

FILED / ENDORSED  
JAN - 6 2020  
By E. Brown, Deputy Clerk

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5 Attorneys for Plaintiff  
6 Christie Winston  
7 individually and on behalf of all others  
similarly situated

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

12 CHRISTIE WINSTON, individually and on  
13 behalf of all others similarly situated,  
14 Plaintiffs,

15 vs.

16 EXECAP, INC., a California Limited Liability  
Corporation, EXECUTIVE AUTOPILOTS,  
17 INC., a California Corporation, ANDREY  
18 KALCHENKO, an individual, and DOES 1  
through 20 inclusive;  
19 Defendants.

CASE NO. 34-2018-00234725-CU-OE-GDS

[Assigned for limited purposes to the Hon.  
Richard K. Sueyoshi, Dept. 40]

**[PROPOSED] ORDER: PLAINTIFF'S  
NOTICE OF MOTION AND  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: January 6, 2020  
Time: 1:30 p.m.  
Dept: 53  
Res. No.: 2541673

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1 This matter came on for hearing on January 6, 2020 at 1:30 p.m. , in the above-entitled  
2 court located at 720 9<sup>th</sup> Street, Sacramento, California, 95814, on the Motion for Preliminary  
3 Approval of Class Action Settlement. Having fully reviewed and considered the moving papers,  
4 and having analyzed the Class Action Settlement Agreement (“Settlement Agreement”) between  
5 Plaintiff Christie Winston (“Plaintiff”) and Defendants Execap, Inc., Executive Autopilots, Inc.,  
6 and Andrey Kalchenko, (hereinafter “Defendants”), attached as Exhibit “1” to the Declaration of  
7 Ronald W. Makarem,

8 **THIS COURT HEREBY MAKES THE FOLLOWING ORDERS:**

9 1. This Court hereby preliminarily approves the proposed Settlement Agreement as  
10 being fair, reasonable, and adequate.

11 2. All defined terms contained herein shall have the same meanings as those set  
12 forth in the Settlement Agreement.

13 3. The Class Notice Packet, attached as Exhibit “2” to the Declaration of Ronald W.  
14 Makarem, is hereby approved.

15 4. The Court finds that the distribution of the Class Notice in the manner set forth  
16 herein substantially meets the requirements of California law and due process, is the best notice  
17 practicable under the circumstances, and shall constitute due and sufficient notice to all persons  
18 entitled thereto.

19 5. Solely for the purposes of the proposed settlement, the following class is hereby  
20 provisionally certified pursuant to California Code of Civil Procedure section 382 as follows:

21 The “Class” means all non-exempt hourly employees who worked  
22 for Defendants in the State of California during the Class Period.  
23 “Class Period” means the period from June 13, 2014 through when  
24 the Court granted preliminary approval of settlement on

25 6. Solely for the purposes of the proposed settlement, the Court does hereby  
26 preliminarily approve Ronald W. Makarem, and William A. Baird of Makarem & Associates,  
27 APLC (“Plaintiff’s Counsel or Class Counsel”) as Class Counsel.  
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1           7.     Solely for the purposes of the proposed settlement, the Court does hereby  
2 preliminarily approve Christie Winston as Class Representative.

3           8.     Solely for the purposes of the proposed settlement, the Court does hereby  
4 preliminarily approve of and appoint CPT Group, Inc., as the Parties' Settlement Administrator,  
5 and approves of settlement administration costs of up to \$ 8,000.

6           9.     The Court finds that the section of the Settlement Agreement regarding the  
7 disposition of uncashed checks complies with California Code of Civil Procedure Sections 382.4  
8 and 384 by providing that any unclaimed settlement funds (settlement checks that expire) shall  
9 be transferred to the California State Controller's Office and held in trust for such Settlement  
10 Class Members pursuant to California Unpaid Property Law.

11          10.    A final fairness hearing (the "Final Approval Hearing") shall be set on  
12 5-19, 2021, in Department 53 of this Court, to review the notice process and  
13 objections, if any, and to determine whether the proposed settlement on the terms and conditions  
14 set forth in the Settlement Agreement are fair, reasonable, and adequate, and should be approved  
15 by the Court; whether the Judgment as provided in the Settlement Agreement should be entered  
16 into; and to determine the amount of attorneys' fees and costs that should be awarded to Class  
17 Counsel and the amount of the Class Representative Enhancement Awards that should be  
18 awarded to the Representative Plaintiff.

