

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 26 2022

BY 
JOSEPH HERNANDEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

KEVIN MCNEIL and GUADALUPE
ROMULO, individually, on behalf of other
members of the general public similarly
situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiffs,

v.

KIK INTERNATIONAL, LLC, a Delaware
limited liability company; KIK POOL
ADDITIVES, INC., a California corporation;
KIK CUSTOM PRODUCTS, INC., a Texas
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CIVDS1915438
[Consolidated with Case No. CIVDS2023661]

Assigned for All Purposes to:
Honorable Bryan F. Foster
Department S-22

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: July 28, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department S-22

Complaint Filed: May 21, 2019
FAC Filed: June 15, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Kevin McNeil's and
2 Guadalupe Romulo's ("Plaintiffs") Motion for Final Approval of Class Action Settlement,
3 Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments, and after
4 considering the papers submitted in support of the motion, including the Joint Stipulation and
5 Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS
6 AND ORDERS as follows:

7 Plaintiffs and Defendants KIK International LLC, KIK Pool Additives, Inc., KIK Custom
8 Products Inc., and KIK Custom Products, Inc. ("Defendants") entered a Settlement Agreement
9 on or about September 8, 2021 to settle this class action lawsuit.

10 The Court entered an Order dated November 10, 2021 preliminarily approving the
11 settlement of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code
12 of Civil Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to
13 Class Members, scheduling a Fairness Hearing for July 28, 2022 in a separate order, and
14 providing Class Members with an opportunity to object to the Settlement or exclude themselves
15 from the Class.

16 The Court held a Fairness Hearing on July 28, 2022 to determine whether to give final
17 approval to the settlement of this class action.

18 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
19 ("Order and Judgment") incorporates the Agreement. Unless otherwise provided herein, all
20 capitalized terms in this Order and Judgment shall have the same meaning as set forth in the
21 Agreement.

22 2. Jurisdiction. Because adequate notice has been disseminated, and all Class
23 Members have been given the opportunity to request exclusion from the Class, the Court has
24 personal jurisdiction with respect to the claims of all Class Members. The Court has subject
25 matter jurisdiction over this class action, including jurisdiction to approve the Settlement, grant
26 final certification of the Class, and dismiss the class action.

27 3. Final Class Certification. The Court finds that the Class satisfies all applicable
28 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due

process. Accordingly, the Court certifies a Class consisting of any and all hourly-paid or non-exempt individuals who worked for Defendants (whether employees of Defendants or a third-party staffing agency) within the State of California during the time period from May 21, 2015, to November 10, 2021 (“Class,” “Class Members,” and “Class Period”). There are currently two thousand seven hundred thirty-three (2,733) Class Members who did not submit a valid and timely Exclusion Form requesting to exclude themselves from the class action Settlement (“Participating Class Members”)¹.

4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of the Justice Law Corporation have fully and adequately represented the Class for purposes of entering and implementing the Settlement and have satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Notice of Class Action Settlement (“Class Notice”) and the Election Not To Participate or Opt-out Form (“Exclusion Form”) (collectively, the “Notice Packet”) and its distribution to Class Members have been implemented pursuant to the Settlement Agreement and this Court’s Preliminary Approval Order. The Court further finds the Notice Packet:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) the pendency of the class action; (ii) the material terms and provisions of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the proposed Settlement (including final certification of the Class, the fairness, reasonableness and adequacy of the Settlement, the adequacy of the Class’s representation by Plaintiffs and Class Counsel, and/or the award of Plaintiffs’ Class Representative Enhancement Payments, Attorney Fee Award, and Cost Award); (iv) their right to exclude themselves from the Class and the Settlement; (v) their right to claim an Individual Settlement Share; (vi) their right to appear at

¹ Phoenix mailed Notice Packets to two thousand seven hundred forty-one (2,741) Class Members and received eight (8) requests for exclusion. Thus, there are two thousand seven hundred thirty-three (2,733) Participating Class Members.

1 the Settlement Fairness Hearing; and (vii) the binding effect of the orders and judgment in the
2 class action, whether favorable or unfavorable, on all Participating Class Members;

3 b. constitutes notice that fully satisfied the requirements of Code of Civil
4 Procedure section 382, California Rule of Court 3.769, and due process;

5 c. constitutes the best practicable notice to Class Members under the
6 circumstances of the class action; and

7 d. constitutes notice reasonable, adequate, and sufficient to all Class
8 Members.

9 6. Final Settlement Approval. The terms and provisions of the Settlement
10 Agreement have been entered in good faith and are the product of arm's-length negotiations by
11 experienced counsel who have done a meaningful investigation of the claims in the dispute. The
12 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
13 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
14 implement the Settlement Agreement according to its terms and provisions.

15 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
16 Order and Judgment are binding on the Participating Class Members, as well as their heirs,
17 executors and administrators, successors, and assigns, and those terms shall have res judicata and
18 other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained
19 by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings
20 involve matters that were or could have been raised in the class action and are encompassed by
21 the release of the Participating Class Members' Released Claims as set forth in the Settlement
22 Agreement. The Settlement Agreement will have no binding effect upon, and provide no res
23 judicata preclusion to, those Class Members who have submitted requests for exclusion.

