

5/17/2024 1:07 PM

By: Sylvia Guajardo, DEPUTY

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Attorneys for Plaintiff Charlie McElhanon

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHARLIE MCELHANON *et al.*

Plaintiff,

vs.

MCLANE/SUNEAST, INC. *et al.*

Defendants.

Case No. CIVSB 2214190

Hon. Joseph T. Ortiz
Dept. S-17

CLASS ACTION

**Notice of Entry of Order Granting Final
Approval and Entering Judgment**

Action Filed: July 8, 2022

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE
2 TAKE NOTICE THAT:

3 1. On May 16, 2024, at 1:30 p.m. in this Department, the Court entered the Order and
4 Judgment Granting Final Approval of Class Action Settlement and Attorneys' Fees and Costs and
5 Entering Judgment attached hereto as Exhibit 1.

6 2. The Judge confirmed the Court's Tentative Ruling attached hereto as Exhibit 2.

7 3. A copy of this Notice has been submitted to the LWDA via its online electronic portal
8 in accordance with Labor Code § 2699(1)(3).

9 4. Notice of the Court's final ruling and entry of judgment is hereby provided.

10
11 Respectfully submitted,

12
13 Dated: May 17, 2024

Ferraro Vega Employment Lawyers, Inc.

14 
15 _____
16 Nicholas J. Ferraro
17 Lauren N. Vega
18 Attorneys for Plaintiff Charlie McElhanon
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EXHIBIT 1

5/16

JUDGE'S COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
CIVIL DIVISION

MAY 16 2024

By: Stephanie Reed
Stephanie Reed, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHARLIE MCELHANON, *et al.*

Plaintiff,

vs.

MCLANE/SUNEAST, INC., *et al.*

Defendants.

Case No. CIVSB 2214190

Hon. Joseph T. Ortiz
Dept. S-17

CLASS ACTION

[Second Amended Proposed] Order
Granting Final Approval of Class Action
Settlement and Attorneys' Fees and Costs
and Entering Judgment

Motion for Final Approval/Attorneys' Fees:

Date: May 16, 2024

Time: 1:30 p.m.

[Filed concurrently with Notice of Motion and
Motion for Final Approval of Class Action
Settlement, Memorandum of Points and
Authorities, Declaration of Nicholas J. Ferraro,
Declaration of Settlement Administrator, and
Declaration of Charlie McElhanon]

Action Filed: July 8, 2022

[Second Amended Proposed] Order Granting Final Approval of Class Action
Settlement and Attorneys' Fees and Costs and Entering Judgment

1 This matter came on for hearing on May 16, 2024 at 1:30 p.m. in Department S-17 of the above-
2 captioned Court, the Honorable Joseph T. Ortiz presiding, on (1) Plaintiff's Motion for Final Approval
3 of Class Action Settlement and (2) Plaintiff's Motion for Attorneys' Fees and Costs.

4 Having received and considered the motions and supporting papers, including the Stipulation
5 for Leave to File First Amended Complaint and Settlement and Release of Class Action and PAGA
6 Claims ("Settlement"), the evidence and documents received by the Court in connection with the
7 Motions for Final Approval and Attorneys' Fees and Costs, and the previously decided Motion for
8 Preliminary Approval, the Court GRANTS FINAL APPROVAL of the Settlement and ORDERS AND
9 MAKES THE FOLLOWING DETERMINATIONS:

10 1. Pursuant to the terms of the Settlement and the Order Granting Preliminary Approval,
11 and the Settlement, a notice was sent to each class member by first-class U.S. mail. The notice
12 informed the class of the terms of the Settlement, their right to receive a settlement payment without
13 any required action, their right to comment upon or object to the Settlement, and their right to appear
14 in person or by counsel at the Final Approval Hearing and to be heard regarding approval of the
15 Settlement. Adequate periods of time were provided for each of these procedures.

16 2. Zero class members returned a written objection to the proposed Settlement as part of
17 the notice process or stated an intention to appear at the Final Approval Hearing and there we no
18 dissenting appearances from class members at the hearing. Two class members requested exclusion
19 from the Settlement: Karcher, M, employee ID # 000044090, and Williams, R, employee ID #
20 000140875. These "opt outs" are affirmatively excluded from the class settlement.

21 3. The Court finds and determines the notice procedure afforded adequate protections to
22 the class and provides the basis for the Court's informed decision regarding approval of the Settlement
23 based the response. The Court finds and determines the notice provided was the best notice
24 practicable, satisfying the requirements of law and due process.

25 4. For purposes of approving this Settlement only, this Court finds and concludes: (a) the
26 proposed class is ascertainable and so numerous that joinder of all members of the class is
27 impracticable; (b) there are questions of law or fact common to the proposed class, and there is a well-
28 defined community of interest among members of the class with respect to the subject matter of the

claims; (c) the claims of the representative are typical of the claims of the class; (d) the class representative has and will fairly and adequately protect the interests of the class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy in the context of settlement; and (f) the law firm of Ferraro Vega Employment Lawyers, Inc. is qualified and adequate to serve as Class Counsel in this action.

5. The Court confirms certification, for settlement purposes only, of the class as defined in the Settlement and approved at the preliminary approval stage.

6. The Court finds and determines the terms set forth in the Settlement are fair, reasonable, and adequate and, having found the Settlement was reached as a result of informed and non-collusive arms'-length negotiations facilitated by a neutral and experienced mediator, directs the Parties to effectuate the Settlement according to its terms. The Court further finds the Parties conducted extensive investigation, research, and informal discovery, and that their attorneys were able to reasonably evaluate their respective positions. The Court also finds that Settlement will enable the Parties to avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery and recognizes the significant value provided to the Class. Therefore, the Court approves the terms of the Settlement, including the release of claims thereunder, and incorporates the terms of the Settlement Agreement in full into this Order as though fully set forth herein. All defined terms used in the Settlement Agreement have the same defined meaning when used herein.

7. The Court finds and determines the fees and expenses in administering the Settlement incurred by the Settlement Administrator of \$18,740.83 are fair and reasonable. The Court orders these administration costs be paid in accordance with the terms of the Settlement.

8. The Court finds and determines the Service Award of \$10,000 to Plaintiff McElhanon as fair and reasonable. The Court orders the service awards be paid in accordance with the terms of the Settlement.

9. The Court finds and determines that payment of the civil penalties under the Labor Code Private Attorneys General Act in the amount of \$12,000.00 as provided under the terms of the Settlement is fair, reasonable, and appropriate. The Court orders that amount be paid in accordance

1 with the terms of the Settlement, 75% or \$9,000.00 to the California Labor and Workforce
2 Development Agency, and 25% or \$3,000.00 the Aggrieved Employees, and approves the settlement
3 of claims under the Labor Code Private Attorneys General Act pursuant to Labor Code § 2699(1)(2).

4 10. Pursuant to the terms of the Settlement and the statutory provisions authorizing
5 attorneys' fees under the California Labor Code and Code of Civil Procedure, as set forth in the Motion
6 for Attorneys' Fees, the Court awards Class Counsel attorneys' fees of \$125,000 and litigation costs
7 of \$21,694.80. Class Counsel has sufficiently explained the basis for the fee award based on a
8 percentage of the fund. The Court finds such amounts to be fair and reasonable. The Court orders the
9 Settlement Administrator to make these payments in accordance with the Settlement.

10 11. Effective upon the entry of this Order, Plaintiff, Participating Class Members, the
11 LWDA and Aggrieved Employees shall be and hereby are enjoined from filing, initiating, or
12 continuing to prosecute any actions, claims, complaints, or proceedings in court, arbitration, with the
13 California Division of Labor Standards Enforcement ("DLSE"), with the LWDA, or with any other
14 entity, with respect to the claims released as described in the Settlement Agreement, and from
15 contesting or interfering with efforts by Defendant or by any other Released Parties to oppose any
16 attempt to bring such released claims against any of them.

17 12. Without affecting the finality of this Order or the entry of judgment in any way, the
18 Court retains jurisdiction of all matters relating to the interpretation, administration, implementation,
19 and enforcement of this Order and the Settlement.

20 13. Nothing in this Order shall preclude any action to enforce the Parties' obligations under
21 the Settlement or under this Order, including the requirement that Defendant make payments to Class
22 Members in accordance with the Settlement.

23 14. The Court hereby ENTERS FINAL JUDGMENT in accordance with the terms of the
24 Settlement, in accordance with this Final Approval Order and Judgment.

25 ///

26 ///

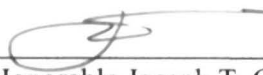
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1 15. The Parties shall comply with Cal. Rules of Court Rule 3.771(b), by filing a Notice of
2 Entry of Judgment with the Court.

3
4 **IT IS SO ORDERED.**

5
6 Date: May 16, 2024


The Honorable Joseph T. Ortiz
Judge of the Superior Court

JOSEPH T. ORTIZ

EXHIBIT 2

Tentative Rulings
May 16, 2024
Department S-17
Judge Joseph Ortiz

Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8715 in advance of the hearing. If all parties submit on a tentative ruling, the tentative ruling will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: As of January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S-17 at jgarcez@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

12. *Rowhouse, LLC. v. SB Pharma Holdings, Inc., et al*, CIVSB2400811

Motion for Preliminary Injunction

5/16/24, 9:00 a.m., Dept. S-17

Tentative Ruling

The Court would **GRANT**, consistent with the prior ruling the temporary restraining order (TRO): The injunction would prohibit Defendant SB Pharma from (1) changing the name of the dispensary from “The Cake House”; (2) destroying any evidence,¹ including but not limited to security camera footage from December 12, 2023 to February 6, 2023; and (3) transferring funds from any bank account used in connection with the dispensary, other than for goods and services from existing vendors. Defendant will provide monthly account statements to verify compliance.

Case Summary

This is a business dispute and breach of contract case. The parties are, in essence, partners in a cannabis dispensary business. The individual Defendant Mierau formed and is the principle for Defendant SB Pharma, which owns the dispensary license. Plaintiff Rowhouse alleges SB maintains the dispensary license. Rowhouse alleges it has a management services agreement whereby it provides all management and takes all profits. Rowhouse is, therefore, the actual operating entity, and it comprises a number of corporate owners, including a corporate entity formed by Mierau with a minority (40%) interest. The other Rowhouse corporate owners have contributed significant financial resources to the undertaking.

Relevant here, Rowhouse alleges that SB Pharma and Mierau violated Rowhouse’s Amended Management Services Agreement (MSA). It asserts that the MSA requires that, other than for drastic changes in cannabis law, Rowhouse’s services could only be terminated for cause as determined by a third-party trier of fact after failure to cure within ninety (90) days. (MSA, § 2.d.) Despite these requirements, Rowhouse alleges that Mierau and SB Pharma wrongfully terminated the MSA and locked out Rowhouse from business operations and banking. Rowhouse filed suit on January 31, 2024, and a First Amended Complaint (FAC) on March 20, 2024, alleging claims for (1) breach of contract; (2) fraud; (3) breach of implied covenant of good faith and fair dealing; (4) unjust enrichment; (5) conversion; (6) Penal Code section 496 (crimes against property); (7) declaratory relief; (8) intentional interference with contract; (9) violation of the unfair practices law; and (10) accounting.

¹ This would the law in any event as the California Civil Discovery Act of 1986 prohibits the intentional destruction of evidence. (See also *Cedar-Sinai Med. Ctr. V. Superior Court* 18 Cal.4th 1, 12-13 [sanctions can be imposed on attorneys who participate in spoliation of evidence].)

Rowhouse applied for a TRO on February 6, 2024, to restore access and restrict SB Pharma's action, which was ultimately granted in part. Since the issuance of the TRO, Rowhouse posted the required bond, and the TRO is effective.

It also filed another Reply on May 2, 2024. Rowhouse now asks that the injunction be expanded cover the already ordered restrictions and also grant Rowhouse access to the security cameras at the dispensary and SB Pharma's bank accounts, as well as restore it as the manager.

Summary of the Law

When deciding whether to issue a preliminary injunction, a trial court "weighs two interrelated factors: the likelihood the moving party ultimately will prevail on the merits, and the relative interim harm to the parties from the issuance or non-issuance of the injunction." (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449-1450 [internal citation omitted].) Under the first factor, the court does not determine the merits of the controversy or whether the applicant will prevail but only whether there is a *likelihood* the applicant will prevail. (*Best Friends Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal.App.4th 168, 182-185.) The second factor involves consideration of factors such as the inadequacy of other remedies; the degree of irreparable harm; and the necessity of preserving the *status quo*. (*14859 Moorepark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) The issuance of a preliminary injunction rests within the sound discretion of the trial court. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527; *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) That discretion, however, should be exercised in favor of the party most likely to be injured. (*McCoy v. Matich* (1954) 128 Cal.App.2d 50, 52.)

