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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

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15 DANIELA ARBELAEZ ACEVEDO and
16 MYRELLA THOMAS, as individuals, and on
17 behalf of themselves and on behalf of all
18 persons similarly situated,

19 Plaintiffs,

20 vs.

21 ACES 2020 I, LLC, a Limited Liability
22 Company; and DOES 2 through 50, inclusive,

23 Defendants.

CASE NO.: 24CV061880

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: December 12, 2024

Hearing Time: 2:30 p.m.

Judge: Hon. Victoria Kolakowski

Dept: 518

Date Filed: January 30, 2024

Trial Date: Not set

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25 This matter came before the Honorable Victoria Kolakowski of the Superior Court of the
26 State of California, in and for the County Alameda, on December 12, 2024, for hearing on the
27 unopposed motion by Plaintiffs Daniela Arbelaez Acevedo and Myrella Thomas (“Plaintiffs”) for
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PRELIMINARY APPROVAL ORDER

1 preliminary approval of the Settlement with Defendant ACES 2020, LLC, doing business in
2 California as ACES 2020 I, LLC (“Defendant”). The Court, having considered the briefs,
3 argument of counsel and all matters presented to the Court and good cause appearing, hereby
4 GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

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6 **IT IS HEREBY ORDERED:**

7 1. The Court preliminarily approves the Class Action and PAGA Settlement
8 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
9 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based
10 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
11 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
12 Procedure and California Rules of Court, rule 3.769.

13 2. This Order incorporates by reference the definitions in the Agreement, and all
14 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

15 3. The Gross Settlement Amount that Defendant shall pay is One Million Six
16 Hundred Fifty Thousand Dollars (\$1,650,000), unless the Escalator Clause described in Section 9
17 of the Agreement requires an increase in the Gross Settlement Amount based on Workweek
18 calculations. It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that the Settlement will avoid substantial additional costs by all Parties, as well as
24 avoid the delay and risks that would be presented by the further prosecution of the Action. It
25 further appears that the Settlement has been reached as the result of serious and non-collusive,
26 arm’s-length negotiations.

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The
3 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
4 preliminarily finds that the monetary settlement made available to the Class is fair, adequate, and
5 reasonable when balanced against the probable outcome of further litigation and the significant
6 risks relating to certification, liability, and damages issues.

7 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$40,000, and
9 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
10 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
11 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
12 evidence supporting these requests, including lodestar, prior to final approval.

13 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
14 representative treatment and certification of a class for settlement purposes only. This stipulation
15 will not be deemed admissible in this or any other proceeding should this Settlement not become
16 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
17 "all individuals who were employed by Defendant and classified as a non-exempt employee in the
18 State of California at any time during the Class Period, except any named plaintiff in the matter
19 *Allen v. ACES 2020 I, LLC et. al.*, Superior Court for the County of Contra Costa, Case No. C23-
20 00916." The "Class Period" is January 1, 2022 through November 5, 2024.

21 7. The Court concludes that, for settlement purposes only, the Class meets the
22 requirements for certification under section 382 of the California Code of Civil Procedure in that:
23 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
24 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
25 community of interest amongst the members of the Class with respect to the subject matter of the
26 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
27 the Plaintiffs will fairly and adequately protect the interests of the members of the Class; (e) a
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1 class action is superior to other available methods for the efficient adjudication of this controversy;
2 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
3 adequate representatives of the Class.

4 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
5 Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP, Zakay Law
6 Group, APLC, JCL Law Firm, APC, and Ferraro Vega Employment Lawyers, Inc. as Class
7 Counsel for the Class.

8 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
9 Amount of \$33,000, which shall be allocated \$24,750 to the Labor & Workforce Development
10 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
11 Agreement pursuant to the PAGA and \$8,250 to the Aggrieved Employees. “Aggrieved
12 Employees” are all individuals who were employed by Defendant and classified as a non-exempt
13 employee in the State of California at any time during the PAGA Period (February 15, 2022
14 through November 5, 2024). Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA
15 will be provided notice of the Agreement and these settlement terms. The Court finds the PAGA
16 Penalties to be reasonable.

17 10. The Court hereby approves, as to form and content, the Class Notice attached to the
18 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
19 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
20 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
21 and opportunity to object to the Settlement. The Court further finds that the distribution of the
22 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
23 the requirements of due process, is the best notice practicable under the circumstances, and shall
24 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
25 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
26 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
27 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
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1 address for the Class Member no later than seven (7) days after the receipt of the undelivered
2 Class Notice.

3 11. The Court hereby appoints ILYM Group as the Administrator. No later than fifteen
4 (15) days after this Order, Defendant will provide the Class Data to the Administrator. The
5 Administrator will perform address updates and verifications as necessary prior to the first
6 mailing. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14)
7 days after receiving the Class Data, the Administrator will mail the Class Notice Packet to all
8 Class Members via first-class regular U.S. Mail to their last known address.

9 12. The Court hereby preliminarily approves the proposed procedure for exclusion
10 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
11 from the Class as provided in the Class Notice by following the instructions for requesting
12 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
13 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
14 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
15 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
16 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
17 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
18 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
19 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
20 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
21 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
22 group, class, or subclass of individuals is not permitted and will be deemed invalid.

23 13. Any Class Member who has not opted out may appear at the final approval hearing
24 and may object or express the Member’s views regarding the Settlement and may present evidence
25 and file briefs or other papers that may be proper and relevant to the issues to be heard and
26 determined by the Court as provided in the Class Notice. Class Members will have until the
27 Response Deadline to submit their written objections to the Administrator. Written objections
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1 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
2 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
3 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
4 Hearing to make an oral objection.

5 14. A final approval hearing shall be held before this Court on April 24, 2025 at 2:30
6 p.m. in Department 518 of the Alameda County Superior Court to hear the motion for final
7 approval and for attorneys' fees and costs, and to determine all necessary matters concerning the
8 Settlement, including: whether the proposed settlement of the Action on the terms and conditions
9 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by
10 the Court; whether the Final Approval Order and Judgment should be entered herein; whether the
11 plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
12 to the Class Members; and to finally approve attorneys' fees and costs, service award, and the fees
13 and expenses of the Administrator. All papers in support of the motion for final approval shall be
14 filed with the Court and served on all counsel no later than sixteen (16) court days before the
15 hearing and both motions shall be heard at this final approval hearing.

16 15. Neither the Settlement nor any exhibit, document, or instrument delivered
17 thereunder shall be construed as a concession or admission by Defendant in any way that the
18 claims asserted have any merit or that this Action was properly brought as a class or representative
19 action, and shall not be used as evidence of, or used against Defendant as, an admission or
20 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
21 omission by Defendant or with respect to the truth of any allegation asserted by any person.
22 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
23 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
24 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
25 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
26 evidence of a presumption, concession, indication or admission by Defendant of any liability,
27 fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action . In such an event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if it is not approved.

17. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: _____

HON. VICTORIA KOLAKOWSKI
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA