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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

FIDEL GOMEZ, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

KIRBY MANUFACTURING, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. VCU308341

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: June 16, 2025

Time: 8:30 a.m.

Judge: Hon. Gary Johnson

Dept.: 7

1 This matter having come before the Honorable Gary Johnson of the Superior Court of the State
2 of California, in and for the County of Tulare, at 8:30 a.m. on June 16, 2025, with Jean-Claude
3 Lapuyade, Esq., of the JCL Law Firm APC and Shani O. Zakay, Esq. of the Zakay Law Group, APLC,
4 as counsel for Plaintiff FIDEL GOMEZ (“Plaintiff”), Kim Flores, Esq. and Lindsay Irene Walczak,
5 Esq. of Berliner Cohen, LLP, appearing for Defendant KIRBY MANUFACTURING, INC. (hereinafter
6 “Defendant”). The Court, having carefully considered the briefs, argument of counsel and all the
7 matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff’s Motion for
8 Preliminary Approval of Class Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
11 Action Claims and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct
12 copy of which is attached to the Declaration of Jackland K Hom, Esq., as Exhibit “1.” This is based on
13 the Court’s determination that the Settlement Agreement is within the range of possible final approval,
14 pursuant to the provisions of Section 382 of the California Code of Civil Procedure and California
15 Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendant shall pay is Two Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00). It
20 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and
21 reasonable as to all Class Members when balanced against the probable outcome of further litigation
22 relating to certification, liability, and damages issues. It further appears that investigation and research
23 have been conducted such that counsel for the Parties are able to reasonably evaluate their respective
24 positions. It further appears to the Court that settlement at this time will avoid substantial additional
25 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
26 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
27 intensive, serious, and non-collusive arms-length negotiations.

28 4. The Court preliminarily finds that the Settlement appears to be within the range of

1 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
4 reasonable when balanced against the probable outcome of further litigation relating to certification,
5 liability, and damages issues.

6 5. Plaintiff seeks a Class Counsel Award in the amount of up-to one-third of the Gross
7 Settlement Amount for attorneys' fees, currently estimated at Seventy-Six Thousand Six Hundred
8 Sixty-Six Dollars and Sixty-Six Cents (\$76,666.66) and litigation costs incurred not to exceed Twenty
9 Five Thousand Dollars and Zero Cents (\$25,000.00), and proposed Class Representative Service
10 Award to the Class Representative, Fidel Gomez, in an amount not to exceed Ten Thousand Dollars
11 and Zero Cents (\$10,000.00). While these awards appear to be within the range of reasonableness, the
12 Court will not approve the Class Counsel Award or Class Representative Service Award until the Final
13 Approval Hearing.

14 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
15 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other
16 proceeding should this Settlement not become final. For settlement purposes only, the Court
17 conditionally certifies the following Class:

18 "all current and former non-exempt employees who worked for Kirby
19 Manufacturing, Inc. in California at any time during the Class Period [April
20 25, 2020 through February 26, 2025]."

21 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
22 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
23 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
24 common questions of law and fact predominate, and there is a well-defined community of interest
25 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
26 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
27 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
28 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified

1 to act as counsel for the Class Representative in his individual capacity and as the representative of the
2 Class Members.

3 8. The Court provisionally appoints plaintiff Fidel Gomez as the representative of the Class.

4 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
5 APC and Shani Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

6 10. The Court hereby approves, as to form and content, the Proposed Notice of Class Action
7 Settlement (“Class Notice”) attached to the Agreement as Exhibit “A.” The Court finds that both
8 notices appear to fully and accurately inform the Class Members of all material elements of the
9 proposed Settlement, including the right of any Class Member to be excluded from the Class by
10 submitting a written request for exclusion, and of each Class Member’s right and opportunity to object
11 to the Settlement. The Court further finds that the distribution of the notices substantially in the manner
12 and form set forth in the Agreement and this Order meets the requirements of due process, is the most
13 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons
14 entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms
15 set forth in the Agreement.

16 11. The Court hereby appoints Apex Class Action, LLC as Administrator. Within ten (10)
17 calendar days of the later of preliminary approval or court approval of Settlement notice to the class,
18 Defendant shall provide to the Administrator the Class Data, including information regarding Class
19 Members that Defendant will in good faith compile from its records, including the Class Member’s full
20 name, last-known mailing address, Social Security number, start dates and end dates of employment.
21 No later than twenty-one (21) calendar days after preliminary approval of the Settlement, the
22 Administrator shall mail the Class Notice to all identified, potential Class Members via first class U.S.
23 Mail using the most current mailing address information available.

24 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
25 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
26 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
27 Settlement of the Released Class Claims that are set forth in the Notice. All requests for exclusion must
28 be postmarked or received by the Response Deadline, which is forty-five (45) calendar days after the

1 date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more
2 than fifteen (15) calendar days from the date of re-mailing of the Notices. Any such person who chooses
3 to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement
4 Payment under the Settlement and will not be bound by the Settlement, or have any right to object,
5 appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all
6 determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out
7 that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
8 individuals is not permitted and will be deemed invalid.

9 13. Any Class Member who has not opted out may appear at the final approval hearing and
10 may object or express the Class Member's views regarding the Settlement and may present evidence
11 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
12 by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the
13 date the Administrator mails the Class Notice to postmark their written objections to the Administrator.

14 14. A hearing on Plaintiff's Motion for Final Approval of Class Action and PAGA
15 Settlement and Plaintiff's Motion for Class Counsel Award and Class Representative Service Award
16 shall be held before this Court on _____ at ____ AM in Department 7 of the Tulare
17 County Superior Court to determine all necessary matters concerning the Settlement, including:
18 whether the proposed settlement of the Action on the terms and conditions provided for in the
19 Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an
20 Order Granting Final Approval should be entered herein; whether the plan of allocation contained in
21 the Agreement should be approved as fair, adequate and reasonable to the Class; and to finally approve
22 the Class Counsel Award and Class Representative Service Award, and the Settlement Administration
23 Costs. All papers in support of the motion for final approval and the motion for Class Counsel Award
24 and Class Representative Service Award shall be filed with the Court and served on all counsel no later
25 than sixteen (16) court days before the hearing.

26 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
27 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
28 evidence of, or used against Defendant as an admission or indication in any way, including with respect

1 to any claim of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth
2 of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
3 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
4 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as
5 received as or deemed to be evidence for any purpose adverse to the Defendant including, but not
6 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
7 liability, fault, wrongdoing, omission, concession or damage.

8 16. In the event the Settlement does not become effective in accordance with the terms of the
9 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
10 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
11 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
12 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
13 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
14 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

15 17. Pending final determination of whether the Settlement should be approved, Class
16 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
17 intervening in, instigating or in any way participating in the commencement or prosecution of any
18 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
19 any claims that are, or relate in any way to, the Release Class Claims, unless and until they submit a
20 timely request for exclusion pursuant to the Agreement.

21 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
22 and all dates provided for in the Agreement without further notice to Class Members and retains
23 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

24 Dated: _____

25 _____
26 JUDGE OF THE SUPERIOR COURT
27
28