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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE AGUILAR, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KNE, LLC, a California limited liability
company, dba H2O LOGISTICS; and DOES 1
through 100,

Defendants.

Case No. 20STCV05676

*[Assigned for All Purposes to Hon. Kenneth R.
Freeman, SSC-14]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 6, 2021
Time: 10:00 a.m.
Dept.: SSC-14

Action Filed: February 13, 2020
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Jose Aguilar (“Plaintiff”), individually and on behalf of a class of similarly situated
3 individuals, hereby submits this Supplemental Brief in Support of Plaintiff’s Motion for Preliminary
4 Approval of Class Action Settlement.

5 **I. PROCEDURAL HISTORY**

6 Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement on December
7 29, 2020, setting it for hearing on February 2, 2021.

8 On January 28, 2021, the Court issued a Tentative Ruling and Checklist via CaseAnywhere.
9 Accordingly, Plaintiff hereby submits the instant supplemental brief to address the issues identified in
10 the Tentative Ruling. Each of the issues are addressed in the same order as they are identified in the
11 Tentative Ruling.

12 In connection with addressing the issues identified in the Tentative Ruling, the Parties have
13 modified the Settlement Agreement and Notices. The following documents are being submitted
14 concurrently herewith as Exhibits to the Supplemental Declaration of Scott M. Lidman (“Supp. Lidman
15 Decl.”), as follows:

16 Attached as **Exhibit A** to the Supp. Lidman Decl. is the redlined version of the Amended
17 Stipulation of Settlement (without exhibits).

18 Attached as **Exhibit B** to the Supp. Lidman Decl. is the final version of the Amended Stipulation
19 of Settlement with the changes accepted and all exhibits, and signed by all Parties.

20 Attached as **Exhibit C** to the Supp. Lidman Decl. is the redlined version of the revised Notice
21 of Pendency of Class Action and Proposed Settlement.

22 Attached as **Exhibit D** to the Supp. Lidman Decl. is the final version of the revised Notice of
23 Pendency of Class Action and Proposed Settlement with the changes accepted.

24 Attached as **Exhibit E** to the Supp. Lidman Decl. is the LWDA Letter submitted to the LWDA
25 and KNE, LLC dba H2O Logistics on February 28, 2020.

26 **II. ISSUES IDENTIFIED IN TENTATIVE RULING**

27 **1. Release of Claims**

28 The Checklist states: Scope: The scope of any release given by class members must be defined
with precision and clarity. Any released claims not presented directly in the complaint must be based on

1 the facts alleged in the complaint. Any released claims under PAGA should be limited to (1) claims for
2 penalties; and (2) which were alleged in BOTH Plaintiffs' Letter to the LWDA AND the Operative
3 Complaint; the release needs to clearly contain an explanation that released claims include all PAGA
4 claims that could have been premised on the facts alleged in the Complaint and that class members and
5 aggrieved employees will release PAGA claims even if class members request exclusion from the class.
6 (See *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476.)]

7 Amended Settlement Agreement

8 The Parties agree with the Court and have revised the Settlement Agreement to narrow the
9 release of claims to those in the operative complaint by taking out "were pled in any of the Complaints
10 in the Action, or which could have been pled in any of the Complaints in the Action based on the factual
11 allegations therein..." and replacing it with "were pled in the operative Complaint in the Action, or
12 which could have been pled in the operative Complaint in the Action based on the factual allegations
13 therein..." See Supp. Lidman Decl., **Exhibits A and B**. The same change was made in the Class Notice.
14 See Supp. Lidman Decl., **Exhibits C and D**.

15 Moreover, the Parties separately defined PAGA Employees and the PAGA Release by adding
16 paragraph 2 in the Amended Settlement Agreement:

17 PAGA Employees. For the purposes of this Settlement Agreement only, Plaintiff and
18 Defendant stipulate to the following definition of PAGA Employees:

19 All current and former non-exempt, hourly employees of Defendant KNE,
20 LLC dba H2O Logistics who worked in California at least one (1) day at
any time from February 13, 2019 through date of preliminary approval of
the Settlement.

21 And also adding paragraph 3.C. in the Amended Settlement Agreement to make clear the PAGA
22 release is limited to: (1) penalties and (2) claims which were alleged in both Plaintiff's Letter to the
23 LWDA and the Operative Complaint:

24 PAGA Release: PAGA Employees, including Plaintiff, will release and forever discharge
25 all claims, demands, rights, liabilities and causes of action for penalties under California
26 Labor Code Private Attorneys General Act of 2004 against the Released Parties based on
27 (as alleged in the letter to the Labor & Workforce Development Agency ("LWDA")
28 February 28, 2020 and the operative Complaint for: (a) failure to pay all overtime wages
owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or
premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods
or leaving the facility for rest breaks, or premium pay for non-complaint rest periods; (e)

failure to provide accurate, itemized wage statements; (f) failure to timely pay wages upon separation of employment; (g) unlawful deductions from wages (collectively, “PAGA Released Claims”). The PAGA Period and the time period of the PAGA Released Claims is defined as the time period of February 13, 2019 through date of preliminary approval of the Settlement (“PAGA Period”).

See Supp. Lidman Decl., **Exhibits A and B**.

Class Notice

The Parties revised the Class Notice by adding defined terms for the PAGA Employees and PAGA Released Claims. With respect to Requests for Exclusion, the Parties added the following language to the Class Notice:

- You cannot submit a Request for Exclusion from the PAGA Release.
- If you submit a Request for Exclusion, you will only be excluded from the Released Claims. You cannot submit a Request for Exclusion from the PAGA Release. You will receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you were employed between February 13, 2019 and [date of preliminary approval of the Settlement].

See Supp. Lidman Decl., **Exhibits C and D**.

2. Undeliverable Notices

The Checklist states: How will notices returned to the administrator as undeliverable after 20 days but before the Response Deadline be handled? Why is the presumption in paragraph 9.F proper? Why shouldn’t undeliverable notices be updated and re-mailed up to the Response Deadline?

The Parties agreed and modified paragraph 9.F (now 10.F in the Amended Settlement Agreement) to state:

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once before the Response Deadline, the Settlement

1 Administrator shall continue to make reasonable efforts to obtain an updated mailing
2 address. Nothing else shall be required of, or done by, the Parties, Class Counsel, or
3 Defendant's Counsel to provide notice of the proposed settlement.

4 *See Supp. Lidman Decl., Exhibits A and B.*

5 **3. Notice of Final Judgment**

6 The Checklist states: How will notice of final judgment be given to the class? (Cal. Rules of
7 Court, rule 3.771(b)) (e.g. Posted on claims administrator's website.)

8 Notice of final judgment will be posted to the Phoenix Settlement Administrator's website.

9 *See Supp. Lidman Decl., Exhibits C and D.*

10 **4. Objections, Requests for Exclusion, and Disputes**

11 The Checklist states: Description of the procedures for submitting written objections, requests
12 for exclusion, claim forms (if applicable) and disputes to estimated payments. Explanation that an
13 exclusion from class claims is not an exclusion from PAGA claims and that class members' PAGA
14 claims will be released even if class members request exclusion from the class. The Notice needs to
15 make this clear.

16 Submitting Written Objections

17 As described in both the Settlement Agreement and the Class Notice, a Settlement Class member
18 can mail the Settlement Administrator the written objection which includes: his or her name, his or her
19 address, as well as contact information for any attorney representing him or her regarding your objection,
20 the case name and number, each specific reason in support of your objection, and any legal or factual
21 support for each objection together with any evidence in support of your objection.

22 Requests for Exclusion

23 As described in both the Settlement Agreement and the Class Notice, Settlement Class members
24 can request an exclusion by writing a "Request for Exclusion from the Class Action Settlement" letter
25 or card postmarked no later than with your name, address, telephone number, last four digits of your
26 social security number, and your signature. The Request for Exclusion should state:

27 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE AGUILAR
28 V. KNE, LLC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED
FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
THE SETTLEMENT OF THIS LAWSUIT."

1 Disputes of Estimated Payment

2 As described in both the Settlement Agreement and the Class Notice, Settlement Class members
3 can dispute the information in the Notice of Settlement Award by completing section IV of the Notice
4 of Settlement Award, which expressly states:

5 If you disagree with any of the information contained in Section III (a)-(c) above, please
6 explain why in the space provided below and include copies of any supporting evidence of
document with this form.

7 Explanation that an Exclusion from Class Claims is Not an Exclusion from PAGA Claims

8 In the Class Notice it expressly states:

- 9
- You cannot submit a Request for Exclusion from the PAGA Release.
 - If you submit a Request for Exclusion, you will only be excluded from the Released
10 Claims. You cannot submit a Request for Exclusion from the PAGA Release. You
11 will receive a proportionate share of the PAGA Payment regardless of whether you
12 exclude yourself from the Settlement if you were employed between February 13,
2019 and [date of preliminary approval of the Settlement].

13 See Supp. Lidman Decl., **Exhibits A-D**.

14 **5. Settlement Agreement and Class Notice**

15 The Checklist states: Modify notice to match any alterations to the Settlement Agreement.

16 The Settlement Agreement and Class Notice are consistent. See Supp. Lidman Decl., **Exhibits**
17 **A-D**.

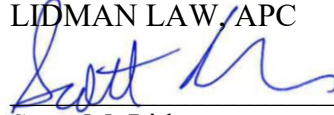
18 **III. CONCLUSION**

19 For the foregoing reasons and the reasons discussed on Plaintiff's Motion, Plaintiff respectfully
20 requests that the Court preliminarily approve the proposed Settlement, provisionally certify the
21 Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action
22 Settlement submitted concurrently herewith.

23
24 Dated: March 29, 2021

Respectfully submitted,
LIDMAN LAW, APC

25 By:



26 Scott M. Lidman
27 Attorney for Plaintiff
28 JOSE AGUILAR