

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 23 2023

BY Amber M. Gear
AMBER M. GEAR, DEPUTY

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JUAN NIEVES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KLLM TRANSPORT SERVICES, LLC, a
Texas Limited Liability Company; and DOES
1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134796
[Assigned to Hon. Judge David Cohn,
Dept S26, for all purposes]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: December 21, 2021

The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement") came for hearing in Department S26 of the above-entitled court. The Final Approval Motion was unopposed by Defendant KLLM Transport 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 Agreement is approved. Due and adequate notice having been given to the Class, and the Court having considered the Settlement Agreement, all

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

1 papers filed, and proceedings had herein and all oral and written comments received regarding
2 the proposed settlement, and having reviewed the record in this Litigation, and good cause
3 appearing,

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

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

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

9 3. The Court finds that the distribution of the Class Notice, as provided for in the
10 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
11 under the circumstances to all Class Members and fully met the requirements of California law
12 and due process under the California and United States Constitution. Based on evidence and
13 other material submitted, the actual notice to the class was adequate.

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

16 5. The Class Claims on behalf of the Participating Class Members included:

- 17 a. any and all claims, wages, penalties, interest, debts, demands, rights,
18 liabilities, costs, compensation, damages, injunctive and/or declaratory
19 relief, attorneys' fees, actions, and/or causes of action that were pleaded or
20 could have been pleaded based upon the factual allegations set forth by
21 Plaintiff in the Complaint filed in this Action and arising at any time
22 during the Class Period, including but not limited to all claims under the
23 California Labor Code for unpaid minimum wages, off-the-clock work
24 violations, failure to provide meal periods, failure to provide rest periods,
25 unreimbursed business expenses, wage statement violations, interest,
26 penalties, and attorneys' fees, waiting time penalties, withholding from
27 wages and the related provisions of the Labor Code including Labor Code
28 §§ 200-204, 208, 210, 216, 218.6, 226, 226.3 , 226.7, 510, 512, 512.5,

558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and Fair Labor Standards Act (the “Released Class Claims”).

6. The claims on behalf of the Aggrieved Employees included:

a. all PAGA claims that Plaintiff alleged or could have alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts and/or theories stated in the operative complaint and/or in Plaintiff’s notice letter to the LWDA, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to reimburse business expenses, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint (the “PAGA Released Claims”).

7. There were no Objections and one Requests for Exclusion to the Settlement. Except for the one opt-out, all Participating Class Members are entitled to payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved Employees (including the one opt-out) are entitled to a pro rata share of PAGA Penalties.

8. The Court approves the Settlement, as set forth in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

9. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

1 10. For purposes of effectuating this Order and Judgment, this Court has certified the
2 following class: “all current and former truck drivers who resided in California and who were
3 employed by Defendant at any time during the Class Period of December 21, 2017, through
4 August 31, 2022,” as defined in the Settlement Agreement. The Court deems this definition
5 sufficient for purposes of California Rules of Court, rule 3.765(a).

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

17 12. By this Judgment, the Class Representative shall release, relinquish, and
18 discharge, and each of the Participating Class Members shall be deemed to have, and by
19 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
20 discharged all Released Class Claims, as defined herein and in the Settlement Agreement.

21 13. For purposes of effectuating this Order and Judgment, the PAGA Released
22 Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees which
23 consists of “all current and former truck drivers who resided in California and who were
24 employed by Defendant at any time during the PAGA Period of December 21, 2020, through
25 August 31, 2022.”

26 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any
27 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
28 or the Settlement (i) is or may be deemed to be or may be used by the Plaintiff or Participating

Class Members as an admission of, or evidence of, the validity of any of the Class Claims, or of any wrongdoing or liability of Defendant or any of the other Released Parties; or (ii) is or may be deemed to be or may be used by Plaintiff or Participating Class Members as an admission of, or evidence of, any fault or omission of Defendant or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. The Gross Settlement Amount to be paid under the Settlement Agreement is \$535,000. From this amount, Class Counsel sought an award of attorney's fees of \$178,333.33, litigation expenses of \$7,486.58, a Service Award of \$5,000 for the Class Representative Juan Nieves, \$6,500 to the Settlement Administrator, ILYM Group, \$37,500,750 to the LWDA for PAGA penalties and \$12,500 to the Aggrieved Employees for PAGA Penalties. Defendant does not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

- A. \$178.333.33 to Class Counsel for attorneys' fees;
- B. \$7,486.58 to Class Counsel for costs/expenses;
- C. \$5,000 to Juan Nieves as a Service Award;
- D. \$6,500 to the Settlement Administrator, ILYM Group;
- E. \$37,500 to the LWDA;
- F. \$12,500 to the Aggrieved Employees on a pro rata basis;
- G. After deducting the foregoing payments from the Settlement Amounts, the remainder shall form the Net Settlement Amount payable to the Participating Class Members as set forth in the Settlement Agreement and as calculated by the Settlement Administrator.

1 16. Defendant is directed to fund the Gross Settlement Amount within 15 calendar
2 days after the Effective Date. The Settlement Administrator is directed to calculate the
3 Participating Class Members' Individual Settlement Amounts from the Net Settlement Amount,
4 as well as the payments due to the Aggrieved Employees, and issue all payments within 10 days
5 of receipt of the payment in accordance with the Settlement Agreement. Concurrently with
6 mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the
7 Settlement Administrator include a Notice of Entry of Judgment to all Class Members either on a
8 postcard or as a detachable portion of the check, noting the following: "Please be advised that
9 on [date] the Superior Court of California for the County of San Bernardino entered Judgment in
10 the case entitled *Juan Nieves v. KLLM Transport Services, LLC, et al.*, San Bernardino County
11 Superior Court, Case No. CIVSB2134796, on behalf of all current and former truck drivers who
12 resided in California and who were employed by Defendant at any time during the Class Period
13 of December 21, 2017, through August 31, 2022." It shall further state: "as to all Participating
14 Class Members, the signing and negotiation of the check shall serve as the Participating Class
15 Member's consent to release all Released Class Claims arising under the Fair Labor Standards
16 Act that are alleged in the Action or that could reasonably have been stated in the Action."

17 17. Participating Class Members and Aggrieved Employees shall have 180 days to
18 negotiate the settlement check from the date of issuance by the Settlement Administrator. In the
19 event that a person does not negotiate his/her check within this time period, the check will be
20 canceled. The value of the unclaimed funds in the Settlement Administrator's account as a result
21 of a failure to timely cash a settlement check shall be issued to the State Controller's Office in
22 the name of the Participating Class Members and/or Aggrieved Employees.

23 18. The following dates shall govern for purposes of this implementing this
24 Order/Judgment:

25 March 23, 2023	Final Approval is entered and the Effective Date occurs
26 April 7, 2023	Defendant is directed to fund the Gross Settlement 27 Amount and separately pay its share of the employer's 28 tax, as calculated and directed by the Settlement Administrator.

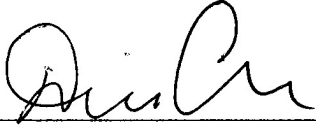
~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT

1 2 3 4 5 6 7 8	April 17, 2023	Settlement Administrator to issue checks to Participating Class Members, Class Representative, Class Counsel, Aggrieved Employees and LWDA.
3	October 14, 2023	Deadline for Participating Class Members and Aggrieved Employees to cash settlement checks.
4 5 6 7 8	<i>10 days before</i> <i>3/25/23</i> November 15, 2023	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Participating Class Members and Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the anticipated date payment will issued to the State Controller.

19. 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 Participating Class Members, 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: 3/23/23


Hon. David Cohn