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Attorneys for Plaintiff KALAINA A. DULA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

KALAINA A. DULA, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

2 KINGS GAMING, INC., a California
corporation; and DOES 1-50, inclusive;

Defendants.

Case No. 20CV-02289

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

Date: July 15, 2022
Time: 8:15 a.m.

Judge: Hon. Brian McCabe
Dept.: 8

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiff KALAINA A. DULA, (hereafter "Plaintiff") in this wage and hour class action filed against 2
6 KINGS GAMING, INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's Motion for Final Approval of
8 Class and PAGA Action Settlement.

9 3. Attached hereto as **Exhibit "A"** are true and correct copies of the fully executed Class
10 Action Settlement Agreement (hereinafter "Agreement").

11 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the conformed April 21,
12 2022, Preliminary Approval Order.

13 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the March 7, 2022, proof of
14 filing the proposed Settlement with the LWDA and the June 22, 2022 proof of filing of this motion for
15 final approval with the LWDA.

16 **I. INTRODUCTION**

17 6. An objective evaluation of the proposed settlement of Ninety-Seven Thousand Five
18 Hundred Dollars and Zero Cents (\$97,500.00) ("Settlement Sum") confirms that the relief negotiated
19 on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed,
20 adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and
21 experience of Jeffrey Ross, Esq., a respected mediator of wage and hour class actions. After deducting
22 any Court-approved attorneys' fees and costs, class representative enhancement payments,
23 administration costs, and payments to the Labor & Workforce Development Agency ("LWDA"), the
24 Net Settlement Sum shall be distributed to the Settlement Class Members based on the number of
25 workweeks they worked while employed by Defendant during the Class Period. *The Class greeted*
26 *news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 118*
27

1 ***Class Members chose to participate in the Settlement.***¹ The unanimous approval by the Settlement
2 Class evidences the clear fairness and reasonableness of the Settlement.

3 7. This Settlement provides substantial recovery for Defendant's alleged wage and hour
4 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Sum of
5 approximately \$37,209.00. This will result in an average Individual Settlement Payment of **\$315.33**
6 and high payment of **\$958.39**.

7 8. The relief offered by the Settlement is immediate and is particularly impressive when
8 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
9 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
10 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
11 litigation.

12 9. As discussed below, the proposed Settlement satisfies all criteria for final settlement
13 approval under California law and falls well within the range of reasonableness. Accordingly, Class
14 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
15 and, entry of the proposed Final Approval Order and Judgment.

16 **II. OVERVIEW OF THE LITIGATION**

17 10. Defendant provides staffing for gaming facilities throughout California. This action
18 asserts claims on behalf of all individuals who are or previously were employed by Defendant in
19 California and classified as non-exempt employees at any time during the Class Period. Plaintiff was
20 employed by Defendant as a non-exempt employee from November of 2019 to December of 2019. At
21 all times during her employment, Plaintiff was paid on an hourly basis and was entitled to legally
22 compliant meal and/or rest periods, and minimum, regular, and overtime wages for all hours worked.
23 Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures.

24 11. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including
25 overtime, failed to provide compliant meal and rest periods, failed to reimburse for required business
26 expenses, failed to furnish complete and accurate itemized wage statements, and failed to timely pay

27 ¹ As of the filing date of this Motion, zero Notices were deemed undeliverable.

1 employees all wages owed at the time of separation of their employment. Defendant forcefully denies
2 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
3 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including
4 but not limited to, facially compliant meal and rest period policies, compliant overtime policies,
5 compliant reimbursement policies, complete and accurate wage statements, and payment of wages to
6 employees upon separation of employment.

7 12. On June 4, 2020, Plaintiff served Defendant and the Labor and Workforce Development
8 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
9 the facts and theories supporting Defendant's alleged violations of various provisions of the California
10 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
11 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
12 2698 *et seq* ("PAGA").

13 13. On August 12, 2020, Plaintiff filed a class and representative action complaint in the
14 Merced Superior Court, Case Number 20CV-02289 ("Class Action"). The Class Action alleged nine
15 causes of action against Defendant for: (1) unfair competition in violation of Cal. Business &
16 Professions Code § 17200; (2) failure to pay minimum wages in violation of Cal. Labor Code §§ 1194,
17 1197, and 1197.1; (3) failure to pay overtime wages in violation of Cal. Labor Code § 510; (4) failure
18 to provide required meal breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable IWC
19 Wage Order; (5) failure to provide required rest breaks in violation of Cal. Labor Code §§ 226.7 & 512
20 and the applicable IWC Wage Order; (6) failure to reimburse employees for required expenses in
21 violation of Cal. Lab. Code § 2802; (7) failure to provide accurate itemized wage statements in violation
22 of Cal. Labor Code § 226; (8) failure to provide wages when due in violation of Cal. Lab. Code §§ 201,
23 202 and 203; and (9) violation of the Private Attorneys General Act under Labor Code §§ 2698, *et seq*.

24 14. Prior to mediation, the Parties engaged in formal discovery, as well as in investigation
25 and the informal exchange of documents and information in connection with the Action and mediation.
26 To prepare for mediation, Defendant provided Class Counsel with a significant sample of time records
27 and certain payroll data points, as well as other documents and information. As discussed *infra*,

1 Plaintiff's counsel retained the forensic consultants at Econ One Research, Inc. ("Econ One") to analyze
2 Defendant's time and payroll data.

3 15. On July 7, 2021, the Parties participated in a full day mediation presided over by Jeffrey
4 Ross, Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day
5 mediation, the Parties were unable to reach an agreement for settlement. Thereafter, for several months,
6 the Parties continued settlement negotiations until they reached a tentative agreement. The Parties then
7 prepared the full Agreement, which was signed by all counsel and the Parties.

8 16. The Court preliminarily approved a Settlement Sum of Ninety-Seven Thousand Five
9 Hundred Dollars and Zero Cents (\$97,500.00). The Settlement Sum shall be used: (1) to satisfy
10 attorneys' fees and costs; (2) to satisfy the costs of administration; (3) to satisfy the PAGA allocation;
11 and (4) to satisfy the representative enhancement award to the Plaintiff incurred in this action.

12 17. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
13 the class and should be granted final approval. This is evidenced by the unanimous approval of the
14 Settlement by the Settlement Class and absence of any objections to the Settlement.

15 18. Further supporting final approval, the average Individual Settlement Payment of \$315.33
16 is comparable to settlement payments in similar wage and hour class actions. This result is particularly
17 favorable considering that liability and certification were far from certain. Given the complexities of
18 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
19 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
20 final approval.

21 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

22 **A. Adequate Investigation**

23 19. Months before filing the Action, Class Counsel began its pre-filing investigation into the
24 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
25 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
26 including portions of Defendant's handbooks, compensation policies, and time and payroll records. At
27

1 the conclusion of the interviews, Class Counsel determined that each of Plaintiff's complaints justified
2 further inquiry.

3 20. Class Counsel subsequently requested Plaintiff's employee file from Defendant. In
4 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
5 Plaintiff's hiring documents, payroll and time records, performance reviews, and separation documents.
6 Class Counsel reviewed and analyzed the documents and determined the documents appeared to
7 substantiate Plaintiff's claims that Defendant failed to, among other things, pay for all time worked,
8 reimburse for required expenses, furnish accurate itemized wage statements, provide compliant meal
9 and rest periods, and timely pay employees all wages due at the time of separation.

10 21. Prior to mediation, the Parties engaged in formal discovery, as well as in investigation
11 and the informal exchange of documents and information in connection with the action and mediation.
12 To prepare for mediation, Defendant provided a significant sample of time records and payroll records,
13 as well as other documents and information, to Class Counsel to review and analyze. Defendant
14 provided data regarding the number of Class Members, aggregate workweek and pay period data for
15 the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the
16 Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*,
17 compensation, timekeeping and meal and rest period policies. In total, Defendant produced hundreds
18 of pages of pertinent policy documents including time and payroll data for Class Counsel to analyze.

19 22. Class Counsel then retained the statisticians and economists at Econ One to evaluate the
20 Class Members' payroll and time data. Econ One provides data analysis and damage modeling
21 consulting services specializing in wage and hour class actions. Econ One's team of financial and data
22 analysts are credentialed and experienced experts in their fields and have provided their expertise on
23 thousands of cases. Stated differently, the Econ One is uniquely qualified to analyze Defendant's time
24 and payroll data.

25 23. Econ One analyzed Defendant's time and payroll data to assist in the development of
26 various damage models. Among other things, Econ One determined the approximate number of work
27 shifts, workweeks, pay periods, average length of shift and average number of hours worked per week
28

1 and pay periods during the Class Period. Econ One also estimated the number of missed, late or
2 truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class
3 Period, and the amount of unpaid wages, and the amount of unreimbursed business expenses during the
4 Class Period.

5 24. In advance of mediation, Class Counsel created several damage models predicated on the
6 Econ One analysis. Class Counsel's models calculated Defendant's potential liability exposure while
7 accounting for the uncertainties of continued litigation. These damage models informed and guided
8 Class Counsel during the mediated settlement discussions.

9 25. In addition to formal and informal discovery, witness interviews, document review, data
10 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
11 two cases are identical, this research provided Class Counsel with a marker to inform settlement
12 discussions and, ultimately, to measure this settlement against.

13 26. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
14 determining Plaintiff's suitability as putative class representative through interviews, background
15 investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims;
16 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
17 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
18 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
19 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
20 estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with several
21 putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This
22 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
23 as well as the impediments to recovery, such as to make an independent assessment of the
24 reasonableness of the terms to which the Parties have agreed.

25 27. Class Counsel only agreed to enter the Settlement following his thorough investigation
26 and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and
27 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated

1 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
2 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
3 reasonable, and adequate, the Court should preliminarily approve the Settlement

4 **B. The Parties Settled Shortly After Mediation**

5 28. The Settlement is the product of a mediation session with a respected mediator and
6 negotiations over the terms of the Settlement. Although the mediation concluded without a settlement,
7 the Parties, represented by its respective counsel, were able to reach an agreement after months of
8 negotiations. The negotiations were adversarial, conducted at arm's length and tempered by the efforts
9 of both sides to serve the interests of their clients. The amount of the service award was not negotiated
10 until after the parties agreed to the Settlement Sum and many other terms.

11 **C. Class Counsel is Experienced in Similar Litigation**

12 29. Plaintiff is represented by competent and experienced counsel to pursue her claims. I
13 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
14 aggrieved employees and consumers throughout California in wage and hour class actions and complex
15 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
16 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Tesla Stone (Paralegal), Sydney Castillo-
17 Johnson (Associate Attorney), Jennifer Hemming (Legal Secretary), and Sara Christensen (Legal
18 Assistant).

19 30. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved
20 Employees. I have extensive experience with wage and hour class and representative actions litigation
21 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
22 litigation experience and complex construction product liability experience. I can, will and have
23 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved
24 Employees throughout this action.

25 31. I have represented consumers and employees in California class actions, and complex
26 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a
27 plaintiffs' civil litigation attorney since April 2007.

1 32. I have significant class counsel and collective action counsel experience. I served as class
2 and/or collective (PAGA) counsel in the following matters:

3 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
4 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar
5 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The
6 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA
7 counsel for the State of California.

8 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914
9 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA
10 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC
11 acted as class counsel for the settlement class and as representative PAGA counsel the
12 State of California and the Aggrieved Employees.)

13 c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-
14 CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million
15 dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums
16 and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

17 d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-
18 20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and
19 appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action
20 settlement.)

21 e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.
22 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and
23 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed
24 the JCL Law Firm, APC as Class Counsel)

25 f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case
26 No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson
27
28

1 approved \$550 billing rate in a representative California Labor Code Private Attorney
2 General Act settlement).

3 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
4 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
5 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
6 class counsel for the settlement class and as representative PAGA counsel the State of
7 California and the Aggrieved Employees.)

8 h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
9 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
10 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
11 employees by the JCL Law Firm, APC.)

12 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
13 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the
14 JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for,
15 *inter alia*, missed meal and rest periods.)

16 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case
17 No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
18 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
19 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

20 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
21 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
22 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
23 *inter alia*, off-the-clock work.)

24 l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
25 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
26 Counsel and granted final approval of wage and hour class action for off-the-clock work.)
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28

1 m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No.
2 SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class
3 counsel and granted final approval of wage and hour class action for meal period
4 violations.)

5 n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
6 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
7 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
8 acted as lead counsel.)

9 o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
10 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
11 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
12 counsel.)

13 p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
14 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
15 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
16 Class Counsel.)

17 q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
18 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
19 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
20 action settlement arising out of Civil Code Section 1940.1.)

21 r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
22 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
23 class counsel and granted final approval of wage and hour class action for unpaid
24 overtime.)

25 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
26 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm,
27 APC, as Class Counsel and granted preliminary approval for the wage and hour class
28

1 action settlement involving nearly 900 current and former employees. Final approval
2 scheduled for October 4, 2019)

3 t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
4 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
5 as Class Counsel and granted final approval for a wage and hour class action settlement
6 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

7 u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
8 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
9 APC, as Class Counsel and granted final approval for a wage and hour wage class action
10 settlement involving misclassified house cleaners.)

11 v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-
12 2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an
13 unlawful housing class action arising under Civil Code Section 1940.2)

14 w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court
15 Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock
16 appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage
17 and hour class action settlement for meal and rest period violations);

18 x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case
19 No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm,
20 APC, as Class Counsel and granted final approval for a wage and hour class action
21 settlement involving claims for on duty meal and rest periods.);

22 y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court
23 Case No. BC603030 (2018 - certified and settled wage and hour class action.)

24 z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
25 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
26 rest periods)

1 aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-
2 00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
3 misclassification);
4 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.
5 BC617160 (2017 - Certified and settled wage and hour class action.);
6 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case
7 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
8 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-
9 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices
10 arising out of Civil Code Section 1940.1);
11

12 33. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
13 favorable verdict for the firm's clients.

14 34. Finally, I have published appellate experience in *William Blanchette et al., v. The*
15 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

16 35. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,
17 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,
18 Rising Star list recognizes the top 2.5% of eligible attorneys. (see
19 https://www.superlawyers.com/about/selection_process.html.)

20 **D. Strength of Plaintiff's Case**

21 36. Here, the Settlement is clearly within the "ballpark" of reasonableness because the
22 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
23 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,
24 91 Cal.App.4th at 250. While the Settlement Sum of Ninety-Seven Thousand, Five Hundred Dollars
25 and Zero Cents (\$97,500.00) represents a discount on Defendant's potential exposure if Plaintiff
26 established liability on all claims and was awarded the full amount of the estimated damages at trial,
27 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk
28

1 that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial
2 recovery may require many more years of litigation, resulting in added fees and costs without any
3 guarantee of recovery for the Class.

4 37. Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to
5 ignore the asserted defenses. If successful on any one its defenses, Defendant could defense the action
6 or at least, drastically undercut Plaintiff's claims.

7 **E. Risks of Continued Litigation**

8 38. With respect to the most immediate challenge, i.e., class certification, the risks attendant
9 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
10 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
11 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
12 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
13 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
14 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
15 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
16 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
17 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
18 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
19 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
20 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
21 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
22 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
23 certification of driver meal and rest period claims based on the predominance of individual issues).
24 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
25 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
26 settlement.

39. Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff's claims and, in fact, already has.

40. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O’Conner v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future.

41. Class Representative and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in

1 favor of the employer. (*See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
2 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
3 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
4 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that
5 employees might not take their breaks were predominantly individualized questions of fact not
6 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
7 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
8 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
9 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
10 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
11 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
12 period claims based on the predominance of individual issues.) Collectively, the examples cited above
13 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
14 through a contested motion is a significant risk factor favoring settlement.

15 **F. The Settlement Sum is Fair and Reasonable**

16 42. The Settlement Sum of Ninety-Seven Thousand, Five Hundred Dollars and Zero Cents
17 (\$97,500.00) in this case is fair and well within the range of recognized reasonableness. As detailed at
18 the time of preliminary approval, the Settlement Sum is fair and reasonable considering the nature and
19 magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel
20 developed varied economic damages models measuring Defendant’s liability exposure while
21 accounting for the uncertainties of continued litigation. The various models were informed by Class
22 Counsel’s investigation, including the analysis of a significant sample of time and payroll data. As
23 detailed in greater depth during the preliminary approval process, Class Counsel projected a range of
24 Defendant’s liability exposure for the claims asserted on behalf of the Settlement Class. The Settlement
25 Sum represents approximately between 20% and 43% of Defendant’s *class-wide* liability exposure as
26 estimated by Class Counsel at the time of mediation.

1 43. Clearly the goal of this litigation to obtain redress for the class has been met by this
2 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
3 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
4 approval.

