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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 02 2018

BY *Sulma Torres*
SULMA TORRES, DEPUTY

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN BERNARDINO**

13 FRANK BALURDI, individually, and on
14 behalf of other members of the general public
similarly situated;

15 Plaintiff,

16 vs.

17 MUZAK LLC, an unknown business entity;
MOOD MEDIA NORTH AMERICA, LLC, an
18 unknown business entity; and DOES 1 through
100, inclusive,

19 Defendants.

Case No.: CIVDS1604825

Honorable Thomas S. Garza
Department S27

CLASS ACTION

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

Date: September 18, 2018
Time: 8:30 a.m.
Department: S27

Complaint Filed: April 1, 2016
FAC Filed: July 6, 2017
Trial Date: None Set

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1 This matter has come before the Honorable Thomas S. Garza in Department S27 of the
2 above-entitled Court, located at the San Bernardino Justice Center, 247 West Third Street, San
3 Bernardino, California 92415, on Plaintiff Frank Balurdi's ("Plaintiff") Motion for Final
4 Approval of Class Action Settlement, Attorneys' Fees, Costs, and Enhancement Payment
5 ("Motion for Final Approval"). Lawyers *for* Justice, PC appeared on behalf of Plaintiff and
6 Fisher & Phillips LLP appeared on behalf of Defendants Muzak LLC and Mood Media North
7 America, LLC ("Defendants").

8 On March 28, 2018, the Court entered an Order Granting Preliminary Approval of Class
9 Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the
10 settlement of the above-entitled action ("Action") in accordance with the Joint Stipulation of
11 Class Action Settlement ("Settlement," "Agreement," or "Settlement Agreement"), which,
12 together with the exhibits annexed thereto, set forth the terms and conditions for settlement of the
13 Action.

14 Having reviewed the Settlement Agreement and duly considered the parties' papers and
15 oral argument, and good cause appearing,

16 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

17 1. All terms used herein shall have the same meaning as defined in the Settlement
18 Agreement and the Preliminary Approval Order.

19 2. This Court has jurisdiction over the claims of the Settlement Class Members
20 asserted in this proceeding and over all parties to the Action.

21 3. The Court finds that the applicable requirements of California Code of Civil
22 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with
23 respect to the Class and the Settlement. The Court hereby makes final its earlier provisional
24 certification of the Class for settlement purposes, as set forth in the Preliminary Approval Order.

25 The Class is hereby defined to include:

26 All current and former hourly-paid or non-exempt individuals who worked for
27 Defendants in the State of California at any time during the period from April
28 1, 2012 up to and including May 28, 2017, as reflected in Defendants' payroll
records ("Class" or "Settlement Class Members").

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1 4. The Notice of Proposed Class Action Settlement (“Class Notice”) that was
2 provided to the Settlement Class Members, fully and accurately informed the Settlement Class
3 Members of all material elements of the Settlement and of their opportunity to participate in,
4 object to or comment thereon, or to seek exclusion from, the Settlement; was the best notice
5 practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class
6 Members; and complied fully with the laws of the State of California, the United States
7 Constitution, due process and other applicable law. The Class Notice fairly and adequately
8 described the Settlement and provided the Settlement Class Members with adequate instructions
9 and a variety of means to obtain additional information.

10 5. Pursuant to California law, the Court hereby finds that the Settlement is
11 reasonable and adequate, and in the best interests of the Class as a whole and grants final
12 approval of the Settlement. More specifically, the Court finds that the Settlement was reached
13 following meaningful discovery and investigation conducted by Lawyers *for* Justice, PC and
14 Girardi & Keese (“Class Counsel”); that the Settlement is the result of serious, informed,
15 adversarial, and arms-length negotiations between the parties; and that the terms of the
16 Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has
17 considered all of the evidence presented, including evidence regarding the strength of the
18 Plaintiff’s case; the risk, expense, and complexity of the claims presented; the likely duration of
19 further litigation; the amount offered in the Settlement; the extent of investigation and discovery
20 completed; and the experience and views of Class Counsel. The Court has further considered the
21 absence of any requests for exclusion from the Settlement and objections to the Settlement.
22 Accordingly, the Court hereby directs that the Settlement be affected in accordance with the
23 Settlement Agreement and the following terms and conditions.

24 6. A full opportunity has been afforded to the Settlement Class Members to
25 participate in the Final Approval Hearing, and all Settlement Class Members and other persons
26 wishing to be heard have been heard. The Settlement Class Members also have had a full and
27 fair opportunity to exclude themselves from the Settlement. Accordingly, the Court determines
28 that all Settlement Class Members who did not submit a timely and valid Request for Exclusion

1 to the Settlement Administrator (“Participating Class Members”) are bound by this Final
2 Approval Order and Judgment.

3 7. The Court finds that payment of Settlement Administration Costs in the amount of
4 \$7,000 is appropriate for the services performed and costs incurred for the notice and settlement
5 administration process. It is hereby ordered that the Settlement Administrator, Simpluris, Inc.,
6 shall issue payment to itself in the amount of \$7,000, in accordance with the Settlement
7 Agreement.

8 8. The Court finds that the Enhancement Payment sought is fair and reasonable for
9 the work performed by Plaintiff on behalf of the Class. It is hereby ordered that the Settlement
10 Administrator issue payment in the amount of \$6,500 to Plaintiff Frank Balurdi for his
11 Enhancement Payment, according to the terms set forth in the Settlement Agreement.

12 9. The Court finds that the request for an award of attorneys’ fees in the amount of
13 \$190,000 falls within the range of reasonableness, and the results achieved justify the award
14 sought. The requested attorneys’ fees are fair, reasonable, and appropriate, and are hereby
15 approved. It is hereby ordered that the Settlement Administrator issue payment in the amount of
16 \$190,000 for attorneys’ fees, in accordance with the Settlement, as follows: \$142,500 to Lawyers
17 *for Justice, PC* and \$47,500 to Girardi & Keese.

18 10. The Court finds that reimbursement of litigation costs and expenses in the amount
19 of \$16,277.38 to Class Counsel is reasonable, and hereby approved. It is hereby ordered that the
20 Settlement Administrator issue payment in the amount of \$16,277.38 to Class Counsel for
21 reimbursement of litigation costs and expenses, in accordance with the Settlement, as follows:
22 \$12,237.38 to Lawyers *for Justice, PC* and \$4,040 to Girardi & Keese.

23 11. The Court hereby enters Judgment by which Participating Class Members shall be
24 conclusively determined to have given a release of any and all Released Claims against the
25 Released Parties, as set forth in the Settlement Agreement and the Class Notice.

26 12. It is hereby ordered that Defendants shall transmit the Gross Settlement Amount
27 to the Settlement Administrator within ten (10) calendar days of the Final Effective Date, in
28 accordance with the Settlement Agreement.

1 13. It is hereby ordered that the Settlement Administrator shall distribute settlement
2 payments to all Participating Class Members, according to the terms set forth in the Settlement
3 Agreement.

4 14. It is ordered that any and all checks for payment of Individual Settlement
5 Payments issued to Participating Class Members that are not cashed or negotiated within one
6 hundred eighty (180) calendar days after they are issued will be cancelled, and the funds
7 associated with such cancelled checks will be transmitted twenty-five percent (25%) to the State
8 Treasury for deposit in the Trial Court Improvement and Modernization Fund and seventy-five
9 percent (75%) to the State Treasury for deposit into the Equal Access Fund of the Judicial
10 Branch, in accordance with the Settlement Agreement.

11 15. After entry of this Final Approval Order and Judgment, pursuant to California
12 Rules of Court, Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret,
13 implement, and enforce the Settlement Agreement, to hear and resolve any contested challenge
14 to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
15 connection with the distribution of settlement benefits.

16 16. Notice of entry of this Final Approval Order and Judgment shall be given to the
17 Settlement Class Members by posting a copy of the Final Approval Order and Judgment on
18 Simpluris, Inc.'s website for a period of at least sixty (60) calendar days after the date of entry of
19 this Final Approval Order and Judgment. No individualized notice shall be required.

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21 **OCT 02 2018**
22 Dated: _____

Thomas Garza

HONORABLE THOMAS S. GARZA
JUDGE OF THE SUPERIOR COURT

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