

FILED
KERN COUNTY SUPERIOR COURT
10/12/2022

BY Fogerson, Vickie
DEPUTY

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

DWAYNE WESLEY, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 ("PAGA");

Plaintiff,

v.

PREMIER EQUIPMENT RENTAL, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: BCV-20-101858-BCB

Assigned for All Purposes to:
Honorable Bernard C. Barmann, Jr.
Division H

CLASS ACTION

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

Hearing Date: September 16, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Division H

Complaint Filed: August 10, 2020
FAC Filed: February 3, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Dwayne Wesley’s (“Plaintiff”)
2 Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Class
3 Representative Enhancement Payment, and after considering the papers submitted in support of
4 the motion, including the Joint Stipulation of Class Action Settlement (“Settlement Agreement,”
5 “Settlement,” or “Agreement”), hereby FINDS AND ORDERS as follows:

6 Plaintiff and Defendant Premier Equipment Rental, Inc. (“Defendant”) entered the
7 Settlement Agreement on or about January 26, 2022, to settle this class action lawsuit.

8 The Court entered an Order dated March 29, 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 16, 2022.

14 The Court held a Fairness Hearing on September 16, 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.

25 3. Final Class Certification. The Court finds the Class satisfies all applicable
26 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
27 process. Accordingly, the Court certifies a Class consisting of all current and former non-exempt
28 employees of Defendant who worked in California during the period from August 10, 2016 to

January 1, 2022 (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) ("Class," "Class Members," and "Class Period"). "Class Members" shall not include any person who submits a timely and valid request for exclusion. There are one hundred twenty-one (121) Class Members.

4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-Gharajeh, and Jason Rothman 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. Class Notice. The Court finds the Notice of Class Action Settlement ("Class Notice") 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 Class Notice:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) the pendency of the class action lawsuit; (ii) the 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) the binding effect of the orders and judgment in the class action lawsuit, whether favorable or unfavorable, on all 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;

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

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

6. Final Settlement Approval. The terms and provisions of the Agreement have been entered in good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Agreement and all its

1 terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best
2 interests of the Parties. The Parties are hereby directed to implement the Agreement according to
3 its terms and provisions.

4 7. Binding Effect. The terms and provisions of the Settlement and this Order and
5 Judgment are binding on Plaintiff and Class Members, as well as their spouses, heirs, registered
6 domestic partners, executors, administrators, successors, and assigns, and those terms shall have
7 res judicata and other preclusive effect in all pending and future claims, lawsuits or other
8 proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits,
9 or other proceedings involve matters that were or could have been raised in the class action
10 lawsuit and are encompassed by the Released Claims. The Settlement will have no binding effect
11 upon, and provide no res judicata preclusion to, those Class Members who have submitted timely
12 requests for exclusion.

13 8. Release by All Class Members. Plaintiff and all Class Members who do not
14 submit a valid and timely exclusion requests, on behalf of himself or herself, his or her heirs,
15 descendants, dependents, executors, administrators, assigns, and successors, fully and finally
16 release and discharge the Released Parties from any and all of the Released Claims for the
17 entirety of the Class Period.

18 a. General Release by Plaintiff. In exchange for the consideration set forth in the
19 Agreement, Plaintiff, for himself, his heirs, successors, and assigns provides a
20 general release for the Released Parties. Plaintiff also expressly waives and
21 relinquishes any and all claims, rights, or benefits he may have under Civil Code
22 section 1542.

23 b. Released Parties. The Released Parties include Defendant, and its past, present,
24 and/or future, direct and/or indirect, owners, officers, directors, members,
25 managers, employees, agents, representatives, attorneys, insurers, partners,
26 investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
27 divisions, predecessors, successors, assigns, and joint venturers, if any.

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

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

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

14 b. The Court reviewed Plaintiff's declaration outlining his involvement in the
15 lawsuit. Given the risks inherent in his services as the Class Representative, the
16 duration of the case and time involved, and the benefits created for the Class, the
17 Court approves the payment of the Class Representative Enhancement Payment of
18 \$10,000 to Plaintiff.

