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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CANDLE HORTON and JEANETTE
ZDANEK, individually and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

NEOSTRATA COMPANY INC.; 24
SEVEN LLC; 24 STAFFING LLC; 24
SEVEN TALENT CALIFORNIA LLC
DBA 24 SEVEN CREATIVE
SOLUTIONS; 24 SEVEN RECRUITING
LLC; CELESTE GUDAS; and DOES 1
through 50, inclusive,

Defendants.

KIMBERLEE WINSTON, an individual,
Plaintiff,

v.

NEOSTRATA COMPANY INC., et al.,

Defendants.

Case No.: 16-cv-2189-AJB-JLB

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND FOR AN
ORDER: (1) PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT; (2) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT; (3) AND SETTING A
HEARING FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

(Doc. No. 152)

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2 Presently before the Court is Plaintiffs Candle Horton and Jeanette Zdanek’s
3 (“Plaintiffs”) unopposed motion for preliminary approval of class action settlement. (Doc.
4 No. 152.) Specifically, Plaintiffs request an order granting: (1) provisional certification of
5 the Settlement Class; (2) preliminary approval of the Putative Class Action Settlement; (3)
6 approval of the Notice and Notice Plan; (4) appointment of the Law Offices of Thomas D.
7 Rutledge and Cohelan Khoury & Singer as Putative Class Counsel; (5) appointment of
8 Plaintiffs Candle Horton and Jeanette Zdanek as the Putative Class Representatives; and
9 (6) the setting of a final approval hearing.

10 Having reviewed and considered the settlement agreement and the unopposed
11 motion for preliminary approval of the Settlement Agreement, the Court **GRANTS**
12 Plaintiffs’ motion, makes the following findings, and grants the relief set forth below.
13 Terms and phrases in this order will have the same meaning as defined in the Settlement
14 Agreement.

15 **IT IS HEREBY ORDERED THAT:**

16 1. Preliminary Approval of Proposed Settlement. The Court preliminarily approves the
17 Settlement set forth in the Settlement Agreement as fair, reasonable, and adequate within
18 the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Class Action
19 Fairness Act of 2005 (“CAFA”), subject to final consideration at the final fairness hearing
20 provided for below. The Court finds that:

21 (a) the Settlement Agreement resulted from extensive arm's length
22 negotiations; and

23 (b) the Settlement Agreement is sufficient to warrant notice of the
24 settlement to persons in the Settlement Class and a full hearing on the approval of the
25 Settlement.

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1 2. Class Certification for Settlement Purposes Only. A Plaintiff class is certified for
2 settlement purposes only in accordance with the terms of the Settlement Agreement (the
3 “Settlement Class”). The Settlement Class is defined as:

4 All individuals (1) who provided services to Defendant
5 NeoStrata in California as Freelance Beauty Advisors, Field
6 Sales Representatives, or jobs with similar titles, and (2) who
7 were issued paystubs from one or more of the 24 Seven
8 Defendants from July 20, 2012 through November 28, 2017.

9 The Court recognizes that certification under this Order is for settlement purposes
10 only, and shall not constitute or be construed as an admission by Defendant that this action
11 is appropriate for class treatment for litigation purposes. Entry of this Order is without
12 prejudice to the rights of Defendant to oppose certification of a class in this action should
13 the proposed settlement not be granted final approval.

14 In connection with this conditional certification, the Court makes the following
15 preliminary findings:

- 16 a. There are questions of law and fact common to the Settlement Class;
- 17 b. The claims of Class Representatives are typical of the claims of members of
18 the Settlement Class Members;
- 19 c. The Settlement Class is so numerous that joinder of all members is
20 impracticable;
- 21 d. Class Representatives and Class Counsel will fairly and accurately represent
22 the interests of the Settlement Class, and there are no conflicts of interest between Class
23 Representatives and members of the Settlement Class;
- 24 e. Questions of law and fact common to the Settlement Class Members
25 predominate over any questions affecting only individual members of the Settlement Class;
- 26 f. Certification of the Settlement Class is superior to other methods for the fair
27 and efficient adjudication of this controversy.
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1 3. Class Representatives. Candle Horton and Jeanette Zdanek are appointed as
2 representatives of the Settlement Class (“Class Representatives”).

