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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MC DEC 20 2016

Sherri R. Carter, Executive Officer/Clerk
BY M. Cervantes, Deputy
Martin Cervantes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANA ISABEL MEJIA, an individual, and on
behalf of herself and all others similarly situated,

Plaintiff,

v.

DISPENSING DYNAMICS INTERNATIONAL,
a California corporation; CORNERSTONE
STAFFING SOLUTIONS, INC., a California
corporation; DEAN DEBUHR, an individual;
MARY ANDERSON, an individual; and DOES 1
through 100, inclusive,

Defendants.

Case No. BC555868
Related to BC580335

~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT
SUBMITTED BY MATERN LAW GROUP,
PC

Dept: 307
Date: November 1, 2016
Time: 10:00 a.m.

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1 **I. BACKGROUND**

2 These related class action lawsuits allege a variety of wage and hour claims against Defendants
3 Dispensing Dynamics International, Inc., Staffing Network Holdings, LLC, dba Staffing Network, LLC
4 and Staffing Network, and Cornerstone Staffing Solutions, Inc. Following mediation, the parties in
5 *Mejia and Williams* entered into a settlement agreement. The Court granted preliminary approval of the
6 settlement in June, 2016. Now before the Court is Plaintiffs' motion for final approval.

7 **II. DISCUSSION**

8 **A. SETTLEMENT CLASS DEFINITION**

9 "Class Members" is defined as, "all current and former non-exempt employees of DDI who
10 worked who worked in California, as well as all current and former non-exempt employees of staffing
11 agency defendants, Staffing Network, Cornerstone Staffing Solutions, Inc., Dream Team Services, Inc.,
12 Aerotek Inc., Manufacturing Pros, LLC, and Priority Business Services, who were employed by DDI in
13 California or assigned to perform services at DDI in California at any time from August 25, 2010
14 through March 31, 2016." (Settlement Agreement, ¶1.3)

15 The parties stipulate to certification of this class for purposes of settlement only. (¶2.5)

16 **B. TERMS OF SETTLEMENT AGREEMENT**

17 The essential terms of the Settlement Agreement are as follows:

- 18 • The Gross Settlement Amount is \$4,000,000, non-reversionary. (¶1.16)
 - 19 o The Gross Settlement Amount is based on the assumption that DDI has already
 - 20 provided class counsel with all known time records from DDI's timekeeping
 - 21 system from August 25, 2010 and October 29, 2015 and the number of shifts
 - 22 actually worked by class members is off by no more than 5%. (¶4.2.)
 - 23 o If the number of shifts is greater than 5%, then the Gross Settlement Amount will
 - 24 be proportionately increased. (¶4.3.)
- 25 • The Net Settlement Amount (\$2,416,800) is the Gross Settlement Amount minus the
- 26 following (¶1.18):
 - 27 o Up to \$1,333,200 (33.33%) for fees (¶7);
 - 28 o Up to \$75,000 for attorney costs (¶7);

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- o Up to \$20,000 for two \$10,000 enhancement awards (§8);
- o Up to \$125,000 for settlement administration costs (§§1.24, 10.3); and
- o \$30,000 (75% of \$40,000 PAGA penalty) to the LWDA (§9).
- The Gross Settlement Amount excludes employer side taxes. (§§1.16, 12.2)
- Any amounts not awarded for fees, costs, enhancements, or PAGA penalties will be added to the Net. (§7-10)
- Settlement payments will be calculated as a percentage of the class member's shifts to the aggregate number of shifts worked by the class. (§5.1.1)
- 90% of each payment will be for the release of non-FLSA claims and 10% will be for the release of FLSA claims, to be paid in two checks. (§§5.1.3, 5.1.4, 5.1.5) The class notice will let class members know that if they cash their FLSA check, they will be deemed to have opted in and are releasing FLSA claims. (§5.1.6)
- Checks not cashed within 180 days will be cancelled. (§11.5)
 - o The settlement administrator will send reminder postcards after 90 days. (§11.3)
 - o The settlement administrator will make reminder phone calls after 120 days. (§11.4.)
 - o Funds from uncashed non-FLSA checks shall escheat to the State of California pursuant to the Unclaimed Property Law. (§11.5.1)
 - o Funds from uncashed FLSA checks will be donated to the Los Angeles Center for Law and Justice. (§11.5.2, and Supplemental Brief, p. 4.)
- Non-FLSA payments will be characterized as 80% 1099-income and 20% W-2 income. FLSA payments will be characterized as 50% 1099-income and 50% W-2 income.
- Named Plaintiffs and all class members who do not opt out shall have, by operation of this Order and the accompanying Judgment, fully, finally and forever released, relinquished, and discharged Releasees from all Released Claims set forth in Section 14 of the Settlement Agreement, which is hereby incorporated by reference. Participating Class Members shall be forever barred and enjoined from prosecuting any of the Released Claims against the Releasees as set forth in the Settlement Agreement, whether

