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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

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

Defendants.

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

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: June 3, 2022
Hearing Time: 8:30 a.m.
Reservation No. 2486076

Judge: Hon, Keri Katz
Dept.: 74

Action Filed: September 17, 2020
Trial Date: None Set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable Keri Katz of the Superior Court of the
2 State of California, in and for the County San Diego, on June 3, 2022, for the motion by Plaintiff
3 Martina Avery (“Plaintiff”) for preliminary approval of the class settlement with Defendant Sleep
4 Data Services LLC (“Defendant”). The Court, having considered the briefs, argument of counsel
5 and all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiff’s
6 Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court’s determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is Two Hundred Seventy-Seven Thousand Five
18 Hundred Dollars (\$277,500). It appears to the Court on a preliminary basis that the settlement
19 amount and terms are fair, adequate and reasonable as to all potential Class Members when
20 balanced against the probable outcome of further litigation and the significant risks relating to
21 certification, liability and damages issues. It further appears that investigation and research have
22 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
25 further prosecution of the Action. It further appears that the Settlement has been reached as the
26 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
27 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
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1 outcome of further litigation and the significant risks relating to certification, liability, and
2 damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
4 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$25,000,
5 and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, at the time of final approval.

9 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who worked
13 for Defendant in California as non-exempt employees at any time during the Class Period." The
14 Class Period is April 22, 2019 to September 22, 2021.

15 6. The Court concludes that, for settlement purposes only, the Class meets the
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
19 community of interest amongst the members of the Class with respect to the subject matter of the
20 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
21 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
22 action is superior to other available methods for the efficient resolution of this controversy; and (f)
23 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff are adequate
24 representatives of the Class.

25 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
26 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
27 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 8. The Court hereby approves, as to form and content, the Notice of Proposed
2 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
3 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement.

12 9. The Court hereby appoints Simpluris as Settlement Administrator. No later than
13 fourteen (14) calendar days after preliminary approval of the Settlement by the Court, Defendant
14 shall provide to the Settlement Administrator an electronic spreadsheet with the Class Data. The
15 Settlement Administrator will perform address updates and verifications as necessary prior to the
16 mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no event later
17 than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class
18 Notice to all Class Members via first-class U.S. Mail.

19 10. The Court hereby preliminarily approves the proposed procedure for exclusion
20 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
21 from the Class as provided in the Class Notice by following the instructions for requesting
22 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
23 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
24 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
25 response date for requests for exclusion will be extended an additional 15 days. Any such person
26 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
27 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
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comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for exclusion may only opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of the Settlement, those Aggrieved Employees that worked during the PAGA Period of April 22, 2019 to September 22, 2021, will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims in the Agreement regardless of their request for exclusion from the Class.

11. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Member's views regarding the Settlement, and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the date of the mailing of the Class Notices to submit their written objections to the Settlement Administrator in accordance with the instructions in the Class Notice. If the Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to make oral objections.

12. A Final Approval Hearing shall be held before this Court on _____ at 8:30 a.m. in Department 74 at the San Diego County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether the Final Approval Order and Judgment should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service awards, and the expenses of the Settlement Administrator. All papers in support of the motion for final approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no later than

1 sixteen (16) court days before the hearing and both motions shall to be heard at the Final Approval
2 Hearing.

3 13. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 14. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 15. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. KERI KATZ
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER