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2022 JAN 18 PM 4:05

LAW AND MOTION DEPT. 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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9 individually and on behalf of all others
similarly situated

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO
13

14 CHRISTIE WINSTON, individually and on
15 behalf of all others similarly situated,
16 Plaintiffs,

17 vs.

18 EXECAP, INC., a California Limited Liability
Corporation, EXECUTIVE AUTOPILOTS,
19 INC., a California Corporation, ANDREY
20 KALCHENKO, an individual, and DOES 1
through 20 inclusive;
21 Defendants.
22

CASE NO. 34-2018-00234725-CU-OE-GDS

(P)
~~PROPOSED~~ ORDER: PLAINTIFF'S
NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Date: January 18, 2022
Time: 1:30 p.m.
Dept: 53
Res. No: 2606279

1 This matter came on for hearing on January 18, 2022 at 1:30 p.m. , in the above-entitled
2 court located at 720 9th Street, Sacramento, California, 95814, on the Motion for Preliminary
3 Approval of Class Action Settlement. Having fully reviewed and considered the moving papers,
4 and having analyzed the Class Action Settlement Agreement (“Settlement Agreement”) between
5 Plaintiff Christie Winston (“Plaintiff”) and Defendants Execap, Inc., Executive Autopilots, Inc.,
6 and Andrey Kalchenko, (hereinafter “Defendants”), attached as Exhibit “1” to the Declaration of
7 Daniel J. Bass and the Parties’ Class Action Settlement Agreement Addendum (“Addendum”)
8 attached as Exhibit “2” to the Declaration of Daniel J. Bass,

9 **THIS COURT HEREBY MAKES THE FOLLOWING ORDERS:**

10 1. This Court hereby preliminarily approves the proposed Settlement Agreement, as
11 amended, as being fair, reasonable, and adequate.

12 2. All defined terms contained herein shall have the same meanings as those set forth
13 in the Settlement Agreement.

14 3. The Class Notice Packet, attached as Exhibit “3” to the Declaration of Daniel J.
15 Bass, is hereby approved.

16 4. The Court finds that the distribution of the Class Notice in the manner set forth
17 herein substantially meets the requirements of California law and due process, is the best notice
18 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
19 entitled thereto.

20 5. Solely for the purposes of the proposed settlement, the following class is hereby
21 provisionally certified pursuant to California Code of Civil Procedure section 382 as follows:

22 The “Class” means all non-exempt hourly employees who worked
23 for Defendants in the State of California during the Class Period.

24 “Class Period” means the period from June 13, 2014 through January
25 6, 2021 the date the Court previously granted preliminary approval
26 in this matter.

1 6. Solely for the purposes of the proposed settlement, the Court does hereby
2 preliminarily approve Ronald W. Makarem, Daniel J. Bass, and William A. Baird of Makarem &
3 Associates, APLC ("Plaintiff's Counsel or Class Counsel") as Class Counsel.

4 7. Solely for the purposes of the proposed settlement, the Court does hereby
5 preliminarily approve Christie Winston as Class Representative.

6 8. Solely for the purposes of the proposed settlement, the Court does hereby
7 preliminarily approve of and appoint CPT Group, Inc., as the Parties' Settlement Administrator,
8 and approves of settlement administration costs of up to \$ 8,000.

9 9. The Court finds that the section of the Settlement Agreement regarding the
10 disposition of uncashed checks complies with California Code of Civil Procedure Sections 382.4
11 and 384 by providing that any unclaimed settlement funds (settlement checks that expire) shall be
12 transferred to the California State Controller's Office and held in trust for such Settlement Class
13 Members pursuant to California Unpaid Property Law.

14 10. A final fairness hearing (the "Final Approval Hearing") *is reserved for* ~~shall be set on~~ ^{PP}
15 05/18/22, ~~2022~~^{PP}, in Department 53 of this Court, to review the notice process and
16 objections, if any, and to determine whether the proposed settlement on the terms and conditions
17 set forth in the Settlement Agreement are fair, reasonable, and adequate, and should be approved
18 by the Court; whether the Judgment as provided in the Settlement Agreement should be entered
19 into; and to determine the amount of attorneys' fees and costs that should be awarded to Class
20 Counsel and the amount of the Class Representative Enhancement Awards that should be awarded
21 to the Representative Plaintiff.

22 11. The Settlement Administrator shall supervise and administer the notice procedure
23 as follows:

- 24 a. Within ten (10) calendar days after this Preliminary Approval is granted by the
25 Court, Defendants shall provide to the Settlement Administrator the names,
26 addresses, social security numbers and work week information of all Class
27 Members during the class period.

1 b. Within fifteen (15) calendar days of receiving the Class Member contact
2 information from Defendants, the Settlement Administrator shall send the Class
3 Notice Packet to each Class Member by First-Class mail.

4 c. At the time the parties file their motion for final approval of the settlement, Class
5 Counsel shall provide the Court with a declaration by the Settlement Administrator,
6 specifying the due diligence it undertook with regard to the mailing of the Class
7 Notice Packet; verifying its settlement administration costs; and reporting on the
8 number of opt-outs, objections, disputed, and average Individual Settlement
9 Payment amounts.

10 12. Any Class Member who wishes to be excluded (opt-out) from the Settlement Class
11 and not participate in the proposed settlement must execute a written request for exclusion to the
12 Settlement Administrator within thirty (30) days, as set forth in the Class Notice Packet. To be
13 timely, the request for exclusion must be mailed to the Settlement Administrator, postmarked by
14 the (30) day deadline. Any Class Member who opts out of the Settlement will be ineligible to
15 receive a settlement payment, but will not be bound by the Settlement Agreement or the release of
16 claims contained therein.

17 13. Class Members who wish to object to the Settlement may do so by sending a
18 written Objection to the Settlement Administrator no later than (30) days after the date on which
19 the Class Notice Packet was initially mailed to Class Members. Any Class Member may submit to
20 the Settlement Administrator a written statement objecting to the Settlement that sets forth the
21 grounds for the objection. Any Class Member may appear at the Final Approval Hearing, with or
22 without prior notice, and show cause, if he or she has any, why the proposed Settlement should or
23 should not be approved as fair, reasonable, and adequate, why attorneys' fees and costs should or
24 should not be awarded to Class Counsel as requested, or why the Class Representative Service
25 Award should or should not be awarded as requested. Class Members who validly opt out of the
26 Settlement may not also object to the Settlement.

27 15. The Court further finds that the proposed funding plan for the Settlement is
28 reasonable and as set forth as follows:

4814-4130-2610.1

1 22. Settlement checks will be distributed fourteen (14) calendar days after the Funding
2 Date. The funding date is ten (10) calendar days after the Effective date. "Effective Date" means
3 either (a) the date sixty (60) days after the entry of the Final Judgment and order finally approving
4 the Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review
5 have been filed, or (b) in the event that a motion for reconsideration, an appeal or other effort to
6 obtain review of the Final Judgment and order finally approving the Settlement, the date sixty (60)
7 days after such reconsideration, appeal or review has been finally concluded and is no longer
8 subject to review, whether by appeal, petition for rehearing, petition for review or otherwise and
9 the Settlement has not been materially modified.

10 16. Upon the Order of this Court granting Final Approval of the Amended Settlement
11 Agreement, the Settlement Administrator shall be authorized to release 90% of the approved
12 Attorneys' Fees and Costs to Class Counsel. The remaining 10% of the approved Attorneys' Fees
13 and Costs shall be retained by the Settlement Administrator.


14 17. The Court will set a compliance hearing for approximately sixty (60) days
15 following final distribution of the settlement funds.

16 18. The Court's preliminary approval of the Settlement Agreement is not to be deemed
17 an admission of liability or fault by Defendants, or a finding as to the validity of any claims or
18 defenses asserted in the action. Upon Court order approving of the final distribution of the
19 settlement funds, the Settlement Administrator shall be authorized to release the remaining 10%
20 of Attorneys' Fees and Costs to Class Counsel.

21 19. The Court reserves the right to adjourn the date of the Final Approval Hearing
22 without further notice to the Class Members, and it will retain jurisdiction to consider all further
23 applications arising out of or connected with the proposed Settlement.

24 **IT IS SO ORDERED.**

25
26 Dated: JAN 18 2022, 2022 ^②



SHAMA H. MESIWALA
Judge of the Superior Court