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Plaintiffs' Class

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 NATIONAL SEATING & MOBILITY, INC.,

14 Plaintiff,

15 vs.

16 MICHAEL PARRY and DOES 1 through 20;
17 inclusive,

18 Defendants.

19 MICHAEL PARRY, individually and on behalf
20 of all others similarly situated,

21 Cross-Complainant,

22 vs.

23 NATIONAL SEATING & MOBILITY, INC.,

24 Cross-Defendant.

Case No.: 3:10-cv-02782-JSW

**~~PROPOSED~~ ORDER (1) PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT; (2) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS; (3)
APPROVING CLASS NOTICE, CLAIM
FORM AND REQUEST FOR EXCLUSION
PROCEDURE; (4) DIRECTING
DISSEMINATION OF CLASS NOTICE; AND
(5) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT
AS MODIFIED HEREIN**

Date: ~~May 17, 2013~~ June 14, 2013

Time: 9:00 A.M.

Courtroom: 11, 19th Floor

Judge: The Hon. Jeffrey S. White

Action Filed: March 3, 2010

26 The parties to the above-captioned civil actions ("Actions"), Plaintiff and Cross-Claim
27 Defendant NATIONAL SEATING & MOBILITY, INC. ("NSM") and Defendant and Cross-Claim
28 Plaintiff Michael Parry, ("Representative Plaintiff") individually and on behalf of others similarly

1 situated (“Plaintiffs”) have agreed - subject to final approval following notice to the proposed
2 Settlement Class - to settle the Actions upon the terms and conditions set forth in the Joint
3 Stipulation of Settlement and Release Between Plaintiffs and Defendant (“Settlement”), which was
4 filed with the Court in connection with the present motion by Plaintiffs for an Order (1)
5 Preliminarily Approving Class Action Settlement; (2) Provisionally Certifying Settlement Class; (3)
6 Approving Class Pre-Notice and Notice, Claim Form and Request for Exclusion Procedure; (4)
7 Directing Dissemination of Class Notice; and (5) Setting Hearing for Final Approval of the
8 Settlement (“Plaintiffs’ Motion”).

9 Plaintiffs’ Motion is unopposed by NSM and was submitted to this Court for review and
10 approval on April 26, 2013. After considering Plaintiffs’ Motion, the Settlement Agreement, the
11 record and proceedings herein, the Court finds, concludes, and hereby orders as follows:

12 1. The Settlement is preliminarily approved as fair, reasonable, and adequate.

13 2. For purposes of determining whether the terms of the proposed Settlement should be
14 finally approved as fair, reasonable and adequate, the following Class is conditionally certified, for
15 purposes of this Settlement only:

16 (a) *Class:* This class includes all Rehabilitation Technology Suppliers who are or
17 were employed by National Seating & Mobility, Inc. who had an Employment
18 Agreement which dictated payment including commissions to be based on
19 “Gross Base Office Profits” or like language for work performed at any time
20 between February 5, 2004 through the Date of Preliminary Approval of the
Settlement, and whose Employment Agreement has a Tennessee choice of law
provision.

21 3. Plaintiff Michael Parry is appointed as representative of the Settlement Class and the
22 following Plaintiffs’ counsel are designated as counsel for the Settlement Class (“Class Counsel”):
23 Kershaw Cutter & Ratinoff, LLP and Meuser Law Group, Inc.

24 4. The Court also appoints Class Action Administration, Inc., 10875 Dover Street,
25 Suite 300, Westminster, CO 80021 (“CAA”) to act as Settlement Administrator to assist the parties
26 in performing the following duties: (a) using the data provided by NSM to prepare the Claim Forms
27 with the information for each Class Member; (b) mailing the Notice and accompanying Forms to
28 Class Members; (c) tracking and follow-up on returned Forms and Requests to be Excluded; (d)

1 notifying the Parties of timely and untimely claims; (e) calculating the amounts due to each Class
2 Member pursuant to the Settlement; (f) notifying the Parties of and making determinations of any
3 disputes regarding claims by the Class Members; and (g) reporting to the Parties and the Court as
4 required or appropriate.

5 5. Notice to the Class shall be provided in the manner described in the Settlement
6 Agreement. The approved form of Class Notice is attached as Exhibits A-C to the Declaration of
7 John R. Parker, Jr.

8 6. The Court preliminarily finds that the dissemination of the Notice under the terms
9 provided for in this Order constitutes the best notice practicable under the circumstances, and is due
10 and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the
11 requirements of due process, the Federal Rules of Civil Procedure, and all other applicable laws.
12 Prior to the final settlement approval hearing, a declaration shall be filed with the Court confirming
13 that Notice was given in accordance with the terms of this Order.

14 7. A hearing shall be held on October 25, 2013, at ~~10:00~~^{9:00} a.m., in
15 Courtroom 11 of the United States District Court for the Northern District of California (“Final
16 Approval Hearing”) to determine whether the proposed Settlement should be finally approved as
17 fair, reasonable, and adequate, and whether a Final Order and Judgment approving the Settlement
18 and dismissing all claims asserted in the Actions on the merits, with prejudice and without leave to
19 amend, should be entered. Plaintiff’s ~~the~~ request for incentive awards and the request for an award
20 of attorneys’ fees, costs and expenses shall be served and filed with the Court within 45 days of the
21 entry of this Order. Plaintiff must ensure class members receive proper notice of that motion, as set forth below.
22 Plaintiff’s briefs and papers in support of final approval shall be served and filed
23 with the Court by September 20, 2013. The Final Approval Hearing described in this
24 paragraph may be postponed, adjourned, transferred or continued by the Court without further notice
25 to the Settlement Class. Upon motion of any party, the Court may, for good cause, extend any of the
26 deadlines set forth in this Order without further notice to the Settlement Class.

