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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**
11

12 JASON MCLELLAND, on behalf of
himself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 CUMMINGS VACUUM SERVICE, INC.,
a California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.
19

CASE NO: BCV-21-100238

Assigned to the Hon. Thomas S. Clark, Dept. 17

**[PROPOSED] ORDER (1) GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND (2)
GRANTING LEAVE TO FILE SECOND
AMENDED COMPLAINT**

DATE: June 7, 2022

TIME: 8:30 a.m.

DEPT.: 17

Action Filed: February 3, 2021

1 Plaintiff Jason McLelland's ("Plaintiff") Unopposed Motion for Preliminary Approval of
2 Class Action Settlement and for Leave to File Second Amended Complaint came on for hearing
3 before this Court in Department 17, Judge Thomas S. Clark presiding, on June 7, 2022. The Court,
4 having considered the papers submitted in support of the motion and having heard oral argument
5 of the parties, **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the settlement based upon the terms set
7 forth in the Settlement Agreement and Release of Claims ("Settlement") filed with the Court. The
8 settlement appears to be fair, adequate, and reasonable to the Class;

9 2. The Court finds that the settlement falls within the range of reasonableness and
10 appears to be presumptively valid, subject only to any objections that may be raised at the final
11 hearing;

12 3. The Court approves, as to form and content, the Notice of Pendency of Proposed
13 Class Action Settlement and Final Hearing ("Notice") and Request for Exclusion form ("Exclusion
14 Form"), and also approves the procedure for members of the Class to object to the settlement set
15 forth in the Notice and Exclusion Form;

16 4. The Court directs the mailing of the Notice and Exclusion Form by first class mail
17 to the Settlement Class Members in accordance with the schedule set forth below. The Court finds
18 that the dates selected for the mailing and distribution of the Notice and Exclusion Form, as set
19 forth herein, meet the requirements of due process and provide the best notice practicable under the
20 circumstances and shall constitute due and sufficient notice to all persons entitled thereto;

21 5. It is ordered that the Settlement Class is preliminarily certified for settlement
22 purposes only. The Settlement Class is defined as follows: all non-exempt employees of Defendant
23 in California at any time between February 3, 2017 and February 22, 2022;

24 6. The Court approves and appoints Daniel F. Gaines and Alex P. Katofsky of Gaines
25 & Gaines, APLC as Class Counsel, and grants preliminary approval of an award of attorneys' fees
26 of up to 40% of the Maximum Settlement Amount (or \$98,000) and documented litigation costs of
27 up to \$12,000 to Class Counsel, subject to final approval by the Court following a further motion
28 by Class Counsel;

1 7. The Court approves and appoints Plaintiff Jason McLelland as the Class
2 Representative and grants preliminary approval to a proposed Class Representative Service Award
3 in an amount not to exceed \$10,000;

4 8. The Court grants preliminary approval of the allocation of \$10,000 to penalties
5 under the Private Attorneys General Act (Labor Code §§ 2698 et seq.), of which 75% (\$7,500) shall
6 be paid to the LWDA and 25% (\$2,500) shall be included in the Net Settlement Proceeds for
7 payment to Class Members;

8 9. The Court hereby approves and appoints ILYM Group, Inc. as the Settlement
9 Administrator and grants preliminary approval of the payment of fees and other charges of the
10 Settlement Administrator in an amount not to exceed \$6,000;

11 10. The Court grants Plaintiff leave to file the Second Amended Class and
12 Representative Action Complaint attached as Exhibit 3 to the Settlement, within five (5) court days
13 of the entry of this Order, and consents that Defendant is not required to file a responsive pleading
14 thereto; and

15 11. The Court orders the following schedule of dates for the specified actions/further
16 proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Exclusion Form to Class Members	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Exclusion Form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 85 days after entry of this Order)

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT