

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 ANDREW KING, on behalf of himself, and
15 on behalf of all persons similarly situated,

16 Plaintiff,

17 vs.

18 DAY MANAGEMENT CORPORATION
19 (DBA) DAY WIRELESS SYSTEMS, a
20 Corporation, and DOES 1 through 50,
21 inclusive,

22 Defendants.

CASE NO.: 22STCV01620

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

Hearing Date: May 17, 2024 _____
Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson
Dept: SS-17

Date Filed: January 14, 2022
Trial Date: Not set

23
24
25
26
27
28

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Andrew King (“Plaintiff”) for an order finally
2 approving the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant Day
3 Management Corporation (dba) Day Wireless Systems (“Defendant”), attorneys’ fees and costs,
4 service payment, and the expenses of the Administrator duly came on for hearing on May 17,
5 2024 before the Honorable Maren E. Nelson.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Los Angeles, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Five Hundred Fifty Thousand
16 Dollars (\$550,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On December 8, 2023, the Court granted preliminary approval of the Settlement.
24 At this same time, the Court approved conditional certification of the Class for settlement
25 purposes only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about January 8, 2024. Mailing of the Class Notice to their last-known addresses was the best
5 notice practicable under the circumstances and was reasonably calculated to communicate actual
6 notice of the litigation and the proposed settlement to the Class. The Class Notice given to the
7 Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was March 8, 2024, which for re-mailings was extended by fourteen (14) days. There
15 was an adequate interval between notice and the deadline to permit Class Members to choose what
16 to do and to act on their decision. A full and fair opportunity has been afforded to the Class
17 Members to participate in this hearing, and all Class Members and other persons wishing to be
18 heard have had a full and fair opportunity to be heard. Class Members also have had a full and
19 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before Jeffrey Krivis, an experienced mediator of wage and
27 hour class actions. There has been no collusion between the Parties in reaching the Settlement.

1 b. Plaintiff and Class Counsel's investigation and discovery have been
2 sufficient to allow the Court and counsel to act intelligently.

3 c. Counsel for all Parties are experienced in similar employment class action
4 litigation. Class Counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. No requests for exclusion were received.

7 e. The participation rate was high. 77 Participating Class Members will be
8 mailed a settlement payment, representing 100% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

17 11. An award of \$181,500 for attorneys' fees, representing one-third of the Gross
18 Settlement Amount, and \$17,450.92 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
21 and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
25 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in this litigation and for his time and effort in
27 bringing and prosecuting this matter on behalf of the Class.

1 **Administration Expenses Payment**

2 13. The Administrator shall calculate and administer the payment to be made to the
3 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
4 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
5 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
6 Administrator has documented \$4,200 in fees and expenses, and this amount is reasonable in light
7 of the work performed by the Administrator.

8 **PAGA Penalties**

9 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
10 Amount of \$5,000, which shall be allocated \$3,750 to the Labor & Workforce Development
11 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
12 Agreement pursuant to the PAGA and \$1,250 to be distributed to the Aggrieved Employees and
13 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
14 (\$1,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
15 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
16 Period Pay Periods. "Aggrieved Employees" are all individuals who are or previously were
17 employed by one or more Defendant in California who were classified as non-exempt employees
18 and who worked during the PAGA Period (February 24, 2021 through June 1, 2023). Pursuant to
19 Labor Code section 2699, subdivision (1)(2), the LWDA was provided notice of the Agreement
20 and these settlement terms and has not indicated any objection thereto. The Court finds the PAGA
21 Penalties to be reasonable.

22 **II.**

23 **ORDERS**

24 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

25 1. The Class is certified for the purposes of settlement only. The Class is defined as
26 follows:

27 All individuals who were employed by Defendant in California and classified as a
28 non-exempt employee at any time during the Class Period (January 14, 2018
through June 1, 2023).

FINAL APPROVAL ORDER AND JUDGMENT

1
2 2. All persons who meet the foregoing definition are members of the Class, except for
3 those individuals who filed a valid request for exclusion (“opt out”) from the Class. There were
4 no individuals who requested exclusion.

5 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
6 best interest of the Class.

7 4. Class Counsel are awarded attorneys’ fees in the amount of \$181,500 and costs in
8 the amount of \$17,450.92. Class Counsel shall not seek or obtain any other compensation or
9 reimbursement from Defendant, Plaintiff or members of the Class.

10 5. The payment of Class Representative Service Payment in the amount of \$10,000 to
11 the Plaintiff is approved.

12 6. The payment of \$4,200 to the Administrator for its fees and expenses is approved.

13 7. The PAGA Penalties of \$5,000 is approved and is to be distributed in accordance
14 with the Agreement.

15 8. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
16 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
17 entry.

18 9. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
19 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
20 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
21 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
22 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement
23 is, may be construed as, or may be used as an admission by or against Defendant of any fault,
24 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
25 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
26 evidence of, an admission or concession with regard to the denials or defenses by Defendant.

27 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding
28 this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in

1 the Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
2 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
3 Claims and/or Released PAGA Claims.

4 10. Notice of entry of this Final Approval Order and Judgment shall be given to all
5 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
6 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
7 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
8 to individual Class Members.

9 11. If the Agreement does not become final and effective in accordance with the terms
10 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
11 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
12 revert to their respective positions as of before entering into the Agreement, and expressly reserve
13 their respective rights regarding the prosecution and defense of this Action, including all available
14 defenses and affirmative defenses, and arguments that any claim in the Action could not be
15 certified as a class action and/or managed as a representative action.

16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
18 Plaintiff, and all members of the Class, shall take nothing in the Action.

19 2. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
20 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
21 supervise and adjudicate any dispute arising from or in connection with the distribution of
22 settlement benefits.

23 3. All Parties shall bear their own attorneys' fees and costs, except as otherwise
24 provided in the Agreement and in this Final Approval Order and Judgment.

25 4. Effective on the date when Defendant fully funds the entire Gross Settlement
26 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
27
28

1 Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will
2 release claims against all Released Parties as follows:

3 (a) All Participating Class Members, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
5 and assigns, release Released Parties from the Released Class Claims. The “Released Class
6 Claims” are all class claims that were alleged, or reasonably could have been alleged, based
7 factual allegations in the Operative Complaint which occurred during the Class Period which does
8 not include the alleged eighth cause of action for wrongful termination. Except as expressly set
9 forth in this Agreement, Participating Class Members do not release any other claims, including
10 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing
11 Act, unemployment insurance, disability, social security, workers’ compensation, and/or Class
12 claims based on facts occurring outside the Class Period.

13 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf
14 of themselves and their respective former and present representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
16 The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably
17 could have been alleged, based on the factual allegations in the Operative Complaint and the
18 PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not
19 include other PAGA claims, underlying wage and hour claims, claims for vest benefits, wrongful
20 termination, violation of the Fair Employment and Housing Act, discrimination, unemployment
21 insurance, disability, social security and worker’s compensation, and/or PAGA claims outside of
22 the PAGA Period.

23 (c) Plaintiff and his or her respective former and present spouses,
24 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
25 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
26 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
27 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
28

1 that were, or reasonably could have been, alleged based on facts contained in the Operative
2 Complaint, Plaintiff's PAGA Notice ("Plaintiff's Release") as fully set forth in the Agreement.

3 5. For any Class Member or Aggrieved Employee whose Individual Class Payment
4 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
5 Administrator shall transmit the funds represented by such checks to the California Controller's
6 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
7 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

8 6. The Court hereby enters judgment in the entire Action as of the filing date of this
9 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
10 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
11 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
12 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

13 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

14
15 Dated: _____

16
17 _____
HON. MAREN E. NELSON
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA