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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,

Plaintiff,

vs.

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

Defendants.

CASE No. **37-2020-00032747-CU-OE-CTL**

**DECLARATION OF MARTINA
AVERY IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: February 17, 2023

Hearing Time: 8:30 a.m.

*[Hearing scheduled by Orders dated June
16, 2022 and November 15, 2022]*

Dept.: C-74

Judge: Hon. Keri Katz

Action Filed: September 17, 2020

Trial Date: Not Set

1 I, Martina Avery, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Final Approval of
4 Class Settlement and in support of my application for a Class Representative Service Payment.
5

6 2. I have personal knowledge of all the facts stated herein. I could and would competently
7 testify under oath to these facts in court if requested to do so.

8 3. I worked for Defendant Sleep Data Services LLC ("Sleep Data") in California from
9 September of 2016 to April of 2020 and I was classified by Sleep Data as a non-exempt
10 employee during that time period.

11 4. I retained the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP, who are
12 experienced in both class action & PAGA representative action litigation and claims against
13 employers for violations of the California Labor Code. I have no personal relationship or family
14 ties to my attorneys or any officer of the Court. I am not aware of having any actual or potential
15 conflicts of interest with another member of the class in this case nor am I aware of having any
16 actual or potential conflicts of interest with Simpluris, the settlement administrator.

17
18 5. I decided to file this class action lawsuit for the benefit of myself and other current
19 and former non-exempt employees who worked for Sleep Data and be a class representative
20 because I felt that my legal rights as an employee and others like me were violated. For example,
21 I worked in a call center and numerous times throughout my employment with Sleep Data I was
22 unable to take compliant meal or rest break because they were either late, interrupted or missed
23 entirely. With regard to meal breaks, for example, they were often taken late because I could not
24 begin a meal break until after finishing a call with a customer. I never received any meal or rest
25 break penalty payments during my employment with Sleep Data. Also, I earned various types of
26

1 non-discretionary incentive wages during pay periods where I earned overtime but these non-
2 discretionary wages were not factored into my regular rate for purposes of calculating my correct
3 overtime rate. I was underpaid overtime as a result.

4
5 6. This class action case was filed on September 17, 2020. Before the complaint was filed I
6 spoke to my attorneys several times and discussed how Sleep Data implemented its company
7 policies and procedures. I also assisted my attorneys in their investigation into my claims by
8 providing them documents and answering their questions. I reviewed the complaint before it
9 was filed and after it was filed I was given access to an electronic file sharing program that
10 alerted me via email when important documents were filed so that I could review them and keep
11 up with the developments in the case which I understood was one of my duties as a class
12 representative. I would also contact my attorneys from time to time if I had any questions about
13 the case.
14

15 7. Even though this action is in the process of settling, I was and remain prepared to
16 perform all the duties of a class representative. I understand that as a class representative I have
17 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
18 exempt employees who worked for Sleep Data during the class period. I have understood that as
19 a fiduciary, I have a duty to prosecute this action for the benefit of the members of the class and
20 surrender any right to compromise the group action for an individual gain.
21

22 8. I understood that being a plaintiff/class representative in this case meant that I
23 was seeking damages not only for myself but also other current and/or former non-exempt
24 employees working for Sleep Data in California. I felt that this group of employees were not
25 aware of their labor law rights and even if they were they would probably be apprehensive about
26 speaking up or even simply because of the time, effort and risk involved in filing a class action
27

lawsuit.

9. I understood that being a part of this lawsuit involved risks. For example, my attorneys explained to me that if the case went to trial and we lost, I could be held responsible to pay for all or part of the attorney fees and costs paid by Sleep Data to defend this lawsuit. Also, I knew there was a risk that future employers, if they ever found out about this lawsuit, could hold it against me or downgrade me as a potential hire. As the only named Plaintiff in this case and in light of this case being in the public record it would not be difficult for a future employer to become aware I sued a former employer for labor law violations. Ultimately I decided these risks were worth it and decided to fight for my rights and the rights of others regardless of the risks, time and effort I spent on this case.

10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also kept up to date on important developments by reviewing court filings that were made available to me electronically as I described above.

11. A mediation took place on June 9, 2021 with Hon. Louis Meisinger (Ret.), a former judge and experienced mediator of wage and hour class actions. Following the all-day mediation session, the parties agreed to settle the action. I communicated with my attorneys regarding the terms of the settlement which was reached between the parties and understood that I was representing absent class members and therefore wanted the best possible result to be obtained for the class and I believe a very positive result was in fact achieved via settlement. I reviewed and signed the Memorandum of Understanding on July 7, 2021 and when the final settlement papers were ready, I closely reviewed the Settlement Agreement which I signed on November 10, 2021.

12. I have been actively involved with this class action lawsuit performing the duties

1 described above. Although I did not keep time records, I was in regular contact with my
2 attorneys, reviewed court filings and spent a significant amount of time on the issues presented
3 during the lawsuit and in the settlement process. I estimate that I spent approximately 40-50
4 hours working on this case up until this point. I believe I have been diligent and have done what
5 is expected of a named plaintiff and class representative to date, and will continue to do so. I
6 have and always will maintain the best interest of the class.
7

8 13. My attorneys explained to me that the settlement process involves a two-step
9 review by the Court to determine whether the settlement is fair before approving the settlement.
10 I know this process also involves notifying all class members of the settlement terms and of their
11 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
12 settlement.
13

14 14. I believe I did the right thing by filing this case on behalf of the class who are in
15 line to receive monetary payments as a result of this case and settlement. I also believe that the
16 requested Class Representative Service Payment of \$10,000 from the settlement is fair
17 compensation for the work I performed and the risks I undertook.
18

19 15. As part of the settlement it was necessary for me to sign a general release of
20 claims I may have against Sleep Data. I believe the Class Representative Service Payment I
21 have requested provides me with some compensation for this agreed release.
22

23 16. In light of all the time and effort I have spent on this case, the risk I undertook by
24 suing a former employer, the exposure to being responsible for paying Sleep Data's costs in the
25 event we did not win the case, the reputational risk that future employers may hold this lawsuit
26 against me, the general release, and in light of the size of the settlement, I believe the request for
\$10,000 as a Class Representative service payment is fair and reasonable.

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

3 Executed on Jan 19, 2023, at EL Cajon CA
4 (city, state)

5 
6 Martina Avery (Jan 19, 2023 14:46 PST)
7 Martina Avery