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FILED
Superior Court of California
County of Los Angeles

01/11/2023

David W. Slayton, Executive Officer / Clerk of Court

By: A. Morales Deputy

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

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16 JAMES MERRICK, CRISTINA CARRILLO,
17 CINDY ESPINOZA, and DIANA LUNA
18 RAMIREZ, individually, and on behalf of other
19 members of the general public similarly situated,

20 Plaintiff,

21 vs.

22 NIPPON EXPRESS NEC LOGISTICS
23 AMERICA, INC., a Delaware Corporation; NEC
24 CORPORATION OF AMERICA, an unknown
25 business entity; RALLY MANAGEMENT
26 SERVICES, LLC, a California corporation; and
27 DOES 1 through 100, inclusive,

28 Defendants.

Case No.: BC651044
Related to and consolidated with: BC678841

Assigned for All Purposes to:
The Hon. Lawrence P. Riff
Dept.: SSC-7

[PROPOSED] JUDGMENT

Hearing Date: January 11, 2023
Time: 11:00 a.m.

Complaint Filed: February 17, 2017
Consolidated
Complaint Filed: January 31, 2018
FAC Filed: July 10, 2018
Trial Date: None Set

1 The Court finds as follows:

2 A. On June 20, 2022, the Court preliminarily approved (1) the Second Amended
3 Stipulation Re: Partial Settlement of Class Action¹ (“NECLA Settlement” or “NECLA Settlement
4 Agreement”) entered between Plaintiffs Cristina Carrillo (“Carrillo Plaintiff”), Cindy Espinoza
5 (“Espinoza Plaintiff”), Diana Luna Ramirez (“Ramirez Plaintiff”, and together with Carrillo
6 Plaintiff and Espinoza Plaintiff, “Carrillo Plaintiffs”), James Merrick (“Merrick Plaintiff”, and
7 together with Carrillo Plaintiffs, “Plaintiffs”) and Defendant Nippon Express NEC Logistics
8 America, Inc. (“Defendant NECLA”), and (2) the Amended Class Action Settlement Agreement²
9 (“NECAM Settlement” or “NECAM Settlement Agreement”) entered between Merrick Plaintiff
10 and Defendant NEC Corporation of America (“Defendant NECAM”) in the following consolidated
11 actions:

- 12 1. *Merrick v. Nippon Express NEC Logistics America, Inc.*, Los Angeles
13 Superior Court, Case No. BC651044; and
- 14 2. *Carrillo et al., v. Nippon Express NEC Logistics America, Inc.*, Los Angeles
15 Superior Court, Case No. BC678841 (collectively, “Actions”)

16 B. The Court granted final approval of the NECLA Settlement on January 11, 2023,
17 and found that the NECLA Settlement was fair, adequate, and reasonable. No Settlement Class
18 Member or PAGA Group Member objected to the NECLA Settlement. Nor did the Labor &
19 Workforce Development Agency (“LWDA”) object to the NECLA Settlement.

- 20 a. For purposes of effectuating the NECLA Settlement, the Court certified a class
21 defined as “all current and former non-exempt Direct and Indirect Employees who
22 worked for Defendant NECLA at the Rancho Dominguez Location during the
23

24
25 ¹ The Second Amended Stipulation Re: Partial Settlement of Class Action is attached as Exhibit E
26 to the Second Supplemental Declaration of Sam Kim in Support of Plaintiffs’ Motion for
27 Preliminary Approval of Class Action and PAGA Settlement involving Defendant Nippon Express
28 NEC Logistics America, Inc., filed on or about May 20, 2022.

² The Amended Class Action Settlement Agreement is attached as Exhibit 2 to the Declaration of
Ovsanna Takvoryan in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
Settlement involving Defendant NEC Corporation of America, filed on or about June 20, 2022.

1 Class Period”³ (“NECLA Settlement Class” or “NECLA Settlement Class
2 Members”).

3 b. The class period for Direct Employees begins February 17, 2013 and the class
4 period for Indirect Employees begins October 10, 2013. The class period for both
5 Direct and Indirect Employees ends on and through July 8, 2020 (“NECLA Class
6 Period”).

7 c. For purposes of effectuating the NECLA Settlement, “PAGA Group Members”
8 are defined as “all current and former non-exempt Direct and Indirect Employees
9 who worked for Defendant NECLA at the Rancho Dominguez Location during the
10 PAGA Period.”

11 d. The PAGA Period is from November 10, 2016 through July 8, 2020 (“PAGA
12 Period”).

13 C. The Court granted final approval of the NECAM Settlement on January 11, 2023,
14 and found that the NECAM Settlement was fair, adequate, and reasonable. No Settlement Class
15 Member objected to the NECAM Settlement.

