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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 11 2023

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

DANIEL DOMINGUEZ, on behalf of all
Aggrieved Employees and the State of
California;

Plaintiff,

vs.

KENCO LOGISTIC SERVICES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2105393
[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT

Complaint filed: August 18, 2020

Plaintiff Daniel Dominguez's ("Plaintiff" or "Class Representative") Motion for Final Approval of the Settlement (the "Final Approval Motion"), as set forth in the Class Action and PAGA Settlement Agreement and Release of Claims¹ (the "Settlement Agreement") came for hearing in Department 1 of the above-entitled court. The Final Approval Motion was unopposed by Defendant Kenco Logistic Services, LLC. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement

¹ See Exhibit A to the Declaration of Brian Mankin in support of the Motion for Final Approval, which was concurrently filed on September 14, 2023.

1 Agreement is approved. Due and adequate notice having been given to the Class, and the Court
2 having considered the Settlement Agreement, all papers filed and proceedings had herein and all
3 oral and written comments received regarding the proposed settlement, and having reviewed the
4 record in this Litigation, and good cause appearing,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

6 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
7 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

8 2. The Court has jurisdiction over the subject matter over this Action, the Class
9 Representative, the Class Members, the Aggrieved Employees, and Defendant.

10 3. The Court finds that the distribution of the Class Notice, Objection Form, Dispute
11 Form and Exclusion Form (collectively attached as Exhibit “A” to the Declaration of Taylor
12 Mitzner filed on September 14, 2023), as provided for in the Order Granting Preliminary
13 Approval for the Settlement, constituted the best notice practicable under the circumstances to all
14 Class Members and fully met the requirements of California law and due process under the
15 California and United States Constitution. Based on evidence and other material submitted, the
16 actual notice to the class was adequate.

17 4. The Court finds that the instant Action presented a good faith dispute of the
18 claims alleged, and the Court finds in favor of settlement approval.

19 5. The Released Class Claims on behalf of the Participating Class Members
20 included:

- 21 a. all claims stated in the operative Complaint and those based solely upon the
22 facts in the Complaint, including: (a) failure to pay minimum wages, (b)
23 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure
24 to provide rest breaks, (e) failure to pay vested vacation upon separation of
25 employment, (f) failure to reimburse business expenses, (g) failure to failure
26 to timely pay wages each pay period and upon separation of employment, (h)
27 failure to provide accurate itemized wage statements, (i) unfair and unlawful
28 competition, and (j) all other claims for statutory penalties based on the facts

1 or claims alleged in the operative complaint.

2 6. The PAGA Released Claims on behalf of the Aggrieved Employees included:

3 a. All PAGA claims that Plaintiff alleged against the Released Parties, on behalf
4 of himself and the State of California, based on the facts stated in the
5 Complaint in the Action and in the LWDA notice letter(s), including all
6 PAGA claims seeking civil penalties that premised upon (a) failure to pay
7 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal
8 periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation
9 upon separation of employment, (f) failure to reimburse business expenses, (g)
10 failure to failure to timely pay wages each pay period and upon separation of
11 employment, and (h) failure to provide accurate itemized wage statements.

12 7. There were no Objections and one valid Request for Exclusion from the
13 Settlement which was submitted by Jordyn A. Homutoff. Other than this individual, all
14 Participating Class Members are entitled to payment pursuant to the Settlement and this
15 Judgment. Furthermore, all Aggrieved Employees are entitled to payment pursuant to this
16 Settlement and Judgment.

17 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
18 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Parties. The
19 Parties are directed to perform in accordance with the terms set forth in the Settlement
20 Agreement and this Order and Judgment.

21 9. The Parties are to bear their own costs, except as otherwise provided in the
22 Settlement Agreement and this Order and Judgment.

23 10. For purposes of effectuating this Order and Judgment, this Court has certified the
24 following Class: "All current and former non-exempt (hourly paid) employees employed by
25 Defendant in California at any time during the Class Period of November 19, 2017, through
26 April 24, 2023." The Court deems this definition sufficient for purposes of California Rules of
27 Court, rule 3.765(a).

1 11. With respect to the Settlement Class and for purposes of approving this
2 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable
3 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
4 fact common to the Class Members, and there is a well-defined community of interest among the
5 Class Members with respect to the subject matter of the Action; (c) the claims of Class
6 Representative are typical of the claims of the Class Members; (d) the Class Representative has
7 fairly and adequately protected the interests of the Class Members; (e) a class action is superior
8 to other available methods for an efficient adjudication of this controversy; and (f) the counsel of
9 record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the
10 Plaintiff in his individual and representative capacity and for the Class.

11 12. By this Order and Judgment, the Class Representative shall release, relinquish,
12 and discharge the Released Class Claims, as defined in the Settlement Agreement. Additionally,
13 by this Judgment, each of the Participating Class Members shall be deemed to have, and by
14 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
15 discharged all Released Class Claims.

16 13. By this Order and Judgment, Plaintiff and the LWDA shall fully, finally, and
17 forever release, relinquish and discharge Defendant and the Released Parties from all PAGA
18 Released Claims, as defined in the Settlement Agreement and above.

19 14. The Settlement is not an admission of wrongdoing or violation by Defendant or
20 any of the other Released Parties, nor is this Judgment a finding of the validity of any claims in
21 the Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither this
22 Settlement Approval Order, the Settlement, or the Judgment nor any document referred to herein,
23 nor any action taken to carry out the Settlement are, may be construed as, or may be used as an
24 admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing
25 or liability whatsoever.

26 15. The Escalator Clause in the Settlement Agreement indicates if the total
27 Workweeks exceeds 48,400, then the Gross Settlement Amount shall be increased by \$33.06 for
28 each additional Workweek. Here, the total number of Workweeks was 53,282, which exceeds

1 the cap by 4,882 Workweeks. Therefore, the Escalator Clause was triggered and the Gross
2 Settlement Amount is increased from \$1,455,000.00 to \$1,624,068.84 (an increase of
3 \$161,408.18 which is arrived at by multiplying 4,882 x \$33.06).

4 16. The updated Gross Settlement Amount to be paid under the Settlement
5 Agreement is \$1,624,068.84. From this amount, Class Counsel sought an award of attorney's
6 fees of \$541,356.28 (one-third of the Gross Settlement Amount), litigation expenses of
7 \$13,624.93, a Service Award for Class Representative Daniel Dominguez of \$5,000, Settlement
8 Administrator Costs of \$10,000 to Phoenix Settlement Administrators, and \$112,500 to the
9 LWDA for PAGA penalties and \$37,500 to the Aggrieved Employees. Defendant does not
10 oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and
11 adequate, and awards the amounts set forth below from the Settlement Amount:

12 A) \$541,356.28 to Class Counsel for attorneys fees (one-third of the GSA);

13 B) \$13,624.93 to Class Counsel for costs/expenses;

14 C) \$5,000 to Class Representative Daniel Dominguez as a Service Award;

15 D) \$10,000 to the Settlement Administrator, Phoenix Settlement

16 Administrators;

17 E) \$112,500 to the LWDA;

18 F) \$37,500 to the Aggrieved Employees;

19 G) After deducting the foregoing payments from the Settlement Amount, the
20 remainder shall form the Net Settlement Amount payable to the Participating Class
21 Members as set forth in the Settlement Agreement and as calculated by the Settlement
22 Administrator.

23 17. Defendant is directed to fund the Settlement Amount in accordance with the
24 Settlement Agreement and the timeline set forth below. Administrator is directed to calculate the
25 Participating Class Member's Individual Settlement Payments from the Net Settlement Amount,
26 as well as the Aggrieved Employees individual payment, and issue all payments within in
27 accordance with the Settlement Agreement and the timeline set forth below:

28 ///

1	The date this Order is entered	The Effective Date occurs.
2	30 days after the Effective Date	Defendant is directed to issue the Gross Settlement Amount of \$1,624,068.84 to the Settlement Administrator, plus separately pay its share of payroll taxes.
3		
4		
5	10 days after receipt of Payment	Settlement Administrator to issue all payments.
6		
7	180 days after payment is issued	Deadline for Participating Class Members and Aggrieved Employees to cash checks.
8		
9	June 17, 2024	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including the status of issuing any uncashed funds.
10		
11		
12		
13	Date: <u>July 1st</u> , 2024	Final Report Hearing re: status of funding.
14	Time: 8:30 a.m.	
15		

16

17 18. The envelope transmitting the settlement checks shall bear the notation “YOUR

18 CLASS ACTION SETTLEMENT CHECK IS ENCLOSED.” Concurrently with mailing the

19 settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement

20 Administrator shall include a Notice of Entry of Judgment to all Class Members either on a

21 postcard or as a detachable portion of the check for the Participating Class Members, noting the

22 following: “Please be advised that on [INSERT DATE] the Superior Court of California for the

23 County of Riverside entered Judgment in the case entitled *Dominguez v. Kenco Logistic*

24 *Services, LLC*, Case No. CVRI2105393, on behalf of the Participating Class Members and

25 Aggrieved Employees, which includes all current and former non-exempt (hourly paid)

26 employees employed by Defendant in California at any time during the Class Period of

27 November 19, 2017, through April 24, 2023.”

28

19. Participating Class Members and Aggrieved Employees shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. If a check has not been cashed within 60 days after issuance, the Settlement Administrator shall mail a reminder postcard within 10 days thereafter and provide the Participating Class Member with the deadline to cash the check. If any check that is issued to a current employee of Defendant is returned to the Settlement Administrator as undeliverable and the Settlement Administrator is unable to locate a valid mailing address, then the Settlement Administrator shall arrange with the Defendant to have the check(s) delivered to the Participating Class Member at their place of employment. In the event that a Participating Class Members and/or Aggrieved Employees does not negotiate his/her check within this time period, the check will be canceled. The value of the unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be issued to the California State Controller's Office in the name of the Participating Class Member and/or Aggrieved Employee.

20. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representative, the Class Members, the Aggrieved Employees, and Defendant for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: 10/11/23

Harold Hopp