24 8. Released Claims. As of the Effective Final Settlement Date, in exchange for the
25 consideration set forth in the Agreement, Plaintiffs and the Participating Class Members shall be
26 deemed to have released the Released Parties from the Released Claims for the Class Period.

27 a. Limited Civil Code Section 1542 Waiver for Settlement Class Members. With
28 regard to the Released Claims only, Participating Class Members waive all rights

and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding the significance of that waiver.

- b. PAGA Release. As of the Effective Final Settlement Date and upon Defendants' fully funding of the Settlement, the Settlement and Judgment to be entered by the court following approval of the Settlement forever bars Plaintiff Romulo and the California Labor and Workforce Development Agency ("LWDA"), directly or through any other proxy or agent, from any future prosecution of Labor Code sections 2698, *et seq.*, claims based on released claims during the PAGA Period against the Released Parties.
- c. Plaintiffs' Release of Claims and General Release. Upon the Effective Final Settlement Date, and as a condition of receiving any portion of their Class Representative Enhancement Payments, Plaintiffs will provide a general release to the Released Parties. Plaintiffs, and each of them, also expressly waive and relinquish the provisions, rights, and benefits of section 1542 of the Civil Code.
- d. Released Parties. The Released Parties include Defendants, and all of Defendants' present and former subsidiaries, parents, affiliates, and joint ventures, and all of Defendants' shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them, KIK Custom Products, Inc, and Aerosols Danville Inc., and any individual or entity which could be jointly liable with Defendants for any of the Released Claims, including staffing agencies who hired, provided or assigned Class Members to perform work at Defendants within the Class Period. Released Staffing Agencies includes, without limitation, Imperial Staffing & Associates, United Employment Solutions Inc., PriorityWorkforce, Inc., EmployBridge, LLC, Kamran Staffing, Inc., MLG Staffing Experts, LLC, Resource Employment Solutions, TSA Staffing (d/b/a Baron HR), and Adecco.

1 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
2 any action to enforce the terms and provisions of the Settlement Agreement.

3 10. Class Representative Enhancement Payments. The Court finds the Class
4 Representative Enhancement Payments of \$10,000, to be paid by Defendants to each Plaintiff
5 out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
6 Enhancement Payments are to be paid pursuant to the terms and provisions set forth in the
7 Agreement.

8 a. The rationale for making enhancement payments is the class representatives
9 should be compensated for the expense and risk they have incurred in conferring a
10 benefit on other class members. Such enhancement payments are appropriate if
11 they are necessary to induce individuals to participate in the suit. Criteria courts
12 may consider include: (1) the risk to the class representatives in commencing suit,
13 both financial and otherwise; (2) the notoriety and personal difficulties
14 encountered by the class representatives; (3) the amount of time and effort spent
15 by the class representatives; (4) the duration of the litigation; and (5) personal
16 benefit (or lack thereof) enjoyed by class representatives.

17 b. The Court reviewed Plaintiffs' declarations outlining their involvement in the
18 lawsuit. Given the risks inherent in their services as class representatives, duration
19 of the case and time involved, and benefits created for the Class, the Court
20 approves the Class Representative Enhancement Payments of \$10,000 to each
21 Plaintiff.

22 11. Attorney Fee Award and Cost Award. The Court finds an award of an Attorney
23 Fee Award of \$349,125, to be paid out of the Gross Settlement Amount by Defendants to Class
24 Counsel, to be reasonable and appropriate. The Court further finds an award of actual litigation
25 costs of \$24,727.70, to be paid by Defendants to Class Counsel out of the Gross Settlement
26 Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the
27 terms and provisions set forth in the Settlement. Defendants shall not be required to pay for any
28 other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any

1 other counsel representing Plaintiffs or Class Members. Defendants shall also not be required to
2 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or
3 Class Members, in connection with or related in any manner to the class action, the Settlement,
4 the administration of the Settlement, and/or the Participating Class Members' Released Claims.

5 a. The Court has an independent right and responsibility to review the requested
6 Attorney Fee Award and only award so much as deemed reasonable. (See
7 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
8 127-28.) The Attorney Fee Award requested by Class Counsel of \$349,125 is
9 thirty-five percent (35%) of the common fund created for the benefit of the Class
10 Members and is supported by use of the percentage-fee method. (See *Laffitte v.*
11 *Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the
12 excellent results achieved for the Class, the financial risk taken by Class Counsel,
13 novel and difficult nature of this litigation, skills required to deal with these
14 issues, percentage fees award in other cases, and contingent fees charged in
15 private marketplace, the Court finds the request for the Attorney Fee Award is
16 consistent with the legal marketplace, is reasonable, and is approved.