1 or not they actually receive or cash checks for the Non-FLSA portion of their individual
 2 settlement payments, and shall not be permitted to seek any further payment or any
 3 personal relief of any kind, including any payment for damages, wages, compensation,
 4 commissions, fees, costs, reimbursements, penalties, or interest on account of the
 5 Released Claims. In the event a Participating Class Member fails to cash his or her
 6 FLSA check, the affected Participating Class Member shall be deemed to have
 7 irrevocably waived any right in or claim to an individual settlement payment, but the
 8 Settlement and the release of the affected Participating Class Member's claims, as set
 9 forth in Section 14 of the Settlement Agreement, shall remain binding upon him or her
 10 except that affected Participating Class Members shall not release claims that reasonably
 11 could have been raised under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

12 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

13 **1. Standards for Final Fairness Determination**

14 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
 15 settlement." CRC 3.769(g). "If the court approves the settlement agreement after the final approval
 16 hearing, the court must make and enter judgment. The judgment must include a provision for the
 17 retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may
 18 not enter an order dismissing the action at the same time as, or after, entry of judgment." CRC 3.769(h).

19 "In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
 20 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The
 21 purpose of the requirement [of court review] is the protection of those class members, including the
 22 named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *See*
 23 *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60
 24 (internal quotation marks omitted); *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
 25 224, 245 (Court needs to "scrutinize the proposed settlement agreement to the extent necessary to reach
 26 a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
 27 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
 28 adequate to all concerned") (internal quotation marks omitted).

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1 "The burden is on the proponent of the settlement to show that it is fair and reasonable. However
 2 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining;
 3 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
 4 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *See Wershba at*
 5 *245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802. Notwithstanding an initial*
 6 *presumption of fairness, "the court should not give rubber-stamp approval." See Kullar v. Foot Locker*
 7 *Retail, Inc. (2008) 168 Cal.App.4th 116, 130. "Rather, to protect the interests of absent class members,*
 8 *the court must independently and objectively analyze the evidence and circumstances before it in order*
 9 *to determine whether the settlement is in the best interests of those whose claims will be extinguished."*
 10 *Id. In that determination, the court should consider factors such as "the strength of plaintiffs' case, the*
 11 *risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action*
 12 *status through trial, the amount offered in settlement, the extent of discovery completed and stage of the*
 13 *proceedings, the experience and views of counsel, the presence of a governmental participant, and the*
 14 *reaction of the class members to the proposed settlement." Id. at 128. "Th[is] list of factors is not*
 15 *exclusive and the court is free to engage in a balancing and weighing of factors depending on the*
 16 *circumstances of each case." Wershba at 245.*

17 Nevertheless, "[a] settlement need not obtain 100 percent of the damages sought in order to be
 18 fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the
 19 relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to
 20 be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be
 21 served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'"
 22 *Id. at 250.*

23 **2. Does a presumption of fairness exist?**

- 24 a. Was the settlement reached through arm's-length bargaining? Yes. On December 1,
 25 2015, Williams' counsel and Defendants participated in mediation before Michael E.
 26 Dickstein. (Declaration of James E. Miller, ¶8.) On December 14, 2015, a second
 27 session of mediation was conducted telephonically, to which counsel for *Mejia* was
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1 invited. (*Ibid.*) Negotiations were at arms'-length and were protracted; with the
2 mediator's assistance, the parties were able to settle both cases. (*Id.* at ¶12.)

3 b. Were investigation and discovery sufficient to allow counsel and the court to act
4 intelligently? Yes. Defendant provided class counsel with documents in order to
5 facilitate mediation: company policies and substantial timekeeping and compensation
6 records. (*Id.* at ¶7.) Plaintiff Mejia sat for a full day of deposition. (Declaration of
7 Matthew Mater, ¶9.)

8 c. Is counsel experienced in similar litigation? Yes. (Miller Declaration, ¶¶14-17, 19, 20;
9 Matern Declaration, ¶¶15-18.)

10 d. What percentage of the class has objected? Zero. (Declaration of Abigail Schwartz, ¶12.)

11 CONCLUSION: The settlement is entitled to a presumption of fairness.

12 **3. Is the settlement fair, adequate, and reasonable?**

13 e. Strength of Plaintiffs' case. "The most important factor is the strength of the case for
14 plaintiffs on the merits, balanced against the amount offered in settlement." *See Kullar v.*
15 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. At the time of preliminary
16 approval, Class Counsel presented evidence regarding the estimated value of the class
17 claims. (Amended Declaration of Rose Luzon re: Preliminary Approval, ¶¶11-13.) The
18 claim for unpaid wages was estimated to be worth approximately \$15 million, if Plaintiffs
19 were to prevail. The \$4 million non-reversionary settlement represents recovery of
20 approximately 26% of the maximum value of the claims.

21 f. Risk, expense, complexity and likely duration of further litigation. Given the nature of the
22 class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles
23 (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any
24 recovery by the class members.

25 g. Risk of maintaining class action status through trial. Even if a class is certified, there is
26 always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180
27 Cal.App.4th 1213, 1226.)
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1 h. Amount offered in settlement. As indicated above, Defendants have agreed to settle for
2 \$4 million. According to calculations provided by the claims administrator, class
3 members who did not opt out will receive on average approximately \$702.77, before
4 taxes. (Schwartz Declaration, ¶14.)

5 i. Extent of discovery completed and stage of the proceedings. As discussed above, at the
6 time of the settlement, the parties had conducted extensive discovery.

7 f. Experience and views of counsel. The settlement was negotiated and endorsed by Class
8 Counsel who, as indicated above, is experienced in class action litigation, including wage
9 and hour cases.

10 g. Presence of a governmental participant. This factor is not applicable here.

11 h. Reaction of the class members to the proposed settlement.

12 Number of class members: 3,501

13 Number of notices mailed: 3,028 + 384

14 [for another 89 class members, addresses could not be located and notice was provided
15 by publication on September 21, 2016]

16 Number of undeliverable notices: 259

17 Number of opt-outs: 4

18 Number of objections: 0

19 Number of participating class members: 3,489

20 CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable."

21 **D. NOTICE OF THE CLASS ACTION SETTLEMENT**

22 The Court determines that the Parties complied with the distribution of the Class Notice to the
23 Settlement Class in the manner and form set forth in the Preliminary Approval Order, acted in a manner
24 consistent with such Order when promptly effectuating further Notice by Publication, and that, as a
25 result, the Class Notice provided to the Settlement Class was the best notice practicable under the
26 circumstances and constituted due and sufficient notice to all persons entitled to such notice.

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1 The procedures required by the Preliminary Approval Order have been carried out and satisfy
2 due process requirements such that all absent Settlement Class Members have been given the
3 opportunity to participate fully in the claims exclusion and approval process.

4 Rust Consulting, Inc. ("Rust Consulting"), the Court-appointed Settlement Administrator has
5 received two (2) disputes concerning credited work shifts on Information Sheets. Rust Consulting has
6 been able to substantiate one (1) of the two (2) disputes and has credited the affected Class Member with
7 additional work shifts accordingly.

8 There were Zero (0) objections and Four (4) Requests for Exclusion to the Settlement in
9 response to the Class Notice. Accordingly, the following four persons, who submitted timely and valid
10 Requests for Exclusion: (1) Yeny Gallegos; (2) Carlos Gonzalez Reyes; (3) Lourdes Murillo; and (4)
11 Elenor C. Nunez are hereby deemed "Opt Outs" and are not bound by the terms of the Settlement.

