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 5 individually, and on behalf of all others similarly situated

6
 7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**

<p>10 PEDRO ACERO, individually and on behalf of all others similarly situated,</p> <p>11 12 Plaintiff,</p> <p>13 v.</p> <p>14 STATE COMPENSATION INSURANCE FUND,</p> <p>15 Defendant.</p>	<p>Case No.: 4:14-CV-04928-YGR</p> <p>[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; GRANTING MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS</p> <p>*AS MODIFIED BY THE COURT*</p> <p>Judge: Yvonne Gonzalez Rogers Courtroom: 1, 4th Floor Date: June 14, 2016 Time: 2:00 p.m.</p> <p>Action Filed: November 5, 2014</p>
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19 This matter came on for hearing before the Court on June 14, 2016, at 2:00 p.m., in
 20 Courtroom 1, of the United States District Court, Northern District of California, before the
 21 Honorable Yvonne Gonzalez Rogers, pursuant to Plaintiff's noticed Motion for Final Approval of
 22 Class Action Settlement and Motion for Award of Attorney's Fees and Costs. Appearances were
 23 noted in the record.

24 The Court having reviewed the materials submitted by the parties, a hearing held June 14,
 25 2016, and for the reasons stated on the record as well as those discussed below, the Court finds and
 26 orders as follows:

27 The Court, having considered the documents filed by the parties in connection with the
 28 class action settlement, the arguments of counsel, the Motion for Final Approval of Class Action

1 Settlement, filed May 10, 2016 (Dkt. No. 60); the Motion for Award of Attorney’s Fees and Costs,
2 filed December 16, 2015 (Dkt No. 54); the Memorandum of Understanding Regarding Class
3 Action Settlement Agreement and Release, attached as Exhibits 1-3 to the Declaration of Harvey
4 Sohnen in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, filed
5 August 27, 2015 (Dkt. No. 39), as amended by the Amendment to Memorandum of Understanding
6 Regarding Class Action Settlement Agreement and Release, attached as Exhibit 2 to the
7 Declaration of Harvey Sohnen in Support of Plaintiff’s Motion for Award of Attorney’s Fees and
8 Costs, filed December 16, 2015 (Dkt. No. 54-1, together the “Settlement Agreement”)); the Notice
9 of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement, and
10 Memorandum in Support thereof filed August 27, 2015 (Dkt. No. 38); this Court’s Order Granting
11 Preliminary Approval of Class Action Settlement filed November 10, 2015 (Dkt. No. 53);
12 Statement of Non-Opposition re Motion for Award of Attorney’s Fees and Costs filed by State
13 Compensation Insurance Fund, filed December 30, 2015 (Dkt. No. 55); Supplemental
14 Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Final Approval of
15 Class Action Settlement and Award of Attorney’s Fees and Costs, filed May 10, 2016 (Dkt. No.
16 58); Supplemental Declaration of Harvey Sohnen in Support of Plaintiff’s Motion for Final
17 Approval of Class Action Settlement and Award of Attorney’s Fees and Costs, filed May 10, 2016
18 (Dkt. No. 59); Declaration of Kelly Kratz Regarding Notice and Settlement Administration
19 Activities Completed as of May 2, 2016, filed May 10, 2016 (Dkt. No. 62); Statement of Non-
20 Opposition to Motion for Final Approval of Class Action Settlement filed by State Compensation
21 Insurance Fund, filed May 18, 2016 (Dkt. No. 63); the Stipulation Regarding Opt-in Claim Forms
22 In Support of Plaintiff’s Motion for Final Approval of Class Action Settlement, filed May 24, 2016
23 (Dkt. No. 64); and all pleadings and papers in the record, hereby grants final approval of the
24 Settlement and grants the Motion for Award of Attorney’s Fees and Costs and **HEREBY ORDERS**
25 **AND MAKES THE FOLLOWING DETERMINATIONS:**

- 26 1. Except as otherwise specified herein, the Court for purposes of this Final Approval
27 Order adopts all defined terms set forth in the Settlement Agreement.
- 28 2. This Court has jurisdiction over the subject matter of this litigation and all claims

1 raised in this action and released in the Settlement Agreement, and personal jurisdiction over State
2 Compensation Insurance Fund and all Settlement Class Members. Specifically, this Court has
3 subject matter jurisdiction over this action pursuant to 28 U.S.C. section 1331.

