

FILED
MERCED COUNTY

2022 APR 29 AM 10:45

CLERK OF THE SUPERIOR COURT
BY Nancy J. Mena DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED

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

Plaintiff,

v.

BROKEN ARROW COMMUNICATIONS,
INC., a New Mexico corporation; and DOES
1 through 100, inclusive;

Defendants.

Case No.: 21CV-03517

Honorable Brian McCabe
Department 8

CLASS ACTION

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

Hearing Date: April 29, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Department 8

Complaint Filed: October 20, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Shonie Shoemaker's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class
3 Representative Enhancement Payment, and after considering the papers submitted in support of the
4 motion, including the Joint Stipulation of Class Action Settlement and Release ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 Plaintiff and Defendant Broken Arrow Communications, Inc. ("Defendant") entered a
7 Settlement Agreement on or about November 5, 2021 to settle this class action lawsuit.

8 The Court entered an Order dated December 16, 2021 preliminarily approving the settlement
9 of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, scheduling a Fairness Hearing for April 29, 2021, and providing Class Members with an
12 opportunity to object to the Settlement, exclude themselves from the Class, or submit a Claim Form.

13 The Court held a Fairness Hearing on April 29, 2021 to determine whether to give final
14 approval to the settlement of this class action.

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

18 2. Jurisdiction. Because adequate notice has been disseminated, and all Class Members
19 have been given the opportunity to request exclusion from the Class, the Court has personal
20 jurisdiction with respect to the claims of all Class Members. The Court has subject matter jurisdiction
21 over this class action, including jurisdiction to approve the settlement, grant final certification of the
22 Class, and dismiss the class action.

23 3. Final Class Certification. The Court finds that the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process.
25 Accordingly, the Court certifies a Class consisting of all current and former non-exempt California
26 employees of Defendant from October 13, 2016, through December 9, 2021 ("Class," "Class
27 Members," and "Class Period"). There are two hundred forty-six (246) Class Members who submitted
28 timely and valid Claim Forms for participation in the Class Action Settlement ("Claimant").

1 4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-
2 Gharajeh, Phillip Song, Josh B. Tran of the Justice Law Corporation have fully and adequately
3 represented the Class for purposes of entering and implementing the Settlement and have satisfied the
4 requirements of Code of Civil Procedure section 382.

5 5. Notice Packet. The Court finds that the Notice of Class Action Settlement and Claim
6 Form (collectively, known as the "Notice Packet") and its distribution to Class Members have been
7 implemented pursuant to the Agreement and this Court's Preliminary Approval Order and that it:

8 a. constitute the best practicable notice to Class Members under the circumstances
9 of the class action;

10 b. constitute notice that was reasonably calculated, under the circumstances, to
11 apprise Class Members of: (i) the pendency of the class action; (ii) the material terms and provisions
12 of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the
13 proposed Settlement (including final certification of the Class, the fairness, reasonableness and
14 adequacy of the settlement, the adequacy of the Class's representation by Plaintiff and Class Counsel,
15 and/or the award of Plaintiff's Class Representative Enhancement Payment and Attorneys' Fees and
16 Costs); (iv) their right to exclude themselves from the Class and the Settlement; (v) their right to
17 claim an Individual Settlement Payment by submitting a Claim Form; (vi) their right to appear at the
18 Settlement Fairness Hearing; and (vii) the binding effect of the orders and judgment in the class
19 action, whether favorable or unfavorable, on all Class Members who do not request exclusion from
20 the Settlement ("Settlement Class Member");

21 c. constitute notice that was reasonable, adequate, and sufficient to all Class
22 Members; and

23 d. constitute notice that fully satisfied the requirements of Code of Civil Procedure
24 section 382, California Rule of Court 3.769, and due process.

25 6. Final Settlement Approval. The terms and provisions of the Settlement Agreement
26 have been entered in good faith and are the product of arm's-length negotiations by experienced
27 counsel who have done a meaningful investigation of the claims in the dispute. The Settlement
28 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate,

1 and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement
2 Agreement according to its terms and provisions.

