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

HILARIO REYES PRECIADO, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

KIP INCORPORATED, a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: CVRI2103836

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] AMENDED FINAL ORDER
GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND JUDGMENT**

*[Assigned for all purposes to the Hon. Harold
Hopp, Dept. 1]*

FINAL APPROVAL HEARING:

Date: January 22, 2024

Time: 8:30 a.m.

Dept.: 1

Action Filed: August 24, 2021

FAC Filed: March 22, 2022

Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 On April 26, 2023, the Court entered an Order granting Plaintiff's Motion for Preliminary
3 Approval of Class Action and PAGA Settlement, conditional class certification, and approval of
4 Class Notice, and setting a Final Approval Hearing (the "Preliminary Approval Order"), thereby
5 preliminarily approving a settlement of the above-entitled action (the "Action") that was reached
6 between Plaintiff Hilario Reyes Preciado ("Plaintiff") and Defendant KIP Incorporated
7 ("Defendant," and together with Plaintiff, the "Parties"), in accordance with the Parties' Third
8 Amended Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement" or
9 "Settlement Agreement"). The Settlement Agreement was attached as Exhibit 2 to the Declaration
10 of Kane Moon in Support of Third Court Ordered Further Briefing in Support of Plaintiff's Motion
11 for Preliminary Approval of Class Action Settlement that was filed on April 5, 2023, and which,
12 together with the exhibits referenced and annexed thereto, set forth the terms and conditions for
13 settlement of the Action. The Court issued a tentative ruling in advance of the Final Approval
14 Hearing, which requested appearance to discuss three items. The Court now has before it a Proposed
15 Amended Final Order and Judgment to finally approve the Settlement.

16 Due and adequate notice having been given to Class Members, and the Court having reviewed
17 the Settlement Agreement and duly considered Plaintiff's Motion for Final Approval of Class Action
18 and PAGA Settlement, the supporting declarations and exhibits thereto, all other papers filed and
19 proceedings had hereto, the record in this Action, and any oral argument, and good cause appearing,

20 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

21 1. The Court, for purposes of this Final Order and Judgment, refers to all terms and
22 definitions as set forth in the Settlement Agreement.

23 2. Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement,
24 including a motion for payment of attorneys' fees and litigation costs to Class Counsel, Class
25 Representative Payment, Settlement Administrator's Payment, and LWDA Payment (collectively
26 "Motion for Final Approval"), and whether the Settlement should be finally approved as fair,
27 reasonable, and adequate as to Class Members, came before Department 1 of this Court, the
28 Honorable Harold W. Hopp presiding, on January 22, 2024.

1 3. The Court finds that the Settlement Agreement appears to have been made and entered
2 into in good faith, the terms of which are fair, reasonable, and adequate; was reached following
3 meaningful discovery and investigation conducted by Plaintiff and his counsel of record (“Class
4 Counsel”); is the result of serious, informed, adversarial, and arms-length negotiations between the
5 Parties; and therefore, meets the requirements for final approval. In so finding, the Court has
6 considered all the evidence presented, including evidence regarding the strength of Plaintiff’s claims;
7 the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the
8 amount offered in the Settlement; the extent of investigation and discovery completed; and the
9 experience and views of Class Counsel. The Court has further considered the absence of objections
10 to the Settlement by Class Members and absence of requests for exclusion from the Settlement.
11 Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion for Final Approval and **ORDERS**
12 Judgment to be entered in accordance with the terms herein.

13 4. The Court certifies, for settlement purposes only, the following Class: All persons
14 employed in the State of California as an Eligible Employee at any time between August 24, 2017,
15 to August 15, 2022. The term “Class Members” shall mean “individuals who are a member of the
16 Class (or if any such person is incompetent, deceased, or unavailable due to liminary service, the
17 person’s legal representative or successor in interest evidenced by reasonable verification). The term
18 “Class Members” shall not include any person who submits a timely and valid request for exclusion.
19 The term “Class” or “Eligible Employee(s)” means “all current and former non-exempt employees
20 who worked for Defendant in California during the Class Period. The term “Class Period” means the
21 time from August 24, 2017, through August 15, 2022.

22 5. The deadline to request exclusion from or to submit written objections to the
23 Settlement was July 10, 2023. There were zero complete, valid, and timely requests for exclusion
24 that were received. Accordingly, no individuals are excluded from the Settlement Class.

25 6. All other Class Members who did not request exclusion from the Settlement Class
26 had an opportunity to object to the Settlement Agreement. No written objection was received.

27 7. The Court-approved Notice of Class Action Settlement (the “Class Notice”), which
28 was attached to the Preliminary Approval Order as Exhibit A and provided to the Class pursuant to

1 the plan for distribution described under the Settlement Agreement, conformed with the requirements
2 of California Rules of Court 3.766 and 3.769, and constituted the best notice practicable under the
3 circumstances, by providing individual and adequate notice of the proceedings and of the matters set
4 forth therein to Class Members. The Class Notice fully satisfied the requirements of due process and
5 provided the Class Members with adequate instructions and a variety of means to obtain additional
6 information.

7 8. A full opportunity has been afforded to Class Members to participate in the Final
8 Approval Hearing, and all Class Members and other persons wishing to be heard have been heard
9 and/or had an opportunity to be heard. Class Members have had a full and fair opportunity to exclude
10 themselves from the Settlement or object to the Settlement. Accordingly, the Court determines that
11 all Class Members who did not request exclusion from the Settlement (“Participating Class
12 Members”) are bound by this Final Order and Judgment.

13 9. Release of Claims:

- 14 a. Plaintiff’s Released Claims. Plaintiff, individually and on behalf of Plaintiff’s heirs,
15 executors, administrators, representatives, attorneys, successors and assigns knowingly
16 and voluntarily releases and forever discharges Defendant, including any and all parent
17 corporations, affiliates, subsidiaries, managers, divisions, predecessors, insurers,
18 franchisors, successors and assigns, including but not limited to each of their current
19 and former employees, attorneys, officers, directors and agents thereof, both
20 individually and in their business capacities, and their employee benefit plans and
21 programs and the trustees, administrators, fiduciaries and insurers of such plans and
22 programs (collectively, “Plaintiff’s Released Parties”), to the fullest extent permitted by
23 law, of and from any and all claims, known and unknown, asserted and unasserted,
24 which Plaintiff has or may have against the Plaintiff’s Released Parties as of the date of
25 execution of this Settlement Agreement. Plaintiff is not waiving any rights Plaintiff may
26 have to: (i) Plaintiff’s own vested accrued employee benefits under the Defendant’s
27 health, welfare or retirement benefits plans, if any, as of the date of execution of this
28 Settlement Agreement, (ii) benefits or rights to seek benefits under applicable workers’

1 compensation (except as to claims under Labor Code §§ 132a and 4553 which are
2 expressly released herein) or unemployment insurance or indemnification statutes; (iii)
3 pursue claims which by law cannot be waived by signing this Settlement Agreement;
4 and (iv) enforce this Settlement Agreement. To affect a full and complete general
5 release as described above, Plaintiff expressly waives and relinquishes all rights and
6 benefits of § 1542 of the Civil Code of the State of California, without exception, except
7 as may be prohibited by law, and does so understanding and acknowledging the
8 significance and consequence of specifically waiving § 1542. Thus, notwithstanding the
9 provisions of § 1542, and to implement a full and complete release and discharge of all
10 parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to
11 include in its effect, without limitation, all claims Plaintiff does not know or suspect to
12 exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
13 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff
14 warrants Plaintiff has read this Settlement Agreement, including this waiver of
15 California Civil Code § 1542, and that Plaintiff has consulted with or had the
16 opportunity to consult with counsel of Plaintiff's choosing about this Settlement
17 Agreement and specifically about the waiver of § 1542, and that Plaintiff understands
18 this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and knowingly
19 enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
20 may discover facts different from or in addition to those Plaintiff now knows or believes
21 to be true regarding the matters released or described in this Settlement Agreement, and
22 even so Plaintiff agrees that the releases and agreements contained in this Settlement
23 Agreement shall remain effective in all respects notwithstanding any later discovery of
24 any different or additional facts. Plaintiff expressly assumes any and all risk of any
25 mistake in connection with the true facts involved in the matters, disputes or
26 controversies released or described in this Settlement Agreement or with regard to any
27 facts now unknown to Plaintiff relating thereto.