4 3. Pursuant to this Court's Order filed November 10, 2015 (Dkt. No. 53), the Notice of
5 Pendency of Class and Collective Action and Proposed Settlement and Claim Form (collectively
6 "Notice Packet") were mailed by first-class mail on December 30, 2015, to 204 Class Members.
7 Any Notice Packets that were initially returned undeliverable were re-mailed to new addresses
8 determined after investigation, and ultimately only 1 Notice Packet remained undeliverable due to
9 an inability to find a correct address. The Notice Packet advised the Class Members of the
10 pertinent terms of the proposed settlement, namely, the claims to be resolved by way of the
11 settlement, the Total Settlement Amount, the preliminary estimate of each Settlement Class
12 Member's distribution and the basis upon which the Class Member's share was calculated, the
13 proposed class representative service award and the proposed deduction for attorney's fees,
14 litigation costs, and administration fees. It further informed the Class Members of the manner in
15 which to challenge their work history stated on the Claim Form, request exclusion, or to object to
16 the settlement and the deadlines for each, and their right to appear in person or by counsel at the
17 final approval hearing. Adequate periods of time were provided for each of these procedures as set
18 forth in the Settlement Agreement approved by this Court.

19 4. As a part of the notice process, only one member of the Class sought to be excluded
20 from the California Settlement Class, and accordingly the California Settlement Class consists of
21 203 persons. There were 150 Class Members who consented to join the FLSA Settlement Class,
22 either by filing a consent form or by submitting an opt-in Claim Form. As such, approximately
23 74% of the 203 California Settlement Class members have joined the FLSA Settlement Class. No
24 Class Member has submitted a written objection. Furthermore, no member of the Class has
25 appeared at the final approval hearing to object.

26 5. The Court finds and determines that this notice procedure afforded adequate
27 protections to Class Members and provides a basis for the Court to make an informed decision
28 regarding approval of the Settlement based on the responses of Class Members. The Court finds

1 and determines that the notice provided in this case was the best notice practicable and satisfied the
2 requirements of law and due process.

3 6. The Court further finds and determines that the terms of the Settlement are fair,
4 reasonable, and adequate to the Settlement Class and to each Settlement Class Member, that the
5 Settlement is ordered finally approved, and that all terms and provisions of the Settlement should
6 be and hereby are ordered to be consummated. In addition to the reasons set forth in the Court’s
7 statements set forth in the Preliminary Approval Order, the facts that no Class Member objected
8 and that only one Class Member requested exclusion further support the Court’s finding that the
9 Settlement is fair, reasonable, and adequate.

10 7. The Court finds and determines that the Settlement payments to be paid to the
11 participating Settlement Class Members as provided for by the Settlement Agreement are fair and
12 reasonable. The Court hereby gives final approval to and orders the payment of those amounts be
13 made to the participating Settlement Class Members in accordance with the terms of the Settlement
14 Agreement.

15 8. Nothing in this order shall preclude any action to enforce the Parties’ obligations
16 under the Settlement or under this Order, including the requirement that Defendant make payments
17 to the participating Settlement Class Members in accordance with the Settlement Agreement.

18 9. The Parties are hereby ordered to comply with and carry out the terms of the
19 Settlement Agreement.

20 10. Solely for purposes of effectuating this Settlement, this Court certifies a “California
21 Settlement Class” of “all persons who worked, full-time, as a Loss Control Representative, Loss
22 Control Consultant, Loss Prevention Representative, Loss Prevention Consultant, Marketing
23 Representative, Broker Relationship Representative, Group Insurance Consultant, Employer
24 Service Representative, Senior Loss Control Representative, Senior Loss Control Consultant,
25 Senior Loss Prevention Representative, Senior Loss Prevention Consultant, Senior Marketing
26 Representative, Senior Broker Relationship Representative, or Senior Group Insurance Consultant
27 by Defendant in California and who regularly performed officially assigned duties outside of State
28 Fund offices at any time during the period on or after November 5, 2010 through November 10,

1 2015, and who has not validly opted-out.” This class was provisionally certified in the Order
2 Granting Preliminary Approval of Class Action Settlement, filed November 10, 2015 (Dkt. No.
3 53).