12 Additionally, Settlement Class Member Edna Soledad Moreno appeared at the Final Approval
13 Hearing to request that she be permitted to opt out of the settlement. While Moreno did not timely
14 submit a request for exclusion in accordance with the procedures set forth in the Preliminary Approval
15 Order and the Settlement Agreement, the Parties have agreed to excuse Moreno's non-compliance and
16 grant her Request for Exclusion. Based on the Parties' agreement, Edna Soledad Moreno shall also be
17 deemed an "Opt Out" and is not bound by the terms of the Settlement, resulting in a total of five (5) opt
18 outs.

19 **E. ATTORNEY FEES AND COSTS.**

20 Class Counsel, Shepherd, Finkelman, Miller & Shah, LLP, Trief & OLK, and Matern Law
21 Group, PC request \$1,333,200 for attorney fees and \$47,915.57 for costs. Fees are requested pursuant to
22 the percentage method pursuant to *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.
23 The \$1,333,200 fee request represents 33.33% of the gross settlement amount, which is within the
24 average range. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: "Empirical
25 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
26 in class actions average around one-third of the recovery.")

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The attorneys have provided evidence from which the lodestar may be calculated.

Timekeeper	Hours	Hourly Rate	Total Lodestar
James E. Miller	98.9	\$750	\$74,175
Rose Luzon	334.3	\$575	\$ 192,222.50
Valerie Chang	39.4	\$400	\$15,760
Chiharu Sekino	14.5	\$300	\$4,350
Shepherd Finkelman support staff	50.2	\$185	\$9,287
Ted Trief	102.1	\$650-\$700	\$ 67,210
Shelly Friedland	87.5	\$450	\$ 39,375
Caitlin Duffy	35.7	\$350	\$ 12,495
Stan Gutgarts	79.4	\$325	\$ 25,805
Trief & OLK staff	.8	\$125	\$100
Matthew Matern	123.5	\$825	\$101,887.50
Joshua Boxer	3.7	\$650	\$2,405
Launa Adolph	1.7	\$650	\$1,105
Dalia Khalili	39.2	\$575	\$22,540
Roy Suh	199.7	\$450	\$89,865
Daniel Bass	15.4	\$450	\$6,930
Lucas Oppenheim	12.9	\$450	\$5,805
TOTAL			\$ 671,317

Based on a review of Class Counsel's timekeeping records, the hours spent on the tasks performed appear to be reasonable for this case. The hourly rates charged also appear to be reasonable and in line with prevailing rates in the community. Accordingly, class counsel's actual attorney fees of \$671,317 acts as the lodestar. To reach the \$1,333,200 fee request requires application of a positive multiplier of 1.985. Based upon the skill displayed by the attorneys, the benefit conferred on the class, and the contingent nature of the fee request, the Court finds that application of a multiplier is warranted. Further, the notice expressly advised class members of the fee request and not a single class member objected to it.

As for costs, Class Counsel request \$47,915.57. Shepherd, Finkelman, Miller & Shah have costs of \$26,857.30. (Miller Declaration, ¶18, and Exhibit A thereto.) Among these costs are \$13,300 for mediation, \$6,987.50 for experts, and \$4,266.68 for process and couriers. Trief & OLK claim costs of \$13,431. (Trief Declaration, ¶6, and Exhibit A thereto). These include \$6,650 for mediation, \$3,494 for experts, and \$2,849 for travel, and other miscellaneous costs. The Matern Law Group, PC claims costs of \$5,627.27. (Matern Declaration, ¶14, and Exhibit C thereto.) These costs are for Case Anywhere, court reporters and transcripts, filing fees, parking, postage, and research. The costs all appear to be

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1 reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the
2 class.

3 Plaintiffs Mejia and Williams have agreed in writing to the fee agreement between counsel,
4 which is for an equal sharing among the three firms. (Trief Declaration, ¶16; Matern Declaration, ¶23.)

5 For all of the foregoing reasons, the fee and cost requests are approved. Matern Law Group, PC
6 has petitioned the Court for a \$5,000 reduction of its equal share of the attorneys' fee award if the Court
7 is inclined to increase Plaintiff Mejia's incentive award to \$10,000. The Court hereby grants this request.

