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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14 MARTINA AVERY, an individual, on behalf
15 of herself, and on behalf of all persons
16 similarly situated,

17 Plaintiffs,

18 v.

19 SLEEP DATA SERVICES LLC a California
20 Limited Liability Company; and Does 1
through 50, Inclusive,

21 Defendants.

CASE NO.: **37-2020-00032747-CU-OE-CTL**

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

Hearing Date: February 17, 2023

Hearing Time: 8:30 a.m.

Judge: Hon, Keri Katz

Dept.: 74

Action Filed: September 17, 2020

Trial Date: None Set

1 The motion of Plaintiff Martina Avery (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendant Sleep Data Services LLC
3 (“Defendant”), and the motion for attorneys’ fees and costs, service payments, and the fees and
4 expenses of the Settlement Administrator, duly came on for hearing on February 17, 2023 before
5 the Honorable Keri Katz.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Two Hundred Seventy-Seven
16 Thousand Five Hundred Dollars (\$277,500) and the terms set forth in the Agreement are fair,
17 reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On June 16, 2022, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
3 by first class mail to members of the Class at their last known addresses on or about November 18,
4 2022. Mailing of the Class Notice to their last known addresses was the best notice option under
5 the circumstances and was reasonably calculated to communicate actual notice of the litigation
6 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
7 accurately informed the Class Members of all material elements of the proposed Settlement and of
8 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
9 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
10 State of California, the United States Constitution, due process and other applicable law. The
11 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
12 instructions and a variety of means to obtain additional information.

13 7. The deadline for opting out of the Class or submitting written objections to the
14 Settlement was January 3, 2023. There was an adequate interval between notice and the deadline
15 to permit Class Members to choose what to do and act on their decision. A full opportunity has
16 been afforded to the Class Members to participate in this hearing, and all Class Members and other
17 persons wishing to be heard have been heard. Class Members also have had a full and fair
18 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
19 Court determines that all Class Members who did not timely and properly submit a request for
20 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

21 **Fairness Of Settlement**

22 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
23 48 Cal.App.4th 1794, 1801 (1996).

24 a. The settlement was reached through arm's-length bargaining between the
25 parties during an all-day mediation before Hon. Louis Meisinger (Ret.), a respected jurist and
26 experienced mediator of wage and hour class actions. There has been no collusion between the
27 parties in reaching the proposed settlement.

1 b. Plaintiff's investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. No requests for exclusion were received.

7 e. The participation rate was high. 257 Class Members will be mailed a
8 settlement payment, representing 100% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Attorneys' Fees and Costs**

17 11. An award of \$92,500 for attorneys' fees, representing one-third (1/3) of the Gross
18 Settlement Amount, and \$22,330.16 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested awards have been supported by Class Counsel's
21 lodestar and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
25 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in the litigation, for her time and effort in
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1 bringing and prosecuting this matter on behalf of the Class, and for her execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 issue any required tax reporting forms, calculate withholdings and perform the other remaining
8 duties set forth in the Agreement. The Settlement Administrator has documented \$8,250 in fees
9 and expenses, and this amount is reasonable in light of the work performed by the Settlement
10 Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
15 Aggrieved Employees based on their respective pay periods during the PAGA Period. The
16 Aggrieved Employees are all individuals who worked for Defendant in California as non-exempt
17 employees at any time during the PAGA Period, which is April 22, 2019 to September 22, 2021.
18 The Court finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent
19 their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims
20 as set forth below, whether or not they opt out of the Settlement.

21 **II.**

22 **ORDERS**

23 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

24 1. The certification of the Class for the purposes of settlement is confirmed. The
25 Class is defined as follows:

26 All individuals who worked for Defendant in California as non-exempt employees
27 at any time during the Class Period (April 22, 2019 to September 22, 2021).

2. All persons who meet the foregoing definition are members of the Class, except for those individuals who filed a valid request for exclusion (“opt out”) from the Class. There were no individual who requested exclusion.

3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the best interest of the Class.

4. Class Counsel are awarded attorneys' fees in the amount of \$92,500 and costs in the amount of \$22,330.16. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or members of the Class.

5. The payment of the Class Representative Service Payment in the amount of \$10,000 to the Plaintiff is approved.

6. The payment of \$8,250 to the Settlement Administrator for their fees and expenses is approved.

7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance with the Agreement.

8. The Agreement and this Settlement are not an admission by Defendant, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other

1 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
2 Released PAGA Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
5 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
6 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
7 to individual Class Members.

8 10. If the Agreement does not become final and effective in accordance with the terms
9 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
10 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
11 revert to their respective positions as of before entering into the Agreement, and expressly reserve
12 their respective rights regarding the prosecution and defense of this Action, including all available
13 defenses and affirmative defenses, and arguments that any claim in the Action could not be
14 certified as a class action and/or managed as a representative action.

15
16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiffs, and all members of the Class, shall take nothing in the Action.

19 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
20 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
21 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
22 arising from or in connection with the distribution of settlement benefits.

23 3. The Parties are authorized, without further approval from the Court, to agree to and
24 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
25 attached thereto which are consistent with this Final Approval Order and Judgment and as
26 approved by the Court.

1 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 5. As of the Effective Date, each Class Member who has not validly opted out has
4 released the "Released Class Claims" against the Defendant and the Released Parties as set forth
5 in the Agreement. "Released Class Claims" means all claims alleged in the operative complaint, or
6 which could have been asserted in the operative complaint premised on the facts asserted therein,
7 which arose during the Class Period, and expressly excluding all other claims, including claims for
8 vested benefits, wrongful termination, unemployment insurance, disability, social security, and
9 workers' compensation, and class claims outside of the Class Period.

10 6. As of the Effective Date, Defendant shall receive a release from the State of
11 California of all PAGA claims for civil penalties alleged in the operative complaint, or which
12 could have been asserted in the operative complaint premised on the facts asserted therein, which
13 arose during the PAGA Period ("Released PAGA Claims"). The release of the Released PAGA
14 Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved
15 Employee submitted a request for an exclusion from the Class for all Released PAGA Claims that
16 occurred during the PAGA Period.

17 7. As of the Effective Date, Plaintiff generally releases and discharges the Released
18 Parties from all of the Plaintiff's Released Claims as set forth fully in the Agreement.

19 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

20
21 Dated: _____

22 _____
23 HON. KERI KATZ
24 JUDGE, SUPERIOR COURT OF CALIFORNIA
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