4 11. At his request, one individual has opted out of the California Settlement Class as
5 identified in the Declaration of Kelly Kratz Regarding Notice and Settlement Administration
6 Activities Completed as of May 2, 2016, filed May 10, 2016 (Dkt. No. 62).

7 12. The Court further certifies, solely for purposes of effectuating this Settlement, an
8 “FLSA Settlement Class” of “all persons who worked, full-time, as a Loss Control Representative,
9 Loss Control Consultant, Loss Prevention Representative, Loss Prevention Consultant, Marketing
10 Representative, Broker Relationship Representative, Group Insurance Consultant, Employer
11 Service Representative, Senior Loss Control Representative, Senior Loss Control Consultant,
12 Senior Loss Prevention Representative, Senior Loss Prevention Consultant, Senior Marketing
13 Representative, Senior Broker Relationship Representative, or Senior Group Insurance Consultant
14 by Defendant in California and who regularly performed officially assigned duties outside of State
15 Fund offices at any time during the period on or after November 5, 2011 through November 10,
16 2015, who opted in by filing either consent forms with the Court or sending opt-in Claim Forms to
17 the Settlement Administrator.” This class was provisionally certified in the Order Granting
18 Preliminary Approval of Class Action Settlement, filed November 10, 2015 (Dkt. No.53). The
19 FLSA Settlement Class consists of 150 individuals listed in Exhibit 1 to the Stipulation Regarding
20 Opt-in Claim Forms In Support of Plaintiff’s Motion for Final Approval of Class Action
21 Settlement, filed May 24, 2016 (Dkt. No. 64). The submitted Claim Forms and Consent Forms
22 have been filed with this court consistent with 28 U.S.C. 216(b). The Claim Forms are attached as
23 Exhibit 2 to said Stipulation. The Consent Forms were previously filed November 5, 2014 (Dkt.
24 No. 4) and December 31, 2014 (Dkt. No. 15).

25 13. The “Settlement Class” consists of the California and FLSA Settlement Classes.

26 14. With respect to the Settlement Class and for purposes of approving this settlement
27 only, this Court finds and concludes that: (a) the Members of the Settlement Class are
28 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions

1 of law or fact common to the Settlement Class which predominate over any individual issues; (c)
2 the claims of Class Representative Pedro Acero are typical of the claims of the members of the
3 Class; (d) the Class Representative has fairly and adequately protected the interests of the members
4 of the Class; (e) a class action is superior to other available methods for an efficient adjudication of
5 this controversy; and (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel, is
6 qualified to serve as counsel for Plaintiff in his individual and representative capacities and for the
7 Settlement Class. The Court's findings are based on Plaintiff's motions for preliminary approval
8 and final approval, and on the fact that Defendant has not opposed class certification for the limited
9 purpose of class action settlement. The Court further recognizes that certification under this Order
10 is for settlement purposes only, and shall not constitute or be construed as an admission by
11 Defendant that this action is appropriate for class treatment for litigation purposes.

12 15. Every person in the California Settlement Class, except the individual who opted
13 out, is a California Settlement Class Member and shall be bound by the Settlement Agreement and
14 be deemed to release and forever discharge all Released State Law Claims, as set forth in the
15 Settlement Agreement.

16 16. Every person in the FLSA Settlement Class who filed a consent form with the Court
17 or sent an opt-in claim form to the Settlement Administrator is an FLSA Settlement Class Member
18 and shall be bound by the Settlement Agreement and be deemed to release and forever discharge
19 all Released Federal Law Claims, as set forth in the Settlement Agreement. The list of 150
20 individuals who have opted into the FLSA Settlement Class is Exhibit 1 to the Stipulation
21 Regarding Opt-in Claim Forms In Support of Plaintiff's Motion for Final Approval of Class Action
22 Settlement, filed May 24, 2016 (Dkt. No. 64).

