

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 03 2024

L. FRANKLIN

AA

SEP 11 2024

DE

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE, HISTORIC COURTHOUSE

JOSUE ARANA, an individual, and NICHOLAS
BORJON, an individual on behalf of all others
similarly situated,

Plaintiffs,

vs.

STATEWIDE TOWING AND RECOVERY,
INC., a California Corporation, CHRISTOPHER
O. KIRK, an individual, and DOES 1 through 20
inclusive,

Defendants.

Case No. CVRI2000629

Assigned to Hon. Harold Hopp in Dept. 1

~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL JUDGMENT

Date: August 8, 2024

Time: 8:30 a.m.

Dept.: 1

ORDER GRANTING FINAL APPROVAL AND FINAL JUDGMENT

This matter, having come before the Honorable Harold Hopp of the Superior Court of the State of California, in and for the County Riverside, on August 8, 2024, for the motion by Plaintiffs Josue Arana and Nicholas Borjon (collectively, "Plaintiffs") for final approval of the class settlement with Defendants Statewide Towing and Recovery, Inc. The Court, having considered the briefs, argument of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiffs' Motion for Final Approval of Class Action Settlement.

1 **THE COURT MAKES THE FOLLOWING DETERMINATION AND ORDERS:**

2 The Court hereby makes a final determination that the settlement amount is fair and
3 reasonable to the Class when balanced against the probable outcome of further litigation relating to
4 class certification, liability and damages issues and potential appeals. The Court finds that significant
5 investigation, research, and litigation has been conducted such that counsel for the Parties at this time
6 are able to reasonably evaluate their respective positions; settlement at this time will avoid substantial
7 costs, delay, and risks that would be presented by the further prosecution of the litigation; the
8 proposed Settlement has been reached as the result of intensive, serious, and non-collusive
9 negotiations between the Parties.

10 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR FINAL
11 APPROVAL OF THE CLASS ACTION SETTLEMENT IS HEREBY GRANTED, AND AS A
12 PART OF SAID FINAL APPROVAL, THE COURT HEREBY ORDERS THAT THE CLASS BE
13 CERTIFIED FOR SETTLEMENT PURPOSES ONLY.

14 **THE COURT FURTHER FINDS AS FOLLOWS:**

15 1. The Court finds that the Settlement Agreement, incorporated by this reference and
16 made a part of this Order Granting Preliminary Approval, is within the range of reasonableness of a
17 settlement that could ultimately be given final approval by this Court and the terms of the Settlement
18 are fair, reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

19 2. The Court notes that Defendants Statewide Towing & Recovery, Inc., and Christopher
20 Kirk ("Defendants") have agreed to a non-reversionary cash settlement and to create a Common Fund
21 in the maximum amount of \$1,100,000.00. Defendants will pay out the entirety of the Net Common
22 Fund to the Participating Class Members, with any uncashed portion of the Net Common Fund to be
23 distributed in accordance with Code of Civil Procedure § 384.

24 3. The Court finds that the elements of numerosity, commonality, typicality, and
25 adequacy have been established to support certification of the Class for settlement purposes, with
26 Plaintiff acting as Class Representative.

27 4. The Class certified by this Order for settlement purposes includes all current and
28 former persons employed by Defendants in California as non-exempt employees at any time during

1 the Class Period who have not entered into an individual settlement agreement with Defendants.

2 5. Notice by first-class mail of the Class Notice constituted the best notice practicable
3 under the circumstances and is in full compliance with the laws of the State of California and, to the
4 extent applicable, the United States Constitution and the requirements of due process. Based on the
5 evidence submitted in conjunction with the Motion, the Court finds that this Class Notice was
6 adequate. The Class Notice fully and accurately informed Class Members of all material elements of
7 the proposed Class Action Settlement, of each Class Member's right to be excluded from the Class,
8 and each Class Member's right and opportunity to object to the proposed Class Action Settlement.
9 The Class Notice adequately advised the Class about: the Class Action; the Settlement terms and the
10 benefits available to each Class Member; each Class Member's right to object and/or "opt out," and
11 the timing and procedures for doing so; the conditional certification of the Class for settlement
12 purposes only; preliminary Court approval of the proposed Settlement; timing and procedures for
13 distributing the settlement funds; and the date of the Final Fairness Hearing, as well as the rights of
14 members to submit objections and appear in connection with said hearing.

15 6. A full opportunity was afforded to Class Members to participate in the Final Fairness
16 Hearing. No Class Member submitted a timely request for exclusion form, nor objected to the
17 settlement.

18 7. The Court approves the Settlement, and each of the releases and other terms set forth
19 therein as fair, reasonable, and adequate to all Class Members. Plaintiffs, Defendants, and the
20 Settlement Administrator are directed to perform all required actions in accordance with the terms set
21 forth in the Settlement.

22 8. The Court finds that the plan of allocation for payment of the Net Settlement Amount
23 as set forth in the Settlement is fair and reasonable. Distribution of the Net Settlement Amount to
24 Class Members shall be performed in accordance with the terms Class Notice and Settlement.

25 9. The Court hereby appoints, for settlement purposes, Plaintiffs Josue Arana and
26 Nicholas Borjon as Class Representatives.

27 10. The Court further finds that Gabriel J. Pimentel and Yesenia L. Rodriguez of Pimentel
28 Law, P.C. are experienced and adequate Class Counsel, and appoints them as Class Counsel for

1 settlement purposes.

2 11. The Court approves payment of settlement administration costs in the amount of
3 \$6,500 to Phoenix Settlement Administrators for notice and settlement administration services
4 rendered in this matter and finds that this amount is fair and reasonable.

