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and the Class

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 21 2024

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

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

Plaintiff,

vs.

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

Defendants.

Case No.: CVRI2100564

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

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

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

1 **AMENDED ~~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 After fully reviewing 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, this Court granted Plaintiff's Motion for Final
9 Approval and entered Judgment in accordance with the Final Approval Order on August 23, 2023.

10 Now, having fully reviewed the Declaration of Lisa Pavlik Regarding Disbursement ("Pavlik
11 Declaration"), filed on May 17, 2024, which satisfies this Court's requirement for a Final Report regarding
12 the status of disbursements, THE COURT ORDERS AS FOLLOWS:

13 1. This Amended Order and Judgment is hereby entered in accordance with the provisions of
14 this Department's Case Management Order (CMO), in order to effectuate the distribution of unpaid
15 residue, including the approval the additional administrative costs incurred by the Settlement
16 Administrator in facilitating the Second Distribution of unclaimed funds.

17 2. The Court has jurisdiction over all claims asserted in the Action, Plaintiff Kenneth
18 Kernitzki ("Plaintiff"), Settlement Class Members and Defendant Quality Car Shippers, LLC.
19 ("Defendant"). On August 23, 2023, this Court finally certified and bound the following Settlement Class
20 Members and Settlement Class:

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

24 and finally bound the State of California as to the following Aggrieved Employees:

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

28 3. On August 23, 2023, pursuant to the Code of Civil Procedure section 382, Rule 3.769 of
the California Rules of Court and Labor Code §§ 2698, *et seq.* ("PAGA"), this Court granted final approval

1 of the Settlement as set forth in the Settlement Agreement and entered this Final Judgment under which
2 Plaintiff, Participating Class Members and the State of California, California Labor and Workforce
3 Development Agency (“LWDA”), shall take nothing from Defendant, except as expressly set forth herein.

4 4. The Court found that Plaintiff has adequately represented the Class and finally appointed
5 Plaintiff as Class Representative.

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

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

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

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

26 9. Plaintiff and all Participating Class Members, shall have, by operation of the Final
27 Approval Order and Judgment dated August 23, 2023, fully, finally, and forever released, relinquished,
28

1 and discharged Released Parties from all Released Claims, as set forth in the Settlement Agreement,
2 effective upon full payment by Defendant per the terms of the Settlement Agreement.

3 10. The State of California, by and through Plaintiff, shall have, by operation of the Final
4 Approval Order and accompanying judgment dated August 23, 2023, fully, finally and forever released,
5 relinquished, and discharged Released Parties from all PAGA Claims set forth in the Settlement
6 Agreement as they relate to the PAGA Settlement, effective upon full payment by Defendant per the terms
7 of the Settlement Agreement. Released Claims include all PAGA claims identified in Plaintiff's Notice
8 to the LWDA, only to the extent alleged in the Operative Complaint. Plaintiff did not release any
9 Aggrieved Employee's claims for wages or damages.

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

18 12. On August 23, 2023, the Court approved the Gross Settlement Amount, as set forth
19 in the Settlement Agreement, of five hundred seventeen thousand fifty dollars and zero cents
20 (\$517,050.00) and the employer-side payroll taxes, which shall be non-reversionary and which shall
21 include (1) Individual Settlement Payments to the Participating Class Members; (2) LWDA PAGA
22 payment to the California Labor and Workforce Development Agency ("LWDA"); (3) Individual PAGA
23 Payments to the Aggrieved Employees; (4) Attorneys' Fees and Litigation Costs to Class Counsel; (5)
24 Class Representative Service Award to Plaintiff; and (6) Administration Expense Payment to the
25 Settlement Administrator, payable under this Settlement in keeping with the subparagraphs below:

26 a. Individual Settlement Payments to Participating Class Members. The Court
27 approved the methodology used to calculate Participating Class Members' Individual Settlement
28 Payments amount as detailed in the Settlement Agreement and approved payments of those amounts to

1 Participating Class Members as Individual Settlement Payments for their individual releases of the
2 Released Claims.

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

6 c. Individual PAGA Payments to the Aggrieved Employees. The Court approved the
7 methodology used to calculate each Aggrieved Employee's Individual PAGA Payment amount as detailed
8 in the Settlement Agreement and approved payments of seven thousand five hundred dollars and zero
9 cents (\$7,500.00) in aggregate for all Aggrieved Employees and approved payments of those amounts to
10 Aggrieved Employees as Individual PAGA Payments.

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

22 e. Litigation Expenses Payment to Class Counsel. The Court granted Plaintiff's and
23 Class Counsel's litigation costs request for three thousand four hundred eighteen dollars and nine cents
24 (\$3,418.09) to Class Counsel for reimbursement of Class Counsel's reasonable litigation expenses
25 incurred in litigating and resolving the Action as a Litigation Cost award because the Court determined
26 that the award of such costs is fair and reasonable.

27 f. Class Representative Service Award to Plaintiff. The Court approved the payment
28 of seven thousand five hundred dollars and zero cents (\$7,500.00) to Plaintiff Kenneth Kernitzki as a Class

1 Representative Service Award, separate and apart from any amounts due to Plaintiff as an Individual
2 Settlement Payment and Individual PAGA Payment.