19          11.    The Settlement Administrator shall supervise and administer the notice procedure  
20 as follows:

21           a.     Within fifteen (15) calendar days after Preliminary Approval is granted by the  
22 Court, Defendants shall provide to the Settlement Administrator the names,  
23 addresses, social security numbers and work week information of all Class  
24 Members during the class period.

25           b.     Within fifteen (15) calendar days of receiving the Class Member contact  
26 information from Defendants, the Settlement Administrator shall send the Class  
27 Notice Packet to each Class Member by First-Class mail.

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1 c. At the time the parties file their motion for final approval of the settlement, Class  
2 Counsel shall provide the Court with a declaration by the Settlement  
3 Administrator, specifying the due diligence it undertook with regard to the  
4 mailing of the Class Notice Packet; verifying its settlement administration costs;  
5 and reporting on the number of opt-outs, objections, disputed, and average  
6 Individual Settlement Payment amounts.

7 12. Any Class Member who wishes to be excluded (opt-out) from the Settlement  
8 Class and not participate in the proposed settlement must execute a written request for exclusion  
9 to the Settlement Administrator within thirty (30) days, as set forth in the Class Notice Packet.  
10 To be timely, the request for exclusion must be mailed to the Settlement Administrator,  
11 postmarked by the (30) day deadline. Any Class Member who opts out of the Settlement will be  
12 ineligible to receive a settlement payment, but will not be bound by the Settlement Agreement or  
13 the release of claims contained therein.

14 13. Class Members who wish to object to the Settlement may do so by sending a  
15 written Objection to the Settlement Administrator no later than (30) days after the date on which  
16 the Class Notice Packet was initially mailed to Class Members. Any Class Member may submit  
17 to the Settlement Administrator a written statement objecting to the Settlement that sets forth the  
18 grounds for the objection. Any Class Member may appear at the Final Approval Hearing, with or  
19 without prior notice, and show cause, if he or she has any, why the proposed Settlement should  
20 or should not be approved as fair, reasonable, and adequate, why attorneys' fees and costs should  
21 or should not be awarded to Class Counsel as requested, or why the Class Representative Service  
22 Award should or should not be awarded as requested. Class Members who validly opt out of the  
23 Settlement may not also object to the Settlement.

24 15. The Court further finds that the proposed funding plan for the Settlement is  
25 reasonable and as set forth as follows:

26 22. Settlement checks will be distributed fourteen (14) calendar days after the Funding  
27 Date. The funding date is ten (10) calendar days after the Effective date. "Effective Date" means  
28 either (a) the date sixty (60) days after the entry of the Final Judgment and order finally approving

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1 the Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review  
2 have been filed, or (b) in the event that a motion for reconsideration, an appeal or other effort to  
3 obtain review of the Final Judgment and order finally approving the Settlement, the date sixty  
4 (60) days after such reconsideration, appeal or review has been finally concluded and is no longer  
5 subject to review, whether by appeal, petition for rehearing, petition for review or otherwise and  
6 the Settlement has not been materially modified.

7 16. Upon the Order of this Court granting Final Approval of the Amended Settlement  
8 Agreement, the Settlement Administrator shall be authorized to release 90% of the approved  
9 Attorneys' Fees and Costs to Class Counsel. The remaining 10% of the approved Attorneys' Fees  
10 and Costs shall be retained by the Settlement Administrator.

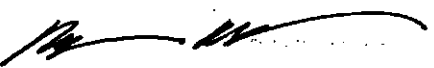
11 17. The Court will set a compliance hearing for approximately sixty (60) days  
12 following final distribution of the settlement funds.

13 18. The Court's preliminary approval of the Settlement Agreement is not to be  
14 deemed an admission of liability or fault by Defendants, or a finding as to the validity of any  
15 claims or defenses asserted in the action. Upon Court order approving of the final distribution of  
16 the settlement funds, the Settlement Administrator shall be authorized to release the remaining  
17 10% of Attorneys' Fees and Costs to Class Counsel.

18 19. The Court reserves the right to adjourn the date of the Final Approval Hearing  
19 without further notice to the Class Members, and it will retain jurisdiction to consider all further  
20 applications arising out of or connected with the proposed Settlement.

21 **IT IS SO ORDERED.**

22  
23 Dated: JAN - 7 2021, 2020

24   
25 Honorable Judge of the Superior Court  
26 SHAMA H. MESIWALA  
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