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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 16, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on January 16, 2024, at 8:30 a.m., in Department 42
4 before the Honorable Trisha Hirashima, presiding. Named Plaintiff Jesse Downard (“Plaintiff”) filed
5 this putative class action on December 19, 2022. The operative Complaint alleges that Defendant
6 Sierra Mental Wellness Group (“Defendant”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest
8 periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7)
9 failing to reimburse employees for incurred expenses, and 8) by engaging in unfair competition.
10 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
11 Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs as part of this
12 Action. Defendant denied all of Plaintiff’s claims and denied that this case was appropriate for class
13 treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary
19 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
20 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
21 DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All hourly non-exempt employees who have worked, or continue to work,
27 for Defendant in California as clinicians, nurses, psychologists, or similar
28 positions responsible for providing care to patients at any point between
December 19, 2018, to (1) the date a signed order preliminarily approving

1 the settlement is filed by the Court, or (2) sixty (60) days after the
2 Agreement is fully executed, whichever is earlier.

3 The Court recognizes that the foregoing definition is for Class Member identification purposes
4 only and is not intended to capture the claims at issue or limit or alter the released claims under the
5 Agreement.

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
11 contentions that Defendant caused the violations outlined above by 1) failing to incorporate the value of
12 on-call earnings when calculating the regular rate of pay for premium purposes such as overtime, double
13 time, sick leave, and meal and rest period premiums, 2) failing to have enough staff to provide meal and
14 rest periods to Plaintiff and putative class members, 3) engaging in rounding practices, rounding of
15 putative class members' hours despite being able to record actual hours worked down to the minute, and
16 lack of rounding policy and its failure to inform Plaintiff and putative class members of its rounding
17 practices, and 4) failing to reimburse Plaintiff and putative class members for use of their personal cell
18 phone and internet for work purposes. The PAGA, waiting time penalty, wage statement violation, and
19 unfair competition claims also derive from these violations. Additionally, Class Members seek the
20 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
21 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
22 the class members.

23 The Court also finds that preliminarily and conditionally certifying the settlement class is
24 required to avoid each Class Member from litigating similar claims individually. This Settlement will
25 achieve economies of scale for Class Members with relatively small individual claims and conserve the
26 resources of the judicial system.

27 The Court finds that Plaintiff Jesse Downard and Plaintiff's counsel, Galen T. Shimoda,
28 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate

representatives of the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$450,000 Gross Settlement Amount, which will be funded in two installment payments of \$225,000. Defendant will fund the first installment payment on May 14, 2024, and the second installment payment on August 14, 2024.

The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and hereby appoints them to fulfill those duties as outlined in the Agreement.

The Court finds that an award of fees under the common fund doctrine may be appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s fees and costs, for an Enhancement Payment to the Class Representative, and Settlement Administrator Costs shall be included in the Notice of Settlement to enable Class Members to review and comment thereon.

1 The Court will consider the reaction of Class Members when evaluating the reasonableness of the
2 requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71
3 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
4 request further supports finding the fee request reasonable”). Class Counsel is directed to provide an
5 updated declaration and itemization regarding actual litigation costs incurred. The Settlement
6 Administrator shall also submit a declaration attesting to Settlement Administrator Costs incurred. The
7 Court will review these amounts and allocations in connection with the final approval hearing. To the
8 extent the Court ultimately awards less than the amounts allocated under the Agreement for attorney’s
9 fees and costs, for an Enhancement Payment to the Class Representative, and/or Settlement
10 Administrator Costs, the difference between the amounts awarded and the amounts requested shall be
11 added to the Net Settlement Amount for distribution to Participating Class Members pro rata as set forth
12 in the Agreement.

13 The Court approves of the Twenty Thousand Dollars (\$20,000) PAGA Payment, which shall be
14 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
15 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
16 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
17 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
18 provides a recovery that creates an effective, substantial deterrent to any potential future non-
19 compliance, furthering the purpose of the Labor Code and LWDA.

20 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
21 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
22 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
23 Workers’ Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
24 Gross Settlement Amount will revert to Defendant for any reason.

25 The releases and waivers for Class Members who do not opt out of being bound by the
26 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
27 also approved by the Court as set forth in the Agreement.
28

1 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
2 **INCLUDING THE NOTICE OF SETTLEMENT**

3 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
4 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
5 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
6 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
7 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
8 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
9 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
10 at his or her most recent address based on a National Change of Address database search from the Class
11 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
12 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
13 including those of due process.

14 The Court also finds that because there is a strong interest in providing Class Members the
15 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
16 privacy rights, the sharing of employment information, including social security numbers, is not a
17 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
18 name, last known mailing address, social security number, and hire and termination dates, total number
19 of workweeks during which the Class Member performed any actual work to the Settlement
20 Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as
21 contemplated within the Agreement and approved by this Order. The Settlement Administrator shall
22 only use this information for the purposes identified in the Agreement and shall keep this information
23 confidential consistent with the terms of the Agreement.

24 **IV. IMPLEMENTATION SCHEDULE**

25 Accordingly, with good cause shown, the Court hereby approves and orders that the following
26 implementation schedule be adhered to:
27
28

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund first installment payment	May 14, 2024
Last day for Defendant to fund second installment payment	August 14, 2024
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has fully funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees

Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of June 4, 2024, at 8:30 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court