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Attorneys for Plaintiff, JEFFERY LEE CONNESS, an individual and on behalf of all others similarly situated and/or aggrieved,

ELECTRONICALLY RECEIVED

Superior Court of California,
County of San Diego

03/09/2022 at 10:41:26 PM

Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

FILED
Clerk of the Superior Court

APR 01 2022

By: **R. Wilks**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL COURTHOUSE

11 JEFFERY LEE CONNESS, an individual and
12 on behalf of all others similarly situated and/or
13 aggrieved,

Plaintiffs,

v.

15 THE CARLSON COMPANY, doing business
16 as The Carlson Company, Inc., a California
17 corporation, doing business as "Mission
18 Janitorial & Abrasive Supplies", doing business
19 as "Mission Janitorial Supplies"; BRADY
20 INDUSTRIES OF CALIFORNIA, INC., a
21 California corporation; KEVIN CARLSON, an
22 individual; CANDICE CARLSON, an
23 individual; GREGORY CARLSON, an
24 individual; TRAVIS BRADY, an individual;
25 and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 37-2021-00015907-CU-OE-
CTL

[Assigned for all purposes to the Hon. Timothy
Taylor, Dept. C-72]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY**

**[Lodged concurrently with Motion for
Preliminary Approval]**

HEARING INFORMATION:

DATE: April 1, 2022
TIME: 1:30 p.m.
DEPT: C-72

**[PROPOSED] ORDER FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the Motion of plaintiff Jeffery Lee Conness ("Plaintiff" or
2 "Mr. Conness") for Preliminary Approval of Class and Representative Action Settlement and
3 Provisional Class Certification for Settlement Purposes Only ("Motion for Preliminary Approval"),
4 the Declarations of David D. Bibiyan and Jasmin K. Gill, the Joint Stipulation Re: Class Action and
5 Representative Action Settlement (the "Settlement Agreement"), the Notice of Proposed Class
6 Action Settlement ("Class Notice"), and other documents submitted in support of the Motion for
7 Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

8 1. The definitions set out in the Settlement Agreement are incorporated by reference
9 into this Order; all terms defined therein shall have the same meaning in this Order.

10 2. The Court certifies the following settlement class for the purpose of settlement only:
11 all current and former non-exempt, hourly-paid employees who worked at any time for The Carlson
12 Company, Inc., doing business as "Mission Janitorial & Abrasive Supplies" and "Mission Janitorial
13 Supplies" ("Carlson Company") from April 9, 2017 through January 8, 2022 ("Class Period") in
14 California ("Class Members").

15 3. The Court preliminarily appoints named plaintiff Mr. Conness as a Class
16 Representative, and David D. Bibiyan and Jeffrey Klein of Bibiyan Law Group, P.C. as well as
17 Jasmin K. Gill of J. Gill Law Group, P.C. as Class Counsel.

18 4. The Court preliminarily approves the proposed class settlement upon the terms and
19 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
20 settlement appears to be within the range of reasonableness of settlement that could ultimately be
21 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
22 amount is fair, adequate and reasonable as to all potential Class Members when balanced against
23 the probable outcome of further litigation relating to liability and damages issues. It further appears
24 that extensive and costly investigation and research has been conducted such that counsel for the
25 parties at this time are reasonably able to evaluate their respective positions. It further appears to
26 the Court that the settlement at this time will avoid substantial additional costs by all parties, as well
27 as the delay and risks that would be presented by the further prosecution of the Action. It further
28 appears that the settlement has been reached as the result of intensive, non-collusive, arms-length

1 negotiations utilizing an experienced neutral third party.

2 5. The Court approves, as to form and content, the Class Notice that has been submitted
3 herewith.

4 6. The Court directs the mailing of the Class Notice by first-class mail to Class
5 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
6 that the dissemination of the Class Notice set forth in the Settlement Agreement complies with the
7 requirements of law, and appears to be the best notice practicable under the circumstances.

