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7 and the Plaintiff Class

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 FRANCISCO FLORES and GIULIA)
FERRARIS, individually, and on)
12 behalf of all others similarly situated,)

13 Plaintiffs,)

14 vs.)

15 MEDIFIT CORPORATE SERVICES,)
16 INC., and DOES 1 through 100,)
inclusive,)

17 Defendant.)
18)

Case No. 3:15-cv-03423-WHO

CLASS ACTION

ORDER AND JUDGMENT:

- 14 (1) **GRANTING FINAL APPROVAL OF**
- 15 **CLASS ACTION SETTLEMENT;**
- 16 (2) **AWARDING ATTORNEYS' FEES**
- 17 **AND COSTS TO CLASS COUNSEL;**
- 18 (3) **AWARDING REIMBURSEMENT OF**
- 19 **SETTLEMENT ADMINISTRATION**
- 20 **EXPENSES**

19 **Date: November 9, 2016**
20 **Time: 2:00 p.m.**
Place: Courtroom 2, 17th Floor
Judge: Honorable William H. Orrick

21 The Court, having carefully considered the briefs, argument of counsel, and all matters
22 presented to the Court, and good cause appearing, hereby **ORDERS** as follows:

23 1. This Order hereby incorporates by reference the definitions of the MediFit Corporate
24 Services, Inc. "Wage and Hour" Class Action Settlement Agreement and Release of Claims
25 ("Settlement Agreement").

26 2. This Court has jurisdiction over the claims of the Settlement Class Members asserted
27 in this proceeding, personal jurisdiction over Representative Plaintiffs and Defendant and Settlement
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1 Class Members as defined in the Settlement Agreement, and subject matter jurisdiction to approve
2 the Settlement.

3 3. The Court previously granted preliminary approval of the Settlement Agreement and
4 conditionally certified the Plaintiff Classes for settlement purposes. The Court hereby now grants
5 final approval of the Settlement Agreement.

6 4. The distribution of the Class Notice to the Plaintiff Class members as set forth in the
7 Settlement Agreement has been completed. Notice given to Plaintiff Class members was reasonably
8 calculated under the circumstances to apprise the Plaintiff Class members of the pendency of this
9 class action, of all material elements of the proposed Settlement, and of their opportunity to exclude
10 themselves from, object to, or comment on the Settlement and to appear at the final approval
11 hearing. The notice was reasonable and the best notice practicable under the circumstances. A full
12 opportunity has been afforded to the members of the Plaintiff Classes to participate in this hearing,
13 and all members of the Plaintiff Classes and other persons wishing to be heard have been heard.
14 Accordingly, the Court determines that all Settlement Class Members are bound by this Order and
15 Judgment.

16 5. The Court approves the terms set forth in the Settlement Agreement and finds that the
17 Settlement Agreement is, in all respects, fair, adequate, and reasonable, and directs the Parties to
18 effectuate the Settlement Agreement according to its terms. The Court finds that the Settlement
19 Agreement has been reached as a result of good faith, arm's length negotiations between the Parties.
20 The Court further finds that the Parties have conducted extensive investigation and research, and
21 their attorneys are able to reasonably evaluate their respective positions. The Court also finds that
22 settlement now will avoid additional and potentially substantial litigation costs, as well as delay and
23 risks if the Parties were to continue to litigate the case. The Court finds that Class Counsel has
24 adequately advanced their position on a contingent-fee basis, and their efforts have resulted in an
25 adequate recovery for the Settlement Class.

26 6. Defendant shall pay the Settlement Class Members pursuant to the claim procedure
27 described in the Settlement Agreement. Defendant shall have no further liability for costs, expenses,
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1 interest, attorneys' fees, or for any other charge, expense, or liability, except as provided in the
2 Settlement Agreement.

3 7. The Court grants final approval of the allocation of \$5,000 pursuant to California
4 Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004. Seventy-five percent
5 of that amount will be payable to the California Labor and Workforce Development Agency, and the
6 remaining twenty-five percent shall be payable to Settlement Class Members.