3 7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order
4 and Judgment are binding on the Settlement Class Members, as well as their heirs, executors and
5 administrators, successors, and assigns, and those terms shall have res judicata and other preclusive
6 effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of
7 any such persons, to the extent those claims, lawsuits, or other proceedings involve matters that were
8 or could have been raised in the class action and are encompassed by the release of the Settlement
9 Class Members' Released Claims as set forth in the Settlement Agreement. The Settlement Agreement
10 will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who
11 have submitted requests for exclusion.

12 8. Released Claims. Upon the Effective Date, Plaintiff and all Settlement Class Members
13 will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
14 discharged with respect to all the Released Parties all Released Claims for any period during the
15 Released Claims Period as set forth in the Agreement.

16 a. General Release by the Class Representative. As a condition of the class action
17 settlement, Plaintiff, as the Class Representative, shall provide a separate general
18 release to all the Released Parties as set forth in the Agreement. Furthermore, pursuant
19 to the terms of the Agreement, and solely with respect to the Released Claims, Plaintiff
20 expressly waives and relinquishes any rights or benefits available to her under the
21 provisions of section 1542 of the Civil Code.

22 b. Released Parties. The Released Parties are Defendant, its parents, subsidiaries, officers
23 and employees, successors, assigns, insurers, and attorneys, etc. ("Released Parties").

24 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any
25 action to enforce the terms and provisions of the Settlement Agreement.

26 ///

27 ///

28 ///

1 10. Plaintiff's Class Representative Enhancement Payment. The Court finds that the Class
2 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the
3 Maximum Settlement Amount, to be reasonable and appropriate. Plaintiff's Class Representative
4 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

5 a. The rationale for making enhancement payments is that the class representatives should
6 be compensated for the expense and risk they have incurred in conferring a benefit on
7 other class members. Such enhancement payments are appropriate if they are necessary
8 to induce individuals to participate in the suit. Criteria courts may consider include: (1)
9 the risk to the class representatives in commencing suit, both financial and otherwise;
10 (2) the notoriety and personal difficulties encountered by the class representatives; (3)
11 the amount of time and effort spent by the class representatives; (4) the duration of the
12 litigation; and (5) personal benefit (or lack thereof) enjoyed by class representatives.

13 b. The Court has reviewed Plaintiff's declaration outlining her involvement in the case.
14 Given the risks inherent in her services as the Class Representative, the duration of the
15 case and time involved, and the benefits created for the Class, the Court approves the
16 Class Representative Enhancement Payment of \$10,000 to be paid to Plaintiff.

17 11. Attorneys' Fees and Costs. The Court finds an award of attorneys' fees of
18 \$333,333.33, to be paid out of the Maximum Settlement Amount by Defendant to Class Counsel, to be
19 reasonable and appropriate. The Court further finds that an award attorneys' costs for actual litigation
20 costs in the amount of \$16,421.68, to be paid by Defendant to Class Counsel out of the Maximum
21 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to
22 the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for any
23 other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other
24 counsel representing Plaintiff or Class Members, or incurred by Plaintiff or Class Members, in
25 connection with or related in any manner to the class action, the Settlement, the administration of the
26 Settlement, and/or the Settlement Class Members' Released Claims.

27 ///

28 ///

a. The Court has an independent right and responsibility to review the requested attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The attorneys' fees requested by Class Counsel in the sum of \$333,333.33 is one-third (1/3) of the common fund created for the benefit of the Class Members and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the excellent results achieved for the Class, the financial risk taken by Class Counsel, the novel and difficult nature of this litigation, the skill required to deal with these issues, percentage fees award in other cases, and the contingent fees charged in private marketplace, the Court finds that the request for the attorneys' fees is with the legal marketplace, is reasonable, and is approved.

b. The Court has reviewed the Declaration of Douglas Han regarding the costs expended in the prosecution of this case. Under the terms of the Settlement, Plaintiff may seek reimbursement of up to \$20,000 in litigation costs. As stated above, the Court finds that Plaintiff has expended \$16,421.68 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of attorneys' costs in the amount of \$16,421.68 for the reimbursement of the costs and expenses incurred by Class Counsel.