16 a. For purposes of effectuating the NECAM Settlement, the Court certified a class
17 defined as “all current and former hourly-paid or non-exempt employees who
18 directly worked for Defendant NECAM within the State of California at any time
19 during the period from February 17, 2013 continuing up to and including July 8,
20 2021.” (“NECAM Settlement Class” or “NECAM Settlement Class Members”).

21 b. The class period is February 17, 2013 continuing up to and including July 8, 2021
22 (“NECAM Class Period”).

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24 _____
25 ³ The term “Rancho Dominguez Location” shall mean the address location at 18615 S. Ferris Pl.,
26 Rancho Dominguez, California 90220-6452. The term “Direct Employees” shall mean non-exempt
27 employees who worked at the Rancho Dominguez Location and received wage statements
28 identifying Defendant NECLA as the employer. The term “Indirect Employees” shall mean non-
exempt employees who worked at the Rancho Dominguez Location and received wage statements
identifying Staffmark, Accountemps, First Step Staffing, JBS, Rally Staffing, OS4Labor, or
Pasona, as the employer.

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

2 1. Carrillo Plaintiff, Espinoza Plaintiff, Diana Luna Ramirez (“Carrillo Plaintiffs”),
3 Merrick Plaintiff, and together with Carrillo Plaintiffs, (“Plaintiffs shall take nothing from
4 Defendant NECLA, except as expressly set forth in the NECLA Settlement Agreement and the
5 Court’s Order Granting Motion for Final Approval of Class Action Settlement entered on ____.

6 2. This Judgment is as to all Actions in the First Amended Consolidated Class Action
7 Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor
8 Code § 2698 *et seq.* (“FACC”).

9 3. With respect to the NECLA Settlement:

10 a. Defendant NECLA shall provide the Settlement Administrator, Phoenix
11 Settlement Administrator with the Gross Settlement Amount of \$731,250.00, no later than
12 fifteen (15) business days following the Effective Date.⁴ The Gross Settlement Amount
13 does not include the employer’s share of payroll taxes, which must be paid separately by
14 Defendant NECLA to the Settlement Administrator, along with 50% of the Notice
15 Publication Costs in the amount of \$4,485.04, no later than fifteen (15) business days
16 following the Effective Date.

17 b. The Settlement Administrator shall disburse the following amounts from the
18 Gross Settlement Amount of \$731,250.00:

19 i. \$26,000.00 total for Service Awards to Plaintiffs in the amount of \$6,500.00
20 each, to Carrillo Plaintiff, Espinoza Plaintiff, Ramirez Plaintiff and Merrick
21 Plaintiff;

22 ii. \$11,250.00 (75% of the \$15,000.00 PAGA Allocation) shall be paid to the

23 ⁴ “Effective Date” is defined as the first court day after the later of the following events has
24 occurred: when the period for filing any appeal, writ or other appellate proceeding opposing the
25 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or
26 any appeal, writ or other appellate proceeding opposing the Settlement has been voluntarily or
27 involuntarily dismissed finally and conclusively with no right to pursue further remedies or relief;
28 or any appeal, writ or other appellate proceeding has upheld the Court’s order granting final
approval of the NECLA Settlement with no right to pursue further remedies or relief. In this regard,
the NECLA Settlement shall not become effective until the Court’s order approving the NECLA
Settlement is completely final such that there is no further recourse by an appellant, objector, or
intervenor who seeks to contest the NECLA Settlement.

1 Labor & Workforce Development Agency and the remaining \$3,750.00 of
2 the PAGA Allocation shall be distributed to PAGA Group Members as set
3 forth in the NECLA Settlement Agreement;

4 iii. \$11,000.00 shall be paid to Phoenix Settlement Administrator for settlement
5 administration costs;

6 iv. \$4,485.04 shall be paid to Phoenix Settlement Administrator for 50% of the
7 Notice Publication Costs;

8 v. Attorneys' fees in the total amount of \$243,750.00 shall be paid as follows:

9 1. 50% to Lawyers for Justice, PC

10 2. 50% to Verum Law Group, APC

11 vi. Reimbursement of \$41,244.73 in litigation costs shall be paid as follows:

12 1. \$17,032.17 to Lawyers for Justice, PC

13 2. \$24,212.56 to Verum Law Group, APC

14 vii. The remaining amount ("Net Settlement Amount") will be distributed to
15 Settlement Class Members as set forth in the NECLA Settlement
16 Agreement.

17 c. All Individual Settlement Payment and PAGA Payment checks shall be
18 negotiable for 180 days from the date of mailing. The Settlement Administrator shall
19 distribute the funds, including any unpaid cash, or remaining residue, including interest,
20 and unclaimed or abandoned funds *after* completion of Redistribution, from this
21 settlement to the Legal Aid Foundation of Los Angeles.

