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E-Filed 7/23/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAY E. MARTIN,
Plaintiff,
v.
LUMETRA CO., INC.,
Defendant.

CASE NO. 3:09-CV-03478-RS

~~PROPOSED~~ ORDER:

- 1) GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
- 2) APPROVING CLASS NOTICE; AND
- 3) CONDITIONALLY CERTIFYING SETTLEMENT CLASS

Date: July 15, 2010
Time: 1:30 p.m.
Place: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

1 Plaintiff Jay E. Martin and defendant Lumetra Healthcare Solutions (sued herein as
2 Lumetra Co., Inc.), acting through their counsel, and subject to Court approval following notice to
3 the putative class members and a hearing, have agreed to settle this litigation, as set forth in the
4 settlement agreement (the "AGREEMENT") submitted in support of the Joint Motion for
5 Preliminary Approval of Class Action Settlement, Approval of Class Notice, and Conditional
6 Certification of Settlement Class (the "Motion"). A hearing on the Motion was held on July 15,
7 2010, before this Court.

8 NOW, THEREFORE, the Court, having considered the papers and the arguments of
9 counsel, and it appearing to the Court that, following notice of the proposed settlement to the
10 putative class members, a hearing should be held to determine finally if the settlement is fair,
11 reasonable and adequate, the Court HEREBY ORDERS as follows:

12 1. All of the definitions contained in the AGREEMENT shall apply to this Order and
13 are incorporated by reference as if fully set forth herein.

14 2. The Motion is GRANTED.

15 3. The Court hereby conditionally certifies for settlement purposes and for no other
16 purposes, the following class of persons:

17 All LUMETRA employees who worked at or reported to LUMETRA's offices
18 located at 1 Sansome Street, San Francisco, California, and who were terminated
19 involuntarily in October or November, 2008. Excluded from the class are: (1)
20 the individuals who held the titles (a) Vice President of Human Resources, (b)
21 President & Chief Executive Officer, and (c) Chief Information Officer; (2)
22 persons on indefinite unpaid leave on the date of termination; and (3) all
23 individuals who timely request exclusion.

24 4. The Court conditionally and preliminarily finds that this action satisfies the
25 requirements for class action approval under Federal Rule of Civil Procedure 23(a) and (b)(3).
26 The Court finds that the class is so numerous that joinder of all members would be impracticable,
27 there are common questions of law or fact common to the class, the claims of plaintiff Jay E.
28 Martin are typical of the claims of the class, and Jay E. Martin will fairly and adequately protect
the interests of the class. The Court further finds that the questions of law and fact common to
the class predominate over any questions affecting only individual members, and that a class
action is superior to other methods for fairly and efficiently adjudicating the controversy.

1 5. The Court finds that the proposed class counsel will fairly and adequately
2 represent the interests of the class and hereby appoints as class counsel the following:

3 LANKENAU & MILLER, LLP
4 Stuart J. Miller
5 132 Nassau Street, Suite 423
6 New York, NY 10038
7 Telephone: (212) 581-5005
8 Facsimile: (2 12) 581-2122

 THE GARDNER FIRM, P.C.
 Mary E. Olsen
 M. Vance McCrary
 J. Cecil Gardner
 210 South Washington Avenue
 P.O. Drawer 3103
 Mobile, AL 36652
 Telephone: (251) 433-8100
 Facsimile: (251) 433-8181

9 FARELLA BRAUN & MARTEL LLP
10 Diego Acevedo
11 235 Montgomery Street, 17th Floor
12 San Francisco, CA 94 104
13 Telephone: (415) 954-4400
14 Facsimile: (415) 954-4480

15 6. The Court approves and appoints as Class Representative Plaintiff Jay E. Martin.

16 7. The Court finds that the settlement is the product of good faith, arms-length
17 negotiations between the parties, and that it is fair, reasonable, and adequate as to the CLASS
18 MEMBERS. The Court therefore preliminarily approves the AGREEMENT and the \$250,000
19 common-fund settlement set forth therein.

20 8. The Court hereby approves the form and content of the class notice attached to the
21 AGREEMENT as Attachment C. The proposed notice clearly and adequately describes the
22 proposed settlement, the manner in which CLASS MEMBERS can object to or participate in the
23 settlement, and the manner in which CLASS MEMBERS can opt out.

24 9. The Court finds that the best practicable notice under the circumstances is by
25 notice via U.S. mail to the CLASS MEMBERS at the last known address available to LUMETRA
26 through its employment records as updated through the National Change of Address Database
27 maintained by the United States Postal Service and with returned notice re-sent to addresses
28 updated through the LEXIS “Allfind” database. The proposed notice complies fully with the
Federal Rules of Civil Procedure and constitutional due process.

1 10. All costs in connection with the dissemination of the class notice and
2 administration of this settlement shall be paid by LUMETRA as set forth in the AGREEMENT.

3 11. CLASS MEMBERS shall make any requests for exclusion from the
4 SETTLEMENT by mail and in writing as provided in the AGREEMENT and form of notice on
5 or before 80 days after the PRELIMINARY APPROVAL DATE.

6 12. CLASS MEMBERS shall file any objection to the settlement on or before 80 days
7 after the PRELIMINARY APPROVAL DATE.

8 13. The Court preliminarily approves the application of CLASS COUNSEL for
9 attorneys' fees and costs in the amount of \$62,500 to be paid from the settlement fund as
10 provided in the AGREEMENT.

11 14. The Court preliminarily approves the application of plaintiff Jay E. Martin for an
12 incentive award of \$5,000 to be paid from the settlement fund as provided in the AGREEMENT.

13 15. The Court approves the State of California Labor and Workforce Development
14 Agency as the *cy pres* recipient of unclaimed settlement funds as provided in the AGREEMENT.

15 16. The hearing on final approval of the AGREEMENT is hereby set for 11/18/10 at 1:30 p.m.
16 Papers for this motion shall be filed and served by 11/5/10.

17 Dated: 7/23, 2010

18 By 
19 Hon. Richard Seeborg
20 United States District Judge

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