

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KRISTY ELWELL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DIVERSITY WIRELESS PARTNERS LLC,
a California Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134554
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: December 17, 2021

The Motion for Final Approval of the Settlement (the “Final Approval Motion”) as set forth in the Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement”) came for hearing in Department S26 of the above-entitled court. The Final Approval Motion was unopposed by Defendants Diversity Wireless Partners, LLC, Jon Garcia and Victor Chapron, Sr. (collectively, “Defendants”). Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is approved. Due and adequate notice having been given to the

1 Class, and the Court having considered the Settlement Agreement, all papers filed, and
2 proceedings had herein and all oral and written comments received regarding the proposed
3 settlement, and having reviewed the record in this Litigation, and good cause appearing,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

5 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
6 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

7 2. The Court has jurisdiction over the subject matter over this Action, the Class
8 Representative, the Class Members, and Defendants.

9 3. The Court finds that the distribution of the Class Notice, as provided for in the
10 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
11 under the circumstances to all Class Members and fully met the requirements of California law
12 and due process under the California and United States Constitution. Based on evidence and
13 other material submitted, the actual notice to the class was adequate.

14 4. The Court finds that the instant Action presented a good faith dispute of the
15 claims alleged, and the Court finds in favor of settlement approval.

16 5. The Released Class Claims on behalf of the Participating Class Members
17 included:

- 18 a. all claims stated in the Complaint and those based solely upon the facts in
19 the Complaint, including: (a) failure to pay minimum wages, (b) failure to
20 pay overtime wages, (c) failure to provide meal periods, (d) failure to
21 provide rest breaks, (e) failure to pay vested vacation, (f) failure to
22 reimburse business expenses, (g) failure to timely pay wages upon
23 separation of employment, (h) failure to provide accurate itemized wage
24 statements, (i) unfair and unlawful competition, and (j) all other claims
25 that reasonably could have arisen out of the allegations made and based on
26 the facts alleged in the Complaint.

27 6. The PAGA Released Claims on behalf of Plaintiff and the Aggrieved Employees
28 included:

1 a. PAGA claims that Plaintiff alleged against the Released Parties, on behalf
2 of the Aggrieved Employees and the State of California, based on the facts
3 stated in the Complaint and in the relevant LWDA notice letter, including
4 all PAGA claims seeking civil penalties premised upon: (a) failure to pay
5 minimum wages, (b) failure to pay overtime wages, (c) failure to provide
6 meal periods, (d) failure to provide rest breaks, (e) failure to pay vested
7 vacation, (f) failure to reimburse business expenses, (g) failure to timely
8 pay wages each period, (h) failure to timely pay wages upon separation of
9 employment, (i) failure to provide accurate itemized wage statements, and
10 (j) all other claims for civil penalties recoverable under PAGA based on
11 the facts or claims alleged in the Complaint.

12 7. There were no Objections and no Requests for Exclusion to the Settlement. Thus,
13 all Class Members are Participating Class Members who are entitled to payment pursuant to the
14 Settlement and this Judgment. Likewise, all Aggrieved Employees are entitled to a pro rata
15 share of PAGA Penalties.

16 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
17 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Parties. The
18 Parties are directed to perform in accordance with the terms set forth in the Settlement
19 Agreement.

20 9. The Parties are to bear their own costs, except as otherwise provided in the
21 Settlement Agreement.

22 10. For purposes of effectuating this Order and Judgment, this Court has certified the
23 following class: “all current and former nonexempt employees employed by Defendant Diversity
24 Wireless Partners, LLC, in California at any time during the Class Period of December 17, 2017,
25 through December 31, 2022,” as defined in the Settlement Agreement. The Court deems this
26 definition sufficient for purposes of California Rules of Court, rule 3.765(a).

27 11. With respect to the Settlement Class and for purposes of approving this
28 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable

1 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
2 fact common to the Class Members, and there is a well-defined community of interest among the
3 Class Members with respect to the subject matter of the Action; (c) the claims of the Class
4 Representative are typical of the claims of the Class Members; (d) the Class Representative has
5 fairly and adequately protected the interests of the Class Members; (e) a class action is superior
6 to other available methods for an efficient adjudication of this controversy; and (f) the counsel of
7 record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the
8 Plaintiff in his individual and representative capacity and for the Settlement Class.

9 12. By this Judgment, the Class Representative shall release, relinquish, and
10 discharge, and each of the Participating Class Members shall be deemed to have, and by
11 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
12 discharged all Released Class Claims, as defined herein and in the Settlement Agreement.

13 13. For purposes of effectuating this Order and Judgment, the release of the PAGA
14 Released Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved
15 Employees which consists of “all current and former nonexempt employees employed by
16 Defendant Diversity Wireless Partners, LLC, in California at any time during the PAGA Period
17 of December 17, 2020, through December 31, 2022.”

