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11 and the Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF RIVERSIDE**

14 KENNETH KERNITZKI, individually, and on
15 behalf of all others similarly situated and
16 aggrieved,

17 Plaintiff,

18 vs.

19 QUALITY CAR SHIPPERS, LLC., a California
20 limited liability company; and DOES 1 through
21 50, inclusive,

22 Defendants.

Case No.: CVRI2100564

[Assigned to Harold W. Hopp, Dept. 1]

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

Date: August 23, 2023
Time: 8:30 AM
Dept: 1

Complaint filed: February 5, 2021
Trial date: None set

1 **[PROPOSED] ORDER AND FINAL JUDGMENT**

2 Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement ("Motion for Final
3 Approval") came before this Court on August 23, 2023, at 8:30 a.m. in *Kernitzki v. Quality Car Shippers,*
4 *LLC., et al.*, Riverside Superior Court, Case No. CVRI2100564 (the "Action").

5 Having fully reviewed the Motion for Final Approval and declarations filed in support thereof,
6 including the parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or
7 "Settlement"), Codicil to the Settlement, and Joint Stipulation and Order attached as Exhibits 1, 2, and 4
8 to the Declaration of Greg Taylor, filed on July 27, 2023, and good cause appearing, THE COURT
9 HEREBY ORDERS AS FOLLOWS:

10 1. Plaintiff's Motion for Final Approval is hereby granted and Judgment is entered as stated
11 herein.

12 2. The Court has jurisdiction over all claims asserted in the Action, Plaintiff Kenneth
13 Kernitzki ("Plaintiff"), Settlement Class Members and Defendant Quality Car Shippers, LLC.
14 ("Defendant"), and finally certifies and binds the following Settlement Class Members and Settlement
15 Class:

16 All current and former drivers, classified by Defendant as independent contractors,
17 who hauled for Defendant at any time during the period from February 5, 2017,
18 through March 30, 2023 (the "Class Period").

19 and finally binds the State of California as to the following Aggrieved Employees:

20 All current and former drivers, classified by Defendant as independent contractors,
21 who hauled for Defendant at any time during the period from September 11, 2019,
22 through March 30, 2023 (the "PAGA Period").

23 3. Pursuant to the Code of Civil Procedure section 382, Rule 3.769 of the California Rules of
24 Court and Labor Code §§ 2698, *et seq.* ("PAGA"), this Court now grants final approval of the Settlement
25 as set forth in the Settlement Agreement and enters this Final Judgment under which Plaintiff, Participating
26 Class Members and the State of California, California Labor and Workforce Development Agency
27 ("LWDA"), shall take nothing from Defendant, except as expressly set forth herein.

28 4. The Court finds that Plaintiff has adequately represented the Class and finally appoints
Plaintiff as Class Representative.

5. The Court finds that Taras Kick and Greg Taylor of The Kick Law Firm, APC have fairly and adequately represented the Class and finally appoints them as Class Counsel.

6. The Court finds that the Settlement that has been reached is the result of non-collusive, arm's-length negotiations. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Class when balanced against the probable outcome of extensive and costly litigation. Substantial investigation and research have been conducted such that counsel for the Parties are reasonably able to evaluate their respective positions. The Court finds that the Settlement will avoid substantial additional costs by all parties, as well as the delay and risk that would be presented by further prosecution of the Action.

7. The Court determines that the Parties complied with the distribution of the Class Notice, including with the objection and exclusion forms enclosed, in the manner and form set forth in the Preliminary Approval Order and that, as a result, the Class Notice provided to the Class was the best notice practicable under the circumstances, constituted due and sufficient notice to all persons entitled to such notice and that all absent Settlement Class Members have been given the opportunity to participate fully in the claims exclusion and the approval process.

8. Simpluris, Inc., the Court-appointed Settlement Administrator, received no objections in response to the Class Notice, no pay period disputes, and no requests for exclusion from the Settlement (i.e., opt-out requests), as identified in the Declaration of Stephen Gomez Regarding Notice and Settlement Administration, dated July 27, 2023 ("Gomez Declaration"). The Court finds that the reaction of the Class to the Settlement was overwhelmingly favorable.

9. Plaintiff and all Participating Class Members, shall have, by operation of this Order and Judgment, fully, finally, and forever released, relinquished, and discharged Released Parties from all Released Claims, as set forth in the Settlement Agreement, effective upon full payment by Defendant per the terms of the Settlement Agreement.

10. The State of California, by and through Plaintiff, shall have, by operation of this Order and the accompanying judgment, fully, finally and forever released, relinquished, and discharged Released Parties from all PAGA Claims set forth in the Settlement Agreement as they relate to the PAGA Settlement, effective upon full payment by Defendant per the terms of the Settlement Agreement. Released

1 Claims shall include all PAGA claims identified in Plaintiff's Notice to the LWDA, only to the extent
2 alleged in the Operative Complaint. Plaintiff does not release any Aggrieved Employee's claims for wages
3 or damages.

4 11. The Settlement is not an admission by Defendant of the merits of any claim in the Action
5 or of any wrongdoing. Neither the Settlement Agreement, nor any document referenced therein, nor any
6 action taken to carry out this Settlement Agreement, shall be (a) construed as or used as an admission of
7 liability or an admission that any of Defendant's defenses in the Action are with or without merit, or (b)
8 disclosed, referred to, or offered in evidence by Plaintiff against Defendant in any further proceeding
9 except for purposes of effectuating the Settlement. However, the Settlement may be admitted in evidence
10 and otherwise used in any proceeding to enforce its terms, or in defense of any claims released by the
11 Settlement.

12 12. The Court approves the Gross Settlement Amount, as set forth in the Settlement
13 Agreement, of five hundred seventeen thousand fifty dollars and zero cents (\$517,050.00) and the
14 employer-side payroll taxes, which shall be non-reversionary and which shall include (1) Individual
15 Settlement Payments to the Participating Class Members; (2) LWDA PAGA payment to the California
16 Labor and Workforce Development Agency ("LWDA"); (3) Individual PAGA Payments to the Aggrieved
17 Employees; (4) Attorneys' Fees and Litigation Costs to Class Counsel; (5) Class Representative Service
18 Award to Plaintiff; and (6) Administration Expense Payment to the Settlement Administrator, payable
19 under this Settlement in keeping with the subparagraphs below:

20 a. Individual Settlement Payments to Participating Class Members. The Court hereby
21 approves the methodology used to calculate Participating Class Members' Individual Settlement Payments
22 amount as detailed in the Settlement Agreement and approves payments of those amounts to Participating
23 Class Members as Individual Settlement Payments for their individual releases of the Released Claims.

24 b. PAGA Payment to the LWDA. The Court hereby approves the payment of twenty-
25 two thousand five hundred dollars and zero cents (\$22,500.00) to the California Labor Workforce
26 Development Agency as 75% of the total PAGA Penalties.

27 c. Individual PAGA Payments to the Aggrieved Employees. The Court hereby
28 approves the methodology used to calculate each Aggrieved Employee's Individual PAGA Payment

1 amount as detailed in the Settlement Agreement and approves payments of seven thousand five hundred
2 dollars and zero cents (\$7,500.00) in aggregate for all Aggrieved Employees and approves payments of
3 those amounts to Aggrieved Employees as Individual PAGA Payments.

4 d. Attorneys' Fees to Class Counsel. The Court hereby grants Plaintiff's and Class
5 Counsel's attorneys' fee request for one hundred seventy-two thousand three hundred fifty dollars and
6 zero cents (\$172,350.00) or one-third (1/3) of the Gross Settlement Amount as Class Counsel Fees
7 Payment payable to Class Counsel because the Court determines that the award of such fees is fair and
8 reasonable in recognition of Class Counsel's diligent representation of Plaintiff and Class Members and
9 the contingent risks Class Counsel undertook in litigating the Action. The Court finds that Class Counsel's
10 request for attorneys' fees is reasonable under the common fund method in light of the benefit obtained
11 for the Class. The Court finds that Class Counsel's hourly rates are reasonable and in line with rates
12 prevailing in the community. The Court further finds that the number of hours Class Counsel spent
13 prosecuting the Action is reasonable. Accordingly, the Court finds that Class Counsel's request for
14 attorneys' fees is also reasonable under the lodestar method.

15 e. Litigation Expenses Payment to Class Counsel. The Court hereby grants Plaintiff's
16 and Class Counsel's litigation costs request for three thousand four hundred eighteen dollars and nine
17 cents (\$3,418.09) to Class Counsel for reimbursement of Class Counsel's reasonable litigation expenses
18 incurred in litigating and resolving the Action as a Litigation Cost award because the Court determines
19 that the award of such costs is fair and reasonable.

20 f. Class Representative Service Award to Plaintiff. The Court hereby approves the
21 payment of seven thousand five hundred dollars and zero cents (\$7,500.00) to Plaintiff Kenneth Kernitzki
22 as a Class Representative Service Award, separate and apart from any amounts due to Plaintiff as an
23 Individual Settlement Payment and Individual PAGA Payment.

24 g. Administration Expense Payment to the Settlement Administrator. The Court
25 hereby approves a payment of seven thousand dollars and zero cents (\$7,000.00) to the Settlement
26 Administrator for settlement administration tasks in accordance with the Administrator's "not to exceed"
27 bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1 13. As required by this department's Case Management Order (CMO), the Administrator must
2 comply with the following requirements:

- 3 a. Any envelope transmitting a settlement distribution to a class member shall bear
4 the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."
5 b. Any settlement distribution check shall be negotiable for at least 90 days but not
6 more than 180 days from the date of mailing.
7 c. The administrator shall mail a reminder postcard to any class member whose
8 settlement distribution check has not been negotiated within 60 days after the date
9 of mailing.
10 d. If (i) any of the class members are current employees of the defendant, (ii) the
11 distribution mailed to those employees is returned to the administrator as being
12 undeliverable, and (iii) the administrator is unable to locate a valid mailing address,
13 the administrator shall arrange with the defendant to have those distributions
14 delivered to the employees at their place of employment.

15 14. The Settlement Administrator is tasked with informing the Settlement Class Members of
16 the Judgment. This will be done concurrently with the distribution of settlement checks, sent via mail to
17 the respective mailing addresses previously used for sending Class Notices. The notice of judgment will
18 include a straightforward statement: "A final judgment has been reached in the class action case of
19 *Kernitzki v. Quality Car Shippers, LLC*, Riverside County Superior Court Case No. CVRI2100564.
20 Records from Quality Car Shippers show that you are a Class Member, and therefore, you are entitled to
21 a portion of the settlement fund." In addition, Class Members were already notified in the Class Notice
22 (at section 9) that they can read the Judgment at Simpluris' website and a URL was provided. Information
23 in the Class Notice also directed Class Members to the website for Riverside County Superior Court by
24 providing a specific URL and instructions for searching the case number.

25 15. The Court hereby approves the plan for the value of any uncashed or undeliverable
26 Individual Class Payment checks or Individual PAGA Payment checks will first be redistributed back to
27 those Class Members who have cashed their checks, and for any funds that remain unclaimed after this
28 second distribution to be transferred to two non-profit organizations as follows: 50% to Defendants'

1 nominee St. Christopher Truckers Development & Relief Fund Inc. and 50% to Plaintiff's nominee Public
2 Citizen Foundation. If a Participating Class Member fails to receive or cash his or her Individual
3 Settlement Payment check or Individual PAGA Payment, then the affected Participating Class Member
4 shall be deemed bound to the Settlement, nonetheless.

5 16. The Court directs and authorizes Counsel for the Parties to utilize all reasonable procedures
6 in connection with the further administration of the Settlement that are not materially inconsistent with
7 either this Order or the terms of the Settlement Agreement.

8 17. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise
9 provided for in this Order or in the Settlement Agreement and as later approved by the Court.

10 18. Pursuant to California Rule of Court, Rule 3.769(h), this Court shall retain jurisdiction over
11 all matters related to the administration and consummation of the Settlement and any claims, asserted in,
12 arising out of, or related to the subject matter of the Action including, but not limited to, all matters related
13 to the final distribution of Settlement funds and the determination of all controversies relating thereto.

14 19. An OSC re Compliance is set for May 24, 2024, at 8:30 a.m. The Court orders Class
15 Counsel to file a report no later than May 17, 2024, concerning the amount of funds distributed and
16 compliance with the Judgment, including a declaration from the Administrator that complies with the
17 requirements set forth in Section "I" of this department's CMO. If there is unpaid residue to be distributed
18 at that time, the final report shall be accompanied by a proposed Amended Judgment, which shall also
19 comply with the requirements of this department's CMO. Proof of Service shall be filed with the court
20 within 15 days of the filing of the judgment.

21 20. Accordingly, and pursuant to Code of Civil Procedure section 382 and Rule 3.769 of the
22 California Rules of Court, this Court GRANTS Plaintiff's Motion for Final Approval of Class Action and
23 PAGA Settlement, and Judgment is entered in accordance with this Order.

24 **IT IS SO ORDERED.**

25
26 DATED: 8/23/23

27 
28 THE HONORABLE HAROLD W. HOPP
JUDGE OF THE SUPERIOR COURT