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10 individually and on behalf of similarly situated employees

FILED
Superior Court of California
County of Sacramento
01/03/2025
V. Aleman, Deputy

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 ALBERT CARR, individually and on behalf
14 of all other similarly situated employees,

15 Plaintiff,

16 vs.

17 WAVEDIVISION HOLDINGS, LLC, a
18 Delaware Limited Liability Company; OH
19 WDH HOLDCO, LLC, a Delaware Limited
20 Liability Company; ASTOUND
21 BROADBAND, LLC, A Washington Limited
22 Liability Company; and DOES 2 to 100,
23 inclusive,

24 Defendants.

Case No. 23CV005516

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 3, 2025

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

Trial Date: None Set

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 January 3, 2025, at 9:00 a.m., in Department 22 before the
4 Honorable Lauri A. Damrell, presiding. Plaintiff Albert Carr (“Plaintiff”) filed this putative class action
5 on July 26, 2023. The operative Complaint alleges that Defendants WaveDivision Holdings, LLC, OH
6 WDH HOLDCO, LLC, and Astound Broadband, LLC (“Defendants”), violated California law by failing
7 to pay minimum wages, failing to pay overtime, failing to provide meal and rest periods or pay premiums
8 in lieu thereof, failing to provide accurate wage statements, failing to timely pay final wages, making
9 unlawful deductions and failing to pay contract wages, failing to maintain accurate records, and failing
10 to pay all sick leave wages due. Plaintiff has also alleged Defendants are liable for civil penalties under
11 the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorney’s fees
12 and costs as part of the Action. Defendants denied all of Plaintiff’s claims and denied that this case was
13 appropriate for class treatment. No class has been certified. The class settlement was preliminarily
14 approved by this Court on July 19, 2024.

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

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

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

27 All persons who worked any hours for Defendants in California during any
28 pay period as a non-exempt employee from July 25, 2019, through May 20,
2024.

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

3 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
4 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
5 records, individuals who fall within the definition and the number of Class Members would make joinder
6 impractical. The commonality and predominance requirements are met for settlement purposes since
7 there are questions of law and fact common to Class Members. The common questions of law or fact in
8 this case all stem from Plaintiff's contentions that Defendants caused the violations outlined above by 1)
9 requiring class members to work off-the-clock, 2) failing to incorporate the value of non-discretionary
10 bonuses and on call incentive pay into class members' regular rates of pay for the purpose of calculating
11 overtime premiums, meal period premiums, rest period premiums, and paid sick time, 3) failing to
12 provide all meal periods, including second meal periods, 4) failing to provide all rest periods, including
13 third rest periods; and 5) unlawfully deducting wages. The PAGA, waiting time penalty, wage statement
14 violation, and unfair competition claims also derive from these violations. Additionally, Class Members
15 seek the same remedies under state law. The typicality requirement for settlement purposes is also
16 satisfied since the claims of the Class Representative are based on the same facts and legal theories as
17 those applicable to the class members.

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

21 The Court finds that Plaintiff Albert Carr and Plaintiff's counsel, Galen T. Shimoda,
22 Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate representatives of
23 the Settlement Class. The Court appoints them as Class Representative and Class Counsel, respectively.

24 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
26 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls
27 within the range of reasonableness, and is fair, reasonable, and adequate for the class. The Court also
28 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length

1 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
2 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
3 were able to object to the Agreement and its terms through the administration process and at a fairness
4 or opt-out of being bound by the preliminarily approved Agreement.

5 No objections were made by Class Members and no Class Members opted out of the settlement.
6 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
7 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
8 gives final approval to the Agreement and all terms there in as if stated here in full, including the \$650,000
9 Maximum Settlement Amount.

10 The Court approves the PAGA Penalty Amount of Thirty-Two Thousand Five Hundred Dollars
11 (\$32,500.00), which shall be paid from the Maximum Settlement Amount, not in addition to the
12 Maximum Settlement Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the
13 PAGA Penalty Amount will be paid to the Labor and Workforce Development Agency ("LWDA") and
14 Twenty-Five percent (25%) will be paid to PAGA Members on a pro rata basis as described in the
15 Agreement. The Court also finds that based on the facts of this case and the disputed issues, the
16 Agreement provides a recovery that creates an effective, substantial deterrent to any potential future
17 non-compliance, furthering the purpose of the Labor Code and LWDA.

