

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff ERIKA COLLAZO

FILED
Superior Court of California
County of Sacramento

06/16/2023

V. Aleman, Deputy

8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

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

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No. 34-2022-00314092

CLASS ACTION

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

Reservation No.: 2708842

Date: June 9, 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

28 **AMENDED [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

BY FAX



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on June 9, 2023, at 9:00 a.m., in Department 28 before the
4 Honorable Lauri A. Damrell, presiding.

5 **Background**

6 Plaintiff filed her original complaint in this case on January 19, 2022, and a First Amended
7 Complaint (“FAC”) on April 27, 2022. Plaintiff alleges that she was employed by Defendant TOP
8 Marketing Group, Inc. (“Defendant”) as part of its office staff from July 6, 2020 to March 2021. She
9 alleges that Defendant committed the following wage and hour violations with respect to Plaintiff and
10 similarly situated employees: (1) misclassified employees as independent contractors; (2) failed to pay
11 for all overtime hours worked at regular rates of pay; (3) failed to pay wages for time during which
12 employees worked while off the clock; (4) failed to provide the requisite meal and rest periods or pay
13 the corresponding premiums; (4) failed to provide complete and accurate itemized wage statements;
14 (5) failed to timely pay employees all wages due upon separation of employment; and (6) failed to
15 reimburse employees for personal cellphone or vehicle use for business purposes. The FAC includes a
16 cause of action for violation of the Unfair Competition Law and the Private Attorneys General Act
17 (“PAGA”).)

18 The Court granted Plaintiff’s motion for preliminary approval on January 27, 2023. (1/27/23
19 Order.) Plaintiff now seeks final approval of the parties’ Joint Stipulation Regarding Class Action and
20 PAGA Settlement and Release (“Settlement Agreement” or “Agreement”). (Exhibits, Exh. A (“SA”).)
21 Concurrently with the filing of this motion, Plaintiff provided notice of the settlement to the Labor and
22 Workforce Development Agency (“LWDA”). (Exhibits, Exh. E; Berzin Decl., ¶ 27.)

23 **Legal Standard**

24 Courts review class action settlements in a three-stage process: (1) an earlier conditional
25 review by the court; (2) a period during which notice is distributed to class members for their
26 comments or objections; and (3) a later detailed review after the notice period when the court decides
27 whether to give “final approval.” (Rubenstein, Newberg on Class Actions (6th Ed. 2022) § 13:1
28 (Newberg); see also Cal. R. Ct. Rule 3.769.) This procedure, which is commonly utilized by both

1 federal and state courts, assures class members of the protection of procedural due process safeguards
2 and enables a court to fulfill its role as the guardian of the interest of the settlement class.

3 As required by the applicable Rule of Court, the Court must conduct a final approval hearing to
4 inquire into the fairness of the proposed settlement. (Cal. R. Ct., Rule 3.769(g).) The Court has broad
5 discretion to determine whether a proposed settlement in a class action is fair. (*Mallick v. Superior*
6 *Court* (1979) 89 Cal.App.3d 434, 438.) The law favors settlement, particularly in class actions and
7 other complex cases where substantial resources can be conserved by avoiding the time, cost, and
8 rigors of formal litigation. (See Newberg, *supra*, § 13:44 (and cases cited therein); *Class Plaintiffs v.*
9 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
10 529 F.2d 943, 950.) In approving a class action settlement, the Court must “satisfy itself that the class
11 settlement is within the ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
12 Cal.App.4th 116, 133 (*Kullar*).) In making its fairness determination, the Court should consider the
13 relevant factors, such as the strength of the plaintiffs’ case, the risk, expenses, complexity and likely
14 duration of further litigation, the risk of maintaining class action status through trial, the amount
15 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
16 experience and views of counsel, and the reaction of the class members to the proposed settlement.
17 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (*Dunk*).) “The most important factor is
18 the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”
19 (*Kullar, supra*, 168 Cal.App.4th at p. 130 [internal quotes omitted].) A presumption of fairness exists
20 where (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery
21 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)
23 Ultimately, the court’s determination is simply “an amalgam of delicate balancing, gross
24 approximations and rough justice.” (*Id.*, at p. 1801.).

25 **Settlement Agreement and Class Response**

26 Under the terms of the Settlement Agreement, Defendant agrees to pay a non-reversionary
27 Gross Settlement Amount (“GSA”) of \$842,500. (Settlement Agreement, §§ 1.15, 5.1, 5.6.) Defendant
28 will also pay any monies necessary to satisfy Defendant’s obligations separate from the GSA. (*Id.*, §

1 5.1.) The following amounts will be paid out from the GSA: (1) attorneys' fees in the amount of
2 \$294,875 (35% of the GSA) to Class Counsel; (2) litigation expenses not to exceed \$15,000 to Class
3 Counsel; (3) administration costs not to exceed \$20,000 to be paid to the Settlement Administrator; (4)
4 an enhancement payment not to exceed \$15,000 to be paid to Plaintiff; and (5) a PAGA Payment in
5 the amount of \$50,000. (*Id.*, §§ 5.2-5.5.)

