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ALAMEDA COUNTY

APR 12 2006

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By [Signature] Deputy

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ALAMEDA COUNTY SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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DANIELLE HYATT, individually and on behalf of others similarly situated,

Plaintiff,

v.

ADECCO USA, INC. d/b/a ADECCO, INC., and Does 1 through 10, inclusive,

Defendants.

Case No. RG05198979

[REDACTED] ORDER (1) GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT; (2) AWARDED ATTORNEYS' FEES AND COSTS TO PLAINTIFF'S COUNSEL; AND (3) GRANTING SERVICE AWARD TO THE CLASS REPRESENTATIVE

528077.1

1 This matter is before the Court on Plaintiff's Motion for an Order Awarding
2 Attorneys' Fees and Costs to Plaintiff's Counsel and Service Award to the Class Representative.
3 In accordance with the Preliminary Approval Order, Class Members have been given notice of
4 the terms of the Settlement, including its provision for attorneys' fees, costs, and service award
5 for the class representative, and have had an opportunity to object to it, comment on it, participate
6 in it, and/or exclude themselves from it. Having considered the proposed Settlement, the papers
7 submitted by the parties in support of final approval of the Settlement, the award of attorneys'
8 fees and costs and the service award to the class representative, and the argument at the final
9 approval hearing held on April 12, 2006, the Court, pursuant to Code of Civil Procedure § 382,
10 hereby grants Plaintiff's motion.

11 **I. FACTUAL BACKGROUND**

12 Plaintiff Danielle Hyatt filed the class action complaint in this action on
13 February 17, 2005, alleging that Defendants Adecco USA, Inc. d/b/a Adecco, Inc. (hereinafter
14 collectively "Defendant" or "Adecco") had violated Labor Code § 227.3, the California Supreme
15 Court's holdings in Suastez v. Plastic Dress-Up Co. (1982) 31 Cal. 3d 774, and the Unfair
16 Competition Law ("UCL"), Business & Professions Code § 17200, because Adecco had
17 maintained a policy and practice of denying earned vacation benefits to certain of its temporary
18 employees, as follows: (1) by requiring temporary employees to work or be available for
19 assignment in December and/or January in order to earn vacation benefits for the preceding year,
20 or else forfeit any right to vacation benefits (the "December Rule"), and (2) by requiring
21 Adecco's temporary employees to work 1500 hours in a year before accruing vacation benefits
22 (the "1500-Hour Rule").¹ Hyatt alleged that such benefits are a form of deferred wages under
23 California law. Specifically, Hyatt rested her challenge on the fact that (1) vacation benefits vest
24 on a pro-rata basis as the employee works; (2) once vested, such vacation benefits cannot be
25 forfeited; and (3) all accrued unused vacation benefits must be paid to an employee upon
26 termination. (Labor Code § 227.3; Suastez.) As a result, Hyatt alleged that Adecco's vacation

27 ¹ Hyatt argued from a Department of Labor Standards Enforcement (DLSE) opinion letter stating that a 1400-hour
28 requirement is an illegal subterfuge to evade Suastez's immediate pro rata vesting requirement.

1 policy for temporary employees violated California's vacation accrual rules.

2 The parties participated in two mediation sessions in San Francisco and Oakland,
3 California, in September and October 2005, under the supervision of experienced mediator, Barry
4 Winograd. As a result of the mediation, the parties signed a memorandum of understanding
5 setting forth the terms of the proposed Settlement before the Court. In reaching the proposed
6 Settlement, Defendant did not (and does not) concede that it has violated the California Labor
7 Code or the Business & Professions Code, and Defendant continues to deny the allegations
8 contained in Plaintiff's complaint.

9 Plaintiff has moved this Court for final approval of the Settlement and have
10 submitted documents in support thereof. No opposition was filed to Plaintiff's motion, and no
11 Class Member has objected to the Settlement. Plaintiff's motion came on for hearing before this
12 Court on April 12, 2006 at 9:00 a.m. Counsel for both parties were present.

13 The Court, having fully considered Plaintiff's notice of motion and motion, the
14 memorandum of points and authorities in support thereof, the declarations in support thereof, the
15 Settlement Agreement itself, and the oral argument presented to the Court, HEREBY ORDERS
16 AND MAKES DETERMINATIONS AS FOLLOWS:

17 **II. ORDER GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT**

18 The Court finds that certification of the following Class, for settlement purposes
19 only, is appropriate under the California Code of Civil Procedure:

20 All California temporary employees from January 1, 2001 through
21 December 31, 2003 who (1) worked more than 1,000 hours in a
22 year but who did not receive a vacation benefit because they
23 worked less than 1,500 hours; or (2) worked more than 1,500 hours
24 in a year but who did not receive a vacation benefit because they
25 did not work in December of that year so as to satisfy the December
26 Rule, as that term is defined in the MOU.

