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CLERK OF THE SUPERIOR COURT

BY *Kuchell Aguilar*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

GENE WEBER, individually, on behalf of other
members of the general public similarly situated,
and on behalf of aggrieved employees pursuant
to the Private Attorneys General Act ("PAGA");

Plaintiff,

v.

SUNRISE MEDICAL (US) LLC, a Delaware
limited liability company; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 20CV-01461

[Consolidated with Case No. 20CV-01707]

Assigned for All Purposes to:
Honorable Brian McCabe
Courtroom 8

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: September 30, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: April 1, 2020
FAC Filed: March 4, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Gene Weber's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost Award, and
3 Class Representative Enhancement Payment, and after considering the papers submitted in
4 support of the motion, including the Joint Stipulation and Settlement Agreement ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 Plaintiff and Defendant Sunrise Medical (US) LLC ("Defendant") entered the Settlement
7 Agreement on or about February 8, 2022, to settle this class action lawsuit.

8 The Court entered an Order dated April 20, 2022, preliminarily approving the settlement
9 of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, and providing Class Members with an opportunity to object to the Settlement or
12 exclude themselves from the Class. Pursuant to a Stipulation and Order, the original Final
13 Approval Hearing was continued and scheduled on September 30, 2022.

14 The Court held a Fairness Hearing on September 30, 2022, to determine whether to give
15 final approval to the Settlement of this class action lawsuit.

16 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
17 ("Order and Judgment") incorporates the Agreement. Unless otherwise provided herein, all
18 capitalized terms in this Order and Judgment shall have the same meaning as set forth in the
19 Agreement.

20 2. Jurisdiction. Because adequate notice was disseminated and all Class Members
21 were given the opportunity to request exclusion from the Class, the Court has personal
22 jurisdiction with respect to the claims of all Class Members. The Court also has subject matter
23 jurisdiction over this class action lawsuit, including jurisdiction to approve the Settlement, grant
24 final certification of the Class, and dismiss the class action lawsuit.

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3. Final Class Certification. The Court finds the Class satisfies all applicable requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process. Accordingly, the Court certifies a Class consisting of all current and former California-based (*i.e.*, currently “residing” in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of Defendant within the State of California at any time during the period from April 1, 2016, through March 20, 2022 (“Class,” “Class Members,” and “Class Period”). There are four hundred (400) Class Members who did not submit valid and timely requests to exclude themselves from the Settlement (“Participating Class Members”).

4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation have fully and adequately represented the Class for purposes of entering and implementing the Settlement and have satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement (“Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class Members have been implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) pendency of the class action lawsuit; (ii) material terms and provisions of the Settlement and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their right to claim an Individual Settlement Payment; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and judgment in the class action lawsuit, whether favorable or unfavorable, on all Participating Class Members;

b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

1 c. constitutes the best practicable notice to Class Member under the
2 circumstances of the class action lawsuit; and

3 d. constitutes notice reasonable, adequate, and sufficient to all Class
4 Members.

5 6. Final Settlement Approval. The terms and provisions of the Agreement have
6 been entered in good faith and are the product of arm's-length negotiations by experienced
7 counsel who have done a meaningful investigation of the claims. The Agreement and all its
8 terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best
9 interests of the Parties. The Parties are hereby directed to implement the Agreement according to
10 its terms and provisions.

11 7. Binding Effect. The terms and provisions of the Settlement and this Order and
12 Judgment are binding on Plaintiff and Participating Class Members, as well as their spouses,
13 heirs, registered domestic partners, executors, administrators, successors, and assigns. Moreover,
14 those terms shall have res judicata and other preclusive effect in all pending and future claims,
15 lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those
16 claims, lawsuits, or other proceedings involve matters that were or could have been raised in the
17 class action lawsuit and are encompassed by the Released Claims and Private Attorneys General
18 Act of 2004 ("PAGA") Released Claims. The Settlement will have no binding effect upon, and
19 provide no res judicata preclusion to, those Class Members who have submitted timely requests
20 for exclusion.

21 8. Release of Claims. Upon Defendant's fulfillment of its payment obligations
22 under section III (J)(9)(a) of the Agreement, Plaintiff and the Participating Class Members will
23 fully and finally release and discharge the Released Parties from the Released Claims.

24 a. Effect of PAGA Settlement. Upon Defendant's fulfillment of its payment
25 obligations under section III (J)(9)(a) of the Agreement, Plaintiff, California
26 Labor and Workforce Development Agency ("LWDA"), and any other
27 representative, proxy, or agent thereof, including, but not limited to, the Eligible
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Aggrieved Employees, will fully and finally release and discharge the Released Parties from the PAGA Released Claims. Eligible Aggrieved Employees may not opt out of the PAGA portion of the Agreement, will still be mailed checks for their portions of the PAGA Payment, and shall still release the PAGA Released Claims regardless of the submission of a valid and timely request for exclusion.

b. Plaintiff's Release of Claims and General Release. Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the Agreement, in exchange for the Class Representative Enhancement Payment of \$10,000, and in recognition of his work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs if this matter had not successfully resolved, Plaintiff provides a general release of claims for himself and any respective spouse, heirs, successors, and assigns. Plaintiff shall also be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the Civil Code, or any other similar provision under federal or state law.

c. Released Parties. The Released Parties include Defendant and its officers, directors, current and former employees, partners, joint venturers, joint employers, representatives, servants, successors-in-interest, parents, assigns, and agents.