3 4. Class Counsel. Plaintiffs’ counsel, The Law Offices of Thomas D. Rutledge and
4 Cohelan Khoury & Singer, are appointed as class counsel (“Class Counsel”).

5 5. Settlement Administrator. CPT Group, Inc. is appointed and approved as the
6 Settlement Administrator.

7 6. Notice. The Court approves as to form and content the Notice of Class Action
8 Settlement and Fairness Hearing (“Notice of Class Action Settlement”) and Exclusion
9 Form attached to the Settlement Agreement as Exhibits A and B.

10 Defendants shall provide to the Settlement Administrator a confidential class list by
11 January 4, 2019 [within twenty-one (21) days following entry of this Order]. The Notice
12 of Class Action Settlement shall be published by February 4, 2019 [within thirty (30) days
13 of receipt of the class data contained in the confidential class list].

14 a. Mail Notice. The Settlement Administrator shall send the Notice of Class
15 Action Settlement as well as the Exclusion Form to the Settlement Class via First Class
16 U.S. Mail using the most current, known address for each Class Member based on the
17 current information obtained by Defendants. Any mailing returned to the Settlement
18 Administrator as undeliverable shall be sent within five (5) calendar days via First Class
19 U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided,
20 the Settlement Administrator shall attempt to determine the correct address using a
21 computer-based skip-trace search, and it shall then perform a single re-mailing via First
22 Class U.S. Mail within five (5) calendar days. If no current address is located, the Notice
23 of Class Action Settlement for that individual will be deemed undeliverable. If a Class
24 Member cannot be located within two attempts at mailings by the Settlement
25 Administrator, Notice of Class Action Settlement for that individual will be deemed
26 undeliverable.

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1 b. CAFA Notice. The Defendants will provide timely notice to all appropriate
2 government entities in compliance with the Class Action Fairness Act (including California
3 or any other state where Class Members may reside) and submit a statement of compliance
4 with the Court in a timely manner as to prevent delay of the Effective Date.

5 c. Declaration to be Filed regarding Notice. At least seven days prior to the
6 Fairness Hearing, the Settlement Administrator shall provide a declaration of due diligence
7 and proof of mailing with regard to mailing of the Notice of Class Action Settlement and
8 Exclusion Form, which they shall in turn provide to the Court.

9 d. Findings concerning Class Notice. The Court finds that the foregoing Notice
10 of Class Action Settlement and the manner of its dissemination is the best practicable notice
11 under the circumstances and is reasonably calculated to apprise Settlement Class Members
12 of the pendency of the Actions and their right to object to or exclude themselves from the
13 Settlement Class. The Court further finds that the Notice of Class Action Settlement is
14 reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to
15 receive notice, and that it meets the requirements of due process and Federal Rule of Civil
16 Procedure 23.

17 e. Approval of Claims Process and Settlement Procedure. The claims
18 submission processes described in the Settlement Agreement are hereby approved. The
19 Court preliminarily approves the process set forth in the Settlement Agreement for
20 submitting, reviewing, approving and paying all claims as described in the Settlement
21 Agreement.

22 f. Costs of Administration, Incentive Payments, and Attorneys' Fees. The Court
23 also approves the process for paying the costs of notice and claims administration, the
24 incentive payments and the Class Counsel's attorneys' fees and litigation costs, subject to
25 proof at the Final Fairness Hearing.

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1 /7. Exclusion from Settlement. Settlement Class Members may opt out of the settlement
2 as set forth in the Settlement Agreement by mailing to the Settlement Administrator a
3 Request for Exclusion. Any such Request for Exclusion must be fully completed and
4 postmarked not more than forty-five (45) calendar days after the postmark date of the initial
5 mailing of the Notice of Class Action Settlement. To be a valid Request for Exclusion, a
6 Settlement Class Member must provide his or her name (and former names, if any), current
7 address, current telephone number, and the last four digits of their social security number.
8 Any Request for Exclusion that does not include all of the required information or that is
9 not submitted in a timely manner will be deemed null, void, and ineffective. If there is a
10 dispute regarding the timeliness or validity of a Request for Exclusion, the Settlement
11 Administrator shall make the determination, after consultation with Class Counsel and
12 Defense Counsel.