27 Because Connie Trenor, Tanya Adams, Abel Hinojos, Marlene Boas, Lisa Albro, Harlan E.
28 Tomlinson, Jr., Hoa Lao, and Manhattan Thi Do timely requested to be excluded from the Class,
they shall be so excluded.

The Court finds that the Class defined above meets the ascertainability,

1 numerosity, commonality, and predominance requirements that justify certification and that
2 resolution of this matter through a class action settlement is superior to other available methods.

3 The Court finds further that:

- 4 (1) Plaintiff is an adequate and typical Class Representative and
5 appoints her Class Representative, and
6 (2) Plaintiff's Counsel has adequately represented the Class,
7 and its appointment as Class Counsel is confirmed.

8 Accordingly, the Court certifies the Class described above for settlement purposes only.

9 The Court has reviewed the terms of the Settlement and finds that the Settlement is
10 fair, adequate, and reasonable when balanced against the possible outcome of further litigation
11 relating to class certification, liability, and damages. The Court finds further that settlement at
12 this time will avoid substantial additional costs and will avoid the delay and risks presented by
13 continued prosecution of the litigation. The Court also finds that the settlement has been reached
14 after arm's-length negotiations between the parties.

15 Following notice that was sent to each Class Member by first class mail, no Class
16 Member objected to any of the terms of the Settlement and only eight Class Members opted out.
17 Such non-opposition to the settlement is evidence of the settlement's fairness, adequacy, and
18 reasonableness. Taking into account (1) the value of the \$3,000,000 cash settlement, (2) the risks
19 inherent in continued litigation, (3) the complexity, expense, and likely duration of the litigation
20 in the absence of settlement, (4) the experience and views of Class Counsel, and (5) the positive
21 reaction of Class Members, the Court finds that the settlement is fair, adequate, reasonable, and
22 deserves this Court's final approval.

23 **III. PLAINTIFF'S REQUEST FOR ATTORNEYS' FEES AND COSTS**

24 Plaintiff's Counsel has moved for awards of (1) attorneys' fees and costs to
25 Plaintiff's Counsel; and (2) a service award to the Class Representative, notice of which were
26 given to all Class Members pursuant to the Court's Preliminary Approval Order of December 14,
27 2005. The Court heard argument regarding Plaintiff's request for fees and service payments upon
28 duly noticed motion on April 12, 2006.

1 Based upon all papers filed with the Court, oral argument at the hearing, the
2 Court's observation and assessment of the performance of Plaintiff's Counsel throughout this
3 litigation, the resulting settlement recovery, and good cause appearing therefor, the Court finds
4 that payment of attorneys' fees and costs in the amount of \$600,000, for all past and remaining
5 work until the completion of this matter, including for work performed and to be performed in the
6 related case of Senior, in accordance with the terms of the Settlement, is fair and reasonable under
7 the circumstances. The amount of the attorneys' fee award is based on an application of the
8 percentage-of-the-fund method and has been cross-checked using the lodestar-times-multiplier
9 method for awarding reasonable attorneys' fees. (*Lealao v. Beneficial California, Inc.* (2000) 82
10 Cal. App. 4th 19, 45, 50.)

11 In light of the work they performed on the case, the outstanding results they
12 achieved on behalf of Class Members, the contingent nature of the litigation, the experience and
13 skill Plaintiff's Counsel displayed in the litigation, and the preclusion of other employment
14 occasioned by the hours Plaintiff's Counsel devoted to this litigation, this Court finds that an
15 award of \$600,000 in fees and costs, equal to 20% of the common fund, is fair and reasonable.
16 (*Lealao*, 82 Cal. App. 4th at 50.)

17 As a cross-check to test the reasonableness of this amount, the Court finds that the
18 \$440,000 in lodestar Plaintiff's Counsel has dedicated to the prosecution of this action and the
19 related Senior case since their inception the case is reasonable and consistent with the litigation in
20 this case. This Court finds further that Plaintiff's Counsel's hourly rates were reasonable for their
21 skill and the work they performed. The resulting lodestar multiplier of 1.28 (or 1.57 when
22 combined with the Senior case) is fair and reasonable in light of the relevant factors identified
23 herein.

24 In setting its award of attorneys' fees and costs, the Court has considered the
25 following factors: (a) the contingent nature of this action; (b) the experience, reputation and
26 ability of Plaintiff's Counsel and the skill they displayed in litigation; (c) the results achieved
27 under the Settlement; and (d) the preclusion of other employment. (*Glendora Comm. Redev.*
28

1 *Agency v. Demeter* (1984) 155 Cal. App. 3d 465, 474-75, 480; *Serrano v. Priest* (1977) 20 Cal.3d
2 25, 49.)

3 Application of all of these factors demonstrates that the \$600,000 award of fees
4 and costs is eminently reasonable. This amount is to be paid by Defendant according to the terms
5 of the Settlement.

6 **IV. SERVICE AWARD TO THE CLASS REPRESENTATIVE**

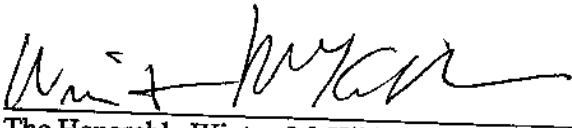
7 Plaintiff seeks a service award to the class representative, Danielle Hyatt in the
8 amount of \$5,000. Plaintiff seeks this payment as compensation for the time, effort, and risk that
9 the Class representative spent to enable the Class Members to receive this recovery.

10 The Court notes that California and federal courts regularly approve service
11 awards to compensate class representatives for the services they provide to the class, the time and
12 effort they invest on behalf of others, and the risks that they incur during the course of class
13 action litigation. Class representative Danielle Hyatt performed a substantial service to Class
14 Members, including bringing this action, producing relevant documents, and making herself
15 available to and working with Plaintiff's Counsel throughout the action. In light of these services,
16 the service award to the class representative is appropriate. Although the proposed service award
17 was disclosed to the Class in the Notice, no class member objected to it.

18 For the foregoing reasons, the Court finds that service award of \$5,000 to Plaintiff
19 Hyatt is fair and reasonable considering her service to Class members.

20 **IT IS SO ORDERED.**

21
22 Dated: April 14, 2006

23 
24 The Honorable Winton McKibben
25 Superior Court of the State of California,
26 County of Alameda

Lief, Cabrasher, Heimann & Bernstein,
LLP
Attn: Dermody, Kelly M.
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339

Sheppard, Mullin, Richter & Hampton
Attn: Barker, Charles F.
333 S. Hope Street, 48th Fl.
Los Angeles, CA 90071-1448

Superior Court of California, County of Alameda
Wiley W. Manuel Courthouse

Hyatt <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS. Adecco USA Inc <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG05198979</u> Order Motion Granted
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The Motion was set for hearing on 04/12/2006 at 09:00 AM in Department 136 before the Honorable Winton McKibben.

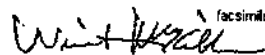
Moving Party Danielle Hyatt appeared by counsel Dermody, Kelly M.. Adecco USA Inc appeared by Michelle J. Hirth.

IT IS HEREBY ORDERED THAT:

The Motion for Final Approval to Class Action Settlement is granted.

The proposed order is signed.

Dated: 04/12/2006

 facsimile

Judge Winton McKibben

Order

Superior Court of California, County of Alameda
Wiley W. Manuel Courthouse

Case Number: RG05198979
Order After Hearing Re: of 04/12/2006

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 600 Washington Street, Oakland, California.

Executed on 04/13/2006.

Executive Officer / Clerk of the Superior Court

By


Digital

Deputy Clerk

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LLP
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Superior Court of California, County of Alameda
Wiley W. Manuel Courthouse

Hyatt <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Adecco USA Inc <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG05198979</u> Order Motion for Attorney Fees Granted
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The Motion for Attorney Fees was set for hearing on 04/12/2006 at 09:00 AM in Department 136 before the Honorable Winton McKibben.

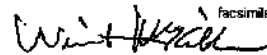
Moving Party Danielle Hyatt appeared by counsel Dermody, Kelly M.. Adecco USA Inc appeared by counsel Michelle J. Hirth

IT IS HEREBY ORDERED THAT:

The motion is granted. Attorney fees awarded in the amount of \$600,000.00.

The proposed order is signed.

Dated: 04/12/2006



Judge Winton McKibben

Superior Court of California, County of Alameda
Wiley W. Manuel Courthouse

Case Number: RG05198979
Motion for Attorney Fees of 04/12/2006

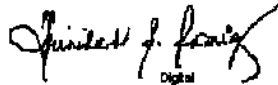
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 600 Washington Street, Oakland, California.

Executed on 04/13/2006.

Executive Officer / Clerk of the Superior Court

By


Digital

Deputy Clerk