

FILED
Superior Court of California
County of Los Angeles

08/16/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Keating Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GINA DAVIDSON; individually and on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General at ("PAGA");

Plaintiff,

v.

AUGUSTA FINANCIAL, INC., a California
Corporation; and MICHAEL JOSEPH
MEENA, an individual;

Defendants.

Case No.: 20CHCV00420

Honorable Melvin Sandvig
Department F47

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: August 16, 2021

Hearing Time: 8:30 a.m.

Hearing Place: Dept. F47

Complaint Filed: July 17, 2020

FAC Filed: February 25, 2021

Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Gina Davidson's ("Plaintiff")
2 motion for final approval of a class action settlement and receiving Attorney Fee Award, Cost Award,
3 and Class Representative Enhancement Payment, and after considering the papers submitted in
4 support of the motion, including the Settlement Agreement, hereby FINDS AND ORDERS as follows:

5 This is a putative class action. Plaintiff is a former employee of Defendants Augusta Financial,
6 Inc. and Michael Meena Joseph ("Defendants"). The operative complaint in the action asserts nine (9)
7 causes of action for wage and hour violations. Plaintiff has brought this action on behalf of hourly-
8 paid or non-exempt employees employed by Defendants within the State of California during the
9 Class Period ("Class"). The Class Period is the time period from July 17, 2016, to March 31, 2021
10 ("Class Period"). There are one hundred seventy-four (174) members in the Class.¹

11 On April 5, 2021, the Court preliminarily approved the proposed Settlement. Plaintiff now
12 moves for Final Approval of the Settlement.

13 The terms used in this Order of Final Approval and Judgment shall have the same meaning as
14 defined in the Joint Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or
15 "Agreement") except as may otherwise be ordered.

16 The following Class is certified for purposes of settlement only: all hourly-paid or non-exempt
17 employees employed by Defendants within the State of California during the time period from July 17,
18 2016, through March 31, 2021.

19 Generally, "questions whether a settlement was fair and reasonable, whether notice to the class
20 was adequate, whether certification of the class was proper, and whether the attorney fee award was
21 proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*
22 (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.)

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28 ¹ The Settlement Administrator mailed out Notice Packets to one hundred seventy-four (174) Class Members and received
three (3) valid and timely requests for exclusion. So, there are one hundred seventy-one (171) Participating Class

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

8 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, *citing Dunk*, *supra*, 48
9 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d
10 615, 624.)

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

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

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

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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 Defendants will pay \$1,000,000, which includes: (1) Administration Costs of the amount
12 \$9,500; (2) Private Attorney General Act ("PAGA") Payment of the amount of \$50,000 (seventy-five
13 percent (75%) of which (\$37,500) shall be paid to the California Labor and Workforce Development
14 Agency ("LWDA") and twenty-five percent (25%) of which (\$12,500) shall be distributed to Eligible
15 Aggrieved Employees, on a pro rata basis; (3) a Class Representative Enhancement Payment of
16 \$10,000 to Plaintiff; (4) Attorney Fee Award of \$350,000 (thirty-five percent (35%) of the Gross
17 Settlement Amount) and Cost Award of \$11,229.74 and (5) Individual Settlement Shares payable to
18 all Class Members who did not submit a valid and timely request to exclude themselves from the
19 Settlement ("Participating Class Members") under the terms of this Settlement Agreement. Class
20 Members are not required to submit a claim form to receive their Individual Settlement Shares
21 pursuant to the Agreement. Similarly, Eligible Aggrieved Employees are not required to submit a
22 claim form to receive their Individual PAGA Payment. There is no reversion. Funding of the
23 Settlement will be made as follows:

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1 No later than twenty-one (21) calendar days after the date the Final Approval of the Settlement
2 can no longer be appealed or, if there are no objectors and no Plaintiff in intervention at the time the
3 Court grants Final Approval of the Settlement, the date the court enters judgment granting Final
4 Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of \$1,000,000
5 needed to pay the entire GSA by wiring the funds to the Settlement Administrator. Within fourteen
6 (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall
7 calculate and disburse all payments due under the Settlement Agreement, including all Individual
8 Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class
9 Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement
10 Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment to the
11 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 her moving papers, Plaintiff contends that the proposed Settlement was the
14 product of arms-length negotiations following extensive litigation and following extensive discovery
15 and exchange of documentation relating to the claims made by Plaintiff. Moreover, the negotiations
16 were facilitated with the assistance of a skilled and experienced mediator, Kelly A. Knight, Esq., an
17 experienced and well-respected class action mediator.

18 With respect to the benefit to the Class Members, Plaintiff's moving papers indicate that the
19 average Individual Settlement Share will be approximately \$3,400.90 under the proposed allocation,
20 which is based on the number of weeks individual Class Members worked.

21 Participating Class Members and Eligible Aggrieved Employees must cash or deposit their
22 Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180)
23 calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within
24 ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. If
25 any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the
26 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the
27 checks are mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment
28 (as applicable) to the California State Controller's Unclaimed Property Division in accordance with

1 California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved
2 Employee will have his or her Individual Settlement Share and/or Individual PAGA Payment available
3 to him or her per the applicable claim procedure to request that money from the State of California.

