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ALAMEDA COUNTY
OCT 1 6 2020
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Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

WILLIAM LOYD HELMICK, et al, Plaintiffs, v. AIR METHODS CORPORATION, et al, Defendants.	No. RG13-665373 ORDER REGARDING INTERPRETATION OF SETTLEMENT AGREEMENT. Date: 10/16/20 Time: 10:00 a.m. Dept.: 21

The application of plaintiffs regarding interpretation of Settlement Agreement came on regularly for hearing on 10/16/20, in Department 21, the Honorable Winifred Y. Smith presiding. Plaintiffs and Defendants appeared at the hearing through counsel of record. The Court, after full consideration of all papers submitted in support and in opposition to the motion, as well as the oral arguments of counsel, decides as follows: The application of plaintiffs regarding interpretation of Settlement Agreement is GRANTED IN PART.

BACKGROUND

This order is distinct from the order approving final approval of the Settlement Agreement ("SA"). This is an order concerning the interpretation of the Settlement Agreement. (SA, para 102; CCP 664.6; CRC 3.769(h).)

In 2018, the parties entered into a partial settlement. The parties had a dispute regarding the size of the class and the identification of the class members. On 6/1/18 the court entered an order approving the partial settlement.

On 6/26/20/2020, the parties entered into a final settlement. The parties negotiated clauses in the SA to address the possibility that the class was larger than known at the time the parties entered into the SA.

After entering on to the SA, AMC provided information for class notice. Plaintiffs became concerned that AMC was identifying persons who were not identified as members of the class on Exhibits A and A-1 and who were disclosed in the 2018 partial settlement[1], and plaintiffs asserted that the escalator clause in para 74(d) applied. AMC disputed that the escalator clause applied.

On 8/21/20, plaintiffs brought the issue to the court's attention. On 8/21/20, the parties filed and the court signed an order identifying the issue of contract interpretation and setting a procedure for resolution. The parties agreed that the court would hear the motion for final approval of class settlement and the application regarding the interpretation of the settlement agreement on the same date.

ORDER

The court applies the general rules of contact interpretation. *Brown v. Goldstein* (2019) 34 Cal.App.5th 418, 432-433, states "[T]he trial court give[s] effect to the mutual intention of the parties as it existed' at the time the contract was executed. … Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms. The court generally may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a

[1] As used in this order, the phrase "Exhibits A and A-1" refers to "Exhibits A and A-1 and who were disclosed in the 2018 partial settlement."

written, integrated contract. … Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous. …"

The court can use the Class Notice for contract interpretation. The SA at para 29 states that Class Notice is the notice attached to the SA as Exh B. Although the text of the SA is controlling on matters of contract interpretation, the Class Notice is part of the SA and therefore can be considered as part of contract interpretation. The court does not find the Class Notice particularly instructive on the issues presented.

There is no relevant extrinsic evidence. The SA exists independent of the litigation conduct of the parties, and the trial stipulations are not relevant to contract interpretation. The case settled in mediation, and the mediation discussions are protected. (Evid Code 1119.) The SA itself has an integration clause. (SA, para 105.)

PLAIN MEANING OF THE CONTRACT

The court gives effect to the mutual intention of the parties as it existed at the time the contract was executed on 6/25/20. The court does not interpret the contract based on what plaintiff of AMC might have intended as new information came to light.

The relevant clauses are:

Para 22 defines "Class" and "Class Member" by general description. Para 22 also states more specifically that "AMC certifies and represents that to the best of its knowledge each" Class Member is identified on Exhibits A and A-1.

Para 44 states the Gross Settlement Amount will be increased if Exhibits A and A-1 do not identify all Class Members.

Para 74(d) states that if persons not on Exhibits A and A-1 assert they are Class Members and the administrator finds that they are Class Members then defendant "shall make an additional

contribution to the Gross Settlement Fund corresponding to what would have been paid [if] he or she was among the Class Members identified in Exhibit A or Exhibit A-1."

The plain reading of these paragraphs is that if a person is not on Exhibits A and A-1 and is later determined to be a Class Member, then defendant AMC must make a supplemental payment.