5 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

6 44. Here, Plaintiff and Defendant negotiated a good faith PAGA allocation in the amount of
7 Five Thousand Dollars and Zero Cents (\$5,000.00) which is 5.1% of the Settlement Sum. This amount
8 falls well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA
9 allocation (\$3,750.00) will be paid to the LWDA ("LWDA") with the remaining twenty-five percent
10 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
11 approved by courts and should be approved.

12 45. Further, on March 7, 2022, Class Counsel gave the LWDA notice of this Settlement and
13 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
14 the LWDA. On June 22, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval
15 of this settlement.

16 I declare under the penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct. Executed this 22nd day of June 2022, at San Diego, California.

18
19 **JCL LAW FIRM, APC**

20 By: 
21 Jean-Claude Lapuyade
22 Attorneys for Plaintiff
23
24
25
26
27
28

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made between KALAINA A. DULA (“Plaintiff”), on behalf of herself and all others similarly situated (the “Putative Class”), on the one hand, and 2 KINGS GAMING, INC. (“Defendant”), on the other hand. Plaintiff and Defendant will at times be referred to collectively as the “Parties” and may individually be referred to as a “Party.”

RECITALS

WHEREAS, Plaintiff contends she was employed by Defendant during the alleged “Class Period,” defined as between August 12, 2016 and the earlier of January 8, 2022 or the date the Court in the Action grants Preliminary Approval of this settlement;

WHEREAS, on August 12, 2020, Plaintiff filed a Class Action Complaint in the Superior Court of California, County of Merced, Case Number 20CV-02289, entitled *Kalaina A. Dula v. 2 Kings Gaming, Inc.* (the “Action”), asserting the following causes of action on a class or representative basis against Defendant: (1) Violation of CA Business & Professions Code § 17200, (2) Failure to Pay Minimum Wage, (3) Failure to Pay Overtime, (4) Failure to Provide Meal Periods, (5) Failure to Provide Rest Periods, (6) Failure to Reimburse Business Expenses, (7) Failure to Provide Accurate Wage Statements, (8) Failure to Timely Pay Wages, and (9) Violation of Private Attorney General Act;

WHEREAS, Defendant denies the validity of Plaintiff’s claims in the Action; however, for the purposes of settlement only, the Parties agree that certification of the class is appropriate and the requisites for establishing class certification are met;

WHEREAS, a settlement has been reached as to the Action in the total gross amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents (\$97,500.00);

WHEREAS, the Parties want to resolve and settle the dispute that has arisen between them, as well as any other claims, asserted or not asserted, that either party may have against the other arising out of facts or events, known or unknown, occurring up to and including the date of execution of this Agreement;

NOW, THEREFORE, in consideration of the promises in this Agreement, the Parties agree as follows:

AGREEMENT

1. No Admission of Liability. It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by any Released Parties. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek preliminary and final court approval of this Agreement, enforce the terms of this Agreement, or as required by a valid court order). The Released Parties disclaim and deny any liability, obligation, or responsibility to Plaintiff whatsoever.

2. Gross Settlement Payment. In consideration for the releases as described in Paragraphs 3 and 4 of this Agreement, and subject to court approval of this Agreement, Defendant agrees to pay the non-reversionary gross amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents (\$97,500.00) (the “Settlement Sum”) to the Class Members (as defined in Paragraph 6 below) subject to the following terms and conditions:

a. The Parties agree that of the Settlement Sum, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be designated to the named Plaintiff, without deductions, as an enhancement award in addition to any amount she may be entitled to receive pursuant to the distribution formula as identified in Paragraph 6 for her time, effort, expense, and risks associated with being a named representative of the Class Members and a general release of her rights. This payment will be reported as 1099 income. Defendant will not oppose any application for such an enhancement award so long as it is consistent with the terms described herein. This amount shall come from, and shall not be in addition to, the Settlement Sum. Plaintiff acknowledges her responsibility for any and all taxes for these sums pursuant to Paragraph 2.e. Should the Court approve less than the amount provided for in this paragraph, said reduced approval amount shall not be cause to invalidate the Agreement;

b. The Parties agree that up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) of the Settlement Sum will be for the payment of settlement administration fees of a third-party administrator. The costs of the Administrator shall be paid from, and shall not be in addition to, the Settlement Sum. Should the Court approve less than the amount provided for in this paragraph, said reduced approval amount shall not be cause to invalidate the Agreement;

c. The Parties agree that up to Five Thousand Dollars and Zero Cents of the Settlement Sum will be allocated to Plaintiff’s claims under the Private Attorneys General Act (“PAGA”) and will be distributed in accordance with the percentages identified within the Act, (i.e. twenty-five percent (25%) of the \$5,000.00 PAGA allocation (i.e. \$1,250.00) will be distributed to the Aggrieved Employees, and seventy-five percent (75%) of the PAGA allocation (i.e. \$3,750.00) will be distributed to the California Labor and Workforce Development Agency (“LWDA”). These amounts shall come from, and shall not be in addition to, the Settlement Sum. Should the Court allocate less or more than the amount provided for in this paragraph, said allocations shall not be cause to invalidate the Agreement;

d. The Parties agree that up to one third of the Settlement Sum (*i.e.* \$32,500.00) will be allocated to the payment of attorneys’ fees incurred in the Action. Defendant will not oppose any request for attorneys’ fees so long as it does not exceed this threshold. Plaintiff will also be entitled to the actual litigation costs from the Settlement Sum as approved by the Court in an amount up to, and not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), based on costs actually incurred by Plaintiff’s Counsel. These amounts shall come from, and shall not be in addition to, the Settlement Sum. Should the court approve less than the amount provided for in this paragraph, said reduced approval amount shall not be cause to invalidate the Agreement;