18 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any
19 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
20 or the Settlement (i) is or may be deemed to be or may be used by the Plaintiff or Participating
21 Class Members as an admission of, or evidence of, the validity of any of the Class Claims, or of
22 any wrongdoing or liability of Defendants or any of the other Released Parties; or (ii) is or may
23 be deemed to be or may be used by Plaintiff or Participating Class Members as an admission of,
24 or evidence of, any fault or omission of Defendants or any of the other Released Parties in any
25 civil, criminal, or administrative proceeding in any court, administrative agency, or other
26 tribunal. Defendants or any of the other Released Parties may file the Settlement Agreement
27 and/or the Judgment from this Action in any other action that may be brought against it or them
28 in order to support a defense or counterclaim based on principles of *res judicata*, collateral

estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. The Gross Settlement Amount to be paid under the Settlement Agreement is \$250,000. From this amount, Class Counsel sought an award of attorney's fees of \$83,333.33, litigation expenses of \$9,752.92, a Service Award of \$10,000 for the Class Representative Kristy Elwell, \$11,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, \$7,500 to the LWDA for PAGA penalties and \$2,500 to the Aggrieved Employees for PAGA Penalties. Defendants do not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

- A. \$83,333.33 to Class Counsel for attorneys' fees;
- B. \$9,752.92 to Class Counsel for costs/expenses;
- C. \$10,000 to Kristy Elwell as a Service Award;
- D. \$11,000.00 to the Settlement Administrator, Phoenix Settlement Administrators;
- E. \$7,500 to the LWDA;
- F. \$2,500 to the Aggrieved Employees on a pro rata basis;
- G. After deducting the foregoing payments from the Settlement Amounts, the remainder shall form the Net Settlement Amount payable to the Participating Class Members as set forth in the Settlement Agreement and as calculated by the Settlement Administrator.

16. Defendants Diversity Wireless Partners, LLC, Jon Garcia and Victor Chapron, Sr., are directed to fund the Gross Settlement Amount, jointly and severally, pursuant to the payment plan set forth in the Settlement Agreement and chart below. The Settlement Administrator is directed to calculate the Participating Class Members' Individual Settlement Amounts from the Net Settlement Amount, as well as the payments due to the Aggrieved Employees, and issue all payments within 10 days of receipt of each payment in accordance with the Settlement Agreement. Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator include a Notice of

Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check, noting the following: “Please be advised that on [date] the Superior Court of California for the County of San Bernardino entered Judgment in the case entitled *Elwell v. Diversity Wireless Partners LLC, et al.*, San Bernardino County Superior Court, Case No. CIVSB2134554, on behalf of all current and former nonexempt employees employed by Defendant Diversity Wireless Partners, LLC, in California at any time during the Class Period of December 17, 2017, through December 31, 2022.”

17. Participating Class Members and Aggrieved Employees shall have 180 days to negotiate each settlement check from the date of issuance by the Settlement Administrator. In the event that a person does not negotiate his/her check within this time period, the check will be canceled, but can be requested to be reissued at any time up until 180 days after the issuance of the final (third) check. Once 180 days passes from the mailing of the third check, the value of the unclaimed funds in the Settlement Administrator’s account as a result of a failure to timely cash a settlement check(s) shall be issued to the State Controller’s Office in the name of the Participating Class Members and/or Aggrieved Employees.

18. The following dates shall govern for purposes of this implementing this Order/Judgment:

August 16, 2023	Final Approval Order is entered and the Effective Date occurs
August 26, 2023	<u>Payment #1 Due:</u> Defendants, jointly and severally, are directed to fund \$80,000 of the Gross Settlement Amount and separately pay their share of the employer’s tax, as calculated and directed by the Settlement Administrator. which shall be used to fund Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for 32% of the Court-awarded amounts.
September 5, 2023	Settlement Administrator is directed to disburse Payment #1 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for 32% of the Court-awarded amounts.

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT

February 1, 2024	Payment #2 Due: Defendants, jointly and severally, are directed to fund \$80,000 of the Gross Settlement Amount and separately pay their share of the employer's tax, as calculated and directed by the Settlement Administrator.
February 12, 2024	Settlement Administrator is directed to disburse Payment #2 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for 32% of the Court-awarded amounts
August 1, 2024	Payment #3 Due: Defendants, jointly and severally, are directed to fund \$90,000 (the remaining balance of the Gross Settlement Amount), and separately pay their share of the employer's tax, as calculated and directed by the Settlement Administrator.
August 12, 2024	Settlement Administrator is directed to disburse Payment #3 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for all remaining Court-awarded amounts.
February 8, 2025	180-day deadline for Participating Class Members and Aggrieved Employees to cash the settlement checks from Payment #3 after which any uncashed checks will be voided and forwarded to the State Controller, pursuant to the Settlement Agreement, this Order and applicable law.
March 14, 2025	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Participating Class Members and Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the anticipated date payment will issued to the State Controller.
Date: _____, 2025 Time: _____ a.m.	OSC re: Disbursement Hearing

19. Pursuant to paragraph 74 of the Settlement Agreement, in the event that Defendants fail to timely make any payment outlined above within 5 calendar days of the due date, Class Counsel shall send a "Notice of default" to Defense Counsel. Defendants will then

1 have seven (7) calendar days after issuance of the notice of default to cure and bring all
2 payments up to the current required amount due. If Defendants fail to timely cure the late
3 payment, all remaining balances shall immediately become due and payable.

4 20. This document shall constitute a Judgment for purposes of California Rule of
5 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
6 Class Representative, the Participating Class Members, Aggrieved Employees, and Defendants
7 for the purposes of supervising the implementation, enforcement, construction, administration,
8 and interpretation of the Settlement Agreement and this Judgment.

9 IT IS SO ORDERED.

10
11 Dated: _____

12 Hon. David Cohn
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28