



of a putative class before determining whether to certify the action as a class action.” (Emphasis added). That is, it would be impermissible and reversible error for “interim” class counsel to conduct a trial of this case as a “class-action” if a class has not been certified by the Court.

Defendant has no objection to a form of the Order that would provide for Proposed Leadership Counsel performing all listed *pre-trial* activities, but an order granting them powers at trial and post trial (as proposed by Plaintiff) would obviate the “interim” label, both by rule and in practice. If this Court should eventually certify a class—which Defendant opposes, and believes this Court will not do—then Defendant would expect such order granting certification to grant Proposed Leadership Counsel such powers through trial and post-trial. But no order should be signed that grants such powers prematurely, in advance of an order determining the question class certification.

### **CONCLUSION AND PRAYER**

Defendant therefore respectfully requests that this Court enter the Proposed Order in the form reflected in Exhibit A hereto, omitting the grant of any trial and post-trial powers to interim class counsel. Defendant agrees to that form of the Proposed Order. Defendant further respectfully requests any and all other relief to which it may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of October, 2025, I caused a true and correct copy of the foregoing to be transmitted by the Court's electronic filing system to the parties listed below:

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