

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
Clerk of the Superior Court

MAY 26 2023

By: B. Orihuela, Deputy

ELECTRONICALLY RECEIVED

Superior Court of California,
County of San Diego

04/21/2023 at 04:51:08 PM

Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JOSEPH SAPP, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

SOUND UNITED, LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2020-00042943-CU-OE-CTL

Assigned for All Purposes to:
Honorable Kenneth J. Medel
Department C-66

CLASS ACTION

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

Hearing Date: May 26, 2023
Hearing Time: 9:30 a.m.
Hearing Place: Department C-66

Complaint Filed: November 23, 2020
FAC Filed: June 15, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Joseph Sapp's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Stipulation of Class Action Settlement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS:**

5 Plaintiff and Defendant DEI Sales, Inc. d/b/a Sound United ("Defendant") entered the
6 Settlement Agreement on or about August 19, 2022 to settle this lawsuit.

7 The Court entered an order dated January 13, 2023 preliminarily approving the settlement
8 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
9 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
10 providing Class Members with an opportunity to object to the Settlement or exclude themselves
11 from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on May 26, 2023 to determine whether to give
13 final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all individuals who are or who have been
25 employed by Defendant in California during the period from November 23, 2016 through August
26 25, 2022 as non-exempt employees (or if any such person is incompetent, deceased, or
27 unavailable due to military service, the person's legal representative or successor in interest
28

1 evidenced by reasonable verification) (“Class,” “Class Members,” and “Class Period”).¹ “Class
2 Members” shall not include any person who submits a timely and valid request for exclusion.
3 There are two hundred ten (210) Class Members.

4 4. Adequacy of Representation. Class Counsel fully and adequately represented the
5 Class for the purposes of entering and implementing the Settlement and satisfied the
6 requirements of Code of Civil Procedure section 382.

7 5. Class Notice. The Court finds the Notice of Class Action Settlement (“Class
8 Notice”) and its distribution to Class Members were implemented pursuant to the Settlement and
9 this Court’s Preliminary Approval Order. The Court also finds the Class Notice:

10 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and
12 their rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to
13 exclude themselves from the Settlement Agreement; (v) their right to receive Individual
14 Settlement Payments; (vi) their right to appear at the Final Approval Hearing; and (vii) binding
15 effect of the orders and judgment in this lawsuit on all Class Members;

16 b. constitutes notice that fully satisfied the requirements of Code of Civil
17 Procedure section 382, California Rule of Court 3.769, and due process;

18 c. constitutes the best practicable notice to Class Members under the
19 circumstances of this lawsuit; and

20 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

21 6. Final Settlement Approval. The terms and provisions of the Settlement
22 Agreement have been entered in good faith and are the product of arm’s-length negotiations by
23 experienced counsel who have done a meaningful investigation of the claims. The Settlement
24 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
25 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
26 Settlement Agreement according to its terms and provisions.

27
28 ¹ The Escalator Clause set forth in paragraph 14 of the Settlement Agreement was
triggered. Thus, pursuant to the terms set forth in the Settlement Agreement, Defendant

1 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiff, Class Members, Private Attorneys General Act of
3 2004 (“PAGA”) Members, and their spouses, heirs, registered domestic partners, executors,
4 administrators, successors, and assigns. Those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Claims.
8 The Settlement Agreement will have no binding effect upon, and provide no res judicata
9 preclusion to, those Class Members who have submitted timely requests for exclusion.

10 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
11 any action to enforce the terms and provisions of the Settlement Agreement.

12 9. Release by All Class Members. Plaintiff and all Class Members who do not
13 submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or her heirs,
14 descendants, dependents, executors, administrators, assigns, and successors, fully and finally
15 release and discharge the Released Parties from any and all of the Released Claims for the
16 entirety of the Class Period.

17 a. Release by All PAGA Members. Upon Defendant fully funding the Settlement,
18 Plaintiff and the PAGA Members will release any and all PAGA Released Claims
19 against Released Parties that arose during the PAGA Period.

20 b. General Release by Plaintiff. In exchange for the consideration set forth in the
21 Agreement, Plaintiff, for himself, his heirs, successors, and assigns provide a
22 general release for the Released Parties. This general release includes expressly
23 waiving and relinquishing any and all claims, rights, or benefits that he may have
24 under Civil Code section 1542.

25 ///

26 ///

27 ///

28 elected to end the Class Period on the date the number of workweeks reaches 16,500.

1 c. Released Parties. The Released Parties include Defendant, and their past, present
2 and/or future, direct and/or indirect, owners, officers, directors, members,
3 managers, employees, agents, representatives, attorneys, insurers, partners,
4 investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
5 divisions, predecessors, successors, assigns, legal representatives, and joint
6 venturers, if any.

7 10. Class Representative Enhancement Payment. The Court finds the Class
8 Representative Enhancement Payment of \$7,500, to be paid by Defendant to Plaintiff out of the
9 Maximum Settlement Amount, to be reasonable and appropriate. The Class Representative
10 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
11 Settlement Agreement.

12 a. The rationale for making enhancement payments is class representatives should
13 be compensated for the expense and risk they incurred in conferring a benefit on
14 the Class. Criteria courts consider include: (1) risk to the class representatives in
15 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
16 effort spent by the class representatives; (4) duration of the litigation; and (5)
17 personal benefit (or lack thereof) enjoyed by class representatives.

18 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
19 risks inherent in the services as the class representative, duration of the case and
20 time involved, and benefits created for the Class, the Court approves the payment
21 of the Class Representative Enhancement Payment of \$7,500 to Plaintiff.

