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FILED
ALAMEDA COUNTY

AUG 03 2021

CLERK OF THE SUPERIOR COURT

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

D'ERICA WASHINGTON, on behalf of
herself, all others similarly situated,

Plaintiff,

vs.

ESA MANAGEMENT, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. RG18898705

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

1 Plaintiff D'erica Washington's Motion for Preliminary Approval of a Class Action
2 Settlement came before this Court for hearing on 8/3/21, at 3 0 .m.
3 On 7/6/21, the Court issued a tentative ruling, which the Parties did not contest. The
4 Court having considered the papers submitted in support of the motion, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The Court grants preliminary approval of the settlement based on the terms set forth
7 in the executed ^{Amended} Stipulation of Class Action Settlement and Release ("Stipulation of Settlement" or
8 "Settlement"), attached as Exhibit A to the Declaration of Shaun Setareh, in Support of Plaintiff's
9 Motion for Preliminary Approval of Class Action Settlement. The Court finds that the terms of the
10 Settlement are fair, adequate, and reasonable to the Class.

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

14 3. The Court finds that the Settlement falls within the range of reasonableness and
15 appears to be presumptively valid, subject only to any objections that may be raised at the Final
16 Approval Hearing and Final Approval by this Court.

17 4. The Court preliminarily finds that extensive investigation and research have been
18 conducted, such that counsel for the Parties are able to reasonably evaluate their respective positions.
19 The Court preliminarily finds that the Settlement will avoid substantial additional costs to all Parties,
20 as well as avoid the delay and risks that would be presented by the further prosecution of the Action.
21 The Court preliminarily finds that the Settlement has been reached as the result of intensive, serious,
22 and non-collusive arms-length negotiations, and has been entered into in good faith. The assistance
23 of an experienced mediator in the settlement process further confirms that the Settlement is non-
24 collusive. Finally, the Court has reviewed the monetary recovery that is being granted as part of the
25 Settlement and preliminarily finds that the monetary settlement awards made available to the
26 members of the Settlement Class are fair, adequate, and reasonable when balanced against the
27 potential risks of further litigation relating to certification, liability, and damages issues.

28 5. The following Class is preliminarily certified for settlement purposes only:
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All persons who applied for employment with Defendant in the United States during the Class Period for whom Defendant procured a background check report for employment purposes. The Class Period is defined as the period beginning on March 27, 2013 through February 20, 2020.

6. The Court preliminarily finds that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) Plaintiff's claims are typical of the claims of the members of the Class; (d) the Class Representative will fairly and adequately protect the interests of the members of the Class; (e) a class action is superior to other available methods for the efficient adjudication of the controversy; and (f) Class counsel is qualified to act as counsel for the Plaintiff in her individual capacity and as the representative of the Class.

7. The Court provisionally appoints Shaun Setareh and William M. Pao of the Setareh Law Group as counsel for the Class ("Class Counsel") for settlement purposes only.

8. The Court provisionally appoints Plaintiff D'erica Washington as the representative of the Class ("Class Representative") for settlement purposes only.

9. The Court provisionally appoints Phoenix Settlement Administrators as the Settlement Administrator.

10. Defendants' form of disclosure and authorization attached hereto as Exhibit __ is conditionally approved as compliant with the Fair Credit Reporting Act, the California Consumer Reporting Agencies Act, and the California Investigative Consumer Reporting Agencies Act. However, entry of the Consent Order attached hereto as Exhibit __ shall occur with entry of the Final Approval Order and Judgment.

11. The Court approves, both as to form and content, the Notice of Class Action Settlement (in substantially the form attached as Exhibit B) ("Notice"). The Court finds that the Notice fully and accurately informs the Class Members of all material elements of the Settlement, of the Class Members' right to be excluded from the Settlement by submitting an Opt-Out Request, and

1 of each Class Member's right and opportunity to object to the Settlement. The Court further finds
2 that the dates and process selected for the mailing and distribution of the Notice meet the requirements
3 of due process, provide the best notice practicable under the circumstances, and constitute
4 constitutionally due and sufficient notice to all persons entitled thereto. The Court further orders the
5 mailing of the Notice to the Class Members by First-Class U.S. Mail, pursuant to the terms set forth
6 in the Settlement and this Order.

