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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JAMES E. AGUILAR, an individual; PAMELA
CAZARES, an individual, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

T & K, L.P., a California Limited Partnership;
and DOES 1-50, Inclusive.

Defendants.

Case No. 21CV384674

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL**

Hearing Date: October 26, 2023

Hearing Time: 1:30 p.m.

Department: 1

Trial Date: None

Action Filed: July 23, 2021

1 Plaintiffs' motion for an order finally approving the Joint Stipulation and Agreement for
2 Class and Representative Action Settlement and Release ("Agreement") and Motion for Class
3 Counsel Attorneys' Fees and Expenses Payment and Service Awards duly came on for hearing on
4 October 26, 2023, before the above-entitled Court. The JCL Law Firm, APC, and Zakay Law
5 Group, APLC, appeared on behalf of Plaintiffs JAMES AGUILAR and PAMELA CAZERES
6 ("Plaintiffs"). Clark Hill LLP appeared on behalf of Defendant T&K, L.P. ("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 terms used herein shall have the same meaning as defined in the
12 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 Santa Clara ("Court"), Case No. 21CV384674,
15 entitled *Aguilar v. T&K, L.P.*, and over all Parties to this litigation, including the Class.

16 **Preliminary Approval of the Settlement**

17 3. On May 30, 2023, the Court granted preliminary approval of a class-wide
18 settlement. At this same time the court approved certification of a provisional settlement class for
19 settlement purposes only. The Court confirms this Order and finally approves the settlement and
20 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 U.S. Mail to the Class Members at their last known addresses on July 14,
24 2023. Mailing of the Notice Packet to their last known addresses was the best notice practicable
25 under the circumstances and was reasonably calculated to communicate actual notice of the
26 litigation and the proposed settlement to the members of the Class Members. The Court finds that
27 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule
28 3.769.

1 5. The Response Deadline for opting out or objecting was August 28, 2023.
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. Eight Class Members
4 requested exclusion. The names of the Class Members who opted out are Amanda O Carrizosa,
5 Antoni I Romero, Emily Cardona, Lizzett Argueta Mandujano, Maleny P Lopez, Maria D
6 Ruezga De Perez, Maria G Lovelace, and Pablo Soto.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Maximum Settlement Amount of
9 \$2,000,000.00. The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.*
10 (1996) 48 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the parties. There is no evidence of any collusion between the parties in reaching the proposed
13 settlement.

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

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

19 d. No objections were received. Eight requests for exclusion were
20 received.

21 e. The participation rate is high. Approximately 99.58% of Class
22 Members will be participating in the Settlement and will be sent settlement payments.

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

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

3 **PAGA Payment**

4 9. The Agreement provides for a payment of PAGA Payment in the amount of
5 \$100,000.00. The Court has reviewed the PAGA Payment and finds and determines that the
6 PAGA Settlement and the allocation of \$75,000.00 to LWDA and \$25,000.00 to the Aggrieved
7 Employees is fair and reasonable and complies with the requirements set forth in *Moniz v. Adecco*
8 *USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Class Counsel Attorneys' Fees and Expenses Payment**

10 10. The Agreement provides for a Class Counsel Attorneys' Fees and Expenses
11 Payment in the amount of up to Six Hundred Eighty Thousand Nine Hundred One Dollars and
12 Forty-One Cents (\$680,901.41). Subject to Court approval, the Class Counsel Attorneys' Fees
13 and Expenses Payment consists of attorneys' fees equal to one-third (1/3) of the Maximum
14 Settlement Amount, Six Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-
15 Six Cents (\$666,666.66) and reimbursement of costs and expenses in the amount of Fourteen
16 Thousand Two Hundred Thirty-Four Dollars and Seventy-Five Cents (\$14,234.75).

17 11. A Class Counsel Attorneys' Fees and Expenses Payment of Six Hundred
18 Eighty Thousand Nine Hundred One Dollars and Forty-One Cents (\$680,901.41) comprised of
19 attorneys' fees in the amount of Six Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars
20 and Sixty-Six Cents (\$666,666.66) and reimbursement of costs and expenses in the amount of
21 Fourteen Thousand Two Hundred Thirty-Four Dollars and Seventy-Five Cents (\$14,234.75) is
22 reasonable in light of the contingent nature of Class Counsel's fee, the hours worked by Class
23 Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
24 represents one-third (1/3) of the common fund, which is reasonable and at the low end of the range
25 for fee awards in common fund cases and is supported by Class Counsel's lodestar.

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1 **Service Awards**

2 12. The Agreement provides for Service Awards of up to \$10,000.00 for each
3 Plaintiff, James Aguilar and Pamela Cazerres, subject to the Court's approval. The Court finds that
4 the amount of \$10,000.00 to each Plaintiff is reasonable in light of the risks and burdens
5 undertaken by the Plaintiffs in this class action litigation.

6 **Administrative Expenses**

7 13. The Agreement provides for Administrative Expenses to be paid in an
8 amount not to exceed \$25,000.00. The Declaration of the Settlement Administrator provides that
9 the actual claims administration expenses were \$25,000.00. The amount of this payment is
10 reasonable in light of the work performed by the Settlement Administrator.

11 **II.**

12 **ORDERS**

13 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

14 1. The Class is certified for the purposes of settlement only. The Settlement
15 Class is hereby defined to include:

16 All individuals who are or previously were employed by Defendant in California
17 and classified as a non-exempt employee at any time during the period from July
18 23, 2017 to October 29, 2022.

19 2. There are 1,904 members of the Class. Every person in the Class who did
20 not opt out is a Settlement Class Member. After providing Notice to the Class, there are eight opt-
21 outs to the Settlement. The names of the Class Members who opted out are Amanda O Carrizosa,
22 Antoni I Romero, Emily Cardona, Lizzett Argueta Mandujano, Maleny P Lopez, Maria D
23 Ruezga De Perez, Maria G Lovelace, and Pablo Soto.

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

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1 4. Defendant shall fund the Maximum Settlement Amount on the Funding
2 Date. In exchange the Class Members shall release Defendant from the “Released Class Claims”
3 and the “Aggrieved Employees” shall release the “Released PAGA Claims.”

4 a. The Released Class Claims are defined as all claims that were
5 alleged or reasonably could have been alleged in the Complaint based on the facts contained
6 therein, arising during the Class Period, including, but not limited to, California Labor Code
7 sections 200, 201, 201.3, 201.5, 202, 201.3, 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226,
8 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515, 558, 1174, 1174(d), 1174.5, 1194, 1197, 1197.1,
9 1197.14, 1198, 1199, 2802, 2804, 2698 et seq., 2699, 2699.3, 2699.5, and any federal
10 counterparts, Code of Civil Procedure sections 382, 395, 395.5, 410.10, 474, and any federal
11 counterparts, California Business and Professions Code section 17200, et seq., 17203, any IWC
12 Wage Orders, any claims involving any alleged unfair competition in violation of Cal. Bus. &
13 Prof. Code § 17200, et seq., failure to pay minimum wages in violation of Cal. Labor Code §§
14 1194, 1197 & 1197.1, failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et
15 seq., failure to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and
16 the applicable IWC Wage Order, failure to provide required rest periods in violation of Cal. Lab.
17 Code §§ 226.7 & 512 and the applicable IWC Wage Order, failure to provide accurate itemized
18 statements in violation of Cal. Lab. Code §§ 226, 226.2, failure to provide wages when due in
19 violation of Cal. Lab. Code §§ 201, 202, and 203, failure to timely pay wages in violation of Cal.
20 Lab. Code § 204, failure to reimburse employees for required expenses in violation of Cal. Lab.
21 Code § 2802, and unpaid wages due to alleged off the clock work.

22 b. The Released PAGA Claims are defined as all claims for PAGA
23 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
24 complaint, first amended complaint, and PAGA notice provided to the LWDA pursuant to Labor
25 Code section 2699.3, subd. (a), including but not limited to, claims involving Labor Code sections
26 200, 201, 201.3, 201.5, 202, 201.3, 202, 203, 204, 205.5, 206.5, 210, 218.5, 218.6, 226, 226.2,
27 226.3, 226.7, 246, 510, et seq., 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
28 1198, 1199, 2802, 2804, 2698 et seq., 2699, 2699.3, 2699.5, the applicable IWC Wage Order, any

1 alleged failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 & 1197.1,
2 failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq., failure to provide
3 required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC Wage
4 Order, failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and
5 the applicable IWC Wage Order, failure to provide accurate itemized statements in violation of
6 Cal. Lab. Code §§ 226, 226.2, failure to provide wages when due in violation of Cal. Lab. Code §§
7 201, 202, and 203, failure to timely pay wages in violation of Cal. Lab. Code § 204, failure to
8 reimburse employees for required expenses in violation of Cal. Lab. Code § 2802, and unpaid
9 wages due to alleged off the clock work, that occurred during the PAGA Period.

10 5. Class Counsel are awarded a Class Counsel Attorneys' Fees and Expenses
11 Payment in the amount of \$680,901.41 comprised of attorneys' fees in the amount of Six Hundred
12 Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$666,666.66) and
13 reimbursement of costs and expenses in the amount of Fourteen Thousand Two Hundred Thirty-
14 Four Dollars and Seventy-Five Cents (\$14,234.75). Class Counsel shall not seek or obtain any
15 other compensation or reimbursement from Defendant, Plaintiffs, or members of the Class.

16 6. The payment of the Service Awards to the Plaintiffs in the amount of
17 \$10,000.00 to each Plaintiff is approved.

18 7. The payment of \$25,000.00 to the Settlement Administrator for the
19 Administration Expenses is approved.

20 8. The PAGA Payment of \$100,000.00 is hereby approved as fair, reasonable,
21 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
22 finds that Plaintiffs and Class Counsel negotiated the PAGA Payment at arms-length, absent of
23 any fraud or collusion.

24 9. Final Judgment is hereby entered in this action. The Final Judgment shall
25 bind each Settlement Class Member.

26 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
27 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General
28 Act ("PAGA").

1 11. The term “Aggrieved Employees” is hereby defined to include all
2 individuals who are or previously were employed by Defendant in California and classified as a
3 non-exempt employee at any time during the period from May 19, 2020 through October 29,
4 2022.

5 12. The Court further finds and determines that Class Counsel satisfied
6 California Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of
7 claims arising under the Private Attorney General Act (“PAGA”) on March 6, 2023, and again on
8 October 3, 2023.

9 13. The Court orders Class Counsel to comply with California Labor Code §
10 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
11 Court’s entry of this Order.

12 14. The Agreement is not an admission by Defendant, nor is this Final
13 Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
14 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
15 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
16 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
17 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
18 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
19 concession with regard to the denials or defenses by Defendant and shall not be offered in
20 evidence in any action or proceeding against Defendant in any court, administrative agency or
21 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
22 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
23 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
24 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
25 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
26 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
27 claims being released by the Settlement.

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1 15. Notice of entry of this Final Approval Order and Judgment shall be given to
2 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send
3 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
4 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
5 indicated in the Notice Packet.

6 16. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
7 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
8 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
9 connection with the distribution of settlement benefits.

10 17. If the Settlement does not become final and effective in accordance with the
11 terms of the Settlement, resulting in the return and/or retention of the Maximum Settlement
12 Amount to Defendant consistent with the terms of the Settlement, then this Final Approval Order
13 and Judgment, and all orders entered in connection herewith shall be rendered null and void and
14 shall be vacated.

15 **IT IS SO ORDERED.**

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17 DATED: _____

Hon. Sunil R. Kulkarni
JUDGE OF THE SUPERIOR COURT