

Filed - 04/05/2023

Electronically filed by Superior Court of California
County of Placer on 04/05/2023
Jake Chatters, Clerk of the Court
By J. Bunday Deputy Clerk

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

AMY MIGDAL, individually and on behalf of
all similarly situated individuals,

Plaintiff,

vs.

PURPLE COMMUNICATIONS, INC., ZP
BETTER TOGETHER, LLC, and DOES 1 to
100,

Defendants.

CASE NO. S-CV-0046377

~~PROPOSED~~ ORDER AND JUDGMENT

Date.: March 14, 2023

Time: 8:30 a.m.

Dept: 31

Complaint Filed: March 15, 2021

Trial Date: None Set

1 Plaintiff Amy Migdal (“Plaintiff”) and Defendants Purple Communications, Inc., and ZP
2 Better Together, LLC. (together “Defendants”) (together with Plaintiff, the “Parties”) have entered
3 into a Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”) to settle
4 the above-captioned class action subject to the Court’s approval (the “Settlement”). On February
5 17, 2023, Plaintiff filed a Motion for Final Approval of Class Action Settlement, including a
6 request for approval of the Enhancement Payments to Plaintiff and Class Counsel’s application for
7 a fee and expense award.

8 The matter came on regularly for hearing on March 14, 2023, at 8:30 am in Department 31,
9 the Honorable Trisha Hirashima presiding. The appearances are as stated in the record. Having
10 reviewed and considered the written submissions of all parties and being fully advised, the Court
11 rules as follows:

12 **I. SUMMARY OF THE MONETARY TERMS OF THE SETTLEMENT**
13 **AGREEMENT**

14 The Settlement Agreement is attached as Exhibit A. Unless otherwise stated, all capitalized
15 terms in this Order and Judgment have the same meaning as in the Agreement.

16 **A. Class Definition**

17 The Class consists of “all individuals who worked for Defendants as non-exempt
18 employees in California since September 7, 2018 who (i) did not sign a Release, (ii) earned sick
19 pay on or after September 7, 2018 and (iii) whose employment with Defendants ended before
20 April 8, 2022” (the “Class” or “Class Members”). *See* Settlement Agreement. ¶5. Based upon
21 Defendant’s records, there are 73 individuals that make up the Class. *See* Declaration of Kevin
22 Lee for Phoenix Settlement Administrators (“Lee Decl. ¶ 3.) Class Members may opt-out of the
23 settlement. *See* Settlement Agreement ¶32.

24 **B. Gross Settlement Amount**

25 The Settlement Agreement provides for the Gross Settlement Amount of One Hundred
26 Twenty-Seven Thousand Five Hundred Dollars (\$127,500.00). *See* Settlement Agreement ¶8.

27 **C. PAGA Penalties**

28 The Settlement Agreement allocates Ten Thousand Dollars (\$10,000) of the Gross
Settlement Amount for the payment of PAGA penalties (“PAGA Penalties”). *See* Settlement

1 Agreement ¶26. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, *i.e.*
2 Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the California Labor and
3 Workforce Development Agency (“LWDA”). *Id.* The remaining twenty-five percent (25%) of the
4 PAGA Payment, *i.e.* Two Thousand Five Hundred Dollars (\$2,500.00) shall be distributed to
5 Participating Class Members. *See id.*

6 **D. Net Settlement Amount**

7 The Net Settlement Amount (calculated after deduction of the approved Class Counsel
8 Award, Enhancement Payment to Plaintiff, LWDA portion of the PAGA Payment and Settlement
9 Administration Costs) will be paid to all Participating Class Members. Settlement Agreement at
10 ¶23. The total amount of the settlement will be split equally among all class members. *See Id.*

11 **E. Class Representative Enhancement Payments**

12 The Settlement Agreement permits the Class Representatives to each seek an Enhancement
13 Payment in the amount of Ten Thousand Dollars (\$10,000.00). *See* Settlement Agreement ¶ 25.

14 **F. Class Counsel Awards**

15 The Settlement Agreement contemplates that Class Counsel may seek an award of attorney
16 fees in the amount of Forty-Two Thousand, Five Hundred Dollars (\$42,500.00), which constitutes
17 33 1/3% of the Gross Settlement Amount. *See* Settlement Agreement ¶24. Additionally, the
18 Settlement provides that Class Counsel may seek reimbursement for actual litigation costs up to
19 the amount of Twenty-Four Thousand Dollars (\$20,000.00). *Id.*

20 **G. Settlement Administration Costs**

21 The Settlement Agreement provides for the payment of the fees and expenses reasonably
22 incurred by the Settlement Administrator, in an amount up to Six Thousand Dollars (\$6,000.00).
23 Settlement Agreement at ¶27. Any portion of the Settlement Administration Costs not used or
24 approved by the Court shall be added to the Net Settlement Amount. *Id.*

25 **II. NOTICE TO CLASS MEMBERS**

26 The Preliminary Approval Order approved of the distribution of the Notice of Proposed
27 Class Action Settlement (“Notice Packet”) to Class Members. In compliance with the Preliminary
28 Approval Order, on December 6, 2022, the Notice Packet was sent to 73 Class Members via first
class mail. *See* Lee Decl. ¶5.

Between the dates of December 6, 2022 and February 15, 2023, the Settlement Administrator received three (3) Notice Packets as undeliverable. None had a forwarding address. Three (3) Notice Packets that were skip traced. Two (2) updated addresses were obtained and the Notice Packet was promptly re-mailed. As of February 15, 2023, two (2) Notice Packets are considered undeliverable, since one updated address could not be obtained by skip tracing and another was returned undeliverable even after using a skip trace. Lee Decl. ¶ 7.

III. THE SETTLEMENT IS PRESUMPTIVELY FAIR AND REASONABLE

The presumption of fairness articulated in *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235 (2001), applies here. As part of the Motion for Preliminary Approval, the Court reviewed the litigation history of the case as described in the Settlement Agreement, and determined at that time that the settlement was indeed arrived at via arms-length negotiation. Nothing has been presented to the Court to contradict that finding, and the Court therefore finds that the settlement was arrived at through arm's-length negotiation.

Thus, the Court finds that the Settlement was entered into in good faith pursuant to California Code of Civil Procedure section 877.6. The Settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any individuals. The Court further finds that the Settlement is fair, reasonable, and adequate and that Plaintiffs have satisfied the standards for final approval of a class action settlement under California law.

Under the provisions of California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure 23, as approved for use by the California state court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to certify a class where:

[Q]uestions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the available methods for the fair and efficient adjudication of the controversy ... Fed. R. Civ. Proc. 23.

Certification of a settlement class is the appropriate judicial device under these circumstances.

IV. ORDER AND JUDGMENT

Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS

1 FOLLOWS:

2 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
3 Settlement Agreement filed in this case.

4 2. The Court has jurisdiction over the subject matter of the litigation, the Class
5 Representatives, the other members of the Participating Class, and Defendants.

6 3. The Court finds that the dissemination of the Notice Packet, as disseminated by the
7 appointed Settlement Administrator Phoenix Class Action Administration Solutions to the Class
8 Members, constituted the best notice practicable under the circumstances to all persons within the
9 definition of the Class, and fully met the requirements of California law and due process under the
10 United States Constitution.

11 4. The Court approves the settlement of the above-captioned action, as set forth in the
12 Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties are
13 directed to perform in accordance with the terms set forth in the Settlement Agreement.

14 5. Except as otherwise provided in the Settlement Agreement, the Parties are to bear
15 their own costs and attorneys' fees.

16 6. The Court hereby certifies the following Class for settlement purposes only: all
17 individuals who worked for Defendants as non-exempt employees in California since September
18 7, 2018 who (i) did not sign a Release, (ii) earned sick pay on or after September 7, 2018 and (iii)
19 whose employment with Defendants ended before April 8, 2022. There are no exclusions from the
20 Class, as no Requests for Exclusion were received.