8 7. The Court hereby preliminarily approves the definition and disposition of the Gross
9 Settlement Amount of \$275,000, which is inclusive of attorneys' fees up to 35% the Gross
10 Settlement Amount (or \$96,250 if the Gross Settlement Amount is not escalated pursuant to
11 Paragraph 8 below), in addition to actual costs not to exceed \$25,000; an enhancement award of
12 \$7,500.00 for Plaintiff; costs of settlement administration of no more than \$5,250; and PAGA
13 penalties in the amount of \$10,000.00, of which \$7,500 (75%) will be paid to the LWDA and
14 \$2,500.00 (25%) will be paid to Aggrieved Employees. The Gross Settlement Amount expressly
15 excludes Employer Taxes, which will be paid separately and apart by Defendants on the wages
16 portion of the Settlement Amount.

17 8. Defendants represent that there are no more than 3,147 Workweeks worked by Class
18 Members between April 9, 2017 through January 8, 2022. In the event the number of Workweeks
19 in the Class Period exceeds 314 Workweeks, then the Gross Settlement Amount shall be increased
20 proportionally for every Workweek above and beyond 3,461 Workweeks by the Workweek Value.
21 The Workweek Value shall be calculated by dividing the current Gross Settlement Amount
22 (\$275,000.00) by 3,147, which amounts to a Workweek Value of \$87.38. Thus, for example, should
23 there be 3,500 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased
24 by \$3,407.82. (3,500 Workweeks – 3,461 Workweeks x \$87.38/Workweek.)

25 9. The Court appoints Phoenix Settlement Administrators ("Phoenix") as the
26 Settlement Administrator, and approves payment of administrative costs, not to exceed \$5,250.00,
27 out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of the class.

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1 10. The Court directs Defendants to, within ten (10) calendar days of the date of this
2 Order, provide the Settlement Administrator with the "Class List" for Settlement Class Members
3 providing the following information for each Settlement Class Member: (1) name, last known
4 address(es) and last known telephone number(s) currently in Defendants' possession, custody, or
5 control; (2) Social Security Number in Defendants' possession, custody, or control; and (3) the
6 number of workweeks during which Class Members performed non-exempt work for Carlson
7 Company, which shall be made available to Class Counsel upon request. The Settlement
8 Administrator shall perform an address search using the United States Postal Service National
9 Change of Address ("NCOA") database and update the addresses contained on the Class List with
10 the newly-found addresses, if any.

11 11. Within seven (7) calendar days of receiving the Class List from Defendants, the
12 Settlement Administrator shall mail the Class Notice in English and Spanish to the Class Members
13 via first-class regular U.S. Mail using the most current mailing address information available. Prior
14 to mailing the Notice to each Class Member, the Settlement Administrator shall undertake
15 reasonable address verification measures so as to update the last known address for each Class
16 Member. To the extent that this process yields an updated address, that updated address shall replace
17 the last known address and be treated as the new last known address for purposes of this Settlement,
18 and for subsequent mailings. The Settlement Administrator shall maintain a Class List with
19 continuously updated contact information for the Class Members and maintain a list with names and
20 all addresses to which notice was given, and digital copies of all the Settlement Administrator's
21 records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years
22 from the Effective Final Approval Date.

23 12. If a Class Notice from the initial notice mailing is returned as undeliverable, the
24 Settlement Administrator will attempt to obtain a current address for the Settlement Class Member
25 to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the
26 returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and
27 (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new
28 address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any

1 Class Notices that are returned to the Settlement Administrator with a forwarding address before the
2 Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. Class
3 Members who are re-mailed a Class Notice shall have an additional fifteen (15) calendar days to
4 submit a Request for Exclusion, written objection or to dispute estimated payments.

5 13. The deadline for filing objections to any of the terms of the settlement shall be forty-
6 five (45) days from the date of mailing of the Class Notice (as the same may be extended in the
7 event of the re-mailing of a Class Notice). Any Class Member who wishes to object to the settlement
8 must mail a written objection to the Settlement Administrator, who will email a copy of the objection
9 to Class Counsel and counsel for Defendants. Class Counsel will lodge a copy of the objection with
10 the Court with the Motion for Final Approval. The objection should set forth in writing: (1) the
11 objector's name and address, (2) the reason(s) for the objection, along with whatever legal authority,
12 if any, the objector asserts supports the objection. Any Class Member who fails to make his or her
13 objection in the manner provided for in this Order may still be heard at the Final Approval Hearing.

