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16 *[Additional counsel on following page]*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 **KERRY N. EVANS and JOSE BALTAZAR,**
20 individually, and on behalf of the State of
21 California, as private attorney generals, and on
22 behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 **AMERI-KLEEN, a California Corporation,**
26 and DOES 1-50, inclusive,

27 Defendants.

Case No. 19STCV23104

[Assigned for All Purposes to the Hon.
Daniel J. Buckley; Dept. 1]

**REVISED [PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 20, 2021

Time: 10:30 a.m.

Dept.: 1

**RECEIVED
JAN 12 2021
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Attorneys for Plaintiffs and the Putative Class

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of a Class Action Settlement came before this Court,
3 on January 20, 2021, the Honorable Daniel J. Buckley presiding. The Court having considered the
4 papers submitted in support of the application of the parties, HEREBY ORDERS THE
5 FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Joint Stipulation of Settlement and Release of Class and
8 Representative Action, Addendum to Joint Stipulation of Settlement and Release of Class and
9 Representative Action, and Second Addendum to Joint Stipulation of Settlement and Release of
10 Class and Representative Action. All terms used herein shall have the same meaning as defined in
11 the Settlement Agreement, Addendum, and Second Addendum. The settlement set forth in the
12 Settlement Agreement, Addendum, and Second Addendum appears to be fair, adequate and
13 reasonable to the Class.

14 2. The Settlement falls within the range of reasonableness and appears to be
15 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
16 and final approval by this Court.

17 3. A final fairness hearing on the question of whether the proposed Settlement,
18 attorneys' fees and costs to Class Counsel, and the Class Representatives' Enhancement Awards
19 should be finally approved as fair, reasonable and adequate as to the members of the Class is
20 scheduled in Department 1 on the date and time set forth in the implementation schedule in
21 Paragraph 10 below.

22 4. This Court approves, as to form and content, the Notice of Proposed Class Action
23 Settlement and Hearing Date for Court Approval (the "Class Notice"), in substantially in the form
24 attached to the Supplemental Declaration of Craig J. Ackermann as **Exhibit C** and attached hereto as
25 **Exhibit A**. The Court approves the procedure for Class Members to participate in, to opt out of, and
26 to object to, the Settlement as set forth in the Settlement Agreement.

27 5. The Court directs the mailing of the Class Notice by first class United States mail to
28 the Class Members in accordance with the Implementation Schedule set forth below. The Court
finds the dates selected for the mailing and distribution of the Class Notice, as set forth in the

1 Implementation Schedule, meet the requirements of due process and provide the best notice
2 practicable under the circumstances and shall constitute due and sufficient notice to all persons
3 entitled thereto. The notice plan satisfies due process and California Rule of Court 3.766(d), (e), and
4 (f).

5 6. It is ordered that the Class is preliminarily certified for settlement purposes only and
6 the factors under California Code of Civil Procedure section 382 and California Rule of Court 3.769
7 are met. Numerosity is satisfied because the Settlement Class consists of approximately 2,095
8 employees who have been identified through Defendant's records. Commonality is satisfied because
9 the Settlement Class is subject to common compensation policies. Typicality is satisfied because
10 Plaintiffs' claims are typical of the Settlement Class and asserts claims regarding Defendant's
11 compensation practices that are at the core of this lawsuit. Adequacy is satisfied because Plaintiffs
12 are adequate to represent the Settlement Class and Plaintiffs' Counsel has extensive experience in
13 wage-and-hour litigation, including numerous class actions

14 7. The Court approves Plaintiff Kerry N. Evans and Jose Baltazar as Class
15 Representatives, and Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C., David
16 Winston of Winston Law Group, P.C., and Kevin Mahoney and Dionisios Aliazis of Mahoney Law
17 Group, APC as Class Counsel.

18 8. The Court approves Phoenix Class Action Administration Solutions as the Settlement
19 Administrator.