5 12. In recognition of their service to the Class initiating and maintaining this litigation,
6 and the risks and burdens undertaken for the benefit of the Class, the Court approves a service award
7 of \$20,000 to Plaintiff Josue Arana and \$10,000 to Plaintiff Nicholas Borjon.

8 13. Based upon the fee motion submitted as part of Class Counsel's Motion for Final
9 Approval of Class Action Settlement, the Court determines that the requested fee of 35% of the
10 Common Fund is reasonable in light of the benefit conferred upon the Class and work performed,
11 which the Court finds is supported by a lodestar cross-check. As such, the Court awards to Class
12 Counsel Pimentel Law, P.C. a sum of \$385,000.00 in attorneys' fees.

13 14. The Court awards Class Counsel ~~\$49,499.67~~ ^{34,487.19} for reimbursement of reasonable
14 litigation costs incurred in this action.

15 **THE COURT FURTHER ORDERS AND ENTERS JUDGMENT AS FOLLOWS:**

16 15. The Settlement Administrator is directed to make the foregoing payments in
17 accordance with the terms of the Settlement.

18 16. Defendants Statewide Towing & Recovery, Inc. and Christopher Kirk are directed to
19 pay the \$1,100,000.00 Gross Common Fund to the Settlement Administrator according to the
20 following schedule: within 30 days of entry of this Order as required by the terms of the Settlement,
21 Defendants will pay the first installment of \$900,000.00. The second installment of \$200,000 will be
22 made 60 days after the first installment payment.

23 17. Within fourteen business days of its receipt of the Gross Common Fund, the
24 Settlement Administrator shall distribute the proceeds as follows: (1) \$385,000.00 to Class Counsel
25 for payment of attorneys' fees; (2) \$49,499.67 for attorney costs; (3) \$20,000 to Class Representative
26 Josue Arana and \$10,000 to Class Representative Nicholas Borjon to pay their service awards; (4)
27 \$35,000 PAGA Payment; and (5) \$6,500 Settlement Administrator Costs. The remaining Net
28 Common Fund of \$602,750.33 is to be distributed to the Participating Class Member in the amount

1 of his or her Individual Settlement Payment.

2 18. Any envelope transmitting a settlement distribution to a Class Member shall bear the
3 notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."

4 19. Any settlement distribution check shall be negotiable for at least 90 days but not more
5 than 180 days from the date of mailing.

6 20. The Settlement Administrator shall mail a reminder postcard to any Class Member
7 whose settlement distribution check has not been negotiated within 60 days after the date of mailing.

8 21. After the time for cashing Individual Settlement Payments has passed, the Settlement
9 Administrator will provide the Parties with a list of uncashed Individual Settlement Payments (if any)
10 Any uncashed portion of the Net Common Fund will be distributed by the Settlement Administrator
11 to the California Controller's Unclaimed Property Fund in the name of Class Members thereby
12 leaving no "unpaid residue" in accordance with CCP § 384.

13 22. Within 15 days after the time for cashing Individual Settlement Payments has passed,
14 the Settlement Administrator shall file with the Court a report concerning uncashed checks. The report
15 will be in the form of a declaration from the Settlement Administrator, describing (i) the date the
16 checks were mailed, (ii) the total number of checks mailed to the Class Members, (iii) the average
17 amounts of those checks, (iv) the number of checks that remain uncashed, (v) the total value of those
18 uncashed checks, (vi) the average amount of the uncashed checks and (vii) the nature and date of the
19 disposition of those unclaimed funds. The report shall be accompanied by a proposed amended
20 Judgment that complies with Civil Procedure Code § 384.5. The Final Report Hearing
21 (nonappearance) shall take place on April 10, 2025.

22 23. Upon entry of this Order and Judgment, all Participating Class Members, and their
23 successors, shall conclusively be deemed to have given full releases of the Released Claims against
24 the Released Parties.

25 24. The Court maintains exclusive and continuing jurisdiction over this action for
26 purposes of supervising the implementation, enforcement, construction, administration and
27 interpretation of the Settlement and this Judgment.

28 25. Class Counsel shall file a Notice of Entry of Order & Judgment and provide to the

1 Settlement Administrator, who shall post the Order & Judgment on its website arana-v-statewide-
2 towing-and-recovery.phoenixcases.com within seven calendar days after entry of Order & Judgment.
3 A copy of the signed Order & Judgment shall be posted on the website for 180 days in compliance
4 with Rule 3.771 (b) of the California Rules of Court in order to provide notice to the Class Members
5 of this Judgment. The Settlement Administrator shall also provide a mailed copy of the signed Order
6 & Judgment to Class Members.

7 26. The Notice of Entry of Judgment shall state the following:

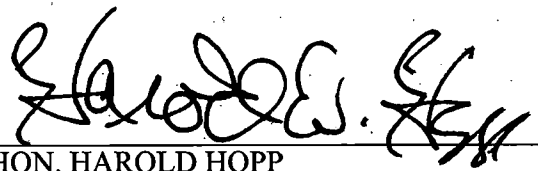
8 "TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

9 PLEASE TAKE NOTICE THAT on August 8, 2024, the Honorable Harold Hopp in
10 Department 1 of the Riverside County Superior Court granted final approval of the class
11 action settlement in this action and entered Judgment. A true and correct copy of the
12 Judgment is attached hereto as Exhibit 1."

13 27. If any of the class members are current employees of the defendant, the distribution
14 mailed to those employees is returned to the administrator as being undeliverable, and the
15 administrator is unable to locate a valid mailing address, the administrator shall arrange with the
16 Defendants to have those distributions delivered to the employees at their place of employment.

17 IT IS SO ORDERED.

18 Dated: Sept. 3, 2024

19 
HON. HAROLD HOPP
JUDGE, SUPERIOR COURT OF CALIFORNIA