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individually and on behalf of similarly situated employees

Filed - 06/04/2024

Electronically filed by Superior Court of California
County of Placer on 06/04/2024
Jake Chatters, Clerk of the Court
By A. Nichols Deputy Clerk

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 FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 4, 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 Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on June 4, 2024, at 8:30 a.m., in Department 42 before the
4 Honorable Trisha Hirashima, presiding. Named Plaintiff Jesse Downard (“Plaintiff”) filed this
5 putative class action on December 19, 2022. The operative Complaint alleges that Defendant Sierra
6 Mental Wellness Group (“Defendant”) violated California law by 1) failing to pay overtime wages, 2)
7 failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest periods, 5)
8 failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7) failing to
9 reimburse employees for incurred expenses, and 8) by engaging in unfair competition. Plaintiff has
10 also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act
11 (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs as part of this Action.
12 Defendant denied all of Plaintiff’s claims and denied that this case was appropriate for class treatment.
13 No class has been certified. The class settlement was preliminarily approved by this Court on January
14 22, 2024.

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

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

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

27 All hourly non-exempt employees who have worked, or continue to work,
28 for Defendant in California as clinicians, nurses, psychologists, or similar

positions responsible for providing care to patients at any point between December 19, 2018, to December 9, 2023.

The Court recognizes that the foregoing definition is for Class Member identification purposes only and is not intended to capture the claims at issue or limit or alter the released claims under the Agreement. A Class Member shall not include the four individuals who timely opted out of the class settlement as identified in paragraph 11 of the declaration of Nathalie Hernandez, which include Benita Priestley, Bonnie Sayers, Emily Clark, and Janet Brown. These individuals shall not be bound by the Agreement or any of the releases or obligations therein except for the releases and covenants regarding to the PAGA claims as set forth in sections 1.31 and 6.2 as they are still Aggrieved Employees under the Agreement and there is no ability to opt out of a PAGA settlement.

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

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

4 The Court finds that Plaintiff Jesse Downard and Plaintiff's counsel, Galen T. Shimoda,
5 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
6 representatives of the settlement class. The Court appoints them as Class Representative and Class
7 Counsel, respectively.

8 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

9 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
10 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls
11 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
12 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
13 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
14 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
15 were able to object to the Agreement and its terms through the administrative process and at a fairness
16 hearing or opt-out of being bound by the preliminarily approved Agreement.

17 No objections were made by Class Members and only four (4) Class Members opted out of the
18 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
19 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs,
20 the Court gives final approval to the Agreement and all terms therein as if stated here in full, including
21 the \$450,000 Gross Settlement Amount, which will be funded in two installment payments of \$225,000.
22 Defendant will fund the first installment payment on May 14, 2024, and the second installment payment
23 on August 14, 2024.

24 Class Counsel sought an award of attorneys' fees of \$157,500, attorney's costs of \$6,245.68, an
25 Enhancement Payment to the Class Representative in the amount of \$15,000, and for Settlement
26 Administrator Costs in the amount of \$7,750. Defendant does not oppose these requests. The Notice of
27 Settlement sent to Class Members included information regarding these amounts and that they would be
28

1 requested in connection with final approval of the Agreement. Class Members have been given the
2 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.

3 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
4 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that
5 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
6 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
7 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
8 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271
9 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a
10 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee
11 from the fund as a whole.”). The Court finds the attorneys’ fees request of Thirty Five Percent (35%) of
12 the Gross Settlement Amount, *i.e.* \$157,500, to be appropriate compensation for Plaintiff’s Counsel.
13 The attorneys’ fees request is within the range of percentages that have been approved by other Courts
14 in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
15 results obtained on behalf of Class Members, Aggrieved Employees and the LWDA, and the contingent
16 nature of the recovery over the course of this case, which included potential loss at summary judgment
17 and/or trial proceedings. Additionally, the Court orders that \$6,245.68 of the Gross Settlement Amount
18 will be paid to Plaintiff’s Counsel for reasonable costs incurred in this case.

19 The Court orders and approves ILYM Group, Inc., to act as the Settlement Administrator in this
20 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are
21 \$7,750. Any difference between the actual Settlement Administrator Costs and the approved amount
22 will be added to the Net Settlement Amount for distribution between the Participating Class Members
23 pro rata as set forth in the Agreement.

24 The Court orders that Plaintiff will receive an Enhancement Payment of \$15,000 from the Gross
25 Settlement Amount for his work on behalf of the Class Members, Aggrieved Employees and the LWDA
26 and in exchange for his general release of all his individual claims in addition to any amount Plaintiff
27 may be entitled to under the Agreement’s pro rata distribution formula.

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

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

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

16 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
17 **INCLUDING THE NOTICE OF SETTLEMENT**

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff’s Motion as
19 Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class Members of the
20 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
21 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
22 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
23 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
24 proposed distribution of such notice by first class mail to each identified Class Member at his or her
25 most recent address based on a National Change of Address database search from the Class Members’
26 last known address and a skip trace on any Class Members who have the Notice of Settlement returned
27 as “undeliverable” or “not at this address” comported with all constitutional requirements, including
28 those of due process.

IV. IMPLEMENTATION SCHEDULE

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

Last day for Defendant to fund first installment payment	May 14, 2024
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 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

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement pursuant to California Civil Procedure Code section 664.6.

3 **IT IS SO ORDERED.**

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5 Date: 06/04/2024


6 By: /s/ Hon. Trisha Hirashima
7 Judge of the Superior Court
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Downard v Sierra Mental Wellness Group
Placer County Superior Court of California S-CV-0049587

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On June 12, 2024, I served the following documents on the party below:

**• ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA SETTLEMENT**

Ronald E. Enabnit Matheny Sears Linkert & Jaime, LLP 3638 American River Dr Sacramento, CA 95864 Telephone: 916-978-3434 Facsimile: 916-978-3430 E-mail: renabnit@mathenysears.com msilva@mathenysears.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 12, 2024, at Salt Lake City, Utah.

Shaniya Baird

Shaniya Baird

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