21 7. With respect to the Class and for purposes of approving the settlement only and for
22 no other purpose, this Court finds and concludes that: (a) the members of the Class are
23 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
24 of law or fact common to the Class, and there is a well-defined community of interest among
25 members of the Class with respect to the subject matter of the non-exempt claims in the Action;
26 (c) the claims of Class Representatives are typical of the claims of the members of the Class; (d)
27 the Class Representatives have fairly and adequately protected the interests of the members of the
28 Class; (e) a class action is superior to other available methods for an efficient adjudication of this

1 controversy; and (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel, are
2 qualified to serve as counsel for the Plaintiffs in their individual and representative capacity and
3 for the Class.

4 8. Pursuant to the terms of the Settlement Agreement, the Settlement Administrator
5 shall make the following payments from the Gross Settlement Amount:

6 (a) to Class Counsel attorneys' fees in the amount of Forty-Two Thousand Five
7 Hundred (\$42,500.00) and reimbursement of litigation costs in the amount of Two Thousand One
8 Hundred Four Dollars and Fifteen Cents (\$2,104.15);

9 (b) an Enhancement Payment to Class Representative Amy Migdal in the amount of
10 Ten Thousand Dollars (\$10,000)

11 (c) the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) to the California
12 Labor and Workforce Development Agency for its seventy-five percent (75%) share of PAGA
13 Penalties; and

14 (d) the sum of Six Thousand Dollars (\$6,000.00) to the Settlement Administrator,
15 Phoenix Class Action Administration Solutions, for its fees and costs relating to the settlement
16 administration process.

17 9. The Court finds that the amounts set forth in 8(a)-(d) are fair and reasonable.

18 10. The Court approves the Individual Settlement Payment amounts, which shall be
19 distributed by the Settlement Administrator pursuant to the terms of the Settlement Agreement.
20 All Individual Settlement Payments to Participating Class Members that remain uncashed after
21 180 days of the mailing of the Settlement Payment checks shall be paid to the California
22 Unclaimed Wages Fund.

23 11. Pursuant to the Settlement Agreement, upon the Effective Date, Plaintiff and all
24 Participating Class Members shall be bound by the following release:

25 Plaintiff and all Class Members, including their agents, affiliates, spouses, domestic
26 partners, representatives, guardians ad litem, heirs, executors, administrators, successors,
27 attorneys, and assigns, past, present and future, shall, for the Released Claims Period, fully
28 and finally waive, release, and forever discharge the Released Parties from any and all
claims (and for all resulting damages, restitution, penalties, interest, costs, attorneys' fees,
or other relief or liability) (i) asserted in the Action, including in the Complaint filed on
March 15, 2021 and based on the facts alleged therein, or (ii) which could have been
asserted based on the factual allegations in the Action, including those concerning sick pay

1 and the payment of final wages upon termination, premised on Labor Code §§ 201, 202,
2 203, 246, or 248.5 ("Released Claims"). The Released Claims include, but are not limited
3 to, any claims, rights, demands, liabilities, and causes of action of any kind or nature in law
4 or in equity, under any theory, whether contract, common law, constitutional, statutory or
5 otherwise, of any jurisdiction, foreign or domestic, whether known or unknown,
6 anticipated or unanticipated, including for damages, restitution, penalties, interest, costs,
7 attorneys' fees, expenses, equitable relief, injunctive relief, and any other relief.

8
9 12. The Court hereby enters final judgment in this case in accordance with the terms of
10 the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the
11 Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over
12 the action and the Parties, including all Settlement Class Members, for purposes of enforcing and
13 interpreting this Order and the Settlement. The Court shall retain jurisdiction to enforce this
14 settlement pursuant to Code of Civil Procedure section 664.6

15
16 IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 04/05/2023



/s/ Hon. Trisha Hirashima

Honorable Trisha Hirashima
Judge of the Superior Court