

FILED

FEB 04 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: L. Berg, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

PATRICIA ALCANTAR and LEAH BROWN,
individually, and on behalf of other members of
the general public similarly situated;

Plaintiffs,

v.

BAY EQUITY LLC, a California Company; and
DOES 1 through 100, inclusive;

Defendants.

Case No. CIV1903376

Honorable James Chou
Department B

CLASS ACTION

**AMENDED ~~PROPOSED~~ ORDER OF
FINAL APPROVAL AND JUDGMENT**

Hearing Date: February 3, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Dept. B

Complaint Filed: September 4, 2019
FAC Filed: July 8, 2020
Trial: None Set

1 The Court, having read the papers filed with regard to Plaintiffs' motion for final approval of a
2 class action settlement and Attorney Fee Award, Cost Award, and Class Representative Enhancement
3 Payments, and after considering the papers submitted in support of the motion, including the Joint
4 Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"),
5 hereby FINDS AND ORDERS as follows:

6 This is a putative class action. Plaintiffs Patricia Alcantar and Leah Brown ("Plaintiffs,"
7 "Plaintiff Alcantar" and "Plaintiff Brown") are former employees of Defendant Bay Equity, LLC
8 ("Defendant"). The operative First Amended Complaint ("Complaint") in the action asserts nine (9)
9 causes of action for wage and hour violations. Plaintiffs have brought this action on behalf of all
10 individuals who worked for Defendant as hourly and/or non-exempt employees and did not sign an
11 arbitration agreement with class action waiver provision contained during the Non-Arbitration Class
12 Period ("Non-Arbitration Class"). The Non-Arbitration Class Period is the time period from
13 September 4, 2015 to August 15, 2020 ("Non-Arbitration Class Period"). Plaintiffs have also brought
14 this action on behalf of all individuals who worked for Defendant as hourly and/or non-exempt
15 employees and who signed an arbitration agreement with a class action waiver provision contained
16 during the Arbitration Class Period ("Arbitration Class"). The Arbitration Class Period is the time
17 period from April 20, 2019 to August 15, 2020 ("Arbitration Class Period"). There are collectively
18 seven hundred eighty-four (784) Class Members.

19 On October 29, 2020, the Court preliminarily approved the proposed class action settlement.
20 Plaintiffs now move for Final Approval of class action settlement.

21 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
22 defined in the Settlement Agreement except as may otherwise be ordered.

23 The following Classes are certified for purposes of settlement only:

24 All individuals who worked for Defendant as hourly and/or non-exempt employees and did not
25 sign an arbitration agreement with class action waiver provision contained during time period
from the September 4, 2015 to August 15, 2020; and

26 All individuals who worked for Defendant as hourly and/or non-exempt employees and who
27 signed an arbitration agreement with a class action waiver provision contained during the time
28 period from April 20, 2019 to August 15, 2020.

1 Specifically excluded from these classes are 87 employees of Defendant who executed general
2 releases that included a waiver of Civil Code section 1542 in advance of the mediation of this
3 matter.

4 Generally, “questions whether a settlement was fair and reasonable, whether notice to the class
5 was adequate, whether certification of the class was proper, and whether the attorney fee award was
6 proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*
7 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

8 In determining whether a class settlement is fair, adequate and reasonable, the
9 trial court should consider relevant factors, such as “the strength of plaintiffs’
10 case, the risk, expense, complexity and likely duration of further litigation, the
11 risk of maintaining class action status through trial, the amount offered in
12 settlement, the extent of discovery completed and the stage of the proceedings,
13 the experience and views of counsel, the presence of a governmental
14 participant, and the reaction of the class members to the proposed settlement.

15 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48
16 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
17 615, 624.)

18 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing
19 of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.*, *supra*, 91
20 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
21 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
22 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
23 reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and
24 *Officers for Justice v. Civil Service Com’n, etc.*, *supra*, 688 F.2d at p. 625, internal quotation marks
25 omitted.)

26 The burden is on the proponent of the settlement to show that it is fair and
27 reasonable. However “a presumption of fairness exists where: (1) the
28 settlement is reached through arm’s-length bargaining; (2) investigation and
discovery are sufficient to allow counsel and the court to act intelligently; (3)
counsel is experienced in similar litigation; and (4) the percentage of objectors
is small.”

(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48
Cal.App.4th at p. 1802.)

1 Although [t]here is usually an initial presumption of fairness when a proposed
2 class settlement ... was negotiated at arm's length by counsel for the class, ...
3 it is clear that the court should not give rubber-stamp approval. Rather, to
4 protect the interests of absent class members, the court must independently and
5 objectively analyze the evidence and circumstances before it in order to
6 determine whether the settlement is in the best interests of those whose claims
7 will be extinguished. To make this determination, the factual record before the
8 ... court must be sufficiently developed... . The proposed settlement cannot be
9 judged without reference to the strength of plaintiffs' claims. The most
important factor is the strength of the case for plaintiffs on the merits, balanced
against the amount offered in settlement. The court must stop short of the
detailed and thorough investigation that it would undertake if it were actually
trying the case, but nonetheless it must eschew any rubber stamp approval in
favor of an independent evaluation.

10 (*Kullar, supra*, 168 Cal.App.4th at p. 130, internal citations and quotation marks omitted.)

11 Defendant will pay \$2,809,965, which includes Administration Costs in the amount of \$7,950;
12 the Private Attorneys General Act ("PAGA") Payment in the amount of \$100,000 to satisfy the PAGA
13 penalties claim as alleged in the Class Action (seventy-five percent (75%) of which (\$75,000) shall be
14 paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent
15 (25%) of which (\$25,000) shall be part of the Net Settlement Amount to be distributed all current and
16 former hourly-paid or non- exempt employees who worked for Defendant within the State of
17 California between April 20, 2019 through August 15, 2020 ("Eligible Aggrieved Employees" and
18 "PAGA Timeframe"), on a pro rata basis); Class Representative Enhancement Payments of \$7,500 to
19 Plaintiff Alcantar and \$7,500 to Plaintiff Brown; the Attorney Fee Award in the amount of
20 \$983,487.75 (thirty-five percent (35%) of the Gross Settlement Amount); the Cost Award in the
21 amount of \$16,756.99; and Individual Settlement Shares to be paid to all Class Members who do not
22 submit a valid and timely request to exclude themselves from the Settlement ("Participating Class
23 Members"). This is not a claims-made settlement, and Individual Settlement Shares will be made
24 automatically to Class Members. There is no reversion. Funding of the Settlement will be made as
25 follows:

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1 No later than twenty-one (21) calendar days after the date the court enters judgment granting
2 final approval of the settlement, Defendant shall deposit the Gross Settlement Amount of \$2,809,965
3 and any additional funds needed to satisfy the Settlement Agreement by wiring the funds to the
4 Settlement Administrator. In the event there are objectors to the Settlement Agreement, payment shall
5 be made within twenty-one (21) calendar days after the time to appeal has run or all appeals have been
6 exhausted, whichever occurs later. Within fourteen (14) calendar days after the Funding of the
7 Settlement, the Settlement Administrator shall calculate and pay all payments due under the
8 Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost
9 Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs.
10 The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA
11 Payment to the LWDA for settlement of the PAGA claim.

12 As noted in the Preliminary Approval Order, the Proposed Settlement is entitled to a
13 presumption of fairness. In their moving papers, Plaintiffs contend that the proposed Settlement was
14 the product of arms-length negotiations following extensive litigation and following extensive
15 discovery and exchange of documentation relating to the claims made by Plaintiffs. Moreover, the
16 negotiations were facilitated with the assistance of a skilled and experienced mediator, Lynn S. Frank.

17 With respect to the benefit to the Class Members, Plaintiffs' moving papers indicate that the
18 average Individual Settlement Share will be approximately \$2,223.08 under the proposed allocation,
19 which is based on the number of weeks and pay periods individual Class Members worked.
20 Participating Class Members must cash or deposit their Individual Settlement Share checks within one
21 hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not
22 redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator
23 will send a reminder postcard. If any checks remain uncashed or not deposited by the expiration of the
24 90-day period after mailing the reminder notice, the Settlement Administrator will, within two
25 hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement
26 Share to the California State Controller's Office in accordance with California Unclaimed Property
27 Law so that the Participating Class Member will have his or her Individual Settlement Share available
28 to him or her per the applicable claim procedure to request that money from the State of California.

1 The Plaintiffs have explained the risks and costs associated with continuing with the litigation
2 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiffs
3 have satisfactorily assessed the maximum value of the claims and of the reasonableness of the
4 discount accepted in the settlement in light of these risks. Finally, the Declaration of the Settlement
5 Administrator, Taylor Mitzner, states that Notice of Class Action Settlement ("Class Notice") and
6 Election Not To Participate or Opt-out Form ("Exclusion Form") (collectively, known as the "Notice
7 Packet") were sent to seven hundred eighty-four (784) Class Members, and there were no objections to
8 the Settlement, no disputes to the Settlement, and only fourteen (14) requests for exclusion. This is
9 further proof of the fairness of the Settlement. The Declaration of Class Counsel provides sufficient
10 information about counsel's experience in litigating class action lawsuits.

11 The Court also has an independent right and responsibility to review the requested attorneys'
12 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
13 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney's fees requested by
14 Class Counsel is in the sum of \$983,487.75 is thirty-five percent (35%) of the common fund created
15 for the benefit of the Class Members and are supported by use of the percentage-fee method. (*See*
16 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of
17 Douglas Han, Class Counsel collectively expended 1,169.2 hours with a total lodestar figure of
18 \$689,182.50. This results in a modest multiplier of 1.4. Considering the contingent nature of the
19 representation and the ongoing monitoring of the Settlement Administration, the requested hourly
20 rates and the fee is justified. The Court finds that the fee request is reasonable, and it is approved.

21 The Court has also reviewed Class Counsel's declarations regarding the Cost Award, the actual
22 litigation costs expended in the prosecution of this litigation. Under the terms of the Settlement,
23 Plaintiffs may seek reimbursement of up to \$25,000 in actual litigation costs. The Court finds that
24 Plaintiffs have expended \$16,756.99 in actual litigation costs, and that such costs were reasonable.
25 Therefore, the Court approves the Cost Award payment of \$16,756.99 from the Net Settlement
26 Amount for the reimbursement of Class Counsel's actual litigation costs.

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1 The rationale for making a Class Representative Enhancement Payment is that the Class
2 Representative should be compensated for the expense or risk he has incurred in conferring a benefit
3 on other members of the Classes. Such an enhancement payment is appropriate if it is necessary to
4 induce an individual to participate in the suit. Criteria courts may consider in determining whether to
5 make an enhancement payment include: 1) the risk to the class representative in commencing suit,
6 both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class
7 representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the
8 litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of
9 the litigation.

10 The Court has reviewed the Declarations of Plaintiff Alcantar and Plaintiff Brown, which
11 outlines their involvement in the lawsuit. Given the risks inherent in service as Class Representatives,
12 the duration of the case and time involved, and the benefits created for the Classes, the Court approves
13 the Class Representative Enhancement Payments in the amount of \$7,500 to Plaintiff Alcantar and
14 \$7,500 to Plaintiff Brown.

15 The Court has reviewed the Declaration of Taylor Mitzner, the Settlement Administrator from
16 Phoenix Class Action Administration Solutions ("Phoenix"), the Court-approved Settlement
17 Administrator. The Court finds that notice was provided to the Classes pursuant to the Preliminary
18 Approval Order, and that notice was sufficient and that it satisfies due process. Phoenix has discharged
19 its duties to provide notice to the Classes and approves a payment of Administration Costs in the
20 amount of \$7,950 for its services in administering this settlement, including the mailing of Individual
21 Settlement Shares according to the terms of the Settlement Agreement.

22 As of the Effective Final Settlement Date, the claims that Plaintiffs and the other Participating
23 Class Members are releasing in exchange for the consideration provided for by the Settlement are all
24 claims in the Complaint, the PAGA notice, and claims that could have been pled arising out of the
25 same operative facts including but not limited to claims for 1) failure to pay overtime (including any
26 underpayment resulting from an improper calculation of the regular rate of pay); 2) failure to provide
27 meal periods (or appropriate premiums in cases where meal periods were not provided); 3) failure to
28 provide rest breaks (or appropriate premiums in cases where rest periods were not provided); 4) failure

1 to pay minimum wages, including a claim that commissioned employees were not paid for non-
2 productive time and for rest breaks; 5) final wages not timely paid; 6) failure to comply with itemized
3 employee wage statement provisions; 7) failure to reimburse business expenses; 8) violations of the
4 Private Attorneys General Act of 2004 (including violations of California Labor Code sections 201,
5 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1,
6 1198, 2800 and 2802, and the IWC Wage Orders; and 9) violation of the Unfair Competition Law
7 (“Released Claims”). The release only applies to periods of time when Class Members were members
8 of the Classes (i.e., excluding periods of time in an exempt position or when employed outside of
9 California). The Released Parties are Defendant and its past or present officers, directors,
10 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
11 insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries,
12 affiliates, parents and attorneys (“Released Parties”).

13 The Settlement Agreement will be binding upon, and inure to the benefit of, the successors and
14 assigns of the Parties.

15 This Order of Final Approval and Judgment, the Settlement Agreement, the settlement which
16 the Settlement Agreement reflects, and any and all acts, statements, documents or proceedings relating
17 to the settlement are not, and shall not be construed as, or used as an admission by or against the
18 Released Parties of any fault, wrongdoing, or liability on their part, or of the validity of any Released
19 Claim or of the existence or amount of damages.

20 Except as otherwise provided in this Order of Final Approval and Judgment, the parties shall
21 bear their own costs and attorneys’ fees.

22 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
23 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments are GRANTED.
24 The Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

25 Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator
26 will serve on the Parties a declaration providing a final report on the disbursements of all funds.

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1 The Court sets a final accounting and compliance date for 12/10/21, 2021 at 1:30 p.m. ^{9:00 AM}
2 in Department B. Plaintiffs shall file a declaration of compliance and accounting from the Settlement
3 Administrator at least five (5) court days prior to the compliance date.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
5 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
6 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
7 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
8 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
9 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

10 IT IS SO ORDERED.

11 JAMES T. CHOU

12 DATED: FEB 04 2021

HONORABLE JAMES CHOU
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On February 9, 21, I served the foregoing document described as

FINAL APPROVAL AND JUDGMENT

for the following case: **Alcantar v. Bay Equity, LLC**
LWDA/Court Case No.: **LWDA-CM-783756-20**
CIV1903376
Marin County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

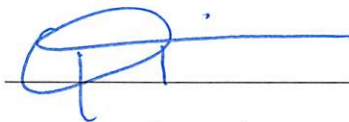
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 9, 2021, at Pasadena, California.



Allana Rivera