12. Claims Administration Costs. The Court finds that Claims Administration Costs in the amount of \$9,500, to be paid by Defendant to the Claims Administrator out of the Maximum Settlement Amount, to be reasonable and appropriate. The Claims Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court has reviewed the declaration of Jeremy Romero from CPT Group, Inc. ("CPT Group"), the Court-approved Claims Administrator. The Court finds that notice was provided to the Class pursuant to the Preliminary Approval Order, that the notice constitute the best practicable notice to the Class, and that the notice satisfied due process. CPT Group has discharged its duties to provide notice to the Class. Thus, the Court approves a payment for Claims Administration Costs in the sum of \$9,500 for

1 CPT Group's services in administering this settlement, including the mailing of
2 Individual Settlement Payments according to the terms of the Agreement.

3 13. PAGA Payment. The Court finds that Private Attorneys General Act of 2004
4 ("PAGA") Payment in the amount of \$50,000, seventy-five percent (75%) of which (\$37,500) will be
5 paid by Defendant to the California Labor and Workforce Development Agency ("LWDA") ("LWDA
6 Payment") out of the Maximum Settlement Amount and twenty-five percent (25%) of which
7 (\$12,500) will be distributed, pro rata, based on weeks worked to all PAGA Aggrieved Employees, to
8 be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions
9 set forth in the Settlement Agreement.

10 14. Funding of the Settlement. Within three (3) business days after the Final Approval of
11 the Settlement, the Claims Administrator will provide the Parties with an accounting of the amounts to
12 be paid by Defendant pursuant to the terms of the Settlement. Defendant will deposit all Court-
13 approved costs, fees, and payments, and claim amounts from the Maximum Settlement Amount into a
14 Qualified Settlement Fund account to be established by the Claims Administrator within fifteen (15)
15 business days of the Effective Date.

16 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the Settlement
17 is entitled to a presumption of fairness. In her moving papers, Plaintiff contends that the proposed
18 Settlement was the product of arm's-length negotiations following extensive litigation, discovery, and
19 exchange of documentation relating to Plaintiff's claims. The negotiations were facilitated with the
20 assistance of mediator Deborah Saxe, Esq., an experienced and well-respected class action mediator.

- 21 a. With respect to the benefit to the Class Members, Plaintiff's moving papers indicate the
22 *highest* Individual Settlement Payment will be approximately \$5,802.58, and the
23 *average* Individual Settlement Share will be about \$1,599.28 under the proposed
24 allocation, which is based on the number of weeks worked during the Class Period.
25 b. There were no Notices of Objection to the Settlement and no Requests for Exclusion
26 from the Settlement. This is further proof of the fairness of the Settlement.

27 ///

28 ///

1 16. Uncashed Checks. Any checks issued by the Claims Administrator to Claimants will
2 be negotiable for at least one hundred eighty (180) calendar days. Those funds represented by
3 settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more
4 than one hundred eighty (180) calendar days after issuance will be sent Legal Aid At Work.

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

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

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

23 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
24 Attorneys' Fees and Costs, and Class Representative Enhancement Payment is GRANTED. The
25 Claims Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

26 ///

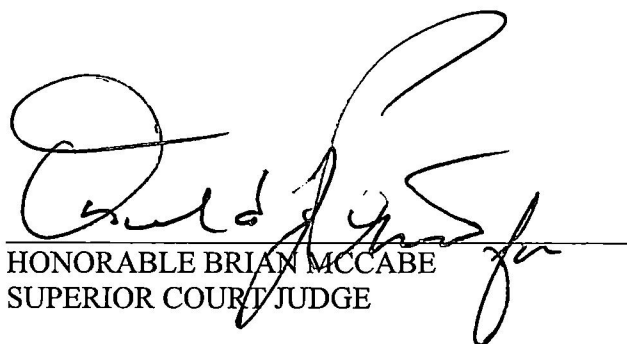
27 ///

28 ///

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

7
8 IT IS SO ORDERED.

9
10 DATED: 4/29/2022

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HONORABLE BRIAN MCCABE
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, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On April 29, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Shoemaker v. Broken Arrow Communications, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM- 849177-21**
Court Case No.: 21CV-03517
Merced 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 April 29, 2022, at Pasadena, California.



Mariah Anderson