e. The Parties agree that employee-side payroll taxes associated with any payments to the Class Members from the Settlement Sum shall come from, and shall not be in addition to, the Settlement Sum. The representative Plaintiff and Class Members shall be responsible for any and all tax obligations associated with any payments they receive as part of the Settlement Sum. The Parties further

agree that employer-side payroll taxes associated with any payments to the Class Members from the Settlement Sum shall be paid separately and in addition to the Settlement Sum by Defendant;

f. There shall be a Net Settlement Sum that is distributed to the Class Members in accordance with the allocations set forth in Paragraph 6 below. The Net Settlement Sum shall consist of the Settlement Sum less the amounts identified in Paragraph 2.a. through 2.e., above (attorneys' fees and costs, costs of administration, PAGA allocation, and representative enhancement award). All Class Members will receive a portion of the Net Settlement Sum on a pro rata basis based on the number of workweeks they worked during the Class Period. Specifically, the final settlement payments will be determined by the Administrator by taking the number of workweeks each individual Class Member worked during the Class Period and dividing that by the total number of workweeks Class Members worked during the Class Period and multiplying that fraction by the Net Settlement Amount; and

g. Within fourteen (14) calendar days after the Court grants final approval of this Agreement, Defendant shall deposit the Settlement Sum (\$97,500.00) in a QSF account established by the Administrator. For purposes of counting the fourteen (14) day deadline established by this section, court approval may be by way of minute order, order from the bench, or by signing a submitted final approval order, whichever is earlier. The Administrator is to provide Defendant advanced notice within seven (7) calendar days after the Court grants final approval of this Agreement regarding the total monies Defendant must deposit.

3. Release. In exchange for the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, a release of liability is understood and agreed to as follows:

a. "Released Parties" as referenced herein and as released in the Agreement shall collectively mean Defendant and each of Defendant's past, present and future parent companies, subsidiaries, affiliates, principals, and any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the Action, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and successors and assigns of any of the foregoing.

b. Upon Final Approval of the Settlement and funding of the Settlement Sum by Defendant, Plaintiff Kalaina A. Dula, on behalf of herself and her heirs, successors, assigns, attorneys and agents, hereby releases and forever discharge the Released Parties from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which she ever had, now has, or may have in the future against any of them including, but not limited to, any claims made or which could have been made in the Action, any claims for failure to pay minimum wages, failure to pay overtime, failure to provide meal periods, failure to pay meal period premiums, failure to provide rest breaks, failure to provide rest break premiums, failure to reimburse business expenses, failure to provide accurate wage statements, failure to timely pay wages, failure to pay wages at separation, violations of the California Private Attorneys General Act, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders, violations of California Labor Code §§201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 246, *et seq.*, 351, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, 2699, 2800, 2802, California

Business and Professions Code §§ 17200, *et seq.*, and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto.

c. As a condition of participating in this class action settlement, Class Members, and individuals who are within the scope of the class definition but fail to timely submit a request to be excluded from the proposed settlement, upon Final Approval of the Settlement and funding of the Settlement Sum by Defendant, shall release and forever discharge the Released Parties from any and all class action and representative claims made in the Action, or which could have been made based on the facts alleged in the Action, including, but not limited to, any claims for failure to pay minimum wages, failure to pay overtime, failure to provide meal periods, failure to pay meal period premiums, failure to provide rest breaks, failure to provide rest break premiums, failure to reimburse business expenses, failure to provide accurate wage statements, failure to timely pay wages, failure to pay wages at separation, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders based on those violations, violations of California Labor Code §§201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198, , 2802, California Business and Professions Code §§ 17200, *et seq.* arising from those violations, and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages arising therefrom (the "Released Claims"). The release shall not extend to any claims outside of the Class Period and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and the PAGA Released Claims, which are released separately hereinbelow. Upon Final Approval of the Settlement and funding of the Settlement Sum by Defendant, the Aggrieved Employees shall release all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims vested benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period (the "PAGA Released Claims"). The "PAGA Period" shall be the period between June 4, 2019 and the earlier of January 8, 2022 or preliminary approval of the Settlement. The "Aggrieved Employees" shall include all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the PAGA Period.

4. California Civil Code Section 1542. Plaintiff hereby agrees that, upon Final Approval of the Settlement and funding of the Settlement Sum by Defendant, all of her rights under section 1542 of the Civil Code of the State of California are hereby waived as to any claims she may have against Defendant. Section 1542 has been explained to Plaintiff by her counsel and provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. Motion for Preliminary Approval of Class Action Settlement. Plaintiff and Plaintiff's counsel shall make their best efforts to file a Motion for Preliminary Approval of this Agreement concurrent with seeking the Court's certification of the class for settlement purposes as soon as reasonably possible after this Agreement is executed by the Parties. Defendant agrees to cooperate with Plaintiff in

these efforts so that the Motion for Preliminary Approval and concurrent certification of the class for settlement purposes is filed in a timely manner.