6 The remaining amount will be paid to participating Class Members according to the number of
7 weeks they worked for Defendants during the Class Period. (*Id.*, § 5.8.) The Class is defined as "all
8 non-exempt employees who have, or continue to, work for [Defendant] in California during the Class
9 Period [January 19, 2018 up to November 26, 2022], including but not limited to all customer service
10 associates, customer service reps, customer service assistants, customer service specialists, warehouse
11 workers, canvassers, event marketers, distribution specialists, sales representatives, or other job titles
12 performing similar job duties, whether as an employee or independent contractor, with the exception
13 of any individuals who only performed sales of Lifeline goods or services through [Defendant] for
14 SafetyNet Wireless (the dba for Amerimex Communications Corp.) between January 19, 2018 and
15 February 27, 2019, and who were included in the information exchanged between the parties during
16 the litigation in *Gregory v. Amerimex Communications Corp., et. al.*, Case No. BC670901."
17 (Settlement Agreement, §§ 1.5, 1.6.)

18 Class Members had 60 days to opt out of or object to the Settlement. (*Id.*, § 1.20.) For tax
19 purposes, individual settlement payments will be allocated as follows: one-third as wages and two-
20 thirds as penalties and interest. (Settlement Agreement, § 5.9.) Checks that remain uncashed after 180
21 days will be donated equally to Capital Pro Bono, Inc. and the Center for Workers' Rights ("CFWR").
22 (*Id.*, §§ 5.6, 7.9.) In granting preliminary approval, the Court required Plaintiff to address the propriety
23 of CFWR as a cy pres beneficiary given Class Counsel's role as Chair of the Board of Directors of that
24 organization. Ms. Berzin attests that "[n]o compensation or benefits, monetary or otherwise, are
25 provided to any Board Member or organization a Board Member is associated with." (*Id.*, ¶ 35.) She
26 further clarifies that the "Executive Director of the CFWR supervises, directs, and controls the day-to-
27 day operations of the CFWR, not ... the Board of Directors. As Chair, my additional duties include
28 scheduling meetings, drafting meeting agendas and presiding over meetings. (*Ibid.*) Finally, Ms.

1 Berzin attests that “CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law,
2 P.C.” and that neither her firm nor its members “have received any compensation, direct or indirect,
3 for designating CFWR or CPB as cy pres beneficiaries or in connection with any of the volunteer work
4 we have done with the organizations.” (*Id.*, ¶¶ 36.) The Court is satisfied that Capital Pro Bono and
5 CFWR are appropriate cy pres beneficiaries.

6 Upon the “Effective Date,” all Participating Class Members release Released Parties
7 (Defendant, Michael D’Adamo, Kevin D’Adamo, and Defendant’s officers, shareholders, directors,
8 agents, employees, attorneys, and insurers) from any class claims that are alleged in the Complaint,
9 and any additional wage and hour claims that could have been brought based on the facts alleged in
10 the Complaint, through the Class Period. (*Id.*, §§ 1.29, 1.31, 6.1.) The Effective Date is the Final
11 Approval Date unless there is a timely objection lodged. (*Id.*, § 1.13.) In granting preliminary
12 approval, the Court noted that the Settlement is not funded until as many as 21 days after the Effective
13 Date; thus, the Release is effective before any funds are paid. (*Id.*, § 7.8.) The Court required the
14 parties to address in moving for final approval this timing is appropriate. Plaintiff argues that the
15 timing of the release is appropriate because “the Agreement, and all obligations therein by all parties,
16 become effective and are triggered on the date a signed order granting final approval is filed with the
17 Court, assuming no objections to the Agreement have been lodged by Class Members,” which “puts
18 all parties, including Class Members, in the same position that they would have been had Plaintiff’s
19 prevailed at trial” and protects Counsel’s ability to enforce Defendant’s obligation to pay. (Mot., pp.
20 7:11-8:19.) The Court is persuaded that the timing is appropriate and no changes to the Agreement’s
21 release will be required.

22 Nathalie Hernandez, Operations Manager at ILYM Group, Inc, declares that (1) the Notice
23 Packet was mailed to all 1,119 Class Members listed in the class list on February 24, 2023; (2) 58
24 Notice Packets remain undeliverable as updated addresses could not be obtained through ILYM
25 Group’s skip trace efforts; (3) ILYM Group has received zero requests for exclusion and zero
26 objections; and (4) a total of 1,119 Class Members are participating in the Settlement, representing
27 100% of the Class Members. (Hernandez Decl., ¶¶ 5-13.) The estimated average gross payment is
28 \$407.23, and the estimated highest gross payment is \$5,150.17. (*Id.*, ¶ 14.)

1 Class Counsel attests that the parties engaged in informal discovery and exchange of
2 documents and that this discovery covered all aspects of the asserted claims, allowing Class Counsel
3 to assess liability and damages and create an accurate damages model. (Berzin Decl., ¶ 7.) Reaching
4 this settlement required about 9 months of arm's-length negotiation, including a full-day mediation
5 with Brandon McKelvey, Esq. on September 27, 2022. (*Id.*, ¶ 9.) The moving papers demonstrate that
6 the settlement was reached after sufficient investigation and arms-length negotiations by the parties.
7 (Berzin Decl., ¶¶ 6-11.) Having provided sufficient information regarding damage analysis at
8 preliminary approval, the Court finds, subject to the final fairness hearing, that the Settlement is within
9 the ballpark of reasonableness and is entitled to a presumption of fairness, and all relevant factors
10 presently support final approval.

11 **PAGA Settlement Amount**

12 The Settlement Agreement provides for a \$50,000 PAGA Settlement, 75% of which (\$37,500)
13 will be paid to the LWDA and 25% of which (\$12,500) will be paid to Aggrieved Employees in
14 proportion to the number of weeks they worked during the PAGA Claim Period. (Settlement
15 Agreement, §§ 5.5, 5.8.) "Aggrieved Employees" are all non-exempt employees who have or continue
16 to work for Defendant in California during the PAGA Claim Period, including but not limited to all
17 customer service associates, customer service reps, customer service assistants, customer service
18 specialists, warehouse workers, canvassers, event marketers, distribution specialists, sales
19 representatives, or other job title performing similar job duties, whether as an employee or
20 independent contractor. (*Id.*, § 1.2.) The PAGA Claim Period is January 14, 2021 up to November 26,
21 2022. (*Id.*, § 1.23.)

22 Upon the Effective Date, Aggrieved Employees release the Released Parties from all claims
23 that were brought under PAGA contained in the Complaint and any additional wage and hour claims
24 that could have been brought based on the facts alleged in the Complaint during the PAGA Period.
25 (*Id.*, §§ 1.30, 1.31, 6.2.) Class Counsel valued the PAGA claim at approximately \$6,084,005, but notes
26 that the maximum value does not account for (1) any of the risks that apply as to the same class claims
27 discussed in detail in her declaration or (2) the Court's discretion to reduce such penalties because
28 most of the penalties would augment amounts owed for substantive violations, and Defendant could

1 argue it classified Class Members in good faith. (Berzin Decl., ¶ 10.) Based on the Court's discretion,
2 Class Counsel estimates that PAGA penalties could be cut by 82 percent (to \$780,234.70) or lower
3 even assuming Plaintiff was successful on the merits. (*Ibid.*) Given Class Counsel's detailed
4 representations, the PAGA Settlement is approved.

5 **Class Counsel Fees and Costs**

6 Courts generally recognize two methods for calculating fees in civil class actions: the
7 lodestar/multiplier method and the percentage-of-recovery method. (*Wershba v. Apple Computer, Inc.*
8 (2001) 91 Cal.App.4th 224, 254.) "The percentage method calculates the fee as a percentage share of a
9 recovered common fund or the monetary value of plaintiffs' recovery. The lodestar method, or more
10 accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours
11 reasonably expended by counsel by a reasonable hourly rate.'" (*Laffitte v. Robert Half Internat. Inc.*
12 (2016) 1 Cal.5th 480, 489.)

13 In determining fees and costs to be awarded to Class Counsel, the Court must exercise its
14 judicial function and make a decision on the propriety of the fees requested; it should not, and does
15 not, abdicate its charge to make a decision simply because the parties may have reached their own
16 agreement in this regard. The choice of a fee calculation method is generally one within the discretion
17 of the trial court, the goal "being the award of a reasonable fee to compensate counsel for their
18 efforts." (*Id.* at p. 504.) "The lodestar method better accounts for the amount of work done, while the
19 percentage of the fund method more accurately reflects the results achieved.' Each has been
20 championed and criticized for its respective advantages and disadvantages." (*Ibid.*, quoting *Rawlings*
21 *v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516.)

