

SEP 13 2023

By K. Collier
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

11 PENNY LYNN JACKSON, individually, on
12 behalf of all others similarly situated, and on
13 behalf of the State of California and other
14 aggrieved persons; and STEVEN THOMAS
SMITH, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

17 APPLE VALLEY COMMUNICATIONS, INC.,
18 a California corporation; AVCOM SERVICES
19 INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2124721

CLASS ACTION

[Assigned for all purposes to: Hon. Joseph T. Ortiz, Dept. S17]

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed with Notice of Motion and Motion,
Memorandum of Points and Authorities, the
Declaration of Justin F. Marquez, and the
Declarations of Plaintiffs]

PRELIMINARY APPROVAL HEARING

Date: September 13, 2023
Time: 1:30 p.m.
Dept: S-17

Complaint filed: August 25, 2021
Trial date: Not set

1 The Court has before it, Plaintiffs Penny Lynn Jackson’s and Steven Thomas Smith’s
2 (collectively, “Plaintiffs”) Motion for Preliminary Approval of Class Action Settlement.
3 Having reviewed the Motion for Preliminary Approval of Class Action Settlement, the
4 Declaration of Justin F. Marquez, the Class Action and PAGA Settlement Agreement and Class
5 Notice (which is referred to here as the “Settlement Agreement”), and good cause appearing,
6 the Court hereby finds and orders as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiffs Lynn Jackson and Steven
11 Thomas Smith and Defendants Apple Valley Communications, Inc. and AVCOM Services Inc.
12 (“Defendants”), attached to the Declaration of Justin F. Marquez in Support of Plaintiffs’
13 Motion for Preliminary Approval of Class Action Settlement as Exhibit 1.

14 2. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court, and appears to be presumptively valid,
16 subject only to any objections that may be raised at the Final Approval Hearing and final
17 approval by this Court. The Court notes that Defendants have agreed to create a common fund
18 of \$475,000 to cover (a) settlement payments to class members who do not validly opt out; (b)
19 a \$20,000.00 payment to the State of California, Labor & Workforce Development Agency for
20 its share of the settlement of claims for penalties under the Private Attorneys General Act, with
21 75% of which (\$15,000.00) will be paid to the LWDA and 25% (\$5,000.00) will be paid to
22 eligible Aggrieved Employees; (c) Class Representative service payments of up to \$10,000.00
23 for each Plaintiff; (d) Class Counsel’s attorneys’ fees, not to exceed 33 1/3% of the Gross
24 Settlement Amount (\$158,333.00), and up to \$25,000.00 in costs for actual litigation expenses
25 incurred by Class Counsel; and (e) Settlement Administration Costs of up to \$15,000.00.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be within
27 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
28 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair

1 and reasonable to the class members when balanced against the probable outcome of further
2 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
3 significant informal discovery, investigation, research, and litigation have been conducted such
4 that counsel for the parties at this time are able to reasonably evaluate their respective positions;
5 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
6 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
7 the result of intensive, serious, and non-collusive negotiations between the Parties with the
8 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
9 that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
12 Workforce Development Agency for its share of the settlement of claims for penalties under the
13 Private Attorneys General Act, the costs to the settlement administrator, and the class
14 representative's enhancement awards should be finally approved as fair, reasonable and
15 adequate as to the members of the class is hereby set in accordance with the Implementation
16 Schedule set forth below.

17 5. The Court provisionally certifies for settlement purposes only the following class
18 (the "Settlement Class"): "all persons employed by Defendants in California and classified as
19 non-exempt employees who worked for Defendants during the Class Period."

20 6. "Class Period" means the period from August 26, 2017 to March 12, 2023.

21 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
22 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
23 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
24 of law and fact that are common, or of general interest, to all Settlement Class Members, which
25 predominate over individual issues; (3) Plaintiffs' claims are typical of the claims of the
26 Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and adequately protect
27 the interests of the Settlement Class Members; and (5) a class action is superior to other
28 available methods for the fair and efficient adjudication of the controversy.

1 8. The Court appoints as Class Representatives, for settlement purposes only,
2 Plaintiffs Penny Lynn Jackson and Steven Thomas Smith. The Court further preliminarily
3 approves Plaintiff's ability to request an incentive award up to \$10,000.00 each.

4 9. The Court appoints, for settlement purposes only, Justin F. Marquez, Benjamin
5 H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel. The Court further
6 preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of
7 the Total Settlement Amount (\$158,333.00), and costs not to exceed \$25,000.00.

8 10. The Court appoints CPT Group, Inc. as the Settlement Administrator with
9 reasonable administration costs estimated not to exceed \$15,000.00.

10 11. The Court approves, as to form and content of the Class Notice, attached to the
11 Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the
12 Notice to Settlement Class Members satisfies due process, provides the best notice practicable
13 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
14 thereto.

15 12. The parties are ordered to carry out the Settlement according to the terms of the
16 Settlement Agreement.

17 13. Any class member who does not timely and validly request exclusion from the
18 settlement may object to the Settlement Agreement.

19 14. The Court orders the following Implementation Schedule:


21 Defendant to provide Class Data to the 22 Settlement Administrator	[14 days after the Court grants preliminary approval of the settlement]
23 Settlement Administrator to mail the Notice 24 Packets	[14 days after receiving the Class List]
25 Response Deadline	[60 days after notice is mailed]
26 Deadline for Administrator to Email 27 Exclusion List	[5 days after Response Deadline]

1 2 3 4 5 6 7	Deadline for Settlement Administrator to Provide Declaration Re Notice	14 days before Deadline to file Motion for Final Approval
	Deadline to Respond to Objections	[5 Court days before Final Approval Hearing]
	Final Approval Hearing	Final Approval is set for <u>Feb. 1, 2024</u> at <u>8:30</u> a.m./p.m. in Dept. S17

8 15. The Court further ORDERS that, pending further order of this Court, all
9 proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

10 **IT IS SO ORDERED.**

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13 DATE: 9/13/23

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15 Hon. Joseph T. Ortiz
16 San Bernardino County Superior Court
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1 **PROOF OF SERVICE**

2 *Jackson v. Apple Valley Communications, Inc., et al.*
3 CIVSB2124721

4 STATE OF CALIFORNIA)
5) ss
6 COUNTY OF LOS ANGELES)

7 I, Min Jee Kim, state that I am employed in the aforesaid County, State of California; I
8 am over the age of eighteen years and not a party to the within action; my business address is
9 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address
10 is minjee@wilshirelawfirm.com.

11 On **August 21, 2023**, I served the foregoing **[PROPOSED] ORDER GRANTING**
12 **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
13 **SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed
14 envelope by following one of the methods of service as follows:

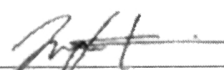
15 Jared L. Bryan (SBN 220925)
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17 Vincent L. Chen (SBN 311883)
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23 **JACKSON LEWIS P.C.**
24 200 Spectrum Center Drive, Suite 500
25 Irvine, California 92618
26 Telephone: (949) 885-1360
27 Facsimile: (949) 885-1380

28 Attorneys for Defendant

- 29 (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State
30 of California Labor and Workforce Development Agency Online Filing Site.
- 31 (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
32 California, by e-mail delivery on the parties listed herein at their most recent known
33 email address or e-mail of record in this action.

34 I declare under penalty of perjury under the laws of the State of California that the
35 foregoing is true and correct.

36 Executed on **August 21, 2023** at Los Angeles, California.

37 
38 _____
Min Jee Kim