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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 GRETA BARTEK, an individual, on behalf of
14 himself and on behalf of all persons similarly
15 situated,

16 Plaintiff,

17 v.

18 THE COMPUTER MERCHANT, LTD., a
19 Massachusetts Corporation; and DOES 1-50,
Inclusive.

20 Defendants.
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CASE No.: 34-2023-00336866

~~PROPOSED~~ **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Hearing Date: October 11, 2024
Hearing Time: 9:00 a.m.
Department: 23

Trial Date: N/A
Action Filed: March 24, 2023

1 This matter having come before the Honorable Jill H. Talley of the Superior Court of the State
2 of California, in and for the County of Sacramento on October 11, 2024, at 9:00 am with Jean- Claude
3 Lapuyade, Esq. of the JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law Group, APLC
4 as counsel for Plaintiff GRETA BARTEK (“Plaintiff”), and Nathan W. Austin, Esq. and Keelia K.
5 Lee, Esq. of Jackson Lewis P.C. appearing for Defendant THE COMPUTER MERCHANT, LTD.,
6 (“Defendant”) and the Court, having carefully considered the briefs, argument of counsel and all the
7 matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff’s Motion for
8 Preliminary Approval of Class Action and PAGA Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
11 and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy of which
12 is attached to the concurrently filed Declaration of Shani O. Zakay, Esq. as **Exhibit “1”**. This is
13 based on the Court’s determination that the Settlement Agreement is within the range of possible
14 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
15 and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendant shall pay is \$250,000.00. It appears to the Court on a preliminary basis that the settlement
20 amount and terms are fair, adequate, and reasonable as to the entire Settlement Class when balanced
21 against the probable outcome of further litigation relating to certification, liability, and damages
22 issues. It further appears that investigation and research have been conducted such that counsel for
23 the Parties are able to reasonably evaluate their respective positions. It further appears to the Court
24 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the
25 delay and risks that would be presented by the further prosecution of the litigation. It further appears
26 that the Settlement has been reached as the result of intensive, serious, and non-collusive arms-length
27 negotiations.

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
3 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
4 finds that the monetary settlement awards made available to the Settlement Class are fair, adequate,
5 and reasonable when balanced against the probable outcome of further litigation relating to
6 certification, liability, and damages issues.

7 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification
8 of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any
9 other proceeding should this Settlement not become final. For settlement purposes only, the Court
10 conditionally certifies the following Settlement Class:

11 All non-exempt employees who worked for Defendant The
12 Computer Merchant, Ltd., in California at any time during the
13 period beginning March 24, 2019 to May 25, 2024 (the “Class
14 Period”).

15 6. The Court concludes that, for settlement purposes only, the Settlement Class meets
16 the requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Settlement Class is ascertainable and so numerous that joinder of all members of the
18 Settlement Class is impracticable; (b) common questions of law and fact predominate, and there is a
19 well-defined community of interest amongst the Settlement Class with respect to the subject matter
20 of the litigation; (c) the claims of the Class Representative are typical of the claims of the Settlement
21 Class; (d) the Class Representative will fairly and adequately protect the interests of the Settlement
22 Class; (e) a class action is superior to other available methods for the efficient adjudication of this
23 controversy; and (f) Class Counsel are qualified to act as counsel for the Class Representative in their
24 individual capacity and as the representative of the Settlement Class Members.

25 7. The Court provisionally appoints plaintiff GRETA BARTEK as the representative of
26 the Settlement Class.

27 8. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
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1 A.P.C. and Shani Zakay of the Zakay Law Group, APLC, as Class Counsel for the Settlement Class.

2 9. The Court hereby approves, as to form and content, the Proposed Notice of Pendency
3 of Class Action (“Class Notice”) attached to the Agreement as Exhibit “A”. The Court finds that
4 both notices appear to fully and accurately inform the Settlement Class and Aggrieved Employees of
5 all material elements of the proposed Settlement, including right of any Settlement Class member to
6 be excluded from the Settlement Class by submitting a written request for exclusion, and of each
7 Settlement Class member’s right and opportunity to object to the Settlement. The Court further finds
8 that the distribution of the notices substantially in the manner and form set forth in the Agreement
9 and this Order meets the requirements of due process, is the most reasonable notice under the
10 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court
11 orders the mailing of the notices by first class mail, pursuant to the terms set forth in the Agreement.

12 10. The Court hereby appoints Apex Class Action, LLC., as Settlement Administrator.
13 Within ten (10) business days of this order, Defendant shall provide, to the Settlement Administrator
14 the Class Data, including information regarding Settlement Class Members that Defendant will in
15 good faith compile from their records, including each Class Member’s full name; last known address;
16 Social Security Number; and start dates and end dates of employment. Within twenty-one (21)
17 calendar days after preliminary approval of the Settlement, the Settlement Administrator shall mail
18 the Notice to all identified, potential members of the Settlement Class via first class U.S. Mail using
19 the most current mailing address information available and electronic mail.

20 11. The Court hereby preliminarily approves the proposed procedure for exclusion from
21 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
22 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
23 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
24 postmarked or received by the Response Deadline which is forty-five (45) calendar days after the
25 date the Class Notice is mailed to the Settlement Class Members or, in the case of a re-mailed Notice,
26 not more than fifteen (15) calendar days after the original Response Deadline. Any such person who
27 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual
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1 Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right
2 to object, appeal or comment thereon. Settlement Class members who have not requested exclusion
3 shall be bound by all determinations of the Court, the Agreement and Judgment. A request for
4 exclusion may only opt out of that particular individual, and any attempt to affect an opt-out of a
5 group, class, or subclass of individuals is not permitted and will be deemed invalid.

6 12. Any Settlement Class member who has not opted out may appear at the final approval
7 hearing and may object or express the Class Member's views regarding the Settlement and may
8 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
9 heard and determined by the Court as provided in the Notice. Settlement Class Members will have
10 forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark
11 their written objections to the Settlement Administrator.

12 13. The Agreement specifies for an award of Class Counsel Award for fees and expenses
13 that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
14 and the Class in this action, consisting of attorneys' fees not to exceed one-third of the Maximum
15 Settlement Amount currently estimated to be \$83,333.33 and costs and expenses up to \$25,000.00.

16 14. The Agreement also specifies a proposed Class Representative's Payment to the Class
17 Representative, Greta Bartek, in an amount not to exceed \$7,500.00.

18 15. While the Class Counsel Award and the Class Representative's Payment appear to be
19 within the range of reasonableness, the Court will not approve the Class Counsel Award or Class
20 Representative's Payment until the Final Approval Hearing

21 16. A final approval hearing shall be held before this Court on 02/14/25 at 9:00 AM
22 in Department 23 of the Sacramento County Superior Court to determine all necessary matters
23 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
24 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
25 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
26 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
27 to the Settlement Class; and to finally approve the Class Counsel Award, Class Representative's
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1 Payment, and the Settlement Administration Costs. All papers in support of the motion for final
2 approval and the motion for Class Counsel Award and Class Representative's Payment shall be filed
3 with the Court and served on all counsel no later than twenty-eight (28) days following the expiration
4 of the Response Deadline.

5 17. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
6 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
7 evidence of, or used against Defendant as, an admission or indication in any way, including with
8 respect to any claim of any liability, wrongdoing, fault, or omission by Defendant or with respect to
9 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
10 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
11 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted
12 in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant,
13 including, but not limited to, evidence of a presumption, concession, indication or admission by
14 Defendant of any liability, fault, wrongdoing, omission, concession or damage.

15 18. In the event the Settlement does not become effective in accordance with the terms of
16 the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
17 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the
18 Parties shall revert to their respective positions as of before entering into the Agreement. In such an
19 event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall
20 not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter
21 the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is
22 not approved.

23 19. Pending final determination of whether the Settlement should be approved, Class
24 Representative and all members of the Settlement Class are barred and enjoined from filing,
25 commencing, prosecuting, intervening in, instigating or in any way participating in the
26 commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or
27 other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Release by
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1 Settlement Class Members, unless and until they submit a timely request for exclusion pursuant to
2 the Agreement.

3 20. The Court reserves the right to adjourn or continue the date of the final approval
4 hearing and all dates provided for in the Agreement without further notice to Settlement Class and
5 retains jurisdiction to consider all further applications arising out of or connected with the proposed
6 Settlement.

7 **IT IS SO ORDERED.**

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9 Dated: 10/15/2024



Jill Talley

The Honorable Jill H. Talley
Judge of the Superior Court

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