7 8. The Court finds that Defendant has served the required notices under the Class Action
8 Fairness Act of 2005, 28 U.S.C. section 1715, with the documentation required by 28 U.S.C. section
9 1715.

10 9. The Court finds that the Settlement Agreement has been drafted and entered into in
11 good faith and constitutes a fair, reasonable, and adequate compromise of the Class Representatives
12 and Settlement Class Member Released Claims against Defendant and all other released parties.

13 10. Plaintiff Class Members who did not timely submit valid Claim Forms or opt-out of
14 the Settlement are bound by the Releases and waiver listed in the Settlement Agreement.
15 Accordingly, as of the final judgment, members of the Plaintiff Class who have not been excluded
16 are barred and enjoined from prosecuting the Released Claims during the Class Period against
17 Defendant.

18 11. Judgment will be entered in accordance with the findings and Orders made herein.
19 For all of the reasons set forth above, Plaintiff's Motion for Final Approval of Class Action
20 Settlement is hereby **GRANTED**. This Action is dismissed in its entirety, on the merits, with
21 prejudice, and without leave to amend.

22 12. Under Rules 23, 54, and 58 of the Federal Rules of Civil Procedure, the Court, in the
23 interests of justice, there being no reason for delay, expressly directs the Clerk of the Court to enter
24 this Order, and hereby decrees that, upon its entry, it be deemed a final Judgment.

25 **IT IS FURTHER ORDERED THAT:**

26 13. The Court hereby finds that Class Counsel has fairly and adequately represented and
27 protected the interests of the Class at all times in this action. An award of attorneys' fees of \$325,000
28 is hereby approved and awarded to Class Counsel as provided for in the Settlement. The Court finds

1 that the amount of this award is fair and reasonable, and is supported by both the application of the
2 percentage fee and the lodestar-plus-multiplier methods for awarding reasonable attorneys' fees and
3 costs. Both methods are available to the Court and produce the same result. Therefore, the Court
4 relies on each method as an independent basis for its determination of a reasonable award of
5 attorneys' fees and costs.

6 14. The award of attorneys' fees is 25% of the total value of the common benefit created
7 for the Class ("Gross Settlement Fund").

8 15. The attorneys' fee award is also warranted based on the alternative lodestar-plus-
9 multiplier method of calculating attorneys' fees in class action cases. Having reviewed Class
10 Counsel's time records, the Court finds that Class Counsel has accumulated a lodestar of
11 \$481,075.50. Class Counsel has requested attorneys' fees of \$325,000. Applying the lodestar-plus-
12 multiplier analysis, the amount requested by Class Counsel would result from the application of a
13 multiplier of approximately .68 to its lodestar.

14 16. The current multiplier of .68 that Class Counsel requests is well below the range of
15 multipliers often approved by courts. *See In re Cenco, Inc. Secs. Litig.*, 519 F. Supp. 322 (N.D. Ill.
16 1981) (4x multiplier awarded); *Harman v. Lyphomed, Inc.*, 945 F.2d 969 (7th Cir. 1991) (*citing In re*
17 *Cenco, Inc. Sec. Litig.*, 519 F. Supp. 322, 325 (N.D. Ill, 1981) (4x multiplier awarded)); *See also*
18 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (3.65 times the lodestar
19 amount); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can
20 range from 2 to 4 or even higher"); *Otero v. Rent-A-Center, Inc.*, (L.A. Super. Ct. 2000) No.
21 BC217038 (awarding 2.43 multiplier in wage and hour case); *In re Beverly Hills Fire Litig.*, 639 F.
22 Supp 915 (E.D. Ky. 1986) (5x multiplier awarded); *Arenson v. Bd. Of Trade*, 372 F. Supp. 1349
23 (N.D. Ill 1974) (4x multiplier awarded). The Court further notes that this is no doubt a "diminishing
24 multiplier" in that Class Counsel has submitted their lodestar based on the time they have spent thus
25 far in the litigation, and the lodestar does not and cannot reflect the actual further billable hours
26 Class Counsel will be expending in the future due to their continuing administrative and other duties
27 in connection with implementing the Settlement. This future work should be taken into account in
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1 considering the reasonableness of Class Counsel’s requested multiplier. The Court further finds that
2 Class Counsel’s hourly rates were reasonable for the work that they performed.

