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on behalf of himself and all others similarly situated,

Additional Plaintiffs' Counsel on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JONATHAN ELIAS, on behalf of himself
and all other similarly situated aggrieved
employees,

Plaintiffs,

v.

TMONE, LLC d/b/a "Mass Markets, Inc.," a
Delaware limited liability company;
MARLOWE COMPANIES INC. also
known as "MCI" d/b/a "Mass Markets,
Inc.," a California entity, form unknown;
and DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No.: 37-2022-00032324-CU-OE-CTL

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Preliminary Approval Hearing:

Date: June 28, 2024

Time: 8:30 a.m.

Dept: C-74

Honorable Blaine K. Bowman
Department C-74

Action filed: August 12, 2022
Trial Date: None Set

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ELECTRONICALLY RECEIVED
Superior Court of California,
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behalf of herself and all others similarly situated

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1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 On June 24, 2024, the Court conducted a hearing on the unopposed Motion for
3 Preliminary Approval of Class and Representative Action Settlement filed by named Plaintiffs
4 Jonathan Elias and Gracie Rodriguez on behalf of themselves and all others similarly situated,
5 (hereinafter “Plaintiffs”). The Court has reviewed and considered the Memorandum of Points and
6 Authorities in support of the Motion, the Declarations of Counsel and the exhibits in support of
7 the Motion, including the Joint Stipulation of Class Action and PAGA Settlement and Release
8 (“Settlement Agreement” or “Settlement”) between Plaintiffs and Defendants TM One, LLC dba
9 “Mass Markets, Inc.” and Marlowe Companies Inc. also known as “MCI” dba “Mass Markets, Inc.”
10 (hereinafter “Defendants”). (Plaintiffs and Defendants shall be referred to collectively as the
11 “Parties”).

12 This Order hereby incorporates by reference the definitions in the Settlement Agreement
13 as though fully set forth herein, and all terms used herein shall have the same meaning as set
14 forth in the Settlement Agreement.

15 NOW THEREFORE, having read and considered the foregoing, the Court **HEREBY**
16 **MAKES THE FOLLOWING FINDINGS:**

17 1. The Court finds on a preliminary basis that the proposed Settlement falls within
18 the range of reasonableness, and the terms of Settlement, as set forth in the Settlement
19 Agreement, are presumptively fair, adequate and reasonable to the Class and, therefore, meet the
20 requirements for preliminary approval, subject only to any objections that may be raised before
21 or at the Final Fairness and Approval Hearing. It appears to the Court that the Settlement’s
22 terms are fair, adequate, and reasonable as to all potential Class Members when balanced
23 against the probable outcome of further litigation, given the risks relating to liability and
24 damages. It further appears that extensive investigation and research has been conducted such
25 that counsel for the Parties at this time are reasonably able to evaluate their respective positions.
26 It further appears to the Court that the Settlement at this time would avoid substantial additional
27 costs by all Parties, as well as the delay and risks that would be presented by the further
28 prosecution of the Action. It appears the Settlement has been reached as a result of intensive,

1 arm's-length negotiations utilizing an experienced third party neutral.

2 2. The Court further finds, for settlement purposes only, that the requirements of
3 California Code of Civil Procedure §382 and California Rules of Court, Rule 3.760 *et seq.* are
4 satisfied. Therefore, the Court certifies, for settlement purposes only, the following Class
5 described in the Motion for Preliminary Approval and Settlement Agreement:

6 All hourly paid, non-exempt Call Center employees employed by Defendants in the State
7 of California during the Class Period (defined as August 12, 2018, through May 31, 2024). It
8 shall be an opt-out class.

9 3. The Court further finds that the moving papers presented for the Court's review
10 set forth a plan to provide proper notice to the Class of the terms of the Settlement and the
11 options available to the Class, including the ability of the Class Members to Opt-Out or submit a
12 Request for Exclusion to the Settlement and not be bound by the Settlement Agreement or
13 receive any Settlement Payment under it; to object to the terms of the Settlement; or to do
14 nothing and receive a Settlement Payment and be bound by the terms of the Settlement.
15 Plaintiffs have submitted to the Court a proposed Notice of Class Settlement.

16 As a result, for good cause appearing, **IT IS HEREBY ORDERED THAT:**

17 1. The Court hereby preliminarily approves the proposed Settlement upon the
18 terms, conditions, and all release language set forth in the Settlement Agreement.

19 2. The Court conditionally certifies and approves, for settlement purposes only, the
20 Class described above.

21 3. For the purposes of this Settlement, the Law Offices of Kevin T. Barnes, The Law
22 Office of Raphael A. Katri, and Wilshire Law Firm ("Class Counsel") are hereby appointed as
23 Class Counsel and shall represent the Class Members in this Action. Any Class Member may
24 enter an appearance in the Action, at their own expense, either individually or through counsel of
25 their own choice; however, if they do not enter an appearance, they will be represented by Class
26 Counsel.

27 4. For the purposes of this Settlement, Plaintiff Jonathan Elias and Plaintiff Gracie
28 Rodriguez are hereby appointed as the Class Representatives for the Class.

1 5. The Court confirms Rust Consulting, Inc. as the Settlement Administrator. The
2 procedures for paying the Settlement Administrative Costs, as set forth in the Settlement
3 Agreement, are approved. Rust Consulting, Inc. is directed to perform all responsibilities of the
4 Settlement Administrator as set forth in the Settlement Agreement. Rust Consulting, Inc. will
5 also post the Judgment in this matter on their website once entered.

6 6. The Court hereby approves, as to form and content, the Notice of Class
7 Settlement attached as **Exhibit 1** to the Settlement Agreement (“Notice”). The Court finds that
8 the dates and procedure for mailing and distributing the Notice of Class Settlement in the
9 manner set forth in Paragraph 7 of this Order meet the requirements of due process and are the
10 best notice practicable under the circumstances and shall constitute due and sufficient notice to
11 all persons entitled thereto.

12 7. The Court directs the mailing of the Court-approved Notice via first class mail to
13 the Class Members in accordance with the schedule and procedures set forth in the Settlement
14 Agreement.

15 a. Within fifteen (15) calendar days of the date of preliminary approval of this
16 Settlement, Defendants shall provide to the Settlement Administrator the
17 Class List; and

18 b. Within fifteen (15) calendar days of receiving the Class List from Defendants
19 the Settlement Administrator shall mail by First-Class United States mail the
20 Notice of Class Settlement to each Class Member. The Settlement
21 Administrator shall conduct a National Change of Address database search
22 before mailing and will also use the most recent address available to the
23 Settlement Administrator for mail delivery. Any returned mail with a
24 forwarding address from the U.S. Postal Service shall be promptly re-mailed
25 to the new address. The Settlement Administrator shall perform a skip trace
26 search for a new address for any returned mail without a forwarding address.

27 8. The procedures for Class Members to Opt-Out by submitting a Request for
28 Exclusion, as set forth in the Notice of Class Settlement and Settlement Agreement, are

1 approved. The time for Class Members to submit a Request for Exclusion shall be forty-five
2 (45) days after the date of the first mailing of the Notices of Class Settlement. This date shall be
3 extended by ten (10) calendar dates if the notice is returned as undeliverable and then remailed
4 to a correct or forwarding address of a Class Member.

5 9. The procedures for Class Members to object to the Settlement, as set forth in the
6 Notice of Class Settlement and Settlement Agreement, are approved. The time for Class
7 Members to object to the Settlement shall be forty-five (45) days after the date of the first
8 mailing of the Notices of Class Settlement. This date shall be extended by ten (10) calendar
9 dates if the notice is returned as undeliverable and then remailed to a correct or forwarding
10 address of a Class Member. Class Members may appear at the Final Approval Hearing, on their
11 own or through a counsel retained at their expense, to present their objection, whether or not
12 they submitted a prior written objection as provided in the Settlement Agreement.

13 10. The procedures for Class Members to dispute the number of workweeks worked,
14 as set forth in the Notice of Class Settlement and Settlement Agreement, are approved. The
15 time for Class Members to submit a workweek dispute shall be forty-five (45) days after the
16 date of the first mailing of the Notices of Class Settlement. This date shall be extended by ten
17 (10) calendar dates if the notice is returned as undeliverable and then remailed to a correct or
18 forwarding address of a Class Member.

19 11. The Court hereby preliminarily approves the definition and disposition of the
20 Class Settlement Amount as that term is defined in the Settlement Agreement. The Court
21 preliminarily approves the distribution of the Class Settlement Amount, all subject to the
22 Court's final approval of the Settlement at the Final Approval Hearing. Assuming the
23 Settlement receives final approval, Defendants shall be required to pay only the Class
24 Settlement Amount in the total amount of \$280,000 plus the employer's share of taxes due as a
25 result of this Settlement.

26 12. A Final Approval Hearing (the "Hearing") shall be held on _____,
27 2024 at _____ a.m./p.m. before the Honorable Blaine K. Bowman in Department C-74 of the
28 San Diego County Superior Court. The purpose of such Hearing will be to: (a) determine

whether the proposed Settlement should be finally approved by the Court as fair, reasonable and adequate; (b) determine the reasonableness of Class Counsel's request for attorneys' fees and costs and amount to be awarded; (c) determine the reasonableness of the Class Representatives' Service Awards requested for the Class Representatives and amount to be awarded; and (d) order entry of Judgment in the Class Action, which shall constitute a complete release and bar with respect to the Released Claims.

13. Class Counsel shall file and serve all papers in support of the Motion for Final Approval and any application for reimbursement of attorneys' fees and costs, including any costs associated with or incurred by the Settlement Administrator, by _____, 2024.

14. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. However, Class Counsel or the Settlement Administrator will give notice to any objecting party of any continuance of the Final Approval Hearing.

15. All further proceedings in this Action shall be stayed except such proceedings necessary to review, approve, and implement this Settlement.

16. In the event: (i) the Court does not finally approve the Settlement as contemplated by the Settlement Agreement; (ii) the Court does not enter a Final Approval Order as contemplated by the Settlement Agreement, which becomes final as a result of the occurrence of the Effective Date (as that term is defined by in the Settlement Agreement); or (iii) the Settlement does not become final for any other reason, the Settlement and any related Class shall be null and void and any order or judgment entered by this Court in furtherance of the Settlement shall be deemed as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of the Settlement, and the Parties shall proceed in all respects as if no Class had been certified and the Settlement Agreement had not been executed.

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1 17. Neither the Settlement, preliminarily approved or not, nor any exhibit, document
2 or instrument delivered hereunder, nor any statement, transaction or proceeding in connection
3 with the negotiation, execution or implementation of the Settlement, shall be admissible in
4 evidence for any reason except as provided in the Settlement Agreement. The Court has made
5 no findings on the merits and the Defendants have denied the allegations in the operative
6 complaint.

7 **IT IS SO ORDERED.**

8 **Dated:** _____, 2024

Honorable Blaine K. Bowman
Judge of the Superior Court