4 The Plaintiff has explained the risks and costs associated with continuing with the litigation
5 and the benefits conferred upon Class Members in the form of immediate compensation. Plaintiff has
6 satisfactorily assessed the maximum value of the claims and of the reasonableness of the discount
7 accepted in the settlement considering these risks. Finally, the Declaration of the Settlement
8 Administrator, Carole Thompson, states that Notices of Class Action Settlement (“Class Notices”) and
9 the Election Not To Participate or Opt-out Form (“Exclusion Form”) (collectively, known as the
10 “Notice Packet”) were sent to one hundred seventy-four (174) Class Members, and there were no
11 objections to the Settlement and only three (3) timely and valid requests for exclusion from Class
12 Members, Edward Chaffin, Diana Daoheuang, and Kayla Isham. This is further proof of the fairness
13 of the Settlement. The Declaration of Class Counsel provides sufficient information about counsel’s
14 experience in litigating class action lawsuits.

15 The Court also has an independent right and responsibility to review the requested attorneys’
16 fees and only award so much as it determines reasonable. (*See Garabedian v. Los Angeles Cellular*
17 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The amount of attorney’s fees requested by
18 Class Counsel in the sum of \$350,000 is thirty-five percent (35%) of the common fund created for the
19 benefit of the Class Members and are supported by use of the percentage-fee method. (*See Laffitte v.*
20 *Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 504.) According to the Declaration of Douglas
21 Han, Class Counsel collectively expended 546.1 hours with a total lodestar figure of \$359,450. Even
22 under the lodestar cross-check the requested fee is below the lodestar. Considering the contingent
23 nature of the representation and the ongoing monitoring of the settlement administration, the requested
24 hourly rates and the fee is justified. The Court finds that the fee request is reasonable, and it is
25 therefore approved.

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1 The Court has also reviewed Class Counsel's declarations regarding the costs expended in the
2 prosecution of this litigation. Under the terms of the settlement, Plaintiff may seek reimbursement of
3 up to \$20,000 in litigation costs. The Court finds that Plaintiff has expended \$11,229.74 in litigation
4 costs, and that such costs were reasonable. Therefore, the Court approves the payment of \$11,229.74
5 in costs from the settlement fund for the reimbursement of Class Counsel's litigation costs.

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

15 The Court has reviewed the Declaration of Plaintiff, which outlines her involvement in the
16 lawsuit. Given the risks inherent in service as the Class Representatives, the duration of the case and
17 time involved, and the benefits created for the class, the Court approves a Class Representative
18 Enhancement Payment in the amount of \$10,000 for Plaintiff.

19 The Court has reviewed the Declaration of Carole Thompson, the Settlement Administrator
20 from CPT Group, Inc. ("CPT Group"), the Court-approved Settlement Administrator. The Court finds
21 that notice was provided to the Class pursuant to the preliminary approval order, and that notice was
22 sufficient and that it satisfies due process. CPT Group has discharged its duties to provide notice to the
23 Class and approves a payment of \$9,500 for its services in administering this settlement, including the
24 mailing of settlement awards according to the terms of the Settlement Agreement.

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1 As of the Effective Final Settlement Date, in exchange for the consideration set forth in the
2 Agreement, Plaintiff and the Participating Class Members release the Released Parties from the
3 Released Claims for the Class Period. The released claims means all causes of action and factual or
4 legal theories that were alleged in the Complaint or reasonably could have been alleged based on the
5 facts and legal theories contained in the operative Complaint, including all of the following causes of
6 action: (a) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime); (b)
7 Violation of California Labor Code sections 226.7 and 512(a) (Unpaid Meal Period Premiums); (c)
8 Violation of California Labor Code section 226.7 (Unpaid Rest Period Premiums); (d) Violation of
9 California Labor Code sections 1194 and 1197 (Unpaid Minimum Wages); (e) Violation of California
10 Labor Code sections 201 and 202 (Final Wages Not Timely Paid); (f) Violation of California Labor
11 Code section 226(a) (Non-Compliant Wage Statements); (g) Violation of California Labor Code
12 sections 2800 and 2802 (Unreimbursed Business Expenses); (h) Violations of California Business &
13 Professions Code sections 17200, *et seq.* and (i) civil penalties under PAGA (Labor Code § 2698, *et*
14 *seq.*) (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the
15 Covered Period. The Released Parties include Defendants and their past or present officers, directors,
16 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
17 insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries,
18 affiliates, parents, attorneys, and any entities that may be considered joint employers (“Released
19 Parties”).

20 Moreover, as of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
21 Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators,
22 representatives, attorneys, successors and assigns voluntarily and knowingly are barred from bringing
23 for the PAGA Released Claims during the PAGA Period. The release of the PAGA Released Claims
24 is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request
25 for exclusion. PAGA Released Claims means all allegations and claims for civil penalties pursuant to
26 PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in the
27 PAGA Notice that arose during the PAGA Period, which includes alleged violations of California
28 Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194,

1 1197, 1197.1, and 1198 ("PAGA Released Claims").

2 Finally, as of the Effective Final Settlement Date, and in exchange for the Class Representative
3 Enhancement Payment to the Plaintiff in an amount not to exceed \$10,000, in recognition of her work
4 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in
5 the event this matter had not successfully resolved, Plaintiff provides a general release of claims for
6 herself and her spouse, heirs, successors and assigns.

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

9 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
10 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment is GRANTED.
11 The Settlement Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

12 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
13 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
14 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
15 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
16 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
17 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

18 IT IS SO ORDERED.

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21 DATED: 08/16/2021



HONORABLE MELVIN SANDVIG
SUPERIOR COURT JUDGE

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On August 19, 2021, I served the foregoing document described as