PARA 44 (THE GROSS SETTLEMENT AMOUNT)

Para 44 defines the Gross Settlement Amount as $78.000.000. Para 44 then goes on to state that the Gross Settlement Amount also includes money due under para 74(d) [the escalator clause] "if it is determined that Exhibit A and Exhibit A-1 do not identify all Class Members hired in California during January 14, 2016-February 14, 2020."

AMC argues that the phrase "Class Members hired in California" means "initially hired by AMC in contracts entered into in California." This is not a reasonable interpretation of the agreement. As used in that sentence, the most reasonable meaning of the phrase "hired in California" is that it is synonymous with "employed in California."

The terms "hired" and "employed" are similar and are often used interchangeably. Labor Code 350(c) states: " ' Employing' includes hiring, or in any way contracting for, the services of an employee." Labor Code 6303(b) defines "Employment" as "the carrying on of any ... work ..., in which any person is engaged or permitted to work for hire, . ." If "work for hire" is "employment," then "hired in California" can reasonably mean "employed in California."

Similarly, *California School Employees Assn., Tustin Chapter No. 450 v. Tustin Unified School Dist.* (2007) 148 Cal.App.4th 510, 519 states, "[Two statutes] define "substitute employee" as someone "employed"—that is, hired—to perform the absent employee's tasks." This also suggests equivalence.

That established, the words "hire" and "employ" are not synonymous. *Antichi v. New York Indem. Co.* (1932) 126 Cal.App. 284, 287, quotes a dissent in a New York case that states: "A man hired to labor is employed, but a man may be employed in a work who is not hired. Materials are employed for building locks, but they are not hired; and a man who does his own work or the work of another is employed in it, although he receives no wages."

"Employ" generally refers to a specific type of relationship whereas "hire" refers to a more general relationship of payment to perform a service. A person can hire a car and driver without employing the driver, and the driver can be either an employee or an independent contractor of a ride providing service.

The court must, therefore, look at context. The SA resolves the claims of Class Members who persons performed work in California and were therefore subject to the California Labor Code when they performed that work. "California's [Labor] laws apply by their terms to all employment in the state, without reference to the employee's place of residence." (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1197.) California's Labor laws also apply to all employment in the state, without reference to whether the employee was initially hired in another state and was then reassigned or transferred to California.

SA para 71 states that AMC is to provide a spreadsheet with employee information including "(g) whether first hired to Class position after January 14, 2016 and, if so, date of hire." In this context, the SA appears to equate "first hired to Class position" with "first employed in Class position." In this context "hire" refers to the work done on a date rather than the commencement of an employment relationship.

There is nothing in the SA that suggests there is any significance to whether a person initially entered into a contact with AMC (was hired) outside of California and then performed

work (was employed) in California. The SA as a whole suggests that what is relevant is whether the person performed work (was employed) in a Class Position in California. In that context the phrase "hired in California" is more reasonably synonymous with "employed in California."

PARA 74(d) (DISPUTES REGARDING CLASS MEMBER STATUS)

Para 74(d) concerns "Disputes Concerning Class Member Status" and has a procedure for persons to assert class member status. Para 74(d) begins with "Should any person who does not receive a Class Notice directed to him or her wish to come forward purporting to be a Class Member …" Para 74(d) then has the escalator clause for persons who are added to the Class.

AMC argues that the phrase "Should any person who does not receive a Class Notice directed to him or her" limits para 74(d) to persons who were not sent a class notice. Under AMC's suggested interpretation, persons who were not identified as Class Members in Exhibit A or A-1 when the SA was signed but who were nevertheless sent class notice would not trigger the para 74(d) escalator clause. This is not a reasonable interpretation of the agreement. As used in para 74(d), the phrase "any person who does not receive a Class Notice directed to him or her" most reasonably means "any person who was not on Exhibit A or A-1."

Para 74(d)'s introductory clause limits it to persons who did not receive a Class Notice. This begs the question of who the parties intended to be the recipients of Class Notice at the time the parties entered into the SA.

Para 73 states that class notice is to be sent to Class Members. Para 22 in turn defines an ascertainable "Class" and "Class Member" in two ways. First, there is the general description for purposes of res judicata (aka claim preclusion). (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-981, 966, 980, 987.) Second, "AMC certifies and represents that to the best of its knowledge each" Class Member is identified on Exhibits A and A-1. Therefore, at the time

the parties entered into the SA, Plaintiff and AMC understood that each Class Member was identified on Exhibits A and A-1 and that class notice would be sent only to those persons.

Given that the Class is defined specifically as the persons on Exhibits A and A-1 and class notice was to be sent only to those persons, the "disputes regarding class member status" in para 74(d) reasonably applies to all persons who were not on Exhibits A and A-1.

This is consistent with the general definition of the Class that would apply for purposes of res judicata (aka claim preclusion). After the parties entered into the SA and up through 45 days after the initial mailing of class notice, persons not on Exhibits A and A-1 could assert to the Class Administrator that they were Class Members. (SA para 74(d).) If they were Class members, then the escalator clause would apply. But if a person did not timely assert that they were a Class Member, then they would nevertheless be bound by the release in the SA if they fit within the general definition of the Class.

APPLICATION TO FACTS

After the parties entered into the SA, AMC identified 22 individuals who are potentially Class Members. The court follows AMC's grouping of the individuals.

Group A. 10 individuals who were initially hired by AMC outside California before 1/14/16. These individuals are "Class members" because they are persons "whom AMC employed in in California at any time on or after January 30, 2009, until June 29, 2020." (SA para 22.) These individuals were not identified in Exhibits A or A-1.

Group B. 12 individuals who were initially hired by AMC outside California after 1/14/16. These individuals are "Class members" because they are persons "whom AMC employed in in California at any time on or after January 30, 2009, until June 29, 2020." (SA para 22.) These individuals were not identified in Exhibits A or A-1.

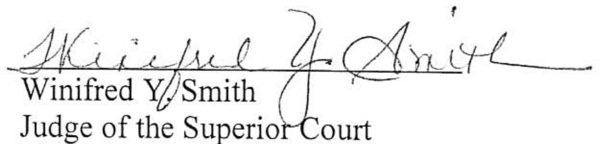
The court does not in this order decide whether these individuals are Class Members. (SA, para 44, 74(d).) The SA at para 74(d) states "The Class Administrator is to make a determination of a person's status as a Class Member, which shall be controlling." The Administrator is responsible for making the factual decision about whether each of the 22 identified persons is a Class Member. At the hearing on 10/16/20, counsel for the parties agreed that the Class Administrator had already decided that the 22 individuals are Class Members.

Para 74(d) then states that if such Class Member was not listed on Exhibit A or A-1, then AMC shall make an additional contribution to the Gross Settlement Fund. The court in this order interprets the SA and concludes that the identification of the 22 individuals as Class Members triggers the escalator clause in the SA.

FINAL APPROVAL ORDER

Defendant AMC's obligation to make the first installment payment under SA para 84 and 87 run from the entry of the Final Approval Order. The court will sign and file the Final Approval Order on 10/16/10.

Dated: October 16, 2020



Winifred Y. Smith
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG13665373
Case Name: Helmick v. Air Methods Corporation

RE: ORDER REGARDING INTERPRETATION OF SETTLEMENT AGREEMENT

CLERK'S CERTIFICATE OF SERVICE

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, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed: 10/16/2020

Jhalisa Castaneda
Courtroom Clerk, Dept. 21

James S. Sitkin LAW OFFICES OF JAMES M. SITKIN One Kaiser Plaza, Suite 505 Oakland, CA 94612 jsitkin@sitkinlegal.com	*Attorneys for Plaintiffs and the Certified Class*
Joshua Konecky SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS LLP 2000 Powell Street, Suite 1400 Emeryville, CA 94607 jkonecky@schneiderwallace.com	*Attorneys for Plaintiffs and the Certified Class*
Lonnie D. Giamela, Esq. Christopher M. Ahearn, Esq. FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, CA 92614 lgiamela@fisherphillips.com cahearn@fisherphillips.com	*Attorneys for Defendant Air Methods Corporation*