

DEC 29 2022

Clerk of the Superior Court
By: R. Cersosimo, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JASFER NEPOMUCENO and DANIELLE
WINKLE, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiffs,

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC, a Delaware limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2021-00006651-CU-OE-CTL
[Consolidated with Case No. 37-2021-
00006737-CU-OE-CTL]

Assigned for All Purposes to:
Honorable Richard S. Whitney
Department C-68

CLASS ACTION

**ORDER OF FINAL APPROVAL AND
JUDGMENT**

Hearing Date: December 29, 2022
Hearing Time: 10:30 a.m.
Hearing Place: Department C-68

Complaint Filed: February 16, 2021
FAC Filed: May 27, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Jasfer Nepomuceno and
2 Danielle Winkle's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, and
3 considering the papers submitted in support of the motion, including the Joint Stipulation of
4 Class Action and PAGA Settlement ("Settlement Agreement," "Settlement," or "Agreement"),
5 hereby FINDS AND ORDERS:

6 Plaintiffs and Defendant Portfolio Recovery Associates, LLC ("Defendant") entered the
7 Settlement Agreement on or about May 12, 2022 to settle this lawsuit.

8 The Court entered an Order dated August 26, 2022 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 scheduling a Final Approval Hearing on December 29, 2022, and providing Class Members with
12 an opportunity to object to the Settlement or exclude themselves from the Class.

13 The Court held a Final Approval Hearing on December 29, 2022 to determine whether to
14 give final approval to the Settlement of this lawsuit.

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

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

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all non-exempt hourly-paid employees who
26 worked for Defendant within the State of California during the time period from February 16,
27 2017 through August 26, 2022 ("Class Period"), but specifically excluding any individual(s) who
28 filed their own separate action as a named plaintiff alleging the same or similar claims being

1 released herein (“Class” and “Class Members”). There are one hundred nineteen (119) Class
2 Members, and none of the Class Members submitted requests to exclude themselves from the
3 Settlement (“Participating Class Members”).

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

7 5. Class Notice. The Court finds the Notice of Class Action Settlement (“Class
8 Notice”) and its distribution to Class Members were implemented pursuant to the Settlement and
9 this Court’s Preliminary 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 and their rights;
12 (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves
13 from the Settlement; (v) their right to receive an Individual Settlement Share; (vi) their right to
14 appear at the Final Approval Hearing; and (vii) the binding effect of the orders and judgment in
15 this lawsuit on all Participating Class Members;

16 b. constitutes notice that fully satisfied the requirements of Code of Civil
17 Procedure section 382, California Rule of Court 3.769, and due process;

18 c. constitutes the best practicable notice to Class Members under the
19 circumstances of this lawsuit; and

20 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

21 6. Final Settlement Approval. The terms and provisions of the Settlement
22 Agreement have been entered in good faith and are the product of arm’s-length negotiations by
23 experienced counsel who have done a meaningful investigation of the claims. The Settlement
24 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
25 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
26 Settlement Agreement according to its terms and provisions.

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1 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiffs, Participating Class Members, all Eligible
3 Aggrieved Employees, and their spouses, heirs, executors, administrators, representatives,
4 attorneys, successors, and assigns. In addition, those terms shall have res judicata and other
5 preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by
6 or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings
7 involve matters that were or could have been raised in this lawsuit and are encompassed by the
8 Released Claims. The Settlement Agreement would not have any binding effect upon, and
9 provide no res judicata preclusion to, any Class Members who submitted timely requests for
10 exclusion. However, no Class Members requested exclusion.

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

13 9. Release of Claims of All Participating Class Members. As of the Effective Final
14 Settlement Date and upon fully funding the settlement, and because no Class Member requested
15 exclusion, all Class Members will be bound by a release of all claims and causes of action falling
16 under the definition of Released Claims for the time frame of the Class Period.

17 10. Release of PAGA Claims. As of the Effective Final Settlement Date and upon
18 fully funding the settlement, the California Labor and Workforce Development Agency
19 (“LWDA”) and all Eligible Aggrieved Employees, including Plaintiffs, individually and on
20 behalf of their spouses, heirs, executors, administrators, representatives, attorneys, successors,
21 and assigns, voluntarily and knowingly are barred from bringing any and all claims seeking civil
22 penalties under the Labor Code predicated on the Private Attorneys General Act of 2004
23 (“PAGA”) asserted in this lawsuit during the PAGA Timeframe against Defendant and Released
24 Parties. The release of PAGA Claims is effective regardless of whether or not the Eligible
25 Aggrieved Employee submits a timely and valid Exclusion Request.

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1 11. Plaintiffs' General Release of Claims. As of the Effective Final Settlement Date,
2 and in exchange for the Class Representative Enhancement Payments to each Plaintiff, in
3 recognition of their work and efforts in obtaining the benefits for the Class and undertaking the
4 risk for the payment of costs if this matter had not successfully resolved, Plaintiffs will be bound
5 by their General Release of Claims described in section III(P) of the Settlement Agreement,
6 including a waiver of Civil Code section 1542.

7 12. Released Parties. The Released Parties include Defendant and its parents,
8 subsidiaries, affiliates, past or present officers, directors, shareholders, employees, investors,
9 assigns, agents, attorneys, principals, heirs, representatives, accountants, auditors, consultants,
10 and insurers and reinsurers.

11 13. Class Representative Enhancement Payments. The Court finds the Class
12 Representative Enhancement Payments of \$10,000, to be paid to each Plaintiff out of the Gross
13 Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement
14 Payments are to be paid pursuant to the terms and provisions set forth in the Agreement.

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

21 b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the
22 risks inherent in their services as the class representatives, duration of the case
23 and time involved, and benefits created, the Court approves the payment of the
24 Class Representative Enhancement Payments of \$10,000 to each Plaintiff.

25 14. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
26 of \$297,500, to be paid out of the Gross Settlement Amount to Class Counsel, to be reasonable
27 and appropriate. The Court further finds the Cost Award as reimbursement for actual litigation
28 costs incurred of \$19,467.11, to be paid to Class Counsel out of the Gross Settlement Amount, to

1 be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and
2 provisions set forth in the Settlement. Defendant shall not be required to pay for any other
3 attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other
4 counsel representing Plaintiffs or Class Members. In addition, Defendant shall not be required to
5 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or
6 Class Members in connection with or related in any manner to this lawsuit, the Settlement, the
7 settlement administration, and/or the Released Claims.

8 a. The Court has an independent right and responsibility to review the requested
9 Attorney Fee Award and only award so much as it determines reasonable. (See
10 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
11 127-28.) The Attorney Fee Award requested by Class Counsel of \$297,500 is
12 thirty-five percent (35%) of the common fund created for the benefit of the Class
13 and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
14 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional results
15 achieved, financial risk undertaken, novel and difficult nature of this litigation,
16 skills required, percentage fees award in previous and other cases, and contingent
17 fees charged in the marketplace, the Court finds the requested Attorney Fee
18 Award is consistent with the marketplace, is reasonable, and is approved.

19 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
20 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
21 seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class
22 Counsel expended \$19,467.11 in litigation costs, and such costs were reasonable.
23 The Court approves the payment of the Cost Award of \$19,467.11 from the Gross
24 Settlement Amount for the reimbursement of Class Counsel's litigation costs.

25 15. Administration Costs. The Court finds Administration Costs of \$8,000, to be paid
26 to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and
27 appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in
28 the Settlement Agreement.

1 a. The Court reviewed the declaration of Tarus Dancy from CPT Group, Inc., the
2 Court-approved Settlement Administrator. The Court finds notice was provided to
3 the Class pursuant to the Preliminary Approval Order, constitutes the best
4 practicable notice to the Class, and satisfied due process. Thus, the Court
5 approves the payment of the Administration Costs of \$8,000 for the Settlement
6 Administrator's services administering the Settlement.

7 16. PAGA Payment. The Court finds the PAGA Payment of \$50,000, seventy-five
8 percent (75%) of which (\$37,500) will be paid to the LWDA out of the Gross Settlement
9 Amount and twenty-five percent (25%) of which (\$12,500) shall be distributed to all Eligible
10 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
11 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

12 17. Funding of the Settlement. No later than fourteen (14) calendar days after the
13 Effective Final Settlement Date and upon the Administrator performing its necessary duties to
14 establish the Qualified Settlement Fund ("QSF") as required by section III(J)(4) of the
15 Settlement Agreement, Defendant shall deposit the Gross Settlement Amount of \$850,000 into
16 the QSF. No funds will be payable by Defendant prior to that time. Within fourteen (14) calendar
17 days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all
18 payments due under the Settlement Agreement.

19 18. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
20 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
21 Settlement was the product of arm's-length negotiations following extensive litigation,
22 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
23 David Rotman, Esq., an experienced and well-respected mediator.

24 a. The fairness of the Settlement is demonstrated by there being no objections to and
25 no requests for exclusion from the Settlement.

26 b. The fairness of the Settlement is further illustrated by the gross *average*
27 Individual Settlement Share being approximately \$3,823.81, and the gross *highest*
28 Individual Settlement Share being about \$10,401.37.

1 19. Uncashed Checks. Participating Class Members must cash or deposit their
2 Individual Settlement Share checks within one hundred eighty (180) calendar days after the
3 checks are mailed to them. Uncashed settlement checks will be paid to the California State
4 Controller's Unclaimed Property Division in accordance with California Unclaimed Property
5 Law so that the Participating Class Members will have their Individual Settlement Shares
6 available to them per the applicable claim procedure to request that money from California.

7 20. Modification of Settlement Agreement. Participating Class Members are hereby
8 authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of
9 the Settlement by an express written instrument: (a) signed by counsel for all Parties or their
10 successors-in-interest; (b) signed by the Parties or their successors-in- interest; or (c) as may be
11 approved by the Court. Such amendments or modifications shall be consistent with this Order
12 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

13 21. Final Accounting and Compliance. The Court sets a nonappearance case review
14 for August 31, 2023 in Department C-68. Within five (5) court days before this hearing,
15 Plaintiffs shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,
16 the compliance status report shall specify the total amount paid to Participating Class Members
17 and the residual of the unclaimed settlement funds that will be paid to the entity identified as the
18 recipient of such funds in the Settlement Agreement.

19 22. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
20 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
21 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
22 and for any other necessary purpose, including, without limitation:

- 23 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
24 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
25 arise out of the Settlement or this Order and Judgment;

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- 1 b. entering such additional orders as may be necessary or appropriate to protect or
2 effectuate this Order and Judgment approving the Settlement, and permanently
3 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
4 the fair and orderly administration of the Settlement; and
5 c. entering any other necessary or appropriate orders to protect and effectuate this
6 Court's retention of continuing jurisdiction.

7 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
8 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
9 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

10 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
11 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
12 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
13 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
14 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
15 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
16 THE JUDGMENT THEREON.

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18 IT IS SO ORDERED.

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20 DATED: 12-28-22

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22 HONORABLE RICHARD S. WHITNEY
23 SUPERIOR COURT JUDGE
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