3 17. In the course of this litigation, Class Counsel incurred substantial costs in the form of,
4 *inter alia*, legal and factual research, photocopies, faxes, travel, postage, and telephone charges
5 totaling \$17,629.47 (as of October 5, 2016) and will incur additional expenses through the
6 completion of the distribution process including, but not limited to, photocopies, faxes, postage, and
7 telephone charges. Such costs are appropriate for reimbursement in these types of cases. *In re United*
8 *Energy Corp. Sec. Litig., Not Rpt’d in F. Supp*, 1998 WL 73211, *6 (C.D. Cal. 1989) (“An attorney
9 who creates or preserves a common fund by judgment or settlement for the benefit of a class is
10 entitled to receive reimbursement of reasonable fees and expenses involved”); 1 Alba Conte,
11 *Attorney Fee Awards* § 2:08 at 50-51 (“The prevailing view is that expenses are awarded in addition
12 to the fee percentage.”); *Smith v. Krispy Kreme Doughnut Corp., Not Rpt’d in F. Supp. 2d*, 2007 WL
13 119157, *3 (M.D.N.C. Jan. 10, 2007); *In re Warner*, 618 F. Supp. 735; *In re GNC Shareholder*
14 *Litig.: All Actions*, 668 F. Supp. 450, 452 (W.D.P.A. 1987). As such, the costs incurred by Plaintiff’s
15 counsel in this litigation are reasonable and appropriate as they served to benefit the class.

16 18. Pursuant to the Settlement Agreement, the sum of \$3,750 shall be paid to the
17 California Labor and Workforce Development Agency for the release of Private Attorneys General
18 Act Claims.

19 **IT IS FURTHER ORDERED THAT:**

20 19. The Court finds that Representative Plaintiffs Francisco Flores and Giulia Ferraris
21 have contributed significantly to the resolution of this case and has fairly and adequately represented
22 and protected the interests of the Classes at all times in this action. Among other efforts,
23 Representative Plaintiffs produced documents, answered a host of questions (on many occasions)
24 from Class Counsel about the organizational structure of the company and job duties performed by
25 themselves and other Class Members, and reviewed documents to aid in the resolution of this case.
26 The Court notes that none of the Class Members have objected to the Enhancement Award requested
27 by Plaintiff and that the award will not significantly reduce the amount of settlement funds available
28 to the Class.

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20. The Court finds the Enhancement Award to be fair and reasonable compensation based upon the evidence presented regarding the services provided and the risks incurred by Representative Plaintiffs in assisting Class Counsel in this matter. The Plaintiff Flores shall be awarded an Enhancement Award in the amount of \$4,500, and Plaintiff Ferraris shall be awarded an Enhancement Award in the amount of \$1,500.

IT IS FURTHER ORDERED THAT:


21. The Court finds that the costs which have already been incurred by the Settlement Administrator, Rust Consulting, Inc., were incurred for the benefit of the Class, are fair, reasonable, appropriate for reimbursement, and are, therefore, hereby approved. The Court thus approves payment of \$20,500 to Rust Consulting, Inc. for administration fees, which includes all costs and fees incurred to date, as well as estimated costs and fees involved in completing the administration of the Settlement.

IT IS FURTHER ORDERED THAT:

22. Under Rules 23, 54, and 58 of the Federal Rules of Civil Procedure, judgment is hereby entered in this Class Action in accordance with the foregoing Order and Judgment and in accordance with the terms and conditions provided in the Settlement Agreement.

IT IS SO ORDERED.

Dated: November 15, 2016



The Honorable William H. Orrick
United States District Judge