7 12. The Court hereby preliminarily approves the proposed procedure for requesting
8 exclusion from, or opting out of, the Settlement. Any Class Member may choose to be excluded
9 from the Settlement as provided in the Notice and set forth in the Settlement. Any such person who
10 chooses to opt out of, and be excluded from, the Settlement will not be entitled to any recovery under
11 the Settlement and will not be bound by the Settlement or have any right to object to, appeal from,
12 or comment thereon. Class Members who have not submitted a timely Opt-Out Request shall be
13 bound by the Settlement Agreement and the contemplated judgment to be entered based thereon.

14 13. Within thirty (30) calendar days after the Court issues the Preliminary Approval
15 Order, Defendant shall provide to the Settlement Administrator the Class Data List, as specified in
16 the Settlement.

17 14. Within fifteen (15) calendar days of receiving the Class Data List from Defendant,
18 The Settlement Administrator shall establish a settlement website in the manner specified in the
19 Settlement.

20 15. Within fifteen (15) calendar days of receiving the Class Data List from Defendant,
21 The Settlement Administrator shall mail the Notice in the manner specified in the Settlement.

22 16. The Court orders that any Opt-Out Request for exclusion from the Settlement must
23 be postmarked no later than forty-five (45) days after the Notice is initially mailed the Class
24 Members, and must be received by the Settlement Administrator to be valid.

25 17. If five percent (5%) or more of the total number of Class Members submit timely and
26 valid Opt-Out Requests, Defendant shall have the option to cancel the Settlement in its sole
27 discretion. To exercise this option, Defendant must send written notification to Class Counsel within
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1 fourteen (14) days of receiving a report from the Settlement Administrator informing Defendant that
2 the total number of timely and valid Opt-Out Requests is five percent (5%) or more.

3 18. Any Class Member who does not timely and validly request exclusion via submission
4 of an Opt-Out Request, may object to the Settlement. Any objection may be in writing, include the
5 Class Member's name and signature, the last four digits of their Social Security Number, the reasons
6 for the objection, whether the Class Member intends to appear at the Final Approval Hearing, and
7 the name of the case: *D'erica Washington v. ESA Management, LLC*, Case No. RG18898705 pending
8 in the California Superior Court, County of Alameda." To be timely, a written objection must be
9 postmarked no later than forty-five (45) days after the Notice is initially mailed to the Class. Class
10 Members may also object to the Settlement by attending the final approval hearing, even if the Class
11 Member has not filed a written objection.

12 19. A Final Approval Hearing shall be held before this Court on December 14, 2021 at
13 3:00 p.m. in Department 23 of the Superior Court of the State of California, County of Alameda,
14 located at 1221 Oak Street, Oakland, CA 94612, to consider the fairness, adequacy and
15 reasonableness of the proposed Settlement preliminarily approved by this Order, and to consider the
16 application of Class Counsel for an award of reasonable attorneys' fees and costs incurred and the
17 proposed Service Payment to the Class Representative. All briefs and materials in support of the
18 Motion for an Order of Final Approval and Judgment and Application for Attorneys' Fees and Costs
19 shall be filed with this Court on or before November 18, 2021.

20 20. Any party to this case, including any Class Member, may be heard in person or by
21 counsel, to the extent allowed by the Court, in support of, or in opposition to, the Court's
22 determination of the good faith, fairness, reasonableness, and adequacy of the proposed Settlement,
23 the requested attorneys' fees and costs, the requested Service Payment to the Class Representative,
24 and any order of Final Approval and Judgment regarding such Settlement, fees, costs, and payment;
25 provided, however, that no person shall be heard in opposition to such matters unless such person
26 has complied with the conditions set forth in the Notice and Settlement.

27 21. The Settlement is not a concession or admission, and shall not be used against
28 Defendant as an admission or indication with respect to any claim of any fault or omission by
5.

1 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
2 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
3 thereof, shall in any event be construed as, offered or admitted into evidence as, received as, or
4 deemed to be in evidence for any purpose adverse to Defendant, including, but not limited to,
5 evidence of a presumption, concession, indication, or admission by Defendant of any liability, fault,
6 wrongdoing, omission, concession, or damage.

7 22. In the event the Settlement does not become effective in accordance with the terms of
8 the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or
9 fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated,
10 and the Parties shall revert back to their respective positions as of before entering into the Settlement
11 Agreement.

12 23. The Court reserves the right to adjourn or continue the date of the Final Approval
13 Hearing and all dates provided for in the Settlement without further notice to the Class Members,
14 and retains jurisdiction to consider all further applications arising out of or connected with the
15 Settlement.

16 **IT IS SO ORDERED.**

17 Dated: 8/3/21

By: 

Honorable Brad Seligman
Judge of the Superior Court

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