22 Plaintiff requests an award of attorney fees in the amount of 35% of the GSA, or \$294,875, in
23 addition to reimbursement of litigation costs not to exceed \$15,000. (Settlement Agreement, § 5.2.)
24 The lodestar for Counsel is approximately \$237,845, based on rates ranging from \$425 to \$725 an
25 hour and approximately 432.2 hours, which includes approximately 10 hours for Ms. Berzin to prepare
26 for and attend the final approval hearing, an ensure compliance with the final approval order regarding
27 this disbursement of funds. (Berzin Decl., ¶ 23.) The Court notes that Counsel misstates the lodestar as
28 \$237,884.50 and Counsel's calculations are approximately \$39.50 off ($[83.4 * \$725 = \$60,465] +$

1 [145.7 * \$625 = \$91,062.50] + [203.1 * \$425 = \$86,317.50] = \$237,845). (*Ibid.*) These errors are de
2 minimis. Counsel's lodestar requires a multiplier of approximately 1.24. The Court is unable to
3 conclude that the particular circumstances of this case required more work, carried more risk, or
4 resulted in a better outcome than similar cases where the Court found an award of one-third of the
5 common fund was appropriate. Accordingly, Plaintiff is awarded attorneys' fees in the amount of 33
6 percent of the GSA (or \$280,833.33.)

7 Counsel attests that Shimoda & Rodriguez Law, PC has incurred \$10,088.99 in actual costs.
8 (Exhibits, Exh. D; Berzin Decl., ¶ 26.) The Court finds this cost award reasonable and appropriate.

9 **Settlement Administrator**

10 The Court tentatively approves the settlement administrator's costs of \$16,850. (Hernandez
11 Decl., ¶ 15.) The Court finds this cost award reasonable and appropriate.

12 **Class Representative Enhancement Payment**

13 Plaintiff seeks the maximum \$15,000 Enhancement Payment to Plaintiff to compensate for the
14 risks, time, and expense of her involvement in this action. (Settlement Agreement, § 5.4.) Plaintiff
15 details how she participated in this litigation and attests that she spent approximately 90 hours
16 prosecuting this case. (Collazo Decl., ¶¶ 5-8.) The Court finds this payment justified based on
17 Plaintiff's declaration and the absence of any objections to the award.

18 **Disposition**

19 In sum, and subject to the final fairness hearing, the Court tentatively concludes that the
20 settlement is entitled to final approval. Plaintiff shall submit a revised Proposed Order reflecting the
21 reduced attorneys' fee award. Provided that no objection is asserted by any Class Member at the
22 hearing on this matter, the Court will sign the revised Proposed Order.

23 Any further Case Management Conferences and compliance hearings shall be handled by this
24 Department. This Department shall monitor compliance with the settlement approval through and
25 including the disbursement of any uncashed amount to the cy pres beneficiaries.

26 Status Conference (Compliance Hearing) is scheduled for February 8, 2024 at 1:30 p.m. in this
27 Department.

28 At least 15 calendar days prior to the Compliance Hearing, Class Counsel shall file a

1 declaration regarding the status of the distribution of the settlement funds. If the Court is satisfied that
2 the settlement funds have been fully distributed, no appearance will be required.
3

4 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
5 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
6 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
7 Agreement.

8 **IT IS SO ORDERED.**

9
10 Date: 06/16/2023

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
By: Lauri A. Damrell / Judge
Judge of the Superior Court



1 *Collazo v. T.O.P. Marketing Group, Inc.*
2 *Sacramento County Superior Court of California 34-2022-00314092*

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

5 I, Shaniya Baird, declare that:

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

8 On June 13, 2023, I served the following documents on the party below:

- 9 **• Amended Proposed Order Granting Plaintiff's Motion For Final Approval
10 Of Class Action And PAGA Settlement**

11 Joel M. Van Parys (SBN 227387) 12 Tashayla Billington (SBN 307050) 13 CDF Labor Law LLP 14 900 University Ave, Suite 200 15 Sacramento, CA 95825 16 Phone: (916) 361-0991 17 Email: jvanparys@cdflaborlaw.com 18 ekastern@cdflaborlaw.com 19 tbillington@cdflaborlaw.com	
---	--

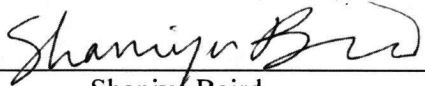
20 [] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set forth
24 above, I served the aforementioned document(s) on the parties in said action
25 by placing a true copy thereof enclosed in a sealed envelope with postage
26 thereon fully prepaid, for collection and mailing on this date, following
27 ordinary business practices, at Elk Grove, California, addressed as set forth
28 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: _____.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct, and that this declaration was executed on June 13, 2023, at Salt Lake City, Utah.

27 
28 Shaniya Baird

G. GALAVIZ