18 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
19 checks issued to Participating Class Members and/or PAGA Members that are not cashed by the
20 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
21 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
22 Maximum Settlement Amount will revert to Defendant for any reason.

23 The releases and waivers for Class Members who did not opt out of being bound by the
24 Agreement (*i.e.* Participating Class Members), PAGA Members, and the Class Representative are also
25 approved by the Court as set forth in the Agreement.

26 Class Counsel sought an award of attorneys' fees of \$227,500.00, attorney's costs of \$12,865.05,
27 an Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
28 Administrator Costs in the amount of \$8,450. Defendants do not oppose these requests. The Notice of

1 Settlement sent to Class Members included information regarding these amounts and that they would be
2 requested in connection with final approval of the Agreement. Class Members have been given the
3 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
4 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates and the
5 amount of time expended in the litigation for the benefit of Class Members. The Court finds that the
6 requested rates and hours expended are reasonable. The Court has also reviewed the updated itemized
7 costs submitted by Class Counsel, the information provided by the Class Representative regarding the
8 efforts and burdens undertaken for the benefit of the class, and the cost information provided by the
9 Settlement Administrator. The Court finds that these amounts are fair and reasonable, and awarded as
10 requested, which will be deducted from the Maximum Settlement Amount. This finding is further
11 supported by the lack of objection by Class Members to these amounts. The difference between the
12 actual attorney's costs and Settlement Administrator Costs awarded and the originally allocated
13 attorney's costs of \$20,000 and Settlement Administrator Costs of \$15,000 will be added to the Net
14 Settlement Amount pursuant to the terms of the Agreement.

15 **III. APPROVING THE NOTICE PROCEDURES AND NOTICE OF SETTLEMENT**
16 **SATISFYING DUE PROCESS**

17 The Court finds that the Notice of Settlement, attached to the Declaration of Cassandra Polites as
18 Exhibit A, fairly and adequately advised Class Members of the terms of the Agreement, the rights being
19 waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class
20 Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to
21 file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing.
22 The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
23 each identified Class Member at his or her most recent address based on a National Change of Address
24 database search from the Class Members' last known address and a skip trace on any Class Members
25 who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with
26 all constitutional requirements, including those of due process.

IV. IMPLEMENTATION SCHEDULE

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

Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Awards to Participating Class Members and/or Individual PAGA Shares to PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payment, PAGA Penalty Amount, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Members	Within 7 calendar days after Defendants have funded the settlement
Last day for Participating Class Members and PAGA Members to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Members
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
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement.

3 The Court Sets a further compliance hearing for September 19, 2025, at 10:30 a.m. At least 15
4 calendar days prior to the hearing, Class Counsel shall file a declaration from the Settlement
5 Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied
6 that the settlement funds have been fully distributed, no appearance will be required.

7 **IT IS SO ORDERED.**

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9 Date: 1/3/2025

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By: Lauri A. Damrell, Judge
Judge of the Superior Court



1 Carr v. WaveDivision Holdings, LLC
2 Sacramento County Superior Court of California 23CV005516

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
7 the within above-entitled action.

8 On January 6, 2025, I served the following documents on the party below:

- 9 • **ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF**
10 **CLASS ACTION AND PAGA SETTLEMENT**

11 Shannon B. Nakabayashi 12 Jackson Lewis P.C. 13 50 California Street, 9 th Floor 14 San Francisco, California 94111 15 Phone: (415) 796-5407 Email: shannon.nakabayashi@jacksonlewis.com Fatimah.Sikin@jacksonlewis.com	Samuel J. Maselli Jackson Lewis P.C. 400 Capitol Mall, Suite 1600 Sacramento, California 95814 Phone: (916) 341-0404 Email: samuel.maselli@jacksonlewis.com
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16 [] [By First Class Mail] I am familiar with my employer's practice for the collection
17 and processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action by
21 placing a true copy thereof enclosed in a sealed envelope with postage thereon
22 fully prepaid, for collection and mailing on this date, following ordinary business
23 practices, at Salt Lake City, Utah, addressed as set forth above.

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

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

28 [] [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 6, 2025, at Salt Lake City,
Utah.

Shaniya Baird
Shaniya Baird