Analysis

Likelihood of Prevailing: In its TRO ruling the Court held that none of the cannabis industry regulations necessarily resulted in it concluding the Amended and Restated Management Services Agreement ("Amended MSA") was illegal or unenforceable. (See also Simms Reply Decl.) With no additional evidence submitted, there is no basis to conclude differently.

The evidence remains Rowhouse through the Amended MSA had management responsibilities of the dispensary to which SB Pharma held the license. And, importantly, the Amended MSA is not subject to termination unless Rowhouse committed acts of fraud, dishonesty, misconduct, gross negligence, or was incompetent in the performance of its management services as found by a third party trier of fact. No evidence was presented that Defendants locked out Rowhouse from managing the dispensary because of a third-party finding that it engaged in fraud, dishonesty, gross negligence, incompetence, or other misconduct. Thus, generally speaking, the evidence supports Rowhouse.

Now, an issue does exist as to whether others fully complied with their obligations to pay for their membership interest in Rowhouse and fund the opening of the business. Rowhouse contends they have done so. (Zora Decl., ¶¶8-10.) SB Pharma contends they have not. (Lavelle

Decl., ¶¶4-5 & Exh. A.) However, this issue is a red herring as payment to purchase membership interest in Rowhouse is not shown as a condition precedent before Rowhouse could operate under the Amended MSA.

Relevant Harm: The evidence remains of a claim that SB Pharma is not paying vendors and that the issue harms the Cake House name. (Pattah Decl., ¶¶11, 20 & 22-25; Bernes Reply Decl., ¶¶3-7 & Exhs. 1 & 3.) The problem with this evidence is that, while it demonstrates harm to the reputation, it shows nothing of Rowhouse's relevant harm in not being able to manage the business.

Concerning the request for direct access the security cameras and accounts, discovery would allow a mechanism for *eventual* access pursuant to this litigation. As to direct access, movant fails to offer evidence of purpose or necessity for the direct access. The Court is not inclined to fashion a remedy where no necessity or harm is offered. However, the Court would require monthly production of bank statements in order to verify compliance with its injunction as related to transfer of assets.

Finally, Rowhouse asks that it be restored the right to operate and manage the dispensary. However, the FAC does not plead for such specific relief. It seeks only monetary damages. Furthermore, if specific relief was sought to restore the management agreement, then that would be the ultimate relief at issue and would not be appropriately provided by preliminary injunction.

14. *McElhanon v. McLane/ Suneast, Inc., et al*, Case No. CIVSB2214190
Motion for Final Approval of Class Action Settlement
5/16/24, 1:30 p.m., S-17

The Court would **GRANT**.

Here, Plaintiff originally filed a wage-and-hour class action against Defendant on July 8, 2022 (CIVSB2214190), alleging a single cause for wage statement violations. Based on a June 24, 2022 LWDA notice, he later filed a companion case for civil penalties pursuant to the Private Attorneys General Act (PAGA) against Defendant on September 1, 2022 (CIVSB2219102). Now, in anticipation of settlement and pursuant to stipulation, Plaintiff files a First Amended Complaint (FAC) on Case No. CIVSB2214190, and now asserts (1) wage statement violations and (2) civil penalties pursuant to PAGA.

In anticipation of mediation, the parties engaged in the exchange of data and documents sufficient to value the case. Plaintiff received a significant documents and data relating to a

significant portion of the putative class and submitted the information to an expert economist for assessment and valuation. Ultimately, the parties participated in a full day of mediation on September 26, 2023, before Michael Dickstein, an experienced neutral. They eventually settled and prepared a long form settlement agreement, executed in January of 2024. Pursuant to the Settlement, Plaintiff would represent all current and former employees of Defendant who worked in California any time between July 8, 2021 and December 31, 2023, whose wage statements included either (1) break time, training, containers, missed load differential, load miles, or functionally equivalent earnings; or (2) piece-rate earnings, rest and recovery period earnings, or non-productive time earnings. (Settlement, ¶16 [Class].) On January 18, 2024, Plaintiff notified the LWDA of the settlement.

