECF 215-2) constituted the best notice practicable under the circumstances and are in full compliance  
23 with the applicable laws and the requirements of due process. The Court further finds that the Notices  
24 of Settlement fully and accurately informed the Rule 23 Class Members of all material elements of  
25 the proposed Settlement, of their right to be excluded from the Settlement, and of their right and  
26 opportunity to object to the Settlement. A full opportunity has been afforded to the Rule 23 Class  
27 Members to participate in this hearing and all Rule 23 Class Members and other persons wishing to  
28 be heard have been heard. Accordingly, the Court determines that all Rule 23 Class Members, since

1 none timely and properly executed a request for exclusion, are bound by this Order and the Judgment.

2 13. The Court further finds that the Notices of Settlement fully and accurately informed  
3 the Collective Members of all material elements of the Settlement. Accordingly, the Court determines  
4 that all Collective Members who submitted timely opt-ins are bound by this Order and the Judgment.

5 14. The Court FINALLY APPROVES Class and Collective Counsel's request for  
6 attorneys' fees of one-third of the original \$6,000,000 Gross Settlement Amount, for a total of  
7 \$2,000,000 in fees. This amount is justified under the common fund doctrine, the range of awards  
8 ordered in this District and Circuit, the excellent results obtained, the substantial risk borne by Class  
9 Counsel in litigating this matter, the high degree of skill and quality of work performed, the financial  
10 burden imposed by the contingency basis of Class Counsel' representation of Plaintiffs and the  
11 Classes and Collective, and the additional work required of Class Counsel to bring this Settlement to  
12 conclusion. The Court finds the fee award is further supported by a lodestar crosscheck, whereby it  
13 finds that the hourly rates of Schneider Wallace Cottrell Konecky LLP and Lawyers for Justice, PC  
14 are reasonable, and that the estimated hours expended are reasonable. In fact, Class Counsel's total  
15 lodestar amount is less than the requested fee. Thus, the Court applies a negative multiplier to Class  
16 Counsel's lodestar in issuing this fee award.

17 15. The Court FINALLY APPROVES Class and Collective Counsel's request for  
18 litigation costs in the amount of \$60,397.73.

19 16. The Court FINALLY APPROVES service awards of \$15,000 for Plaintiff Jones,  
20 Knight, and Crummie, \$10,000 for Plaintiffs Ross and East, and \$5,000 for Plaintiffs Azevedo and  
21 Turner, and finds that these awards are fair and reasonable for the work these individuals provided to  
22 the Rule 23 Classes and Collective and the broader release they executed than the Rule 23 Class  
23 Members and Opt In Plaintiffs.

24 17. The Court approves the LWDA Payment to the Labor and Workforce Development  
25 Agency ("LWDA") for Plaintiffs' claims pursuant to the California Private Attorney General Act of  
26 2004.

27 18. The Court hereby confirms the appointment of Heffler Claims Group as Settlement  
28 Administrator, and approves its reasonable administration costs of \$70,000, which are to be paid from

1 the total Settlement.

2 19. Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES following  
3 implementation schedule:

4 Effective Date	5 The latest of: (i) if no appeal is filed, the 6 expiration date of the time for filing or 7 noticing any appeal of the judgment ( <i>i.e.</i> , 30 8 days from the entry of judgment); (ii) if 9 there is an appeal of the Court's judgment, 10 the date of dismissal of such appeal, or the 11 expiration of the time to file a petition for 12 writ of certiorari to the United States 13 Supreme Court; or (iii) if a petition for writ 14 of certiorari is filed, the date of denial of the 15 petition for writ of certiorari, or the date 16 the judgment is affirmed pursuant to such 17 petition.
12 Deadline for Heffler Claims Group to calculate 13 the employer share of taxes and provide 14 CertifiedSafety with the total amount of 15 CertifiedSafety's Payroll Taxes	16 Within 7 days after Effective Date
14 Deadline for CertifiedSafety to pay the Gross 15 Settlement Amount into the Qualified Settlement 16 Account	17 Within 14 days after Effective Date
16 Deadline for CertifiedSafety to deposit the 17 amount of CertifiedSafety's Payroll 18 Taxes	19 Within 14 days after Effective Date
18 Deadline for Heffler Claims Group to make 19 payments under the Settlement to Participating 20 Individuals, the LWDA, Class Representatives, 21 Plaintiffs' counsel, and itself	22 Within 30 days after the Effective Date
20 Check-cashing deadline	23 180 days after issuance
21 Deadline for Heffler Claims Group to report to 22 counsel for all Parties the number of and amount 23 of uncashed checks	24 14 days after check-cashing deadline
22 Deadline for redistribution of uncashed check 23 funds to those Class Members who cashed their 24 Individual Settlement Payment checks, or 25 transfer to the <i>cy pres</i> recipient	26 21 days after report from Heffler Claims 27 Group regarding uncashed checks
25 Deadline for Heffler Claims Group to provide 26 written certification of completion of 27 administration of the Settlement to counsel for 28 all Parties and the Court	As soon as practicable after redistribution of uncashed check funds to those Class Members who cashed their Individual Settlement Payment checks, or transfer to the <i>cy pres</i> recipient

20. The Court further ORDERS that, pending further order of this Court, all proceedings  
in the above-captioned Actions, except those contemplated herein and in the Settlement, are stayed.



1           21.     With this final approval of the Settlement, it is hereby ordered that all claims that are  
2 released as set forth in the Settlement are hereby barred.

3           22.     The Court permanently enjoins all of the Rule 23 Class Members who did not timely  
4 exclude themselves (opt-out) from the Settlement, Opt In Plaintiffs, and the LWDA from pursuing,  
5 or seeking to reopen, any Released Claims (as defined in the Settlement at Paragraph 4.19 and the  
6 Notices of Settlement at Section 7) against any of the “Releasees” (as defined in the Settlement at  
7 Paragraph 2.37).

8           23.     The Court dismisses the above-captioned Actions with prejudice and will enter  
9 Judgment consistent with the Settlement and this Order to so dismiss the Actions and permanently  
10 enjoin and bar all Rule 23 Class Members who did not opt-out of the Settlement, all Opt In Plaintiffs,  
11 and the LWDA from prosecuting against any Released Claims (as defined in the Settlement at  
12 Paragraph 4.19 and the Notices of Settlement at Section 7) against any of the “Releasees” (as defined  
13 in the Settlement at Paragraph 2.37).

14           24.     The Court shall retain jurisdiction to enforce the terms of the Settlement.

15           **IT IS SO ORDERED.**

16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. EDWARD M. CHEN  
United States District Judge,  
Northern District of California