13 8. Objection Rights. Any objection must be sent to the Settlement Administrator and
14 postmarked no later than forty-five (45) calendar days after the first postmark date of
15 mailing the Notice of Class Action Settlement. An objection shall be deemed to be
16 submitted as of the postmarked date. The written objection must contain: (1) the name and
17 case number of this lawsuit *Candle Horton et al. v. NeoStrata Company Inc. et al.*, United
18 States District Court for the Southern District of California, Case No. 3:16-cv-02189-AJB
19 (JLB); (2) the full name and current address and telephone number of the Class Member
20 making the objection; (3) the last four digits of their social security number; (4) the specific
21 reason(s) for the objection; and (5) any and all evidence and supporting papers (including,
22 without limitation, all briefs, written evidence, and declarations) for the Court to consider.
23 Settlement Class Members who submit an objection remain bound by this Settlement
24 Agreement.

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1 9. Class Counsel Fees. Subject to proof, the Court preliminary APPROVES attorneys’
2 fees and costs award for (1) attorneys’ fees in an amount up to one-third of the Gross
3 Settlement Amount and (2) litigation costs actually incurred (but not exceeding \$20,000)
4 in representing the interests of the Settlement Class Members, supported by billing
5 statements and documentation of expenses by Class Counsel. Any fees and costs awarded
6 by the Court to Class Counsel will be paid from the Gross Settlement Amount. Counsel
7 must support their fee claim by a lodestar analysis of hours spent and fee rates for those
8 hours in a Motion to be heard at the Final Settlement Hearing.

9 10. PAGA Payment. The Court preliminary APPROVES a PAGA payment from the
10 Gross Settlement Amount of \$20,000, which shall be allocated as \$15,000 to the LWDA
11 as the LWDA’s share of the settlement of civil penalties paid under this Agreement
12 pursuant to the PAGA on behalf of the Settlement Class Members, and \$5,000 to the Net
13 Settlement Amount for distribution to the Settlement Class Members. The PAGA Payment
14 is to cover any and all claims for civil penalties on behalf of the Settlement Class Members
15 for violations of California Labor Code sections 201-204, 204b, 210, 216, 218, 218.5, 223,
16 224, 225.5, 226, 226.3, 226.6, 226.7, 245, 246, 246.5, 247, 247.5, 248.5, 249, 510, 512,
17 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2802, 2804,
18 2810.3, 2810.5, and the applicable IWC Wage Order. This includes any claims for civil
19 penalties, wages, attorneys’ fees, costs, and any other recovery permitted under California
20 Labor Code sections 210, 218.5, 224, 225.5, 226.3, 558, 1174, 1174.5, 1197.1, and 2699.

21 11. General Release. The Court preliminary APPROVES the general release by the
22 Class Representatives.

23 12. Settlement Hearing. The final fairness hearing will be held before this Court on
24 **April 11, 2019, at 2:00 p.m.** in Courtroom 4A of the United States District Court for the
25 Southern District of California, 211 West Broadway, San Diego, California, 92101. The
26 final fairness hearing will determine: (a) whether the settlement as set forth in the
27 Settlement Agreement is fair, reasonable, adequate, and in the best interests of the
28 Settlement Class; and (b) whether a Judgment, as provided in the Settlement Agreement,

1 should be entered granting final approval of the settlement. The Court may adjourn and/or
2 continue the final fairness hearing without further notice to Settlement Class Members.

3 13. Class Counsel must file a motion for final approval of settlement, fees, costs, and
4 other distributions no later than twenty eight (28) days before the Final Approval Hearing.
5 Counsel must also submit a proposed order at that time.

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7 **IT IS SO ORDERED.**

8 Dated: December 14, 2018


Hon. Anthony J. Battaglia
United States District Judge

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