

1 Kelly M. Dermody (State Bar No. 171716)
2 Jahan C. Sagafi (State Bar No. 224887)
3 LIEFF, CABRASER, HEIMANN &
4 BERNSTEIN, LLP
5 Embarcadero Center West
6 275 Battery Street, 30th Floor
7 San Francisco, CA 94111-3339
8 Telephone: (415) 956-1000
9 Facsimile: (415) 956-1008

10 Daniel Feinberg (State Bar No. 135983)
11 LEWIS, FEINBERG, RENAKER & JACKSON, P.C.
12 1330 Broadway, Suite 1800
13 Oakland, California 94612
14 Telephone: (510) 839-6824
15 Facsimile: (510) 839-7839

ENDORSED
FILED
San Francisco County Superior Court

APR 24 2006

GORDON PARK-LI, Clerk
BY: DONNA K. LOK
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

11 WILLIAM SENIOR, individually and on
12 behalf of others similarly situated,


13 Plaintiff,

14 v.

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

17 Defendants.

Case No. CGC 04-431031


**[PROPOSED] 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**

1 This matter is before the Court on Plaintiff's Motion For Final Approval of Class
2 Action Settlement and his Motion for an Order Awarding Attorneys' Fees and Costs to Plaintiff's
3 Counsel and Service Award to the Class Representative. In accordance with the Preliminary
4 Approval Order, Class Members have been given notice of the terms of the Settlement, including
5 its provision for attorneys' fees, costs, and service award for the class representative, and have
6 had an opportunity to object to it, comment on it, participate in it, and/or exclude themselves from
7 it. Having considered the proposed Settlement, the papers submitted by the parties in support of
8 final approval of the Settlement, the award of attorneys' fees and costs and the service award to
9 the class representative, and the argument at the final approval hearing held on April 19, 2006, the
10 Court, pursuant to Code of Civil Procedure § 382, hereby grants Plaintiff's motion.

11 **I. FACTUAL BACKGROUND**

12 Plaintiff William Senior filed the class action complaint in this action on April 30,
13 2004, alleging that Defendant Adecco USA, Inc. d/b/a Adecco, Inc. (hereinafter collectively
14 "Defendant" or "Adecco") maintained an illegal "use-it-or-lose-it" vacation policy that required
15 employees to forfeit earned, but unused, vacation time at the end of each calendar year. Plaintiff
16 alleged that this "use-it-or-lose-it" policy was improper, unfair and/or illegal under California
17 Labor Code § 227.3, §§ 200, *et seq.*, California Labor Code §§ 2698, *et seq.*; and the Unfair
18 Competition Law ("UCL"), Business & Professions Code § 17200.

19 Adecco removed the case to federal court on ERISA preemption grounds, claiming
20 that ERISA preempted the state law claims. After conducting discovery regarding the ERISA
21 issue, Plaintiff moved to remand the matter back to state court.

22 On May 9, 2005, U.S. District Judge Phyllis Hamilton of the Northern District of
23 California granted Plaintiff's Motion to Remand, holding that there was no federal jurisdiction
24 because Adecco could not show that the Adecco vacation pay plan was an ERISA plan rather
25 than a "payroll practice" under the applicable federal Department of Labor ("DOL") regulation,
26 29 C.F.R. § 2510.3-1(b). Judge Hamilton reasoned that under the applicable DOL regulation,
27 payment of vacation wages from an employer's general assets does not create an ERISA plan.

28 The parties entered into settlement negotiations, resulting in a signed

1 Memorandum of Understanding setting forth the terms of the proposed Settlement, which is
2 before the Court. In reaching the proposed Settlement, Defendant did not (and does not) concede
3 that it has violated the California Labor Code or the Business & Professions Code, and Defendant
4 continues to deny the allegations contained in Plaintiff's complaint.

5 Plaintiff has moved this Court for final approval of the Settlement and has
6 submitted documents in support thereof. No opposition was filed to Plaintiff's motion, and no
7 Class Member has objected to the Settlement. Plaintiff's motion came on for hearing before this
8 Court on April 19, 2006 at 9:30 a.m. Counsel for both parties were present.

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

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

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

16 All individuals who were employed by Adecco as Regular or
17 Colleague employees in California at any time from January 1,
18 2001 through October 31, 2003, who forfeited unused PTO hours
due to Adecco's forfeiture policy.

19 Because Cara Lawrence timely requested to be excluded from the Class, she shall be so excluded.

20 The Court finds that the Class defined above meets the ascertainability,
21 numerosity, commonality, and predominance requirements that justify certification, and that
22 resolution of this matter through a class action settlement is superior to other available methods.

23 The Court finds further that:

- 24 (1) Plaintiff is an adequate and typical Class Representative and
appoints him Class Representative, and
25 (2) Plaintiff's Counsel has adequately represented the Class,
26 and its appointment as Class Counsel is confirmed.

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

28 The Court has reviewed the terms of the Settlement and finds that the Settlement is

1 fair, adequate, and reasonable when balanced against the possible outcome of further litigation
2 relating to class certification, liability, and damages. The Court finds further that settlement at
3 this time will avoid substantial additional costs and will avoid the delay and risks presented by
4 continued prosecution of the litigation. The Court also finds that the settlement has been reached
5 after arm's-length negotiations between the parties.

6 Following notice that was sent to each Class Member by first class mail, no Class
7 Member objected to any of the terms of the Settlement and only one Class Member opted out.
8 Such non-opposition to the settlement is evidence of the settlement's fairness, adequacy, and
9 reasonableness. Taking into account (1) the value of the \$848,964.81 cash settlement, (2) the
10 risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the
11 litigation in the absence of settlement, (4) the experience and views of Class Counsel, and (5) the
12 positive reaction of Class Members, the Court finds that the settlement is fair, adequate,
13 reasonable, and deserves this Court's final approval.

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

15 Plaintiff's Counsel has moved for awards of (1) attorneys' fees and costs to
16 Plaintiff's Counsel; and (2) a service award to the Class Representative, notice of which were
17 given to all Class Members pursuant to the Court's Preliminary Approval Order of February 2,
18 2006. The Court heard argument regarding Plaintiff's request for fees and service payments upon
19 duly noticed motion on April 19, 2006.

20 Based upon all papers filed with the Court, oral argument at the hearing, the
21 Court's observation and assessment of the performance of Plaintiff's Counsel throughout this
22 litigation, the resulting settlement recovery, and good cause appearing therefor, the Court finds
23 that payment of attorneys' fees and costs in the amount of \$127,344, for all past and remaining
24 work until the completion of this matter, in accordance with the terms of the Settlement, is fair
25 and reasonable under the circumstances. The amount of the attorneys' fee award is less than
26 Plaintiff's Counsel's lodestar in the case and has been cross-checked using the percentage-of-the-
27 fund method and. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 45, 50.)

28 In light of the work they performed on the case, the outstanding results they

1 achieved on behalf of Class Members, the contingent nature of the litigation, the experience and
2 skill Plaintiff's Counsel displayed in the litigation, and the preclusion of other employment
3 occasioned by the hours Plaintiff's Counsel devoted to this litigation, this Court finds that an
4 award of \$127,344 in fees and costs, less than 15% of the common fund (when costs are
5 deducted), is fair and reasonable. (*Lealao*, 82 Cal. App. 4th at 50.)

6 As a cross-check to test the reasonableness of this amount, the Court finds that the
7 more than \$125,000 in lodestar Plaintiff's Counsel has dedicated to the prosecution of this action
8 since its inception is reasonable and consistent with the litigation in this case. This Court finds
9 further that Plaintiff's Counsel's hourly rates were reasonable for their skill and the work they
10 performed. Plaintiff's request for an amount of attorneys' fees and costs less than Counsel's
11 lodestar and costs expended is eminently reasonable.

12 Application of all of these factors demonstrates that the \$127,344 award of fees
13 and costs is eminently reasonable. This amount is to be paid by Defendant according to the terms
14 of the Settlement.

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

16 Plaintiff seeks a service award to the class representative, William Senior, in the
17 amount of \$5,000. Plaintiff seeks this payment as compensation for the time, effort, and risk that
18 he spent to enable the Class Members to receive this recovery.


19 The Court notes that California and federal courts regularly approve service
20 awards to compensate class representatives for the services they provide to the class, the time and
21 effort they invest on behalf of others, and the risks that they incur during the course of class
22 action litigation.

1 Class representative William Senior performed a substantial service to Class
2 Members, including bringing this action, producing relevant documents, and making himself
3 available to and working with Plaintiff's Counsel throughout the action. In light of these services,
4 the service award to the class representative is appropriate. Although the proposed service award
5 was disclosed to the Class in the Notice, no class member objected to it.

6 For the foregoing reasons, the Court finds that service award of \$5,000 to Plaintiff
7 Senior is fair and reasonable considering his service to Class members.

8 **IT IS SO ORDERED.**

9
10 Dated: April 24, 2006



The Honorable James L. Warren
Superior Court of the State of California,
City and County of San Francisco

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