

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

11/04/2025

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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 FINAL
APPROVAL**

Date: October 13, 2025
Time: 8:30 a.m.

Judge: ~~Hon. Gary Johnson~~
Dept.: 7

Russell P Burke

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award
3 and Service Award duly came on for hearing on October 13, 2025, before the above-entitled Court.
4 Zakay Law Group, APLC and JCL Law Firm, APC, appeared on behalf of Plaintiff FIDEL GOMEZ
5 ("Plaintiff"). Berliner Cohen, LLP. appeared on behalf of Defendant KIRBY MANUFACTURING,
6 INC. (hereinafter "Defendant").

7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. All capitalized terms used herein shall have the same meaning as defined in
12 the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of Tulare ("Court"), Case No. VCU308341, entitled
15 *Fidel Gomez v. Kirby Manufacturing, Inc.* and over all Parties to this litigation, including the Class.

16 **Preliminary Approval of the Settlement**

17 3. On July 22, 2025, the Court granted preliminary approval of a class and
18 PAGA wide settlement. At this same time, the court approved certification of a provisional
19 settlement class for settlement purposes only. The Court confirms this Order and finally approves
20 the settlement and the certification of the Class.

21 **Notice to the Class**

22 4. In compliance with the Preliminary Approval Order, the Notice Packet was
23 mailed by first class mail to the Class Members at their last known addresses on July 30, 2025.
24 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
25 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
26 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
27 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

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1 5. The Response Deadline for opting out or objecting was September 29, 2025.
2 There was an adequate interval between notice and deadline to permit Class Members to choose
3 what to do and act on their decision. No Class Members objected. No Class Members requested
4 exclusion.

5 **Fairness Of the Settlement**

6 6. The Agreement provides for a Gross Settlement Amount of \$230,000.00.
7 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
8 Cal.App.4th 1794, 1801.)

9 a. The settlement was reached through arms-length bargaining between
10 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
11 Settlement.

12 b. The Parties' investigation and discovery have been sufficient to allow
13 the Court and counsel to act intelligently.

14 c. Counsel for all Parties are experienced in similar employment class
15 action litigation and have previously settled similar class claims on behalf of employees claiming
16 compensation. All counsel recommended approval of the Settlement.

17 d. The percentage of objectors and requests for exclusion is small. No
18 objections were received. No requests for exclusion were received.

19 e. The participation rate is high. All Class Members will be participating
20 in the Settlement and will be sent settlement payments.

21 7. The consideration to be given to the Class Members under the terms of the
22 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
23 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
24 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
25 litigation and the delays which would ensue from continued prosecution of the Action.

26 8. The Agreement is finally approved as fair, adequate, and reasonable and in
27 the best interests of the Settlement Class Members.

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1 **Class Counsel Award**

2 9. The Agreement provides for a Class Counsel Award in the amount of up to
3 One Hundred One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$101,666.66),
4 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount, or Seventy-Six
5 Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$76,666.66), and reimbursement of
6 costs and expenses in the amount of up to Twenty-Five Thousand Dollars and Zero Cents
7 (\$25,000.00).

8 10. A Class Counsel Award of Ninety-Eight Thousand, Two Hundred Eighty-
9 Three Dollars and Sixty-Eight Cents (\$98,283.68) comprised of attorneys' fees in the amount of
10 Seventy-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$76,666.66) and
11 reimbursement of actually incurred costs and expenses in the amount of Twenty-One Thousand, Six
12 Hundred Seventeen Dollars and Two Cents (\$21,617.02) is reasonable in light of the contingent
13 nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
14 Counsel. The requested attorneys' fee award represents 1/3 of the common fund, which is reasonable
15 and at the low end of the range for fee awards in common fund cases and is supported by Class
16 Counsel's lodestar.

17 **Service Award**

18 11. The Agreement provides for a Service Award of Ten Thousand Dollars and
19 Zero Cents (\$10,000.000), subject to the Court's approval. At the preliminary approval stage, the
20 Court notified Plaintiff that it would be reducing this payment to \$5,000.00. The Court finds that
21 the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) is reasonable in light of the risks
22 and burdens undertaken by Plaintiff in this class action litigation.

23 **Settlement Administration Costs**

24 12. The Agreement provides for Settlement Administration Costs to be paid in
25 an amount not to exceed \$4,950.00. The Declaration of the Settlement Administrator provides that
26 the actual claims administration expenses were \$4,950.00. The amount of this payment is reasonable
27 in light of the work performed by the Settlement Administrator.

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1. The Class is certified for the purposes of settlement only. The Settlement Class is hereby defined to include all current and former non-exempt employees who worked for Defendant Kirby Manufacturing, Inc. in California during the period from April 25, 2020, to February 26, 2025 (“Class Period”).

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

5. The payment of the Service Award to Plaintiff Fidel Gomez in the amount of \$5,000.00 is approved.

7. The PAGA Payment of \$10,000.00 is hereby approved as fair, reasonable, adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any fraud or collusion.

1 8. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
3 of Defendant from all class claims alleged or reasonably could have been alleged based on the facts
4 alleged, in the Operative Complaint in the Action, which occurred during the Class Period, and
5 expressly excluding all other, including claims for vested benefits, wrongful termination,
6 unemployment insurance, disability, social security, workers' compensation, and class claims
7 outside of the Class Period. To the extent employees are required to "opt-in" to have this release be
8 deemed effective under federal law, the acceptance and negotiation of any settlement check shall be
9 deemed effective for that purpose.

10 9. Final Judgment shall also bind Plaintiff, the LWDA, the State of California,
11 and all Aggrieved Employees pursuant to the California Labor Code Private Attorneys' General Act
12 ("PAGA") and shall release Defendant from all PAGA claims alleged in the Operative Complaint
13 in the Action and Plaintiff's PAGA notice to the LWDA, which occurred during the PAGA Period,
14 and expressly excluding all other claims, including claims for vested benefits, wrongful termination,
15 unemployment insurance, disability, social security, workers' compensation, and PAGA claims
16 outside of the PAGA Period.

17 10. The term "Aggrieved Employees" is hereby defined as all current and former
18 non-exempt employees who worked for Defendant Kirby Manufacturing, Inc. in California at any
19 time during the PAGA Period. The PAGA Period means the period between April 25, 2023, to
20 February 26, 2025.

21 11. The Court further finds and determines that Class Counsel satisfied California
22 Labor Code § 2699(s)(2) by giving the LWDA notice of the proposed Settlement of claims arising
23 under the Private Attorney General Act ("PAGA") on May 19, 2025, and again on May 29, 2025.

24 12. The Court orders Class Counsel to comply with California Labor Code §
25 2699(s)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
26 entry of this Order Class Period.

27 13. The Agreement is not an admission by Defendant, nor is this Final Approval
28 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by

1 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
2 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
3 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
4 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
5 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
6 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
7 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
8 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
9 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
10 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
11 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
12 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
13 or issue preclusion or similar defense as to the claims being released by the Settlement.

14 14. Notice of entry of this Final Approval Order and Judgment shall be given to
15 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
16 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
17 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
18 in the Notice Packet.

19 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
20 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
21 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
22 connection with the distribution of settlement benefits.

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1 16. If the Settlement does not become final and effective in accordance with the
2 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
3 Defendants consistent with the terms of the Settlement, then this Final Approval Order and
4 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
5 be vacated.

6 **IT IS SO ORDERED.**

7
8 DATED: 11/04/2025, ~~2025~~



Russell P Burke

Hon. ~~Gary Johnson~~
Judge, Superior Court for the State of California,
County of Tulare