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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

DEC 30 2014

Sherri R. Carter, Executive Officer/Clerk
By: Sharon McKinney, Deputy

10 Attorneys for Plaintiff
11 CORY WIGERSMA

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES
15 CENTRAL DISTRICT

16 CORY WIGERSMA, individually
17 and on behalf of all others similarly
18 situated,

19 Plaintiffs

20 v.

21 MOTION THEORY, INC., a
22 California Corporation, and DOE
23 ONE through and including DOE
24 ONE HUNDRED,

25 Defendants.

Case No: BC 531180

Assigned to Hon. Elihu M. Berle,
Dept. 323, Central Civil West

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS-ACTION
SETTLEMENT

Date: December 30, 2014

Time: 8:30 a.m.

Dept: 323

Place: Central Civil West

600 S. Commonwealth Ave.
Los Angeles, California

Complaint filed: December 19, 2013

First Am. Comp. filed: Mar. 28, 2014

Discovery Cut-Off: N/A

Motion Cut-Off: N/A

Trial Date: N/A

1
2 **WHEREAS**, the Court has before it the unopposed motion by Plaintiff Cory
3 Wigersma (“Plaintiff”) for preliminary approval of a proposed class-action settlement.

4 **WHEREAS**, the parties having made application for an order preliminarily
5 approving the settlement of this action, in accordance with a Joint Stipulation of
6 Settlement and Release (“Stipulation”) that sets forth the terms and conditions for a
7 proposed settlement of the entire litigation and entry of judgment upon the terms and
8 conditions set forth therein;

9 **WHEREAS**, the Court having read and considered the Stipulation; and

10 **WHEREAS**, all defined terms containing herein having the same meanings as
11 those set forth in the Stipulation;

12 **IT IS HEREBY ORDERED:**

13 1. The Court hereby preliminarily approves the Stipulation as being within the
14 range of possible approval and as disclosing no grounds to doubt its fairness.

15 2. The Stipulation, entered in the course of a JAMS mediation with mediator
16 Joel Grossman, has been negotiated at arm’s-length and is preliminarily determined to be
17 fair, reasonable and adequate, pending final hearing and approval.

18 3. The Court preliminarily determines that the class should be certified as the
19 proposed class: (1) is sufficiently numerous; (2) there are common issues of law or fact
20 and these common issues affect all class members; (3) the claims of the class
21 representative are typical of the claims of the class; and (4) class counsel and the
22 representative plaintiff will fairly and adequately protect the interests of the entire class.

23 4. Solely for purposes of the proposed settlement, two Settlement Classes are
24 hereby provisionally certified pursuant to section 382 of the California Code of Civil
25 Procedure as follows:

26 (a) The Final Wage Class: All employees tendered a final paycheck in
27 California by or on behalf of Defendant in the State of California during the period of
28 three years preceding the filing of this action to July 31, 2014; and

1 (b) The 226 Class: All non-exempt employees tendered a paycheck in
2 California by or on behalf of Defendant in the State of California during the period from
3 one year prior to the filing of the Complaint to the date July 31, 2014.

4 5.. Solely for purposes of the proposed settlement, the Court does hereby
5 preliminarily approve (a) Alan Harris and David Garrett of Harris & Ruble as Class
6 Counsel; and (b) Cory Wigersma as Class Representative.

7 6. Deadlines: Counsel for Defendant shall deliver a complete list of class
8 member contact information to the Settlement Administrator no later than January 12,
9 2015. The Settlement Administrator shall mail notices to Class Members no later than
10 January 26, 2015. Class Counsel shall file its Motion for Attorney Fees and Incentive
11 Award no later than February 20, 2015. Class Member Claims, Objections, or Opt-Out
12 Requests must be postmarked no later than March 27, 2015. The Deadline for Class
13 Counsel to respond to objections and report class participation data to the Court is April
14 17, 2015.

15 7. On April 27, 2015, at 10 a.m., or on such other date and time as the Court
16 may hereafter designate, a final approval hearing shall be held before this Court, in
17 Department 323 or in such other Department as the Court may hereafter designate, to
18 determine (a) whether the proposed settlement of the litigation on the terms and
19 conditions provided for in the Stipulation is fair, reasonable, and adequate; and (b) the
20 amount of attorney's fees and costs that should be awarded to Class Counsel.

21 8. Gilardi & Co., LLC ("Gilardi" or the "Claims Administrator") is approved
22 as Settlement Administrator to supervise and administer the notice procedure as more
23 fully set forth in the Stipulation. Gilardi shall serve as Settlement Administrator subject
24 to its November 6, 2014, Administration Estimate Summary, which provides for an
25 Administration Fee Cap of \$40,000 (the "Administrative Fee").

26 9. By no later than twenty days after entry of the Order granting Preliminary
27 Approval of the Settlement, but no earlier than January 30, 2015, Defendant will deposit
28 the sum of \$150,000 with the Claims Administrator (the "Initial Deposit"). On

1 December 1, 2015, Defendant will deposit the sum of \$200,000 with the Claims
2 Administrator. On December 1, 2016, Defendant will deposit the sum of \$300,000 with
3 the Claims Administrator. On December 1, 2017, Defendant will deposit the sum of
4 \$350,000 with the Claims Administrator. (These deposits shall collectively be known as
5 the "Settlement Funds.")

6 10. The Claims Administrator shall place the Settlement Funds in an account or
7 accounts that is/are not market-dependent and that are federally guaranteed or federally
8 insured to maintain the principal without any risk of loss whatsoever.

9 11. In December of 2015, the Claims Administrator shall make an initial
10 distribution of Settlement Funds to the Participating Class Members, less any other court-
11 approved payments as indicated below (the "First Distribution"). In January of 2017, the
12 Claims Administrator shall make a second distribution of Settlement Funds to the
13 Participating Class Members, less any other court-approved payments as indicated below
14 (the "Second Distribution"). In December of 2017, the Claims Administrator shall make
15 a final distribution of Settlement Funds to the Participating Class Members, less any other
16 court-approved payments as indicated below (the "Final Distribution").

17 12. The Settlement Funds shall be distributed as follows:

18 (a) From the **Initial Deposit**:

19 - Gilardi shall be paid 75% of the \$40,000 Administrative Fee i.e.
20 \$30,000.

21 (b) From the **First Distribution**:

22 - Class Counsel shall be paid 75% of its court-approved Costs, with
23 the remaining balance of the First Distribution to be distributed to
24 Participating Class Members pursuant to the Stipulation.

25 (c) From the **Second Distribution**:

26 - Class Counsel shall be paid 25% of its court-approved attorney
27 fees, with the remaining balance of the Second Distribution to be distributed
28 to Participating Class Members pursuant to the Stipulation.

1 (d) From the **Final Distribution:**

- 2 - Gilardi shall be paid 25% of the Administrative Fee, i.e. \$10,000.
3 - Class Counsel shall be paid 25% of its court-approved Costs.
4 - The LWDA shall be paid \$20,000.
5 - Plaintiff shall be paid the \$5,000 Enhancement Award.
6 - Class Counsel shall be paid the remaining balance of its fees.
7 - Any amount of the Final Distribution remaining after the above-
8 referenced payments are made shall be distributed to Participating Class
9 Members pursuant to the Stipulation.

10 13. All Settlement Class Members who do not exclude themselves from the
11 Settlement shall be bound by all determinations and judgments in the litigation
12 concerning the settlement, whether favorable or unfavorable to the Settlement Class.
13 Any Settlement Class Member who wishes to be excluded from the Settlement Class and
14 not participate in the proposed settlement must submit a request for exclusion as more
15 fully set forth in the Stipulation.

16 14. Any Member of the Settlement Class may enter an appearance in the
17 litigation, at his or her own expense, individually or through counsel of his or her own
18 choice, by filing a notice to appear. Any Member of the Settlement Class who does not
19 enter an appearance or exclude himself or herself from the Class—i.e., opt out of the
20 settlement—will be represented by Class Counsel as to all of the released claims more
21 fully set forth the Stipulation.

22 15. Class Members who do not exclude themselves from the Class—i.e. opt out
23 of the settlement—shall be permitted to object to the settlement as more fully set forth in
24 the Stipulation. To object, a Class Member must file a written objection with the Claims
25 Administrator by the date to be set forth in the Notice to Class Members.

26 16. Any written objections shall state each specific objection and any legal
27 support for each objection. The objection must also state the Class Member's full name
28 and address. Plaintiff's Counsel and Defendant's Counsel shall thereafter be entitled to

1 file and serve a response to any such objection no later than April 17, 2015. If the Court
2 rejects the Class Member's objection, the Class Member will still be bound by the terms
3 of the Stipulation of Settlement. If a Class Member intends to object to the settlement but
4 nevertheless wishes to receive his or her share of the settlement funds, the Class Member
5 must submit a valid and timely Claim Form. If the Court approves the settlement despite
6 any objections, and if the objecting Class Member did not file a valid and timely Claim
7 Form, he or she will not receive any settlement proceeds. If a Class Member submits
8 both a Claim Form and an Opt-Out request, the Opt-Out Request will be disregarded.

9 14. The Court reserves the right to adjourn the date of the final-approval hearing
10 without further notice to the Settlement Class Members, and the Court retains jurisdiction
11 to consider all further applications arising out of or connected with the proposed
12 settlement.

13 15. Bet Tzedek Legal Services is named as the cy pres recipient.

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15 **IT IS SO ORDERED.**

16 DEC 30 2014

ELIHU M. BERLE

17 DATED: _____

18 DEC 30 2014

19 JUDGE, CALIFORNIA SUPERIOR
20 COURT
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