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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 27, 2023

Time: 9:00 a.m.

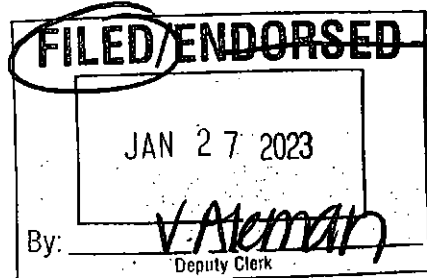
Dept.: 28

Judge: Lauri A. Damrell

Filed: January 19, 2022

FAC Filed: April 27, 2022

Trial Date: None Set



[PPSD] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on January 27, 2023, at 9:00 a.m., in Department 28
4 before the Honorable Lauri A. Damrell, presiding. Named Plaintiff Erika Collazo ("Plaintiff") filed
5 this putative class action on January 19, 2022. The operative Complaint alleges that Defendant T.O.P.
6 Marketing Group, Inc. ("Defendant") failed to pay overtime wages, failed to pay minimum wages,
7 failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage
8 statements, failed to timely pay final wages, failed to reimburse expenses, and engaged in unfair
9 competition. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
10 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs
11 as part of this Action. Defendant denied all of Plaintiff's claims and denied that this case was
12 appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendant and its owners,
14 Michael D'Adamo and Kevin D'Adamo, will provide monetary consideration in exchange for a
15 release of claims consistent with the terms of the proposed settlement as set forth in the Joint
16 Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement" or
17 "Settlement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval
19 of Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed
20 Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS
21 AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees who have, or continue to, work for T.O.P.
27 Marketing Group, Inc. in California from January 19, 2018 up to
28 November 26, 2022, including but not limited to all customer service
associates, customer service reps, customer service assistants, customer
service specialists, warehouse workers, canvassers, event marketers,

1 distribution specialists, sales representatives, or other job title performing
2 similar job duties, whether as an employee or independent contractor, with
3 the exception of any individuals who only performed sales of Lifeline
4 goods or services through T.O.P. Marketing Group, Inc. for SafetyNet
Wireless (the dba for Amerimex Communications Corp.) between January
19, 2018 and February 27, 2019, and who were included in the
information exchanged between the parties during the litigation in
Gregory v. Amerimex Communications Corp., et al., Case No. BC670901.

5 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
6 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

7 The Court finds that Class Members meet the ascertainability and numerosity requirements since
8 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
9 the definition and the number of Class Members would make joinder impractical. The commonality and
10 predominance requirements are met for settlement purposes since there are questions of law and fact
11 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
12 contentions that Defendant caused the violations outlined above by 1) misclassifying Class Members as
13 independent contractors; 2) failing to maintain accurate time records for Class Members; 3) failing to
14 pay Class Members for all regular and overtime hours worked; 4) failing to adopt meal and rest period
15 policies; and 5) failing to reimburse Class Members for phone and vehicle expenses. The PAGA,
16 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
17 violations. Additionally, Class Members seek the same remedies under state law. The typicality
18 requirement for settlement purposes is also satisfied since the claims of the Class Representative is
19 based on the same facts and legal theories as those applicable to the class members.

20 The Court also finds that preliminarily and conditionally certifying the settlement class is
21 required to avoid each Class Member from litigating similar claims individually. This Settlement will
22 achieve economies of scale for Class Members with relatively small individual claims and conserve the
23 resources of the judicial system.

24 The Court finds that Plaintiff Erika Collazo and Plaintiff's counsel, Galen T. Shimoda
25 Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
26 representatives of the settlement class. The Court appoints them as Class Representative and Class
27 Counsel, respectively.

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1 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

2 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
3 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
4 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
5 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
6 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
7 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
8 of continued litigation. The Court also acknowledges that Class Members may present any objections to
9 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
10 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
11 therein as if stated here in full, including the \$842,500 Gross Settlement Amount.

12 The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and
13 hereby appoints them to fulfill those duties as outlined in the Agreement.

14 The Court approves of the \$50,000 PAGA Payment, which shall be paid from the Gross
15 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
16 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
17 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
18 on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a
19 recovery that creates an effective substantial deterrent to any potential future non-compliance, furthering
20 the purpose of the Labor Code and LWDA.

21 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
22 **INCLUDING THE NOTICE OF SETTLEMENT**

23 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
24 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
25 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
26 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
27 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
28 hearing to be conducted on the date set forth below. The Court further finds that the Notice of

1 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
2 at his or her most recent address based on a National Change of Address database search from the Class
3 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
4 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
5 including those of due process.

6 The Court also finds that because there is a strong interest in providing Class Members the
7 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
8 privacy rights, the sharing of employment information, including social security numbers, is not a
9 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
10 name, last known mailing address, social security number, and total number of pay periods during which
11 the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiff
12 or Class Counsel, in order to process this settlement as contemplated within the Agreement and
13 approved by this Order. The Settlement Administrator shall only use this information for the purposes
14 identified in the Agreement and shall keep this information confidential consistent with the terms of the
15 Agreement.

16 IV. IMPLEMENTATION SCHEDULE

17 Accordingly, with good cause shown, the Court hereby approves and orders that the following
18 implementation schedule be adhered to:

19 20 21	Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
22 23 24	Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
25 26 27	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later

1 2 3	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
4 5 6 7	Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
8 9 10	Last day for Defendant, Michael D'Adamo and Kevin D'Adamo to fund settlement	Within 21 calendar days after the Effective Date
11 12 13 14	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after funding
15 16 17	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
18 19 20	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
21 22	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

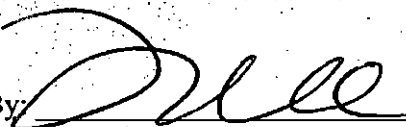
The Court directs the parties to contact the Clerk for Department 28 to schedule a final approval hearing to take place in this Department on a Friday at 9:00 a.m. consistent with the administration timelines set forth in the Agreement. Briefs and supporting documentation relating to the final approval hearing are to be submitted according to the California Code of Civil Procedure. Class Members who

1 object in a timely manner, and in the manner set forth in the Agreement, may appear and present such
2 objections at the fairness hearing in person or by counsel.

3 If for any reason the Court does not grant final approval of the Agreement, all evidence and
4 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
5 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
6 purpose other than approving a settlement class. The parties will revert to their respective positions as if
7 no settlement had been reached at all.

8 **IT IS SO ORDERED.**

9
10 Date: 1/27/23

By: 

Judge of the Superior Court

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13 LAURI A. DAMRELL
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Collazo v. T.O.P. Marketing Group, Inc.
Sacramento County Superior Court of California 34-2022-00314092

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On January 30, 2023, I served the following documents on the party below:

- **Signed Order Granting Plaintiff's Motion For Preliminary Approval of Class Action And PAGA Settlement**

Joel M. Van Parys (SBN 227387) Tashayla Billington (SBN 307050) CDF Labor Law LLP 900 University Ave, Suite 200 Sacramento, CA 95825 Phone: (916) 361-0991 Email: jvanparys@cdflaborlaw.com ekastern@cdflaborlaw.com tbillington@cdflaborlaw.com	
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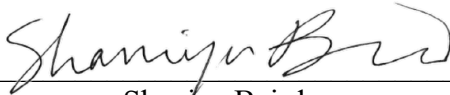
☐ [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

☐ [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

☐ [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

☐ [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2023, at Salt Lake City, Utah.



Shaniya Baird