3 g. Administration Expense Payment to the Settlement Administrator. The Court
4 previously approved a payment of seven thousand dollars and zero cents (\$7,000.00) to the Settlement
5 Administrator for settlement administration tasks which constituted the Administrator's "not to exceed"
6 bid submitted to the Court in connection with Preliminary Approval of the Settlement. To effectuate the
7 second distribution to all eligible Class members who cashed their checks ("Second Distribution"), as
8 described in paragraph 15 below, the Court hereby approves a revised payment amount of nine thousand
9 dollars and zero cents (\$9,000.00) to the Settlement Administrator. The additional cost of \$2,000 shall be
10 deducted from the remaining funds prior to redistribution.

11 13. As required by this department's Case Management Order (CMO), the Administrator was
12 ordered to comply with the following requirements:

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

25 14. The Settlement Administrator was tasked with informing the Settlement Class Members of
26 the Judgment, concurrently with the distribution of settlement checks, sent via mail to the respective
27 mailing addresses previously used for sending Class Notices. The Settlement Administrator was instructed
28 that the notice of judgment must include a straightforward statement: "A final judgment has been reached

1 in the class action case of *Kernitzki v. Quality Car Shippers, LLC*, Riverside County Superior Court Case
2 No. CVRI2100564. Records from Quality Car Shippers show that you are a Class Member, and therefore,
3 you are entitled to a portion of the settlement fund.” In addition, Class Members were already notified in
4 the Class Notice (at section 9) that they can read the Judgment at Simpluris’ website and a URL was
5 provided. Information in the Class Notice also directed Class Members to the website for Riverside County
6 Superior Court by providing a specific URL and instructions for searching the case number.

7 15. On August 23, 2023, the Court approved the plan for the value of any uncashed or
8 undeliverable Individual Class Payment checks or Individual PAGA Payment checks to first be
9 redistributed back to those Class Members who have cashed their checks, and for any funds that remain
10 unclaimed after this Second Distribution to be transferred to two non-profit organizations as follows: 50%
11 to Defendants’ nominee St. Christopher Truckers Development & Relief Fund Inc. and 50% to Plaintiff’s
12 nominee Public Citizen Foundation. If a Participating Class Member fails to receive or cash his or her
13 Individual Settlement Payment check or Individual PAGA Payment, then the affected Participating Class
14 Member shall be deemed bound to the Settlement, nonetheless.

15 16. The Court directed and authorized Counsel for the Parties to utilize all reasonable
16 procedures in connection with the further administration of the Settlement that are not materially
17 inconsistent with either the Final Approval Order or the terms of the Settlement Agreement.

18 17. The Parties were ordered to bear their own respective attorneys’ fees and costs, except as
19 otherwise provided for in the Final Approval Order or in the Settlement Agreement and as later approved
20 by the Court.

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

25 19. An OSC re Compliance was set for May 24, 2024, at 8:30 a.m. The Court ordered Class
26 Counsel to file a report no later than May 17, 2024, concerning the amount of funds distributed and
27 compliance with the Judgment, including a declaration from the Administrator that complies with the
28 requirements set forth in Section “I” of this department’s CMO. The Court also ordered Class Counsel to

1 file a proposed Amended Judgment in compliance with this department's CMO if there is unpaid residue
2 to be distributed at that time. Proof of Service shall be filed with the court within 15 days of the filing of
3 the judgment.

4 20. On May 17, 2024, Class Counsel filed a Status Report re Disbursements and a declaration
5 from the Administrator indicating that unclaimed funds totaled \$12,829.83 after the first distribution to
6 class members, and that the Administrator will be effectuating a Second Distribution of funds to all eligible
7 Class members who cashed their initial checks, pursuant to this Court's Order Granting Final Approval,
8 dated August 23, 2023.

9 21. Following the Court's execution of this Amended Proposed Order and Final Judgment, the
10 Administrator will have 10 days to effectuate the Second Distribution.

11 22. If unclaimed funds remain after the second distribution to class members, Plaintiff will also
12 provide the Court with a Proposed Amended Judgment directing Simpluris to distribute those funds to the
13 parties' proposed cy pres recipients, as stated in the Court's Order Granting Final Approval, dated August
14 23, 2023.

15 23. Notice of this Amended Judgment shall be provided to the Settlement Class by posting the
16 Final Approval Order and this Amended Judgment on the settlement website for a period of not less than
17 60 days from the date the judgment is entered. It shall not be necessary to send notice of entry of this
18 Amended Judgment to the Settlement Class by any other means.

19 24. This document shall constitute a judgment for the purposes of California Rules of Court,
20 Rule 3.769(h).

21 25. Pursuant to Labor Code section 2669(1)(3), Plaintiff must submit a copy of this Amended
22 Judgment to the LWDA within ten days after entry of judgment.

23 **IT IS SO ORDERED.**

24
25
26 DATED: 6/21/24



THE HONORABLE HAROLD W. HOPP
JUDGE OF THE SUPERIOR COURT