20 9. To facilitate administration of the Settlement pending final approval, the Court hereby
21 enjoins Plaintiffs and all Class Members from filing or prosecuting any claims, suits or
22 administrative proceedings (including filing claims with the Division of Labor Standards
23 Enforcement of the California Department of Industrial Relations or the Labor Workforce
24 Development Agency) regarding claims released by the Settlement, unless and until such Class
25 Members have filed valid Requests for Exclusion with the Settlement Administrator and the time for
26 requesting exclusion from the settlement has elapsed.

27 ///

28 ///

///

10. The Court orders the following **Implementation Schedule** for further proceedings:

| | | |
|----|--|---|
| a. | Deadline for Defendant to Submit Class Member Information to Settlement Administrator | [Within 14 days after entry by the Court of its Order of Preliminary Approval] S.A. ¶VI.B |
| b. | Deadline for Settlement Administrator to mail Class Notice to Class Members | [Within 28 days following the Preliminary Approval Date] S.A. ¶VI.B |
| c. | Deadline for Class Members to Object or Request to be Excluded from Settlement | [60 calendar days after mailing of the Class Notice] S.A. ¶VI.C, VI.D |
| d. | Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees and Costs, and Enhancement Award | [16 court days prior to the Final Approval and Fairness Hearing] |
| e. | Final Approval and Fairness Hearing | _____, 2021 at ____ a.m./p.m. |

IT IS SO ORDERED.

Dated: _____

HON. DANIEL J. BUCKLEY

EXHIBIT A

[CLASS MEMBER NAME and ADDRESS]

[CLASS MEMBER NAME], PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

*This is **not** a solicitation from a lawyer. A court authorized this notice.*

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Kerry N. Evans v. Ameri-Kleen, a California Corporation

Superior Court of The State of California, County of Los Angeles Case No. 19STCV23104

If you are or were employed by Ameri-Kleen as a non-exempt sanitor at any time between July 3, 2015 and [INSERT PRELIMINARY APPROVAL DATE], a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

The Court has granted preliminary approval of the Settlement. As a member of the Settlement Class, you have several options available to you:

| | |
|---|--|
| <p>PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT</p> | <p><u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you WILL receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will be covered by the release summarized in section 5 below and will therefore give up any rights you may otherwise have to sue Defendant separately regarding certain claims.</p> <p>Your estimated Individual Settlement Amount is [INSERT ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT AS CLASS PARTICIPANT].</p> <p>It is important that if your address has changed, you give your current mailing address to the Settlement Administrator to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved.</p> |
| <p>ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT</p> | <p>If you timely request in writing to be excluded from the proposed Settlement, you WILL NOT receive a share of the Net Settlement Amount, except for any allocated portion of the PAGA penalty amounts, which are distributed regardless of whether or not you opt out, and the settlement will not affect any rights you may otherwise have to sue Defendant separately about the same legal claims in this lawsuit.</p> |

| | |
|--------------------------------------|--|
| | Section 7 below explains how to request to be excluded from the Settlement. Your written Request for Exclusion/ Opt-Out letter must be postmarked by [REDACTED], 2020. |
| OBJECT | You may object to the Settlement if you did not ask to be excluded from the Settlement. If you timely submit in writing an objection to the Settlement and the Settlement is nonetheless granted final approval, you WILL (i) receive a share of the Settlement proceeds and (ii) release legal claims against Defendant. Your written notice of intent to object must be postmarked by [REDACTED], 2020. |
| DISPUTE YOUR SETTLEMENT AWARD | You may dispute Defendant’s records of number of weeks worked during the Class Period by submitting information to the Settlement Administrator, not later than [REDACTED], 2020. The Settlement Administrator shall make the final decision based on the information presented by you and Defendant. |

1. What is this lawsuit about?

This action was filed on July 3, 2019. Plaintiffs allege that Ameri-Kleen (“Defendant”), failed to provide timely meal periods within the first five hours and to provide lawful second meal periods for shifts worked in excess of ten hours and or pay meal period premiums; failed to pay minimum wages for all hours worked based on Defendant’s alleged policy and practice of automatically deducting thirty minutes from each shift worked in excess of six hours regardless of whether or not an employee received a meal period; failed to pay overtime wages; failed to provide rest periods; failed to provide accurate itemized wage statements; and failed to timely pay wages. Plaintiffs also seek related penalties under the Private Attorneys’ General Act of 2004 (“PAGA”) and restitution under Cal. Bus. & Prof. Code section 17200.