27 8. Objections to the proposed Settlement shall be heard, and the Court shall consider any
28 papers or briefs submitted in support of said objections, in its discretion, only if they comply with
the objection procedures set forth in the Notice. Specifically, members of the Class who wish to
PLAINTIFF MUST ENSURE CLASS MEMBERS RECEIVE NOTICE OF THE MOTION FOR
ATTORNEYS' FEES AND INCENTIVE AWARD. See In re Mercury Interactive Sec. Litig., 618 F.3d
988, 993-95 (9th Cir. 2010); Fed. R. Civ. P. 23(h)₃

1 object to the Settlement must file any such objection with the Clerk of the Court not later than
 2 August 23 *, 2013, and provide a copy of the objection to Class Counsel and to counsel
 3 for NSM as set forth in the Settlement Agreement and Notice. Any objection must: (1) contain the
 4 objector's name and address; (2) be signed by the objector; (3) include reference to the matter of
 5 *Nationanl Seating & Mobility, Inc., Plaintiff vs. Michael Parry and DOES 1 through 20, Defendants*
 6 *and related cross complaint, Case No. 3:10-cv-02782-JSW in the United States District Court,*
 7 *Northern District of California;* (4) include a statement of whether the objector intends to appear at
 8 the Final Approval Hearing; and (5) provide an explanation of the basis for the objection. Any Class
 9 Member who does not so request to object waives the right to do so in the future, and shall be
 10 forever barred from making any objection to the proposed Settlement by appearing at the Final
 11 Approval Hearing, appeal, collateral attack, or otherwise.

12 9. All requests for exclusion from the Settlement Class must be in writing and must
 13 comply with the provisions of and contain the information requested as set forth in the Settlement
 14 Agreement and Notice and, to be effective, must be submitted no later than
 15 August 23*, 2013. Class Counsel, with the cooperation of counsel for NSM, is
 16 responsible for reporting to the Court at the Final Approval Hearing regarding the number and status
 17 of any requests for exclusion. All persons who file timely and valid requests for exclusion in the
 18 manner set forth in the Notice shall have no rights under the Settlement, and shall not share in the
 19 distribution of Settlement funds, but shall not be bound by the Settlement Agreement or any final
 20 judgment and order of dismissal entered pursuant to the Settlement Agreement. All Class Members
 21 who do not request exclusion in the manner set forth in the Notice shall be bound by any final
 22 judgment and order of dismissal entered pursuant to the Settlement Agreement, shall be barred and
 23 enjoined, now and in the future, from asserting any and all California law wage and hour claims, as
 24 defined in the Settlement Agreement, against the Released Parties, as defined in the Settlement
 25 Agreement, and any such Settlement Class Member shall be conclusively deemed to have released
 26 any and all such California law wage and hour claims.

27 10. The certification of the Settlement Class shall be for settlement purposes only and
 28 shall not constitute, nor be construed as, an admission on the part of NSM that this Action, or any

* The Court has set this deadline to account for the need to ensure class members receive notice of the motion for attorneys' fees and incentive award.

1 other proposed or certified class action is appropriate for class treatment pursuant to Federal Rule of
2 Civil Procedure 23 or any other similar class action statute or rule. The certification is without
3 prejudice to the rights of NSM to: (a) seek decertification or modification of the Settlement Class as
4 certified should the settlement not be approved or implemented for any reason; or (b) terminate the
5 proposed Settlement as provided for in the Settlement Agreement.

6 11. The proposed Settlement is hereby preliminarily approved, but is not to be deemed an
7 admission of liability or fault by NSM or by any other person, or a finding of the validity of any
8 claims asserted in this litigation, or of any wrongdoing or of any violation of law by NSM. The
9 proposed Settlement is not a concession and shall not be used as an admission of any fault or
10 omission by NSM or any other person or entity. Neither the terms of the Settlement nor any related
11 document shall be offered or received in evidence in any civil, criminal, or administrative action or
12 proceeding, other than such proceedings which may be necessary to consummate or enforce the
13 terms of the Settlement, except that NSM may file this Order in any action that may be brought
14 against it in order to support a defense or counterclaim based on principles of res judicata, collateral
15 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
16 preclusion or issue preclusion or similar defense or counterclaim.

17 12. In the event that the proposed Settlement as provided in the Settlement Agreement is
18 not approved by the Court, or for any reason the parties fail to obtain a Final Approval as
19 contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its
20 terms, then the Settlement Agreement and actions taken in connection therewith, including but not
21 limited to entry of this Order, shall become null and void and of no further force and effect, and shall
22 not be used or referred to for any purposes whatsoever. In such event, the Settlement Agreement
23 and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the
24 rights of any and all parties thereto, who shall be restored to their respective positions prior to
25 execution of the Settlement Agreement.

26 13. It is hereby ordered that all proceedings in this Action shall be stayed, except such
27 actions as may be necessary to implement the Settlement Agreement and this Order, pending further
28 proceedings in connection with the effectuation of the proposed Settlement.

October 25 _____, 2013 9:00 a.m. Final approval hearing.

_____, 2014 Deadline for Settlement Administrator to mail
(30 days after Judgment is Final): settlement fund checks to class members.
The Court shall not set a specific date, because the Court cannot anticipate whether an appeal will be filed.

IT IS SO ORDERED:

Date: May 16, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT COURT JUDGE

The Court HEREBY ORDERS that the parties provide the Court with a status of NSM's claims against Parry, and whether a case management conference needs to be scheduled for those claims. The status report shall be due by May 24, 2013.

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