22 11. Attorneys' Fees and Costs. The Court finds the attorneys' fees of \$175,000, to be
23 paid out of the Maximum Settlement Amount by Defendant to Class Counsel, to be reasonable
24 and appropriate. In addition, the Court finds the attorneys' costs as reimbursement for actual
25 litigation costs incurred of \$15,000, to be paid by Defendant to Class Counsel out of the
26 Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
27 paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall
28 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements

1 incurred by Class Counsel or any other counsel representing Plaintiff or Class Members.
2 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
3 disbursements incurred by Plaintiff or Class Members in connection with or related in any
4 manner to this lawsuit, Settlement Agreement, settlement administration, and Released Claims.

5 a. The Court has an independent right and responsibility to review the attorneys'
6 fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
7 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The
8 attorneys' fees of \$175,000 is thirty-five percent (35%) of the common fund
9 created for the benefit of the Class and is supported by use of the percentage-fee
10 method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,
11 504.) Considering the exceptional results achieved, financial risk undertaken,
12 novel and difficult nature of this litigation, skills required, percentage fees award
13 in previous and other cases, and contingent fees charged in the marketplace, the
14 Court finds the attorneys' fees is consistent with the marketplace, is reasonable,
15 and is approved.

16 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
17 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
18 seek reimbursement of up to \$15,000 in litigation costs. The Court finds Class
19 Counsel expended \$15,370.70 in litigation costs, and such costs were reasonable.
20 Since this sum exceeds the maximum amount permitted to be reimbursed, the
21 Court approves the payment of the attorneys' costs of \$15,000 from the common
22 fund for the reimbursement of Class Counsel's litigation costs.

23 12. Settlement Administration Costs. The Court finds Settlement Administration
24 Costs of \$8,870, to be paid by Defendant to the Settlement Administrator out of the Maximum
25 Settlement Amount, to be reasonable and appropriate. The Settlement Administration Costs are
26 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

27 ///

28 ///

1 a. The Court reviewed the declaration of Cassandra Polites from ILYM Group, Inc.,
2 the Settlement Administrator. The Court finds notice was provided to the Class
3 pursuant to the Preliminary Approval Order, constitutes the best practicable notice
4 to the Class, and satisfied due process. Thus, the Court approves the payment of
5 the Settlement Administration Costs of \$8,870 for the Settlement Administrator's
6 services in administering the Settlement.

7 13. PAGA Payment. The Court finds the PAGA Payment of \$30,000, seventy-five
8 percent (75%) of which (\$22,500) will be paid to the California Labor and Workforce
9 Development Agency ("LWDA") out of the Maximum Settlement Amount and twenty-five
10 percent (25%) of which (\$7,500) will be included in the Net Settlement Amount and distributed
11 to PAGA Members, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is
12 to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

13 14. Funding the Settlement. No later than thirty (30) business days after the Effective
14 Date, Defendant will deposit \$500,000 into a Qualified Settlement Fund administered by the
15 Settlement Administrator. Within thirty (30) calendar days of the Effective Date and after
16 Defendant has fully funded the Qualified Settlement Fund with the Maximum Settlement
17 Amount, the Settlement Administrator will issue payments to: (a) all Class Members who have
18 not submitted a valid and timely Request for Exclusion, including any Class Member whose
19 notice was returned as undeliverable; (b) all PAGA Members, (c) Plaintiff; (d) Class Counsel;
20 and (e) LWDA. The Settlement Administrator will also issue a payment to itself for Court-
21 approved services performed in connection with the Settlement.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
23 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contend the
24 Settlement was the product of arm's-length negotiations following extensive litigation,
25 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
26 Deborah Crandell Saxe, Esq., an experienced and well-respected mediator.

27 a. The fairness of the Settlement is demonstrated by there being no objections to and
28 no requests for exclusion from the Settlement.

1 b. The fairness of the Settlement is further illustrated by the gross *average*
2 Individual Settlement Payment being approximately \$1,291.10, and the gross
3 *highest* Individual Settlement Payment being about \$4,986.52.

4 16. Uncashed Checks. Checks will remain negotiable for one hundred eighty (180)
5 calendar days. Any check not cashed within one hundred eighty (180) calendar days will be void.
6 Uncashed settlement checks shall be distributed to a mutually agreeable *cy pres* recipient
7 California Court-Appointed Special Advocates for Children.

8 17. Modification of Agreement. The Class Members are hereby authorized, upon
9 approval of the Court, to agree to and adopt amendments to or modifications of the Agreement
10 by a written instrument signed by counsel for all Parties or their successors-in-interest. Such
11 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
12 the rights of Class Members under the Agreement.

13 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
14 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
15 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
16 and for any other necessary purpose, including, without limitation:

- 17 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
18 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
19 arise out of the Settlement or this Order and Judgment;
- 20 b. entering such additional orders as may be necessary or appropriate to protect or
21 effectuate this Order and Judgment approving the Settlement, and permanently
22 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
23 fair and orderly administration of the Settlement; and
- 24 c. entering any other necessary or appropriate orders to protect and effectuate this
25 Court's retention of continuing jurisdiction.

26 ///

27 ///

28 ///

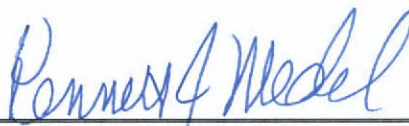
1 The Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs,
2 and Class Representative Enhancement Payment is GRANTED. The Settlement Administrator is
3 directed to carry out the terms of the Settlement Agreement forthwith.

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

11 IT IS SO ORDERED.

12
13 DATED: _____

5.26.23

14 

HONORABLE KENNETH J. MEDEL
SUPERIOR COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On June 9, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Sapp v. Sound United, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-804916-20**
Court Case No.: 37-2020-00042943-CU-OE-CTL
San Diego 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 June 9, 2023, at Pasadena, California.



Mariah Anderson