Defendant denies Plaintiffs' claims and allegations and asserts that they have complied with all of their legal obligations under the California Labor Code, PAGA, Cal. Bus. & Prof. Code section 17200, and other applicable laws.

This description of the case is general and does not cover all the issues of this case. This Notice is not an expression by the Court about the merits of the case. The Settlement is not an admission of any wrongdoing, and the Court has not made any findings of liability.

2. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiffs’ allegations or Defendant’s defenses.

3. Why did this case settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiffs believe their claims and that of the Class have merit, Plaintiffs recognize that litigating is a risky proposition, and that they may not have prevailed on all or some of their claims. Likewise, while Defendant is confident that it has strong defenses to Plaintiffs’ and the Class’ claims, they recognize the risks, distractions, and costs involved with litigation. The

Parties attended a mediation conference with a third-party neutral and, recognizing the risks and costs inherent in litigation, thereafter reached the proposed Settlement of the claims asserted in the lawsuit.

On [INSERT PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the proposed Settlement, upon finding this proposed Settlement is the result of good faith, arm's-length negotiations between the parties through their respective attorneys. The Court has expressed no opinion on the merits of Plaintiffs' claims or Defendant's defenses.

4. What are the terms of the proposed Settlement and how much will I receive?

Without admitting any fault or liability and in exchange for a release of all claims, Defendant has agreed to pay a total of five hundred fifty thousand dollars (\$550,000.00) pursuant to the Payment Plan¹ to create a non-reversionary settlement fund ("Gross Settlement Amount"). The Gross Settlement Amount shall be available to pay each Class member who has not previously opted out.

Under the proposed Settlement, the following amounts will be deducted from the Gross Settlement Amount before any payments are made to employees, subject to final approval by the Court:

- Attorneys' Fees – up to one hundred eighty-three thousand dollars (\$183,333.33)
- Attorneys' Costs of Suit – up to twenty thousand dollars (\$20,000.00)
- PAGA Payment – ten thousand dollars (\$10,000.00) (\$7,500.00 of the \$10,000.00 Payment to the Labor & Workforce Development Agency; and \$2,500.00 of the \$10,000.00 in PAGA Penalties will be distributed to all Class Participants).
- Settlement Administration Expenses – up to twenty-five thousand dollars (\$25,000.00)
- Service Awards to Class Representatives – up to five thousand dollars (\$5,000.00) each (totaling \$10,000.00)

After these deductions, three hundred four thousand one hundred sixty-six dollars and sixty-seven cents (\$304,166.67) will be available for payment to the Settlement Class receiving this notice as the Net Settlement Amount. Specifically, each Settlement Class Member's share shall be based on his or her percentage of weeks worked during the Settlement Class Period (i.e., the proportional amount of weeks worked of each settlement class member during the Settlement Class Period as a percentage of all weeks worked by all Settlement Class Members). The Settlement Class Period shall mean the period from July 3, 2015 to [INSERT PRELIMINARY APPROVAL DATE]. The proposed method of allocation is fair and reasonable and reflects the strength and value of the claims at issue in this action. Class Counsel proposes this distribution to reflect their valuation of each of the potential claims at issue in this lawsuit. 10% of each Individual Settlement Amount shall constitute wages and reported on an IRS W-2 basis and 90% to non-wage premiums, penalties and interest, to be reported on an IRS form 1099.

Final approval and a determination of attorneys' fees, attorneys' costs, PAGA penalties, settlement administration expenses, and a service award to the class representative are subject to a fairness hearing that will occur on [INSERT FINAL APPROVAL HEARING DATE] in Dept. 1 of the Los Angeles County Superior Court, 312 N. Spring Street, Los Angeles, California 90012 on [REDACTED], 2020, at XX Pacific Time.