The parties successfully moved for Preliminary Approval of the Settlement before this Court on February 15, 2024. As preliminary matter, this Court found the total settlement amount of \$375,000.00 to be fair, reasonable, and adequate given the strength of the Plaintiff's case and the risks involved in litigation. Adequate discovery and investigation had occurred, and there was no evidence of fraud or collusion.

There are 647 class members and 643 PAGA aggrieved employees. (Bulthuis Decl., ¶16.) Notices were mailed on or about March 28, 2024. (Bulthuis Decl., ¶18.) There were 20 notices returned, though many were re-sent after forwarding addresses were obtained and after skip tracing efforts. (*Id.*, ¶¶18-9.) As of the date of this motion, 15 notices are deemed undeliverable. (*Id.*, ¶19.) There were no objections, but there were two² requests for exclusion. (*Id.*, ¶¶12-13.) This Motion seeks final approval on the proposed settlement.

Statement of the Law

Settlement of a class action requires court approval. (Rules of Court, rule 3.769.) The moving party must demonstrate that the settlement is "fair, adequate and reasonable." (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 126.) The court has "broad discretion in making this determination." (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors may include "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintain class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors "is not exhaustive and should be tailored to each case." (*Ibid.*) The court may "engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 overruled on other grounds.)

² The declaration indicates one request for an exclusion; however, the Court has been provided an *amended* Proposed Order, indicating a second requested exclusion. (See Second Amended Proposed Order, ¶2.) While not supported by a declaration from the claims administrator, it appears that a second request for exclusion was submitted following the submission of the declaration on file.

“Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “The court must therefore scrutinize the proposed settlement agreement to the extent necessary to ‘reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” (*Ibid.*, quoting *Officers for Justice v. Civil Service Com’n* (9th Cir. 1982) 688 F.2d 615, 625.) The settlement is entitled to “a presumption of fairness . . . where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

Summary of the Proposed Class Settlement

The proposed final settlement terms are largely in line with those approved preliminarily: Defendants will pay a gross, non-reversionary settlement amount of \$375,000.00, from which will be deducted (1) \$125,000.00 for Class Counsel’s attorneys’ fees (1/3rd of the total); (2) costs of \$21,694.80; (3) Plaintiff’s enhancement fees of \$10,000.00; (4) claims administration fees of \$18,740.83; and (5) PAGA penalties of \$12,000.00 (of which \$9,000.00, or 75%, will go to the LWDA and \$3,000.00, or 25%, will go to the aggrieved employees).

The parties estimate this will leave a wage-and-hour only net settlement amount of a non-reversionary \$187,564.37. This amount would be split by the class of 645 employees (deducting the two exclusions) in proportionate shares determined by number of work weeks within the Settlement Class Period. The average per class member would be \$290.80. The entire amount would be characterized as non-wage damages for tax purposes. (Settlement, ¶133.) Given the 643 aggrieved employees, the average PAGA payout to the aggrieved employees would be \$4.67.

Tentative

The Court finds no evidence of fraud or collusion. Class counsel are able, experienced, and well-qualified to represent the class. The representative is also well qualified to represent. The settlement was reached through an arms-length negotiation. The Court incorporates the reasons for the preliminary approval, issued on February 15, 2024, into its ruling by this reference and would:

1. Certify the Class for settlement.
2. Approve the settlement as fair and reasonable, finding that class members were given notice, advised of their rights and to object or exclude themselves.

3. Appoint Charlie McElhanon as Class Representative and approves his service award of \$10,000 each.
4. Appoint Ferraro Vega Employment Lawyers as Class Counsel for settlement purposes.
5. Approve administrative expenses as stated to Simpluris Settlement Administrators at \$18,740.83.
6. Approve the attorneys' fees as stated at \$125,000.00, with costs of \$21,694.80 for litigation of this action. Counsels' lodestar analysis supports attorneys' fees and costs, in light of a modest multiplier sufficient to recognize the risk undertaken and the speedy resolution. (See, e.g., Ferraro Decl., ¶¶7-15 & Exhs. 3-4.)
7. Direct the clerk to enter the Court's order as final judgment.
8. Reserve continuing jurisdiction for the purposes of implementing, enforcing, or administering the Settlement or enforcing the terms of the Judgment.