6. Administrator and Distribution Method. The Parties agree that Plaintiff's and Defendant's counsel will select the Administrator to process and distribute the Settlement Sum in accordance with the Agreement. The Parties will agree upon an Administrator as soon as reasonably possible after this Agreement is executed by the Parties and prior to Plaintiff's counsel filing a Motion for Preliminary Approval of this Agreement. In addition, subject to court approval, timelines and methods related to the administration of this Agreement shall be as follows:

a. For purposes of this Agreement, Class Members are defined as: "all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the Class Period." For purposes of this Agreement, Aggrieved Employees are defined as: "all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the PAGA Period."

b. All Class Members who do not opt out of the Settlement in accordance with this Agreement will receive a portion of the Net Settlement Sum on a pro rata basis based on a reasonable estimate of the total number of workweeks worked by all members of the Settlement Class during the Class Period. All Aggrieved Employees will receive a portion of the PAGA Payment allocated to the Aggrieved Employees on a pro rata basis based on a reasonable estimate of the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, regardless of whether they opt out of the Settlement. The Administrator shall mail and distribute to all Class Members a notice of this settlement, in English, informing them of the basic information regarding its terms, how to submit objections, how to exclude themselves from this proposed settlement, their estimated shares of the Net Settlement, how to dispute the allocated number of workweeks, and the date for a final fairness hearing (the "Class Notice," in a form substantially similar to that attached hereto as **Exhibit A**). The estimated share of the Net Settlement Sum for each individual within the class definition will be determined as follows: 1) A Total Value Per Workweek will be derived by dividing the Net Settlement Sum by the total number of weeks that all Class Members worked within the class period (*i.e.* any week in which a class member worked at least one (1) day); and 2) each Class Member will have their respective number of workweeks multiplied by the Total Value Per Workweek to derive their respective share of the Net Settlement Sum. Any monies allocated to individuals within the class definition who do not participate in this settlement because they opt out will be redistributed to Class Members pro-rata. The redistribution will take place by eliminating the non-participating class members' workweeks from the total workweeks used to calculate the Total Value per Workweek. The Total Value per Workweek will then be recalculated and applied to Class Members' workweeks to determine their respective share of the Net Settlement Sum.

c. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 10% as wages ("Wage Portion"); 90% as penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

d. Within seven (7) calendar days after the date that the Court grants preliminary approval of this Agreement, Defendant shall provide to the Administrator a list of all Class Members and all information necessary to locate Class Members, process payments, and process claims for payments, including, but not limited to, Class Member workweeks or dates of employment, last known addresses, social security numbers, and any other information required to effectuate the Agreement.

e. The class list, and any other data provided by Defendant to the Administrator, shall be treated as confidential and not subject to disclosure by the Administrator except (a) relevant information may be provided to Class Counsel to the extent necessary to address a disputed claim or to respond to a specific inquiry from a class member, or to any third party; (b) to allow Defendant and Plaintiff's counsel to review and confirm the calculation of Class Members' estimated share of the settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Administrator to perform its obligations described in this Agreement. Further, the Administrator and Plaintiff's counsel shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Administrator shall ensure that the Notice and any other communications to class members shall not include the Class Members' Social Security Number, except for the last four digits.

f. Within fourteen (14) calendar days from the date the Court preliminarily approves this Agreement, the Administrator will provide the Parties the spreadsheet showing the Administrator's calculations for anticipated payments to Class Members, the allocation of workweeks to Class Members, and any payroll taxes to be paid by Defendant. The Administrator may redact any identifying information and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in order to protect Class Members' confidential information. This will allow Plaintiff and Defendant the opportunity to review the Administrator's calculations, and the Administrator will confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the class notices, as noted below.

g. Within twenty-one (21) calendar days from the date the Court preliminarily approves this Agreement, the Administrator will perform an NCOA check for class members' most current addresses based on the information provided by Defendant and will mail the Court approved notices and disbursement forms to the class members. The class members will have forty-five (45) days from the date of mailing the notices and disbursement forms in which to postmark returned information either contesting the number of workweeks allocated to them, requesting to opt out of the class action settlement, or objecting to the proposed settlement. For any notices and claim forms returned as undeliverable or notifying the Administrator that the class member is no longer at the address, the Administrator shall perform a skip-trace on that individual and re-mail the notice and claim form within three (3) business days of receiving information that the mailing was undeliverable or the class member was no longer at the address to the new address found in under the skip-trace. Individuals who have notices or claim forms re-mailed to them shall have an additional fourteen (14) calendar days to contest the number of workweeks allocated to them, request to opt out of the class action settlement, or object to the proposed settlement. Absent good cause found by the Court, Class Members' objections to the proposed settlement must be in writing and comply with the other requirements contained in this Agreement in order to be valid.

h. The Administrator will investigate and will have the final decision on disputes as to the class members' information (*e.g.* workweeks). Any dispute as to the number of workweeks, request to opt-out, or objection submitted beyond the times authorized under Paragraph 6.f. will be approved only with the mutual approval of the Parties. The Administrator shall provide weekly reports to the Parties regarding the administration status, *i.e.* number of opt-outs, objections, and disputes submitted and the current status of any opt-outs, objections, or disputes received.

i. Within seven (7) calendar days after the last day for class members to object to the proposed settlement, dispute their information, or request to be excluded from the settlement, the Administrator shall provide a declaration to be submitted to Court detailing the administration process thus far, the number of objections received, the number of opt-out requests received, the number of disputes submitted, and the final status of all such items.

j. After the Court grants final approval and within seven (7) calendar days after the Administrator receives payment of the Settlement Sum, the Administrator shall provide the Parties the final calculations of settlement payments to Class Members. The Administrator may redact any identifying information and instead assign an employee value, except leaving the identifying information for the named Plaintiff, such that the Parties can review and approve the final distribution amounts to Class Members. Within seven (7) calendar days after the final calculations are distributed by the Administrator, the Administrator, only upon approval by the Parties of the final distribution amounts, will mail to Class Members their pro-rata share of the Net Settlement Sum and Aggrieved Employees their pro-rata share of their PAGA Payment. Class Members shall have one hundred and eighty (180) days to cash their respective settlement checks under this Agreement. Any checks not negotiated within the one hundred and eighty (180) days will be voided and will not be reissued. Within seven (7) calendar days after the Administrator distributes final calculations and obtains approval by the Parties thereto, the Administrator shall also distribute to the awarded attorneys' fees and costs, the representative enhancement award, and payment for the costs of Administration.

k. Within one ninety thirty (190) calendar days after the Administrator mails Class Members their pro-rata share of the Net Settlement Sum, any unclaimed funds, including funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to the Voluntary Legal Services Program – Employment Law Clinic located in Sacramento, California as the *cy pres* beneficiary. No amount of the Settlement Sum will revert to Defendant for any reason.

l. Within ten (10) calendar days after the Administrator distributes the unclaimed funds in accordance with Paragraph 6.k., the Administrator shall provide the Parties with a declaration outlining the settlement administration process and completion of payments to those specified in Paragraph 6.k.

m. The Parties agree the Class Members' contact information and social security numbers will be used only by the Administrator counsel for the sole purpose of effectuating the Agreement.

7. Class Counsel. The Parties agree to the designation of Zakay Law Group, APLC and JCL Law Firm, APC as class counsel for purposes of the Settlement Class.

8. Class Representative. The Parties agree to the designation of Plaintiff Kalaina A. Dula as the class representative for purposes of the Settlement Class.

9. Scope of the Class. It was represented to Plaintiff at the time of the execution of this Agreement that there were approximately 108 putative Class Members as of September 30, 2021. To the extent the number of class members increases beyond this number by more than 10%, to the Settlement Sum shall automatically increase by a proportionate amount. (i.e. if the number of employees increases by 11%, the total increase to the settlement will be 1%.).

10. Attorneys' Fees and Costs. Except as otherwise set forth in this Agreement, the Parties agree that each shall bear their own respective attorneys' fees and costs incurred in this Action, with the exception of any dispute regarding the payment of the Settlement Sum. In the case of a dispute regarding the payment of the Settlement Sum, the prevailing party shall be entitled to recover their attorneys' fees and costs.

11. Enforcement. This Agreement is made and is enforceable in accordance with the provisions of California Code of Civil Procedure section 664.6 and that Parties agree that the Court shall retain jurisdiction for that purpose to effectuate the terms of this Agreement and after entry of judgment in this Action. This Agreement shall be admissible in any proceeding for its enforcement in accordance with sections 1118 and 1123 of the California Evidence Code.

12. Opt-Out Contingency. If more than 10% of the putative Class Members make valid requests to opt out of the class settlement, Defendant may, in its sole discretion, choose to reject or accept, and be bound by, this Agreement. Defendant shall have five (5) calendar days from the date the Administrator indicates the number of Class Members who opted out to inform Plaintiff's counsel in writing of its decision to exercise this opt-out option. However, Defendant agrees to pay the cost of the Administrator incurred in administering the settlement up to the date Defendant chooses to exercise this opt-out option.

13. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart, when executed, shall have the efficacy of an original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

14. Confidentiality. Plaintiff represents and agrees that she has not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiff further agrees not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties.

15. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of her representation related to the Action are her responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Action will be satisfied by the incurring party. Plaintiff will indemnify, defend and hold Released Parties harmless from any such claims.

16. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's claims with respect to payment of the Settlement Sum shall not recover, directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth in Paragraph 1. If, despite the provisions of this Paragraph, any Released Party receives any claims, including a claim for contribution, any indemnity arising out of a claim with respect to payment of the Settlement brought against another person in an interest in the claims of Plaintiff, Plaintiff shall indemnify, provide a full defense for and hold harmless the Released Parties for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Released Party is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Released Party but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff.

17. Entire Agreement. This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the Action. This Agreement may not be modified or amended except in writing, signed by all Parties. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

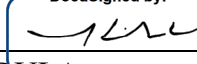
18. Conditional Nature. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

19. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

20. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: 1/10/2022, 2022

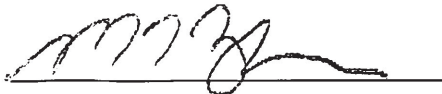
DocuSigned by:

 KALAINA A. DULA
 3442FBA28F3D4E8...

Dated: _____, 2022

KALAINA A. DULA

Dated: January 29, 2022

2 KINGS GAMING, INC.

By: 

Print Name: Michael LeBlanc

Title: owner

Approved as to form and content:

ZAKAY LAW GROUP, APLC

Dated: _____, 2022

Shani O. Zakay
Counsel for Plaintiff

JCL LAW FIRM, APC

Dated: _____, 2022

Jean-Claude Lapuyade
Counsel for Plaintiff

FISHER & PHILLIPS, LLP

Dated: February 1, 2022



Alden J. Parker
Counsel for Defendant

Dated: _____, 2022

2 KINGS GAMING, INC.

By: _____

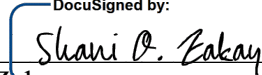
Print Name: _____

Title: _____

Approved as to form and content:

ZAKAY LAW GROUP, APLC

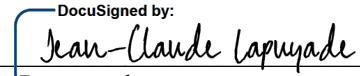
Dated: 1/10/2022, 2022

DocuSigned by:


Shani O. Zakay
Counsel for Plaintiff

JCL LAW FIRM, APC

Dated: 1/10/2022, 2022

DocuSigned by:


Jean-Claude Lapuyade
Counsel for Plaintiff

FISHER & PHILLIPS, LLP

Dated: _____, 2022

Alden J. Parker
Counsel for Defendant

EXHIBIT B

FILED
MERCED COUNTY

2022 APR 21 PM 3:49

CLERK OF THE SUPERIOR COURT

BY: *James Stephens* DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

KALAINA A. DULA, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

v.

2 KINGS GAMING, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No: 20CV-02289

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT

Hearing Date: April 6, 2022
Hearing Time: 8:15 a.m.