¹ "Payment Plan" shall mean the schedule by which Defendant will fund the Settlement. Defendant shall fund 10% of the Settlement within 90 days of March 30, 2020, and another 10% shall be funded within 90 days of the initial 10% payment. Defendant shall fund a further \$133,000.00 of the Settlement Amount within six months of the Effective Date. Defendant shall fund the remaining balance of the Settlement Amount within six months after Defendant's \$133,000.00 installment payment.

5. What rights am I giving up?

As part of the Settlement, Plaintiffs and each member of the Settlement Class (excluding those who elect to exclude themselves from the class settlement) will fully release and discharge Ameri-Kleen, and all of their past, present, or future affiliated entities, parents, subsidiaries, predecessors or merged entities, partners, and each of their past, present and future owners, officers, directors, trustees, agents, shareholders, executives, managers, trustees, and employees.

The Release covers all claims alleged in, or arising out of facts asserted in the operative Consolidated Second Amended Complaint (the “Complaint”) asserted against Defendant during the Settlement Class Period from July 3, 2015 through [INSERT PRELIMINARY APPROVAL DATE] (with respect to claims for (1) Defendant’s failure to provide meal periods and/or pay missed meal period premiums (Labor Code §§ 226.7, 512 and IWC Wage order 5-2001); (2) Defendant’s failure to pay minimum wages for all hours worked (Labor Code §§ 1194 and 1194.2); (3) Defendant’s failure to provide complete/accurate wage statements (Labor Code § 226); (4) waiting time penalties (Labor Code § 201-203); (5) Defendant’s failure to pay overtime wages (Labor Code § 510); (6) failure to provide rest periods (Labor Code § 226.7); (7) Derivative UCL violations (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); (8) Derivative penalties pursuant to PAGA (Cal. Labor Code §§ 2699, *et seq.* and 558), as well as PAGA penalties for Labor Code § 2802 claims, and all other wage and hour claims arising from the facts and causes of action alleged in the Complaint and based on the factual predicates of the Complaint that will include all the foregoing claims, under California, federal or local law. The Release does not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor do they include any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; the Fair Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA).

6. What are PAGA Penalties?

Under PAGA, the state of California deputizes private attorney generals, such as Plaintiffs, to prosecute employers for alleged violations of the Labor Code and all employees who worked for Defendant during the one year period preceding the submission of Plaintiff’s PAGA letter to the LWDA through the date of preliminary approval are entitled to share in the 25% of the penalties that would otherwise be recoverable by the State if it directly prosecuted Defendant for the alleged Labor Code violations.

Under the terms of the Settlement, ten thousand dollars (\$10,000.00) of the Gross Settlement Amount is allocated to alleged Private Attorneys General Act (PAGA) civil penalties (“PAGA Penalties”), subject to Court approval. By law, 75% of the PAGA Penalties (*i.e.*, \$7,500.00) will be paid to the California Labor & Workforce Development Agency and 25% of the PAGA Penalties (*i.e.*, \$2,500) will be distributed to the Class Participants.

7. What if I do not wish to be part of the proposed Settlement?

Anyone not wishing to participate in the proposed Settlement may exclude himself or herself (“opt out”)

by completing, signing and mailing a Request for Exclusion letter by **XXXX** to the Settlement Administrator as follows.

| | |
|---|--|
| Settlement Administrator: INSERT INSERT INSERT | |
|---|--|

If your Request for Exclusion is postmarked after **XXX**, it will be rejected, and you will be a Class Member and be bound by the Settlement terms.

To be valid, any Request for Exclusion must state something similar to the effect that the Settlement Class Member wishes to be excluded from the Class Settlement and contain the following additional information: (1) the name, employee identification number and/or last four digits of the employee’s social security number for identification purposes, address for correspondence, and signature; (2) a statement that the Settlement Class member wishes to be excluded from the class settlement such as “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN EVANS V. AMERI-KLEEN”; and (3) be postmarked by the **[INSERT RESPONSE DEADLINE <<sixty (60) days>>]** and mailed to the Settlement Administrator at the address specified above.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Class Participant and will not receive payment as part of this proposed Settlement (except for his or her allocation of PAGA penalties, if any). Such persons will keep any rights they may otherwise have to sue Defendant separately about the claims made in this lawsuit.

8. What if I have an objection?

Any objection to the proposed Settlement must be in writing and mailed to the Settlement Administrator (identified above) by **_____**. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name; (2) be postmarked by the **[INSERT RESPONSE DEADLINE]** and mailed to the Settlement Administrator at the address specified above; and (3) should provide each specific reason in support of the objection. Class Members need not include legal arguments for their written objections to be considered. If you wish to appear at the Final Approval and Fairness Hearing, in person or through an attorney, you need not file a notice of intention to appear at the same time as your objection is filed. Filing the notice of intention to appear is not necessary to preserve your right to appear at the Final Approval and Fairness Hearing.

9. Who represents the Class?

The Court has appointed Plaintiffs (Kerry N. Evans and Jose Baltazar) as the class representatives and appointed the following Plaintiffs’ attorneys as Class Counsel:

Craig J. Ackermann
Ackermann & Tilajef, P.C.
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249 E. Ocean Boulevard, Suite 814

Long Beach, CA 90802

Phone: (562) 590-5550

Fax: (562) 590-8400

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed Settlement, you are free to hire one at your own expense.

10. What happens next in the case?

The proposed Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 1 of the Los Angeles County Superior Court, 312 N. Spring Street, Los Angeles, California 90012 on , 2020, at XX Pacific Time, to consider any objections and determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the settlement of the PAGA representative claim and also Class Counsel's request for attorneys' fees and costs, the costs of settlement administration, and the proposed service awards. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing. Face masks and/or facial coverings are required and mandatory at all times to enter any courthouse or courtroom and must be worn covering the nose and mouth. Social distancing will be observed in the courthouse and courtroom in the event you elect to appear at the hearing. If a Class Member would like to arrange to appear by telephone or video conference, please contact Class Counsel and they will make efforts to facilitate that or visit LACourtConnect at <https://my.lacourt.org/laccwelcome> for instructions on how to appear remotely.

Due to COVID-19 related and the Defendant's financial issues, Defendant shall fund the settlement pursuant to a payment plan. Specifically, Defendant shall fund 10% of the Settlement within 90 days of March 30, 2020, and another 10% shall be funded within 90 days of the initial 10% payment. These funds shall be deposited in a trust account to be established by the Settlement Administrator. Defendant shall fund a further one hundred thirty-three thousand dollars (\$133,000.00) of the Settlement Amount within six months of the Effective Date, which will be sixty (60) days after the Court grants final approval, if there are no appeals. Defendant shall fund the remaining balance of the Settlement Amount within six months after Defendant's one hundred thirty-three thousand dollars (\$133,000.00) installment payment.

Therefore, if the Court grants final approval, settlement payments will not be distributed until approximately one year and two months after the final approval order is entered.

11. How can I receive more information?

This Notice is a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the proposed Settlement, you may review the detailed “Stipulation of Settlement” on file with the Clerk of the Court as well as the pleadings and other records in this litigation at the Office of the Clerk of the Los Angeles County Superior Court, 312 N. Spring Street. Los Angeles, California 90012. You must make an appointment to view documents at the Office of the Clerk.

This notice summarizes the proposed settlement. More details are in a Settlement Agreement and a website created by the Settlement Administrator accessible at: www.xxxxxx.com. You may also call or email Class Counsel (listed above) or the Settlement Administrator (listed above). You may also ask Class Counsel to send you a copy of the Joint Stipulation of Settlement and Release of Class and Representative Action. The pleadings and other records in this litigation may, absent any COVID-19 related orders and/or procedures implemented by the Court, be examined at the Office of the Clerk of the Los Angeles County Superior Court, 312 N. Spring Street. Los Angeles, California 90012. You must make an appointment to view documents at the Office of the Clerk. Additional information is also available through the Court’s online system at <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> by searching using the case number.

Please do not telephone the Court, the Office of the Clerk, or Defendant for information regarding this proposed Settlement.