14 14. Any Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by
15 mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the
16 Settlement Administrator, postmarked within forty-five (45) days from the date of mailing of the
17 Class Notice (as the same may be extended in the event of the re-mailing of a Class Notice). To be
18 valid, a Request for Exclusion must include the Class Member's name, social security number and
19 signature and the following statement or something to its effect: "Please exclude me from the
20 Settlement Class in the *Jeffery Lee Conness v. The Carlson Company, Inc., et al.* matter" or a
21 statement of similar meaning. The Settlement Administrator shall immediately provide copies of
22 all Requests for Exclusion to Class Counsel and Defendants' Counsel and shall report the Requests
23 for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final
24 Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will
25 not be entitled to receive any payment from the Settlement and will not be bound by the Settlement
26 Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement
27 Class Member who does not opt out of the Settlement by submitting a timely and valid Request for
28 Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released

1 Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement
2 is granted.

3 15. If a Class Member objects to the Settlement, the Class Member will remain a member
4 of the Settlement Class and, if the Court approves the Settlement, the Class Member will be bound
5 by the terms of the Settlement in the same way and to the same extent as a Class Member who does
6 not object. A Class Member cannot both object and opt out. If a Class Member both objects and
7 opts out of the Settlement, the objection will be overruled and the opt-out will control. Class
8 Members who worked during the PAGA Period that submit a valid Request for Exclusion will still
9 be deemed Aggrieved Employees, will still receive their Individual PAGA Payment, and will be
10 bound by the release encompassed in the PAGA Released Claims as defined in the Settlement
11 Agreement.

12 16. No later than seven (7) calendar days from the Response Deadline, the Settlement
13 Administrator shall prepare and submit to Class Counsel and Defendants' Counsel a declaration
14 attesting to the completion of the notice process as set forth in the Settlement Agreement, including
15 an explanation of the number of attempts to obtain valid mailing addresses for, and re-sending of,
16 any Class Notice returned undeliverable and the identities, number of, and copies of all opt-outs and
17 objections and comments received by the Settlement Administrator.

18 17. For any checks from this distribution that are not cashed by Participating Class
19 Members and Aggrieved Employees within one-hundred-eighty (180) calendar days from the date
20 of the mailing of the checks, within seven (7) calendar days after the expiration of the 180-day
21 period, such checks shall be canceled and funds associated with such checks shall be considered
22 unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384
23 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
24 Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St.,
25 Suite 600, San Francisco, California 94101 for use in San Diego County. The Settlement
26 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
27 Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a
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1 proposed amended judgment that is consistent with the provisions of Code of Civil Procedure
2 section 384.

3 18. All papers filed in support of final approval, including supporting documents for
4 attorneys' fees and costs, shall be filed by July 12, 2022.

5 19. Class Counsel and counsel for Defendants shall file any responses to any written
6 objections submitted to the Court by five (5) court days prior to the final approval hearing.

7 20. A final approval hearing shall be held with the Court on Aug 5, 2022 at
8 1:30 a.m./(p.m.) in Department C-⁷²~~73~~, (Central Courthouse) of the above-entitled Court to determine:

9 (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved
10 by the Court; (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of
11 incentive award to the Class Representative; (4) the amount to be paid to the Settlement
12 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA.

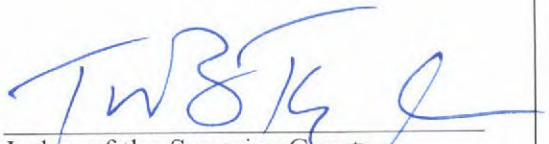
13 21. In the event the settlement does not become effective in accordance with the terms
14 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
15 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
16 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.
17 The parties will be free to assert any claim or defense that could have been asserted at the time of
18 entry of the Settlement Agreement.

19

20 **IT IS SO ORDERED.**

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22 Dated: 4/1, 2022

23 
24 Judge of the Superior Court
25 **Timothy B. Taylor**

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