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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
(UNLIMITED JURISDICTION)

MCKENNA MCKENZIE, on behalf of herself,
all others similarly situated, the general public,
and as an “aggrieved employee” on behalf of
other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

RED DOOR ESCAPE ROOM, LLC, a
California limited liability company;
KINGSMEN ESCAPE ENTERTAINMENT
LLC, a California limited liability company;
KYLE MALOY, a natural person; and DOES 1–
50, inclusive,

Defendant(s).

Case No. CIVMSC21-01753

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

Hearing Date: TBD
Hearing Time: TBD
Hearing Dept.: 39, The Honorable
Edward G. Weil

Action filed: August 27, 2021



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1 The Motion of Plaintiff McKenna McKenzie (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Edward G. Weil presiding. The Court having considered the Motion, the Joint
4 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit 1 to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
10 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
11 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
12 only to any objections that may be raised at the final hearing and final approval by this Court. The
13 Court will make a determination at the hearing on the motion for final approval of class action
14 settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and
15 reasonable to the Settlement Class.

16 2. For purposes of this Preliminary Approval Order, the “Settlement Class” all
17 persons employed by Defendants and/or Red Door Jet Fuel, L.P. in California and classified as
18 hourly, non-exempt employees who worked for Defendants and/or Red Door Jet Fuel, L.P. during
19 the Class Period except those who are immediate family members of anyone with an ownership
20 interest in one or more of the entities. The “Class Period” means the period of time from August
21 27, 2018, through the date of preliminary approval of this settlement. Defendants estimate that as
22 of the date of mediation, there were 262 potential Settlement Class Members. The “Effective
23 Date” means the date by when both of the following have occurred: (a) the Court enters a
24 Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.
25 The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
26 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
27 Participating Class Members objects to the Settlement, the day after the deadline for filing a notice
28 of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the
appellate court affirms the Judgment and issues a remittitur. The occurrence of the Effective Date
is a prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.



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1 3. This action is provisionally certified pursuant to section 382 of the California Code
2 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
3 purposes of settlement only with respect to the proposed Settlement Class.

4 4. The Court hereby preliminarily finds that the Settlement was the product of
5 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
6 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
7 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
8 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
9 compromise of the Parties' respective positions. The Court further preliminarily finds that the
10 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
11 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
12 Settlement was entered into in good faith.

13 5. The Court finds that the dates set forth in the Settlement for mailing and
14 distribution of the Class Notice meet the requirements of due process and provide the best notice
15 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
16 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
17 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
18 for further proceedings:

- 19 a. Defendants shall provide Simpluris, Inc., the appointed Settlement
20 Administrator, with: (a) An electronic database of all Class Members, last
21 known mailing address, Social Security number and Defendants' employee
22 identification number ("Class Members' Data"); and (b) Corresponding to
23 each Class Member's name, Defendants shall provide a figure indicating the
24 total number of Pay Periods during the Class Period in which Defendants
25 employed the Class Member. That number of Pay Periods shall be referred to
26 as that Class Member's "Individual Pay Periods;" (c) If any of the Class
27 Members' Data are unavailable to Defendants, Defendants will so inform
28 Class Counsel and the Parties will make their best efforts to reconstruct or
otherwise agree upon the Class Members' Data prior to when it must be
submitted to the Settlement Administrator. Class Members' Data will
otherwise remain confidential and will not be disclosed to anyone, except as



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necessary to applicable taxing authorities, or pursuant to Defendants' express written authorization or by order of the Court.

- b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than three (3) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
- d. **Declaration of Settlement Administrator.** Not later than 14 days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its



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1 declaration of due diligence if any material changes occur from the date of the
2 filing of its prior declaration.

3 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

4 Class Members may submit requests to be excluded from the effect of the
5 Settlement, or objections to the Settlement, pursuant to the following
6 procedures:

- 7 i. **Request for Exclusion from Settlement.** A Class Member may
8 request to be excluded from the effect of this Agreement, and any
9 payment of amounts under this Agreement, by timely mailing a letter
10 to the Settlement Administrator stating that the Class Member wants to
11 be excluded from this Action. This letter must include the Class
12 Member's name, address, telephone number, and signature. To be valid
13 and timely, the request to be excluded must be postmarked by the date
14 specified in the Class Notice (60 days from the initial mailing of the
15 Class Notice by the Settlement Administrator). A Class Member who
16 properly submits a valid and timely request to be excluded from the
17 Action shall not receive any payment of any kind in connection with
18 this Agreement or this Action, shall not be bound by or receive any
19 benefit of this Agreement, and shall have no standing to object to the
20 Settlement. A request for exclusion must be mailed to the Settlement
21 Administrator at the address provided on the Class Notice. The
22 Settlement Administrator shall transmit the request for exclusion to
23 counsel for the Parties as follows:

24 *To Class Counsel:*

25 David G. Spivak, Esq.
26 The Spivak Law Firm
27 8605 Santa Monica Bl
28 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Sarah Brite Evans
Schwartz Semerdjian Cauley & Evans LLP
101 W Broadway
Ste 810
San Diego, CA 92101



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1 ii. **Objections to Settlement.** The Class Notice will provide that any
2 Class Member who does not request exclusion from the Action and
3 who wishes to object to the Settlement should submit an objection in
4 writing to the Settlement Administrator by 60 days after the Settlement
5 Administrator mails the Class Notice, a written objection to the
6 Settlement which sets forth the grounds for the objection and the other
7 information required by this paragraph. The objection should be mailed
8 to the Settlement Administrator at the address provided on the Class
9 Notice. The Settlement Administrator shall transmit the objections to
10 counsel for the Parties as follows:

11 *To Class Counsel:*

12 David G. Spivak, Esq.
13 The Spivak Law Firm
14 8605 Santa Monica Bl
15 PMB 42554
16 West Hollywood, CA 90069

11 *To Defense Counsel:*

12 Sarah Brite Evans
13 Schwartz Semerdjian Cauley & Evans LLP
14 101 W Broadway
15 Ste 810
16 San Diego, CA 92101

17 The written objection should state the objecting Class Member's full
18 name, address, and the approximate dates of his or her employment
19 with Defendants. The written objection should state the basis for each
20 specific objection and any legal support in clear and concise terms. The
21 written objection also should state whether the Class Member intends
22 to formally intervene and become a party of record in the action, and
23 upon formally intervening, appear and argue at the Final Approval
24 Hearing. However, the objectors will be provided with the opportunity
25 to speak at the final approval hearing regardless of whether they have
26 filed an appearance or submitted a written opposition beforehand.
27 If the objecting Class Member does not formally intervene in the action
28 and/or the Court rejects the Class Member's objection, the Class
29 Member may still be bound by the terms of this Agreement.

30 f. **Report.** Not later than fourteen (14) days after the deadline for submission of
31 requests for exclusion, the Settlement Administrator will provide the Parties



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1 with a complete and accurate list of all Class Members who sent timely
2 requests to be excluded from the Action and all Class Members who objected
3 to the settlement.

4 6. The Court approves, as to form and content, the Class Notice in substantially the
5 form attached as Exhibit A to the Settlement.

6 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
7 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8 8. The Court approves, for settlement purposes only, McKenna McKenzie as the
9 Class Representative.

10 9. The Court approves Simpluris, Inc. as the Settlement Administrator.

11 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
12 costs subject to final review by the Court.

13 11. The Court preliminarily approves the estimated Settlement Administrator costs
14 payable to the Settlement Administrator subject to final review by the Court.

15 12. The Court preliminarily approves Plaintiff's Class Representative Payment subject
16 to final review by the Court.

17 13. A Final Approval Hearing shall be held on _____ at _____.m. in the
18 Superior Court for the State of California, County of Contra Costa, located at Wakefield Taylor
19 Courthouse, 725 Court Street, Martinez, CA 94553 to consider the fairness, adequacy and
20 reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval
21 Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class
22 Representative Payment to the Class Representative. The notice of motion and all briefs and
23 materials in support of the motion for final approval of class action settlement and motion for
24 attorneys' fees and litigation costs shall be served and filed with this Court on or before sixteen
25 (16) Court days before the Final Approval Hearing.

26 14. If for any reason the Court does not execute and file a final approval order and
27 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
28 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
litigation, as more specifically set forth in the Settlement.

15. The Court expressly reserves the right to adjourn or continue the Final Approval



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Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE EDWARD G. WEIL
JUDGE OF THE SUPERIOR COURT



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