Honorable Judge Brian McCabe
Department 8

Trial Date: Not Set
Action Filed: August 12, 2020

1 On April 6, 2022, a hearing was held on Plaintiff KALAINA A. DULA's ("Plaintiff")
2 Motion for Preliminary Approval of Class and PAGA Action Settlement. Zakay Law Group,
3 APLC appeared for Plaintiff. Fisher Phillips, LLP appeared for Defendant 2 KINGS GAMING,
4 INC. ("Defendant").

5 The Court having read and considered the papers on the motion, the arguments of counsel,
6 and the law, and good cause appearing therefore,

7 **IT IS ORDERED:**

8 1. This Order incorporates the defined terms in the Stipulation of Class Action and
9 PAGA Settlement (the "Agreement" or "Settlement"). Unless otherwise specified, all capitalized
10 terms in this Order shall have the same meaning given to those terms in the Agreement.

11 2. The Class is defined as all individuals who are or previously were employed by
12 Defendant in California and classified as non-exempt employees at any time during the Class
13 Period. The Class Period is the period of time from August 12, 2016 through January 8, 2022.
14 Pursuant to the Agreement, the Class is conditionally certified for settlement purposes only.

15 3. The Parties' Agreement is granted preliminary approval as it meets the criteria for
16 preliminary settlement approval. The Settlement falls within the range of possible approval as
17 fair, adequate and reasonable, and appears to be the product of arm's-length and informed
18 negotiations and to treat all Class Members fairly. Continued litigation would have been
19 expensive for both sides. The Parties acknowledge that litigating and trying this action may have
20 resulted in delay of any recovery, involved significant risk as to liability and certification, and led
21 to possible appeals. Class Counsel received the relevant information for the Class. Plaintiff has
22 adequately demonstrated that the Settlement did not occur until Plaintiff and Class Counsel
23 possessed sufficient information to evaluate the case and make an informed decision about
24 settlement.

25 4. The Parties' proposed notice plan is legally sound because individual notices will be
26 mailed to all Class Members whose identities are known to the Parties, and such notice is the best
27 notice practicable. The Parties' proposed Notice of Proposed Class Action Settlement ("Class
28 Notice") attached to the Agreement as Exhibit 1, sufficiently informs Class Members of the terms

1 of the Settlement, their rights under the Settlement, their rights to object to the Settlement, their
2 right to receive a Settlement Award or elect not to participate in the Settlement, the processes for
3 doing so, and the date and location of the Final Approval Hearing. The Class Notice also provides
4 notice that PAGA Members will receive payment from the Net PAGA Amount and will be bound
5 by and release all Released PAGA Claims, irrespective of whether they opt out of the Settlement.
6 Thus, the Court approves the Settlement Notice because it provides adequate notice to Class
7 Members.

8 5. Any Class Member who does not submit a valid request for exclusion will receive an
9 Individual Settlement Payment based upon the allocation formula in the Agreement. Class
10 Members who wish to exclude themselves from the Settlement must mail a signed Request for
11 Exclusion to the Settlement Administrator not later than 45 days after the Settlement
12 Administrator mails the Settlement Notice Packets to them. PAGA Members will receive
13 payment from the Net PAGA Amount and will be bound by and release all Released PAGA
14 Claims, irrespective of whether they opt out of the Settlement.

15 6. Any Class Member who elects not to participate in the Settlement has 45 days after
16 the mailing of the Class Notice to request exclusion from the Settlement pursuant to the
17 procedures set forth in the Class Notice. Any Class Member who wishes to object to the
18 Settlement, the proposed Class Counsel's Fees and Costs, and/or Class Representative Incentive
19 Payment will have the opportunity to do so at the Final Approval Hearing.

20 7. Class Counsel must file their application for Class Counsel's Fees and Costs
21 concurrently with their motion for final approval of the Settlement.

22 8. Simpluris is appointed to act as the Settlement Administrator, pursuant to the terms
23 set forth in the Settlement.

24 9. The JCL Law Firm, APC and Zakay Law Group, APLC are approved as Class
25 Counsel.

26 10. Plaintiff is approved as the representative of the Class.

27 11. Defendant is directed to provide the Settlement Administrator with the Class
28

Members' Class List as specified by the Agreement no later than 7 days after the date of entry of this Order. Pursuant to the terms set forth in the Agreement, the Class List, its contents and any files containing Class List shall remain strictly confidential for the Settlement Administrator's eyes only, not to be disclosed to Plaintiff or to Class Counsel or to any Class Member.

12. The Class Notice attached as Exhibit 1 to the Agreement is approved. The Settlement Administrator is directed to mail the approved Settlement Notice by first-class mail to the Class Members at their last known address no later than 14 days after receipt of the Class List.

13. A Final Approval Hearing will be held on 7-15-22 at 8:15^{am} in Department 8, to determine whether the Settlement should be granted final approval as fair, reasonable, and whether there was adequate notice to the Class Members. The Court will hear all evidence and argument necessary to evaluate the Settlement, and will consider the request for approval of Class Counsel's Fees and Costs, Class Representative Incentive Payment, and Settlement Administration Costs. Class Members and their counsel may support or oppose the Settlement and the motion for an award of attorneys' fees and costs and the Class Representative Incentive Payment, if they so desire, as set forth in the Class Notice.

14. Any Class Member may appear at the Final Approval Hearing in person or by his or her own attorney and show cause why the Court should not approve the Settlement, or object to the motion for an award of attorneys' fees and costs and the Class Representative Incentive Payment.

15. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Class Members. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement.

DATED: 4-21-2022

HON. BRIAN MCCABE
MERCED SUPERIOR COURT

EXHIBIT C

Tesla Stone

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Monday, March 7, 2022 6:10 PM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

03/07/2022 06:09:00 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm