

11/28/2023

F Superior Court of California **F**
I County of Butte **I**
L DEC 27 2023 **L**
E Sharif Elmallah, Clerk **E**
D By J. Stange Deputy **D**

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

BRANDON BARNES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

UST SELECT, INC., a South Carolina
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22CV02939

Assigned for All Purposes to:
Honorable Stephen E. Benson
Department 6

CLASS ACTION

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

Hearing Date: December 27, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 6

Complaint Filed: December 14, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Brandon Barnes' ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant UST Select, Inc. ("Defendant") entered the Settlement
6 Agreement on or about August 7, 2023 to settle this lawsuit.

7 The Court entered an order dated September 27, 2023 preliminarily approving the
8 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
9 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
10 Members, providing Class Members with an opportunity to object to the Settlement or exclude
11 themselves from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on December 27, 2023 to determine whether to
13 give final approval to the Settlement of this lawsuit.

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

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
25 exempt employees of Defendant within the State of California at any time during the period from
26 December 14, 2019, through May 15, 2023 ("Class," "Class Members," and "Class Period").
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1 There are one hundred sixty-one (161) Class Members who did not submit valid and timely
2 Requests for Exclusion from the Settlement ("Participating Class Members").¹

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for the purposes of entering and implementing the Settlement and satisfied the
5 requirements of Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds the Court Approved Notice of Class Action
7 Settlement and Hearing Date for Final Court Approval ("Class Notice") and its distribution to
8 Class Members were implemented pursuant to the Settlement and this Court's Preliminary
9 Approval Order. The Court also finds the Class Notice:

- 10 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
12 Agreement and their rights; (iii) their right to object to any aspect of the
13 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
14 Agreement; (v) their right to receive settlement payments; (vi) their right to
15 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
16 judgment in this lawsuit on all Participating Class Members;
- 17 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
18 section 382, California Rule of Court 3.769, and due process;
- 19 c. constitutes the best practicable notice to Class Members under the circumstances
20 of this lawsuit; and
- 21 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

22 6. Final Settlement Approval. The terms and provisions of the Settlement
23 Agreement have been entered into in good faith and are the product of arm's-length negotiations
24 by experienced counsel who have carried out a meaningful investigation of the claims. The
25 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
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28 ¹ The Class Data contained information for one hundred sixty-four (164) Class Members,
and the Administrator received three (3) requests for exclusion. Thus, there are one hundred
sixty-one (161) Participating Class Members.

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

3 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
4 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
5 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
6 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
7 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
8 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
9 that were or could have been raised in this lawsuit and are encompassed by the Released Class
10 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement
11 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
12 Class Members who have submitted timely requests for exclusion.

13 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
14 any action to enforce the terms and provisions of the Settlement Agreement.

15 9. Release by Participating Class Members Who Are Not Aggrieved Employees.
16 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
17 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
18 Participating Class Members, on behalf of themselves and their former and present
19 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
20 Released Parties from the Released Class Claims.

21 a. Release by Participating and Non-Participating Class Members Who Are
22 Aggrieved Employees. Effective on the date when Defendant fully funds the
23 entire Gross Settlement Amount and funds all employer payroll taxes owed on the
24 Wage Portion of the Individual Class Payments, all Participating and Non-
25 Participating Class Members, who are Aggrieved Employees, on behalf of
26 themselves and their former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns, are deemed to release the Released Parties
28 from the Released PAGA Claims.

1 b. Plaintiff's Release. Effective on the date when Defendant fully funds the entire
2 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
3 Portion of the Individual Class Payments, Plaintiff and his former and present
4 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
5 assigns generally release and discharge Released Parties from the Plaintiff's
6 Release. Plaintiff also expressly waives and relinquishes the provisions, rights,
7 and benefits, if any, of section 1542 of the Civil Code.

8 c. Released Parties. The Released Parties include: (i) Defendant; (ii) each of its past,
9 present, and future parents, subsidiaries and affiliates, including, without
10 limitation, any corporation, limited liability company, partnership, trust,
11 foundation and non-profit entity which controls, is controlled by, or is under
12 common control with Defendant; (iii) past, present, and future shareholders,
13 directors, officers, agents, employees, attorneys, insurers, members, partners,
14 managers, contractors, agents, consultants, representatives, administrators,
15 fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any
16 of the foregoing; and (iv) any individual or entity which could be jointly liable
17 with any of the foregoing, including, but not limited to, temporary agencies.

18 10. Class Representative Service Payment. The Court finds the Class Representative
19 Service Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross Settlement
20 Amount, to be reasonable and appropriate. The Class Representative Service Payment is to be
21 paid pursuant to the terms and provisions set forth in the Agreement.

22 a. The rationale for making enhancement payments is class representatives should
23 be compensated for the expense and risk they incurred in conferring a benefit on
24 the Class. Criteria courts consider include: (1) risk to the class representatives in
25 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
26 effort spent by the class representatives; (4) duration of the litigation; and (5)
27 personal benefit (or lack thereof) enjoyed by class representatives.

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1 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
2 risks inherent in the services as the class representative, duration of the case and
3 time involved, and benefits created for the Class, the Court approves the payment
4 of the Class Representative Service Payment of \$10,000 to Plaintiff.

5 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

6 The Court finds the Class Counsel Fees Payment of \$140,000, to be paid by Defendant to Class
7 Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the
8 Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual
9 litigation costs incurred of \$11,448.56, to be paid by Defendant to Class Counsel out of the
10 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
11 pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not
12 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
13 Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also
14 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
15 incurred by Plaintiff or Class Members in connection with or related in any manner to this
16 lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and
17 Released PAGA Claims.

18 a. The Court has an independent right and responsibility to review the Class Counsel
19 Fees Payment and only award so much as it determines reasonable. (See
20 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
21 127-28.) The Class Counsel Fees Payment of \$140,000 is thirty-five percent
22 (35%) of the common fund created for the benefit of the Class and is supported by
23 use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.*
24 (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk
25 undertaken, difficult nature of this litigation, skills required, percentage fees
26 award in previous and other cases, and contingent fees charged in the
27 marketplace, the Court finds the Class Counsel Fees Payment is consistent with
28 the marketplace, is reasonable, and is approved.

1 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
2 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
3 seek reimbursement of up to \$15,000 in litigation costs. The Court finds Class
4 Counsel expended \$11,448.56 in litigation costs, and such costs were reasonable.
5 Thus, the Court approves the payment of the Class Counsel Litigation Expenses
6 Payment of \$11,448.56 from the common fund for the reimbursement of Class
7 Counsel's litigation costs.

8 12. Administration Expenses Payment. The Court finds Administration Expenses
9 Payment of \$6,000, to be paid by Defendant to the Administrator out of the Gross Settlement
10 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
11 pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court reviewed the declaration of Christina Fowler from ILYM Group, Inc.,
13 the Court-approved Administrator. The Court finds notice was provided to the
14 Class pursuant to the Preliminary Approval Order, constitutes the best practicable
15 notice to the Class, and satisfied due process. Therefore, the Court approves the
16 payment of the Administration Expenses Payment of \$6,000 for the
17 Administrator's services in administering the Settlement.

18 13. PAGA Penalties. The Court finds the PAGA Penalties of \$20,000, seventy-five
19 percent (75%) of which (\$15,000) will be paid to the LWDA out of the Gross Settlement
20 Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to Aggrieved
21 Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be
22 paid pursuant to the terms and provisions set forth in the Settlement Agreement.

23 14. Funding the Settlement. Defendant shall fund the Gross Settlement Amount by
24 transmitting the funds to the Administrator no later than the Effective Date. Within fourteen (14)
25 calendar days after Defendant fully funds the Gross Settlement Amount, the Administrator will
26 mail settlement checks to the appropriate persons and entities.

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1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
5 Judge Howard R. Broadman (Ret.), an experienced and well-respected mediator.

6 a. The fairness of the Settlement is demonstrated by there being no objections to and
7 only three (3) requests for exclusion from the Settlement.

8 b. The fairness of the Settlement is further illustrated by the gross *average*
9 Individual Class Payment being approximately \$1,298.14, and the gross *highest*
10 Individual Class Payment being about \$4,700.78.

11 16. Uncashed Checks. Class Members must cash or deposit their settlement checks
12 within one hundred eighty (180) calendar days after the settlement checks are mailed to them.
13 Uncashed settlement checks will be canceled and transmitted to the California Controller's
14 Unclaimed Property Fund in the name of the Class Member.

15 17. Modification of Agreement. The Participating Class Members are hereby
16 authorized to agree to and adopt amendments to or modifications of the Agreement by an express
17 written instrument signed by all Parties or their representatives and approved by the Court. Such
18 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
19 the rights of Participating Class Members under the Agreement.

20 18. Final Accounting and Compliance. The Court sets a compliance hearing on
21 August 16, 2024 in Department 6. Within five (5) court days before this hearing, Plaintiff shall
22 file a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance
23 status report shall specify the total amount paid to Class Members and the residual of the
24 unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds
25 in the Settlement Agreement.

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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 December 28, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Barnes v. UST Select, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-878285-22**
Court Case No.: 22CV02939
Butte 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 December 28, 2023, at Pasadena, California.


Mariah Anderson