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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/06/2022 at 10:54:00 AM
Clerk of the Superior Court
By Carlos Terriquez,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THOMAS BREWER, as a proxy for the State of California,

Plaintiffs,

v.

ELM ADHC, an unknown California entity; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 37-2020-00018551-CU-OE-NC

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT

Date: April 8, 2022
Time: 10:00 a.m.
Dept.: 28

~~[PROPOSED]~~ ORDER

On or about April 8, 2022, this Court issued its Tentative Ruling Granting Plaintiff Thomas Brewer's ("Plaintiff") Motion for an Order to Approve Settlement Agreement Pursuant to the Private Attorneys General Act, Labor Code § 2698 *et seq.* Neither Plaintiff, nor Defendant CA Reliable Medical Systems, Inc. ("Defendant"), erroneously sued as ELM ADHC (Plaintiff and Defendant collectively, the "Parties") contested the Court's Tentative Ruling. Accordingly, the Court hereby orders as follows:

Plaintiff's motion for approval of settlement is granted. Labor Code § 2699(l)(2).

The PAGA settlement is "fair, reasonable and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws". *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

As for attorney's fees, Plaintiff seek attorney's fees based on the common fund doctrine. "[W]hen an attorney fee is awarded out of a common fund preserved or recovered by means of litigation, the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, 486.

Here, Plaintiff seeks one-third of the common fund. According to the 9th Circuit, 25 percent is the "benchmark award that should be given in common fund cases". *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 24, fn 13.

The court may double-check the reasonableness of the percentage fee through a lodestar calculation. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal. 5th 480, 486. Plaintiff has provided the Court with evidence as to the actual fees and costs incurred to enable the Court to cross-check the percentage of fund recovery with the actual fees incurred. Plaintiff has provided the Court with evidence as to the actual fees and costs incurred to enable the Court to cross-check the percentage of fund recovery with the actual fees incurred. Plaintiff alleges that the actual fees were $63,300.00 for 74.4 hours at the hourly rate of $750.

When determining a reasonable hourly rate for the legal services, the Court must consider the prevailing rate in the community for comparable legal services. *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 156. The Court may consider the higher prevailing fees that are charged in the community in which out-of-town counsel's office is located, when the

prevailing party made a good faith effort to find local counsel but was unable to do so. *Horsford v. Board of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 397-399. An insufficient showing has been made by Plaintiff that local counsel could not be located.

Further, an insufficient showing has been made that the hourly rate of $750 is charged in North San Diego County for comparable work. Class counsel's evidence in support of such rates consist of federal district court decisions in the central and north districts and unpublished trial court decisions in Santa Clara Superior Court. Notwithstanding, application of the rate of $350-$400 at the appropriate rate for this community still results in an award within the range of the amount requested.

IT IS FURTHER HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Parties are hereby ordered to carry out the terms of the Settlement Agreement. Defendant is hereby ordered to deposit the first installment of $15,000.00 within thirty (30) calendar days of this Court's signing of this Order and Judgment and to deposit with the Settlement Administrator $3,000.00 (the "Subsequent Payments") between the first and fifth of every month for the subsequent twenty (20) months until the balance of $60,000.00 is completely paid.

2. Pursuant to Labor Code § 2699(i) and upon full funding of the Gross Settlement Amount of $75,000.00, it shall be distributed as follows:

- $25,000.00 to Plaintiff's counsel as Attorneys' Fees;
- $1,027.07 to Plaintiff's counsel as Costs;
- $2,400.00 to the Settlement Administrator;
- $5,000.00 to Plaintiff as the enhancement award;
- The remainder, or the PAGA Penalty Fund, after the above deductions shall be distributed 75% to the Labor Workforce Development Agency and 25% to the Aggrieved Employees based on the formula set forth in the Settlement Agreement.

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3. This Court hereby enters judgment pursuant to the terms of the PAGA Settlement Agreement.

IT IS SO ORDERED.

DATED: _ 06/06/2022 _____

Honorable Earl H. Maas, III
Judge of the Superior Court of California

PROOF OF SERVICE

I, Jeanette LaCorte, am employed by POLARIS LAW GROUP, in the County of San Benito, California. I am over the age of 18 and not a party to the within action. My business address is 501 San Benito Street, Suite 200, Hollister, California 95023.

On this date I caused to be served the **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT** the parties in this action, by placing copies of the same in envelopes, addressed as follows and delivered in the manner indicated:

Harsh Y. Ronvelia, Esq.
Solomon Ward Seidenwurm & Smith LLP
401 B Street Suite 1200 | San Diego, CA 92101
hronvelia@swsslaw.com

__ **(By Mail)** I caused each envelope, with postage prepaid to be placed in the United States mail at Hollister, California. I am readily familiar with the business practices of the firm regarding the collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to such business practices, and in the ordinary course of business, all correspondence is deposited with the United States Postal Service on the same day it is placed for collection and mailing.

__**(By Courier)** I delivered the envelopes to UPS who contracted to deliver the envelope to the addressee on the __ same day __ next day.

__**(By Hand)** I delivered the envelope to addressee.

__**(By Telecopier)** I also caused each document to be sent by telecopier to the fax numbers stated above. The transmissions were reported as complete and without error.

_X_ **(By E-Mail)** I caused each document to be send via e-mail to the e-mail stated above via Drop Box. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Hollister, CA on May 25, 2022.

Jeanette LaCorte