28 b. Participating Class Members Released Claims. As of the date of the Judgment, each

1 Participating Class Member, and without the need to manually sign a release document,
2 shall release the Released Parties from all causes of action and claims stated in the
3 complaint and those based solely upon the facts alleged in the complaint, including all of
4 the following claims for relief from August 24, 2017 through August 15, 2022: (1) Failure
5 to Provide Meal Periods; (2) Failure to Provide Rest Breaks; (3) Failure to Pay Minimum
6 and regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Indemnify
7 Necessary Business Expenses; (6) Failure to Timely Pay Wages Pursuant to Labor Code
8 Section 204 and 210; (7) Failure to Timely Pay All Wages Due Upon Separation of
9 Employment; (8) Failure to Provide Accurate and Itemized Wage Statements; and (9)
10 Violation of Business & Professional Code Section 17200. (“Class Released Claims”).
11 The Class Released Claims for the Participating Class Members excludes all claims for
12 vested benefits, wrongful termination, unemployment insurance, disability, social
13 security, workers’ compensation, claims while not an Eligible Employee, and claims
14 outside of the Class Period. The Class Released Claims only covers the time period of
15 from August 24, 2020 through August 15, 2022.

16 c. The PAGA Group Released Claims. As of the date of the Judgment, Plaintiff, the PAGA
17 Group Members, and the LWDA shall release, from August 24, 2020, through August 15,
18 2022, the Released Parties from all claims for civil penalties under the California Labor
19 Code Private Attorney’s General Act of 2004 that were alleged in Plaintiff’s LWDA
20 Exhaustion Letter and/or in the Action, including claims for relief for: (1) Failure to
21 Provide Meal Periods; (2) Failure to Provide Rest Breaks; (3) Failure to Pay Minimum
22 and regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Indemnify
23 Necessary Business Expenses; (6) Failure to Timely Pay Wages Pursuant to Labor Code
24 section 204 and 210; (7) Failure to Timely Pay All Wages Due Upon Separation of
25 Employment; and (8) Failure to Provide Accurate and Itemized Wage Statements. The
26 PAGA Released Claims only cover the time period of August 24, 2020, through August
27 15, 2022.

28 d. Released Parties. “Released Parties” include Defendant KIP Incorporated, together with

1 its past and present, officers, directors, and employees.

2 e. The Participating Class Members Released Claims and PAGA Released Claims described
3 above expressly exclude all claims made for vested benefits, wrongful termination,
4 unemployment insurance, disability, social security, workers' compensation, claims
5 while classified as exempt, and claims outside of the Class Period and/or PAGA Period.

6 10. The Parties shall bear their own respective attorneys' fees and costs, except as
7 otherwise provided for in the Settlement Agreement and approved by the Court.

8 11. The Court finds that the Maximum Settlement Amount, the Net Settlement Amount,
9 and the methodology used to calculate Settlement Shares and PAGA Payment Shares to Participating
10 Class Members and PAGA Group Members, respectively, are fair and reasonable. The Court thus
11 authorizes the Settlement Administrator to pay settlement allocations in accordance with the terms
12 of the Settlement Agreement. The Settlement Administrator shall establish a Settlement Account
13 within ten (10) days of the Effective Date (as that term is defined under the Settlement Agreement)
14 and notify the Parties when the Settlement Account has been established. Within ten (10) days after
15 receiving notification of the Settlement Account and statement for the Settlement Account Deposit,
16 Defendant shall pay into the Settlement Account an amount equal to the Settlement Account Deposit,
17 including an amount equal to Defendant's share of employer taxes. Payments to Class Members shall
18 be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days of its receipt of the
19 Settlement Account Deposit from Defendant.

20 12. Any envelope transmitting a settlement distribution to a Class Member shall bear the
21 notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Any settlement
22 distribution check shall be negotiable for at least 90 days but not more than 180 days from the date
23 of mailing. The Settlement Administrator shall mail a reminder postcard to any Class Member whose
24 settlement distribution check has not been negotiated within 60 days after the date of mailing. If any
25 of the Class Members are current employees of Defendant and those Class Members' mailed
26 distribution is returned to the Settlement Administrator as being undeliverable, and if the Settlement
27 Administrator is unable to locate a valid mailing address, the Settlement Administrator shall arrange
28 with Defendant to have those distributions delivered to those Class Members at their place of

1 employment.

2 13. A total amount of \$40,000.00 shall be allocated to resolution of the Released PAGA
3 Claims under the Private Attorneys General Act of 2004 (“PAGA”) and distributed as follows: 25%
4 (\$10,000.00) to the PAGA Group Members and 75% (\$30,000.00) to the LWDA. The LWDA’s
5 claims for the Released PAGA Claims are hereby extinguished.

6 14. The Court confirms the appointment of Plaintiff as the Class Representative, for
7 settlement purposes only. In addition to any recovery that Plaintiff is eligible to receive under the
8 Settlement Agreement as a Class Member, the Court approves and orders a service payment in the
9 amount of \$5,000.00 from the Maximum Settlement Amount to Plaintiff for his role and service as
10 the Class Representative, for the risks and work attendant to that role, and for his general release of
11 claims, both known and unknown, and waiver of Section 1542 rights.

12 15. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, for
13 settlement purposes only, as they are experienced in wage and hour class action litigation, have no
14 apparent conflicts of interest with Plaintiff or other Class Members, and have adequately represented
15 Class interests. The Court approves and orders the payment to Class Counsel from the Maximum
16 Settlement Amount for reasonable attorneys’ fees not to exceed one-third of the Maximum
17 Settlement Amount (\$150,000.00), as well as \$13,831.70 for reimbursement of litigation costs
18 actually incurred. The Court finds that the fees and costs amounts are reasonable in light of the
19 benefits provided to the Class.

20 16. The Court confirms the appointment of Phoenix Settlement Administrators as the
21 Settlement Administrator, who has fulfilled its initial notice and reporting duties owed under the
22 Settlement Agreement. The Court approves and orders the payment of \$7,000.00 from the Maximum
23 Settlement Amount to the Settlement Administrator for the costs of settlement administration.

24 17. In accordance with California Rule of Court 3.771(b), notice of this Final Order and
25 Judgment will be given to the Class by the Settlement Administrator, who will post the Final Order
26 and Judgment on a website maintained by the Settlement Administrator, the address of which was
27 provided to Class Members in the Notice, for a period of not less than 90 calendar days after entry.

28 18. This Final Order and Judgment is intended to be a final disposition of the Action in

1 its entirety and is intended to be immediately appealable.

2 19. The obligations set forth in the Settlement Agreement are deemed part of this Final
3 Order and Judgment, and the Parties are ordered to carry out the Settlement Agreement according to
4 its terms and provisions.

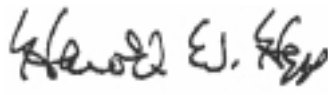
5 20. Following entry of this Final Order and Judgment, and without affecting the finality
6 thereof, the Court shall retain jurisdiction over the Action and the Settlement solely for purposes of
7 (i) enforcing this Settlement, (ii) addressing settlement administration matters, and (iii) addressing
8 such post-Judgment matters may be appropriate under court rules or applicable law.

9 21. The Settlement Agreement is finally approved but is not an admission by Defendant
10 of the validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation
11 of law. Neither the Settlement Agreement nor any related document shall be offered or received in
12 evidence in any civil, criminal, or administrative action or proceeding between Plaintiff and
13 Defendant, other than such proceedings between Plaintiff and Defendant as may be necessary to
14 consummate or enforce the Settlement. However, the foregoing shall not prevent other parties from
15 doing so or to otherwise predetermine the admissibility of the Settlement Agreement in litigation
16 involving third parties.

17 22. The Court sets a Non-Appearance Hearing (Case Review) re: Distribution on
18 September 23, 2024, at 8:30 a.m. in Department 1. Class Counsel are ordered to file a final report
19 and declaration by the Settlement Administrator regarding settlement distribution no later than
20 September 16, 2024. No appearance is required at the Case Review if the Settlement Administrator's
21 declaration filed prior to the hearing reports that all the distributions under the Settlement Agreement
22 are complete.

23 **IT IS SO ORDERED.**

24 DATE: 02/05/2024

25 
26 _____
27 Honorable Harold W. Hopp
28 Judge of the Superior Court, Riverside County