17 b. The Court has reviewed the declaration of Douglas Han regarding the costs
18 expended in the prosecution of this litigation. Under the terms of the Settlement,
19 Class Counsel may seek reimbursement of up to \$25,000 in litigation costs. As
20 stated above, the Court finds Class Counsel have expended \$24,727.70 in
21 litigation costs and such costs were reasonable. Thus, the Court approves the
22 payment of the Cost Award of \$24,727.70 for the reimbursement of Class
23 Counsel's litigation costs.

24 12. Administration Costs. The Court finds Administration Costs of \$18,500, to be
25 paid by Defendants to the Settlement Administrator out of the Gross Settlement Amount, to be
26 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
27 provisions set forth in the Settlement Agreement.

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1 a. The Court has reviewed the declaration of Taylor Mitzner from Phoenix Class
2 Action Administration Solutions (“Phoenix”), the Court-approved Settlement
3 Administrator. The Court finds notice was provided to the Class pursuant to the
4 Preliminary Approval Order, the notice constitute the best practicable notice to
5 the Class, and the notice satisfied due process. Phoenix has discharged its duties
6 to provide notice to the Class. Thus, the Court approves a payment for
7 Administration Costs of \$18,500 for Phoenix’s services in administering this
8 settlement.

9 13. PAGA Payment. The Court finds the PAGA Payment of \$50,000, seventy-five
10 percent (75%) of which (\$37,500) will be paid by Defendants to the LWDA out of the Gross
11 Settlement Amount and twenty-five percent (25%) of which (\$12,500) shall be distributed to
12 Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA
13 Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14 14. Funding of the Settlement. No later than fourteen (14) calendar days after the
15 Effective Final Settlement Date, Defendants shall deposit the Gross Settlement Amount of
16 \$997,500 needed to pay the entire Gross Settlement Amount and the employer’s share of payroll
17 taxes by wiring the funds to the Settlement Administrator. Defendants shall also at this time
18 provide any tax information the Settlement Administrator may need to calculate each
19 Participating Class Members’ Individual Settlement Share. No later than fourteen (14) calendar
20 days after the funding of the Settlement, the Settlement Administrator shall calculate and
21 disburse all payments due under the Settlement.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
23 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
24 proposed Settlement was the product of arm’s-length negotiations following extensive litigation,
25 discovery, and exchange of documentation relating to Plaintiffs’ claims. The negotiations were
26 facilitated with the assistance of mediator David A. Rotman, an experienced and well-respected
27 class action mediator.

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1 a. There were no objections to the Settlement and only eight (8) requests for
2 exclusion from the Settlement. This is further proof of the fairness of the
3 Settlement.

4 b. With respect to the benefit to the Class Members, Plaintiffs' moving papers
5 indicate the *average* Individual Settlement Share will be approximately \$195.81,
6 and the *highest* Individual Settlement Share will be about \$2,135.07 under the
7 proposed allocation.

8 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
9 Employees must cash or deposit their Individual Settlement Share and Individual PAGA
10 Payment checks (which may be issued as a single check) within one hundred eighty (180)
11 calendar days after the checks are mailed to them. Any uncashed settlement checks will be paid
12 by the Settlement Administrator to the California State Controller's Unclaimed Property
13 Division.

14 17. Final Accounting and Compliance. The Court sets a final accounting and
15 compliance date for _____ at _____ a.m./p.m. in Department S-22. No later than five
16 (5) court days before the final accounting and compliance date, Plaintiffs will file a declaration
17 of compliance.

18 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
19 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
20 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
21 and for any other necessary purpose, including, without limitation:

22 a. enforcing the terms and provisions of the Settlement Agreement and resolving
23 any disputes, claims, or causes of action in the class action that, in whole or in
24 part, are related to or arise out of the Settlement Agreement or this Order and
25 Judgment;

26 b. entering such additional orders as may be necessary or appropriate to protect or
27 effectuate this Order and Judgment approving the Agreement, and permanently
28

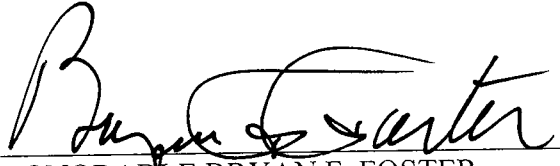
1 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
2 the fair and orderly administration of this Settlement; and
3 c. entering any other necessary or appropriate orders to protect and effectuate this
4 Court's retention of continuing jurisdiction.

5 For the reasons set forth above, the Motion for Final Approval of Class Action
6 Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payments
7 is GRANTED. The Settlement Administrator is directed to carry out the terms of the Settlement
8 Agreement forthwith.

9 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
10 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
11 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
12 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
13 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
14 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
15 THE JUDGMENT THEREON.

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17 IT IS SO ORDERED.

18
19 DATED: 8-26-2022

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21 HONORABLE BRYAN F. FOSTER
22 SUPERIOR COURT JUDGE
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On August 26, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **McNeil, et al v. KIK International, LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 802260-20**
Court Case No.: CIVDS1915438
San Bernardino County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 26, 2022, at Pasadena, California.



Mariah Anderson