23 17. The Court approves a payment to the Class Representative in the amount of \$7,500
24 to Pedro Acero, as an enhancement for the initiation and pursuit of this action, work performed,
25 and risks undertaken, as more fully set forth in the moving papers and the Declaration of Pedro
26 Acero in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action
27 Settlement, filed August 27, 2015 (Dkt. No. 40). This amount is separate and apart from any other
28 recovery to which he might be entitled to under other provisions of the Settlement Agreement.

1 18. The Court finds that notice of the requested award of attorney's fees and costs was
2 directed to Class Members in a reasonable manner and complied with Rule 23(h)(1) of the Federal
3 Rules of Civil Procedure. Class Members and any party from whom payment is sought have been
4 given the opportunity to object pursuant to Rule 23(h)(2) of the Federal Rules of Civil Procedure,
5 and no Class Member has objected to the requested fees or expenses.

6 19. Class Counsel, having conferred a benefit on absent Class Members and having
7 expended efforts to secure a benefit to the Settlement Class, is entitled to a fee and accordingly, the
8 Court approves the application of Class Counsel, Sohnen Law Offices, for attorney's fees in the
9 total amount of \$162,500, which is 25 percent of the gross settlement fund, and litigation expenses
10 in the total amount of \$11,614. This award of 25 percent of the common fund is within the range
11 of attorney's fee awards in similar wage-and-hour class actions and is warranted in this case due to
12 the high level of risk involved and the exceptional skill and diligence required to litigate and
13 resolve the difficult claims at issue. The propriety of awarding twenty five percent of the common
14 fund in this case is confirmed by the lodestar cross check: Based on the time expended and rates
15 charged, which the Court specifically finds to be reasonable, Class Counsel's lodestar actually
16 exceeds the common fund award.

17 20. The Court further approves and directs Dahl Administration, LLC, the appointed
18 Settlement Administrator, to disburse to those persons and entities referenced below, in the manner
19 set forth as follows:

20 A. Participating Settlement Class Members, by check, his/her individual
21 Settlement Payment as calculated by the Settlement Administrator within twenty-five (25) days of
22 the "Settlement Effective Date" as defined in paragraph 42 of the Settlement Agreement;

23 B. Class Representative Pedro Acero, the sum of \$7,500, by check, in addition
24 to any Settlement distribution to which he is entitled within fifteen (15) days of the Settlement
25 Effective Date;

26 C. Sohnen Law Offices by wire transfer, the total amount of \$162,500, for
27 attorney's fees and \$11,614 for litigation expenses within fifteen (15) days of the Settlement
28 Effective Date; and,

1 D. Dahl Administration, LLC, the total amount of \$7,284 for administration
2 costs and expenses within fifteen (15) days of the Settlement Effective Date.

3 E. Second round Settlement share checks to all participating Settlement Class
4 Members from the Settlement Fund who cashed first round checks within the ninety (90) day
5 period, within forty-five (45) days of date of expiration of first round Settlement Class Member
6 settlement checks.

7 F. Residual funds in the Settlement Fund to the *cy pres* beneficiary, Legal
8 Services of Northern California, no later than thirty (30) days after the end of the ninety (90)-day
9 period for cashing checks in the second round distribution.

10 21. The Court retains jurisdiction over the administration and effectuation of the
11 Settlement including, but not limited to, the ultimate disbursal to the participating Settlement Class
12 Members, payment of attorney's fees and expenses, the enhancement payment award to the Class
13 Representative, payment to the Settlement Administrator, and other issues related to this
14 Settlement.

15 22. The Court enters judgment and dismissal of the entire action with prejudice, as of
16 the filing date of entry of this final order.

17 **IT IS SO ORDERED.**

18
19 Dated: June 15, 2016


YVONNE GONZALEZ ROGERS
U.S. DISTRICT COURT JUDGE