9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

10. Class Representative Enhancement Payment. The Court finds the Class Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

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1 a. The rationale for making enhancement payments is class representatives should
2 be compensated for the expense and risk they incurred in conferring a benefit on
3 the Class. Criteria courts may consider include: (1) risks in commencing the suit;
4 (2) notoriety and personal difficulties encountered; (3) amount of time and effort
5 spent; (4) duration of the litigation; and (5) personal benefit (or lack thereof)
6 enjoyed.

7 b. The Court reviewed Plaintiff's declaration outlining his involvement in the
8 lawsuit. Given the risks inherent in his services as the Class Representative,
9 duration of the case and time involved, and benefits created for the Class, the
10 Court approves the payment of the Class Representative Enhancement Payment of
11 \$10,000 to Plaintiff.

12 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
13 of \$280,934, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to
14 be reasonable and appropriate. The Court also finds the Cost Award as reimbursement for
15 litigation costs incurred of \$34,450.38, to be paid by Defendant to Class Counsel out of the
16 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
17 pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required
18 to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class
19 Counsel or any other counsel representing Plaintiff and Class Members. Defendant shall also not
20 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
21 Plaintiff and Class Members in connection with or related to this lawsuit, the Settlement, the
22 administration, and/or the Released Claims and PAGA Released Claims.

23 a. The Court has an independent right and responsibility to review the requested
24 Attorney Fee Award and only award so much as it determines reasonable. (See
25 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
26 127-28.) The requested Attorney Fee Award of \$280,934 is thirty-eight percent
27 (38%) of the common fund created for the benefit of the Class and is supported by
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the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, novel and difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the requested Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

b. The Court reviewed the declaration of Douglas Han regarding the costs expended. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$40,000. The Court finds Class Counsel expended \$34,450.38 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$34,450.38 from the common fund for the reimbursement of litigation costs.

12. Administration Costs. The Court finds the Administration Costs of \$7,900, to be paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Christina Fowler from Simpluris, Inc. ("Simpluris"), the Court-approved Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, the notice constitutes the best practicable notice to the Class, and the notice satisfied due process. Thus, the Court approves the payment of the Administration Costs of \$7,900 for Simpluris' services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$30,000, seventy-five percent (75%) of which (\$22,500) will be distributed to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$7,500) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding the Settlement. Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall deposit the \$650,000 needed to fund the Gross Settlement Amount of \$739,300 into the Qualified Settlement Fund. This is because Defendant will be entitled to a credit towards its satisfaction of the Gross Settlement Amount in the sum of \$89,300, which represents the amount previously paid to Class Members for *Pick Up Stix* settlements. Within fourteen (14) calendar days after the funding of the Settlement Agreement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement.

15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the Settlement was the product of arm's-length negotiations following extensive litigation, discovery, and exchange of documentation relating to Plaintiff's claims. The negotiations were facilitated with the aid of the mediators Michael Loeb and Paul Grossman, who are experienced class action mediators.

a. The fairness of the Settlement is demonstrated by there being no objections to and only one (1) request for exclusion from the Settlement.

b. The fairness of the Settlement is also illustrated by the *average* Individual Settlement Payment being approximately \$736.41, and the *highest* Individual Settlement Payment being about \$1,308.33 under the Settlement allocation.

16. Uncashed Checks. Participating Class Members and Eligible Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. Uncashed settlement checks will be canceled and paid to the California State Controller: Unpaid Wage Fund.

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1 17. Modification of Settlement Agreement. The Class Members are hereby
2 authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of
3 the Settlement Agreement by an express written instrument signed by counsel for all Parties or
4 their successors-in-interest. Such amendments or modifications shall be consistent with this
5 Order and Judgment and cannot limit the rights of Class Members under the Settlement
6 Agreement.

7 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
8 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
9 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
10 and for any other necessary purpose, including, without limitation:

- 11 a. enforcing the terms and provisions of the Settlement Agreement and resolving
12 any disputes, claims, or causes of action in the class action that, in whole or in
13 part, are related to or arise out of the Settlement Agreement or this Order and
14 Judgment;
15 b. entering such additional orders as may be necessary or appropriate to protect or
16 effectuate this Order and Judgment approving the Settlement Agreement, and
17 permanently enjoining Plaintiff from initiating or pursuing related proceedings, or
18 to ensure the fair and orderly administration of the Settlement Agreement; and
19 c. entering any other necessary or appropriate orders to protect and effectuate this
20 Court's retention of continuing jurisdiction.

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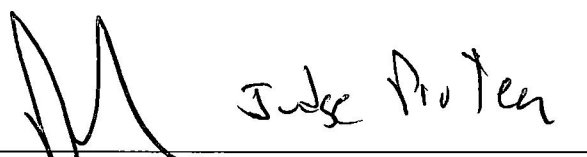
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1 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
2 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

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12 IT IS SO ORDERED.

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14 DATED: 9-30-22

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16 HONORABLE BRIAN MCCABE
17 SUPERIOR COURT JUDGE
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On October 5, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Weber v. Sunrise Medical (US) LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-781068-20**
Court Case No.: 20CV-01707
Merced County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 5, 2022, at Pasadena, California.



Mariah Anderson