8 **F. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

9 An incentive fee award to a named class representative must be supported by evidence that
10 quantifies time and effort expended by the individual and a reasoned explanation of financial or other
11 risks undertaken by the class representative. *See Clark v. American Residential Services LLC* (2009)
12 175 Cal.App.4th 785, 806-807; *see also Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380,
13 1394-1395 ("[Criteria courts may consider in determining whether to make an incentive award include:
14 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety
15 and personal difficulties encountered by the class representative; 3) the amount of time and effort spent
16 by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
17 enjoyed by the class representative as a result of the litigation. [Citations.]]")

18 Here, named Plaintiffs Ana Isabel Mejia and Janet Williams each request incentive awards of
19 \$10,000: Ana Isabel Mejia worked for Defendant from 2005 to August, 2013. She has spent
20 approximately 22 hours on this case, assisting her attorneys, searching for relevant documents,
21 reviewing documents, and missing full days of work to prepare for and have her deposition taken. Mejia
22 accepted the risks of being a class representative and put herself on the line in order to vindicate the
23 rights of her co-workers; she has taken her role as class representative seriously. (Declaration of Mejia,
24 ¶¶3-7.) Janet Williams worked at Defendant's City of Industry facility on Bixby Drive, and has been
25 actively engaged in this litigation. She has spent approximately 25 hours working on this case,
26 performing such tasks as providing information to her attorneys and discussing her work experiences
27 with them, reviewing documents, and providing factual support and witness identities. Williams did the
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1 best she could to represent the class and has accepted the risks associated with acting as a class
2 representative, including the stigma that may affect future employment. (Williams Declaration, ¶¶3-7.)

3 In light of the above as well as the benefits obtained on behalf of the class, \$5,000 appears to be
4 a reasonable inducement, ^{for Williams} Matern Law Group, PC has petitioned the Court to increase Plaintiff Mejia's
5 service award to \$10,000 in light of her extraordinary contributions to the class and Matern Law Group,
6 PC agrees to a corresponding reduction to \$5000 to its fee award share. The Court hereby grants this
7 request *in light of carnala and Ms. Mejia's Declarations*

8 **G. CLAIMS ADMINISTRATION COSTS**

9 Claims administrator, Rust Consulting, Inc., estimates that, barring unforeseen circumstances,
10 the administration of this settlement will cost \$89,836. (Schwartz Declaration, ¶15.) Rust has been
11 responsible for mailing notice in English and Spanish, performing skip traces, establishing a website,
12 adjudicating disputes and handling inquiries, and it will be responsible for calculating settlement
13 payments and performing the associated tax reporting work. \$125,000 was estimated at the time of
14 preliminary approval, and was made know to class members. None objected. For all these reasons, the
15 Court approves payment to Rust in the amount of \$89,836.

16 **III. CONCLUSION AND ORDER**

17 **A. FINAL RULING**

- 18 (1) Grant class certification for purposes of settlement;
- 19 (2) Grant final approval of the settlement as fair, adequate, and reasonable;
- 20 (3) Award \$1,328,200 in attorney fees and \$47,915.57 in costs to Class Counsel, with Matern
21 Law Group, PC's share of the fee award reduced by \$5,000 in accordance with
22 paragraphs E and F;
- 23 (4) Award \$5,000 as an incentive payment to Janet Williams;
- 24 (5) Award \$10,000 as an incentive payment to Ana Isabel Mejia in accordance with
25 paragraphs E and F;
- 26 (6) Award \$89,836 in claims administration costs to Rust Consulting;
- 27 (7) Approve \$30,000 PAGA penalty payment to the LWDA;
- 28 (8) Order class counsel to lodge a proposed Judgment, consistent with this ruling by

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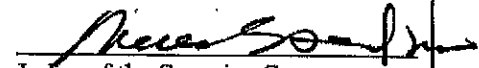
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(9) Order class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for August 11, 2017, at 8:30 a.m. The Final Report regarding distribution of the settlement funds is to be jointly filed by August 4, 2017.

Dated: 12/20/16


Judge of the Superior Court
MAREN E. NELSON

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