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Attorneys for Plaintiff Isabel Guillen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ISABEL GUILLEN, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

KERR CORPORATION, a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants

Case No.: 30-2021-01217243-CU-OE-CXC

CLASS AND REPRESENTATIVE ACTION

[Hon. William Claster]

**SUPPLEMENTAL DECLARATION OF
KANE MOON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

CONTINUED PRELIMINARY APPROVAL
HEARING

Date: February 9, 2024
Time: 9:00 a.m.
Dept: CX101

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1. I am an attorney at law duly licensed to practice as such before all Courts of the State of California and am one of the attorneys of record for Plaintiff Isabel Guillen and the putative Class. I have personal knowledge of the matters set forth herein and could competently testify to the facts described herein.

3. The instant Declaration addresses the issues identified in the Minute Order. The italicized text provides a verbatim duplication of the Court’s tentative, and the ordinary text provides an explanation of how that issue has been addressed.

4. A true and correct copy of the fully executed Revised Class and Representative Action Settlement Agreement (“Revised Settlement Agreement”), which includes the revised Notice, Dispute Form, and Exclusion Form, is attached to the instant Declaration as **Exhibit A**. A true and correct copy of a redlined document comparing the Revised Settlement Agreement to the previous version filed with this Court is attached to the instant Declaration as **Exhibit B**. The Revised Settlement Agreement and this supplemental declaration were submitted as a set to the Labor and Workforce Development Agency on January 31, 2024. A true and correct copy of the submission confirmation email is attached as **Exhibit C**.

5. [1] *The table of contents indicates ¶ 1.18 contains the definition for “Gross Settlement Amount,” but the Settlement omits that paragraph.*

6. The formatting issues have been corrected. (Exhibit A [“Revised Settlement Agreement”], ¶ 1.18; *see also id.* at ¶ 1.4.)

1 7. ***[2] Please provide 60 days, rather than 45, for opt-outs, objections, and workweek***
2 ***disputes. (Agr. ¶¶ 1.11, 6.1.)***

3 8. The Settlement now provides for 60 days. (Revised Settlement Agreement, ¶ 1.11; see
4 also Dispute Form, at 1; Exclusion Form, at 1.)

5
6 9. ***[3] Section 1.33 regarding “Released PAGA Claims” must be limited to those***
7 ***specific Labor Code violations identified in Plaintiff’s letter to the LWDA on August 17, 2021***
8 ***(Moon Decl. Exh. 3). See Uribe v. Crown Building Maintenance (2021) 70 Cal. App. 5th 986,***
9 ***1005.***

10 10. The definition of “Released PAGA Claims” has been amended to only include those
11 Labor Code sections identified in the Plaintiff’s August 17, 2021 letter to the LWDA. (Revised
12 Settlement Agreement, ¶ 1.33.)

13
14 11. ***[4] Employer-side taxes are paid from the GSA. (¶ 3.) Why should class members***
15 ***pay this? These taxes should be paid by the employer separately and not taken from the GSA.***

16 12. The Tentative Ruling asked why Defendant’s share of payroll taxes is being paid out
17 of the Gross Settlement Amount instead of in addition to the gross settlement amount. Inclusion
18 of the employer’s share of payroll taxes was a negotiated term of the settlement in order that
19 Defendant could evaluate whether the settlement consideration was appropriate and acceptable
20 by applying a sum certain. (Declaration of Timothy M. Rusche, ¶ 2.)

21 13. Based on its evaluation of the case and associated risks and exposure, Defendant
22 would not have agreed to the \$550,000 Gross Settlement Amount had taxes been excluded. (*Id.*)
23 Instead, Defendant would have negotiated a reduction in the Gross Settlement Amount based on
24 its estimated tax burden. (*Id.*)

25 14. The below illustrates that there is no material mathematical difference between
26 Defendant’s total out-of-pocket expenses and employee settlement payments if employer payroll
27 taxes are included the Gross Settlement Amount verses a reduction in the Gross Settlement
28 Amount to account for the estimated and excluded taxes it will be required to pay.

15.

SETTLEMENT FUND ALLOCATION	TAXES INCLUDED IN GSA	TAXES EXCLUDED FROM GSA
Gross Settlement Amount	\$550,000	\$543,143 (Decreased by estimated payroll taxes at time of settlement of \$6,857)
Fees (33% of GSA)	\$183,333	\$181,047
Costs	\$13,870	\$13,870
Service Award	\$7,5000	\$7,500
Settlement Administration	\$7,250	\$7,250
PAGA Allocation (not subject to payroll tax)	\$75,000	\$75,000
Net Settlement Amount	\$263,047	\$258,476
Wage Allocation (1/3 of net settlement amount)	\$86,805	\$86,158
Employer Payroll Taxes	\$6,857 (7.9% of \$86,805)	\$6,806 (7.9% of \$86,158)
Net Employer Settlement Payment	\$550,000	\$549,949
Average Class Member Wage Payment (wage allocation	\$374	\$371

divided by 232 class members)

16. The formula negotiated by the parties allowed each to determine the actual settlement value and for Defendant to account internally for the exact costs. By requiring Defendant to pay additional employer taxes on top of the negotiated amount that already accounted for them, Defendant's total payment related to the settlement would be \$556,857—an increase in costs for which it neither bargained for nor accounted.

17. *[5] As to other pending actions (Moon Decl. ¶ 10), what is this conclusion based on? For example, did Plaintiff's counsel discuss with Defense counsel, investigate court dockets, or pending LWDA cases?*

18. Plaintiff's counsel investigated the Department of Industrial Relations' website for the list of PAGA cases (<https://cadir.my.salesforce-sites.com/PagaSearch/PAGASearch>). As of January 17, 2024, there were two other cases filed against Kerr Corporation: (i) LWDA-CM-161503-16, filed by Lavette Thomas on October 10, 2016; and (ii) LWDA-CM-161501-16, filed by Rhonda Mueller, on October 10, 2016. On January 30, 2024, Plaintiff's counsel confirmed with Defense counsel that they are not aware of any ongoing investigation pertaining to those letters.

19. Additionally, Plaintiff's counsel used a case search software called Courthouse News (<https://www.courthousenews.com/>), which searches filings in all courts of California for a fee. On January 31, 2024, I searched "Kerr Corporation," and did not find any pending class actions in California.

20. *[6] Per § 8.1(2), cashing the check is deemed an opt-in FLSA release. This procedure is unnecessary in an opt-out settlement under California class action procedural law. The release here is otherwise sufficient to extend to FLSA claims arising from the facts alleged using an opt-out procedure to FLSA claims arising from the facts alleged using an opt-*

1 *out procedure under California law. (Rangel v. PLS Check Cashers of California, Inc. (9th*
2 *Cir. 2018) 899 F.3d 1106, 1110-11.) This procedure is unacceptable because it appears that if*
3 *a class member does not sign the check and waive all FLSA claims, then they are nonetheless*
4 *deemed to have released their state law claims yet not receive their settlement payment.*

5 21. This section has been deleted.

6
7 22. *[7] At final approval, please submit contemporaneously made billing records for*
8 *attorney's fees and costs. The Court will not be inclined to award an amount of fees and costs*
9 *greater than the amount stated in the notice.*

10 23. Counsel for Plaintiff will comply with this Order.

11
12 24. *[8] Because Plaintiff has provided a declaration regarding her requested*
13 *enhancement, no declaration is required at final approval.*

14 25. Counsel for Plaintiff will comply with this Order.

15
16 26. *[9] At final approval, the administrator is to provide a high, low, and average for*
17 *individual settlement payments, along with Plaintiff's individual payout.*

18 27. Counsel for Plaintiff will comply with this Order.

19
20 **As to the Notice:**

21 28. *[1] Pages 1 and 4: Change CX104 to CX 101.*

22 29. The Notice has been revised. (Exhibit 1 to Exhibit A of Supplemental Declaration of
23 Kane Moon ["Revised Notice"], pp. 1, 4.)

24
25 30. *[2] Page 2: Include amounts of the proposed distributions.*

26 31. The Notice has been revised to include the amounts of distributions. (Revised Notice,
27 p. 2.)

32. [3] *Page 2: Provide details as to disposition of unclaimed funds.*

33. The Notice now provides that the unclaimed funds will be paid to the California
Controller in the Class Member's name. (Revised Notice, pp. 2-3.)

34. [4] *Page 3: "If you want to opt out of, or request to be excluded from and not bound
by, the class action settlement, then you must submit your intention to opt out of the settlement
in the manner and time frame described in this Notice and in the Settlement Agreement."
Delete "... and in the Settlement Agreement", which creates an unnecessary obligation to
obtain and analyze a legal document.*

35. The unnecessary language has been deleted. (Revised Notice, p. 3)

36. [5] *Page 4: The instructions regarding opt-out and dispute are overly complicated.
Reference should be made [sic] the forms provided and to follow the instructions therein.*

37. The Notice now references the enclosed Exclusion Form. (Revised Notice, p. 4.)

38. [6] *Page 4: The Court's physical address is 751 W Santa Ana Blvd, Santa Ana, CA
92701.*

39. The Notice has been revised. (Revised Notice, p. 4.)

40. [7] *Page 5: There is a misplaced "I" between paragraphs in the release.*

41. The formatting issue has been corrected. (Revised Notice, p. 5.)

42. [8] *Page 5: Identify and include instructions on how to obtain documents from the
Court's website.*

43. The Notice has been revised. (Revised Notice, p. 6.)

44. [9] *If any changes are made to the settlement agreement, corresponding changes to
the notice must be made.*

45. The following changes have been made to the Revised Notice per the Revised Settlement Agreement:

- (a) The deadline to submit opt-outs, objections, and workweek disputes will be sixty calendar days from the time of mailing. (Revised Notice, p. 4; *see supra*, ¶ 8.)
- (b) The definition of “Released PAGA Claims” now only refers to the specific Labor Code sections provided in Plaintiff’s letter to the LWDA. (Revised Notice, p. 4; *see supra*, ¶ 10.)
- (c) The FLSA release language has been deleted. (Revised Notice, p. 5; *see supra*, ¶ 21.)

46. [10] *the font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.*

47. Counsel for Plaintiff will ensure the administrator complies with this order.

* * * *

48. I declare under penalty of perjury, under the laws of the State of California and the United States, that the foregoing is true and correct.

Executed on January 31, 2024, at Los Angeles, California.


Kane Moon

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
Angeles, California 90017. On **June 20, 2022**, I served the foregoing document described as:

5 **SUPPLEMENTAL DECLARATION OF KANE MOON IN SUPPORT OF PLAINTIFF'S**
6 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
addressed as follows:

8
9 ATTORNEYS FOR DEFENDANT, ACRISURE OF CALIFORNIA LLC

10
11 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the
parties to accept electronic service, I caused the documents to be sent to the persons at
12 the electronic service addresses listed above via third-party cloud service
CASEANYWHERE.

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

15 Executed this, **June 20, 2022** at Los Angeles, California.

16 Ximena Reyes
17 Type or Print Name

/s/ Ximena Reyes
Signature