19 11. Attorneys' Fees and Costs. The Court finds the attorneys' fees of \$140,000, to be
20 paid out of the Maximum Settlement Amount by Defendant to Class Counsel, to be reasonable
21 and appropriate. The Court finds the attorneys' costs as reimbursement for litigation costs
22 incurred of \$11,451.62, to be paid by Defendant to Class Counsel out of the Maximum
23 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant
24 to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for
25 any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any
26 other counsel representing Plaintiff and Class Members. Defendant shall also not be required to
27 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff and
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Class Members in connection with or related to this lawsuit, the Settlement, the administration, and/or the Released Claims.

a. The Court has an independent right and responsibility to review the requested attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The attorneys' fees requested by Class Counsel of \$140,000 is forty percent (40%) of the common fund created for the benefit of the Class and is supported by 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 attorneys' fees 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 \$15,000. The Court finds Class Counsel expended \$11,451.62 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of attorneys' costs of \$11,451.62 from the common fund for the reimbursement of litigation costs.

12. Settlement Administration Costs. The Court finds Settlement Administration Costs of \$7,000, to be paid by Defendant to the Settlement Administrator out of the Maximum Settlement Amount, to be reasonable and appropriate. The Settlement Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Nicole Bench from ILYM Group, Inc. ("ILYM Group"), 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 Settlement

Administration Costs of \$7,000 for ILYM Group’s services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$10,000, seventy-five percent (75%) of which (\$7,500) will be distributed to the California Labor and Workforce Development Agency (“LWDA”) out of the Maximum Settlement Amount and twenty-five percent (25%) of which (\$2,500) will be included in the Net Settlement Amount and distributed to Class Members, 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 of the Settlement. Within thirty (30) calendar days of the Effective Date, and after Defendant has fully funded the Qualified Settlement Fund with the Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a) all Class Members who have not submitted a valid and timely Request for Exclusion, including any Class Member whose notice was returned as undeliverable; (b) Plaintiff; (c) Class Counsel; and (d) the LWDA. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. The Settlement Administrator will pay Individual Settlement Payments from the Net Settlement Amount to all Class Members by sending a check in the appropriate amount to the Class Member at the address indicated in the Class List or as subsequently determined by the Settlement Administrator to be correct.

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 mediator Judge Howard Broadman (Ret.), who is an experienced and well-respected class action mediator.

- a. The fairness of the Settlement is demonstrated by there being no objections to and no requests for exclusion from the Settlement.

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b. The fairness of the Settlement is also illustrated by the *average* Individual Settlement Payment being approximately \$1,438.42, and the *highest* Individual Settlement Payment being about \$6,289.19 under the Settlement allocation.

16. Uncashed Checks. Class Members will receive checks for their Individual Settlement Payments. Checks will remain negotiable for one hundred twenty (120) days. Uncashed checks will be voided and distributed to the *cy pres* recipient Court Appointed Special Advocates or an organization supporting victims of cancer.

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

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

a. enforcing the terms and provisions of the Settlement Agreement and resolving any disputes, claims, or causes of action in the class action that, in whole or in part, are related to or arise out of the Settlement Agreement or this Order and Judgment;

b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and Judgment approving the Settlement Agreement, and permanently enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of the Settlement Agreement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

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1 The Motion for Final Approval of Class Action Settlement, Attorney' Fees and Costs,
2 and Class Representative Enhancement Payment is GRANTED. The Settlement Administrator is
3 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: Signed: 10/12/2022 09:16 AM



HONORABLE BERNARD C. BARMANN, JR.
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 November 1, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Wesley v. Premier Equipment Rental, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-854255-21**
Court Case No.: BCV-20-101858
Kern 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 November 1, 2022, at Pasadena, California.



Mariah Anderson