22 d. **Releases of Class Claims by Plaintiffs and Settlement Class Members:**

23 Upon the Settlement Administrator's receipt of the Gross Settlement Amount, the Final
24 Approval of the Settlement by the Court and the Settlement becoming Effective, each
25 Settlement Class Member will be deemed to have fully and finally released and discharged
26 Defendant NECLA and all of its present, past and future subsidiaries, affiliates, parents,
27 indirect-subsidiaries, indirect-parents, and attorneys and each of their company-sponsored
28 employee benefit plans, and their respective successors and predecessors in interest, all

1 of their respective officers, directors, employees, members, administrators, fiduciaries,
2 trustees, beneficiaries and agents, and each of their past, present, and future officers,
3 directors, shareholders, owners, members, employees, agents, principals, heirs,
4 representatives, accountants, auditors, consultants, insurers and reinsurers, but excluding
5 NEC Corporation of America (the “Released Parties”) from the “Released Class Claims.”
6 For purposes of this Agreement, the “Released Class Claims” are defined as all claims
7 alleged by Plaintiffs in the FACC against Defendant NECLA as well as all claims that
8 could be alleged by Plaintiffs based on the allegations contained in the FACC against
9 Defendant NECLA, at any time during the Class Period, excluding the Released PAGA
10 Claims.

11 e. **Release of PAGA Claims by Carrillo Plaintiffs, the LWDA, and PAGA**
12 **Group Members:** Upon the Settlement Administrator’s receipt of the Gross Settlement
13 Amount and the employer’s portion of payroll taxes, and after the Effective Date, Carrillo
14 Plaintiff, Espinoza Plaintiff, Ramirez Plaintiff, and the LWDA will be deemed to have
15 released the Released Parties of and from all of the Released PAGA Claims during the
16 PAGA Period. All PAGA Group Members will also be bound by the judgment entered by
17 the Court as to the Released PAGA Claims. “Released PAGA Claims” means all claims
18 for civil penalties that could have been sought by the Labor Commissioner for the alleged
19 violations identified in Carrillo Plaintiff, Espinoza Plaintiff, and Ramirez Plaintiff’s
20 respective Labor Code section 2699 notices to the LWDA, including Labor Code sections
21 201, 202, 203, 204, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 1194, and 1197.

22 f. **Release of Claims by Plaintiffs:** Plaintiffs hereby each fully release and
23 forever discharge the Released Parties from any and all claims, causes of action, damages,
24 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorney’s fees,
25 costs, and any other form of relief or remedy in law, equity, or whatever kind or nature,
26 whether known or unknown, suspected or unsuspected (exclusive of any workers
27 compensation claims), including but not limited to: (1) the Action and any claims arising
28 out of or related to the Action; (2) any claims for wrongful termination, discrimination,

1 harassment, and/or retaliation; (3) any act, omission, or occurrence arising out of or related
2 to Plaintiffs' employment with Defendant NECLA occurring on and before the Final
3 Effective Date of the Settlement; and (4) any other form of relief or remedy of any kind,
4 nature, or description whatsoever, whether premised on statute, contract, tort or other theory
5 of liability under state, federal or local law. Plaintiffs each hereby further agree that,
6 notwithstanding § 1542 of the California Civil Code, all claims that Plaintiffs each may
7 have against Released Parties, known or unknown, suspected or unsuspected, are hereby
8 released. Section 1542 provides: "A general release does not extend to claims which the
9 creditor does not know or suspect to exist in his or her favor at the time of executing the
10 release, which if known by him or her must have materially affected his or her settlement
11 with the debtor." Plaintiffs each expressly waive the provisions of section 1542 with full
12 knowledge and with the specific intent to release all known or unknown, suspected or
13 unsuspected claims arising on or before the Effective Date of the Settlement, and therefore
14 Plaintiffs each specifically waive the provisions of any statute, rule, decision or other source
15 of law of the United States or of any state of the United States or any subdivision of a state
16 which prevents release of unknown claims.

17 4. With respect to the NECAM Settlement:

18 a. Defendant NECAM shall provide the Settlement Administrator, Phoenix
19 Settlement Administrator with the Gross Settlement Fund of \$250,000.00, within thirty (30)
20 calendar days of the Effective Date.⁵ The Gross Settlement Fund does not include the

21 ⁵ Effective Date" refers to, if there are no timely Objections by members of the Settlement Class
22 and/or any such Objections have been withdrawn prior to the Final Approval Hearing, the date the
23 Court signs an order granting final approval of the Settlement Agreement. If timely Objections are
24 submitted by one or more members of the Settlement Class which are not thereafter withdrawn
25 prior to the Final Approval Hearing, the Effective Date will be the later of the following events: (1)
26 when the period for filing any appeal, writ or other appellate proceeding with respect to the Court's
27 final approval order and judgment has lapsed; (2) when any appeal, writ, or other appellate
28 proceeding with respect to the Court's final approval order and judgment has been dismissed finally
and conclusively with no right to pursue further remedies or relief; or (3) when any appeal, writ, or
other appellate proceeding has upheld the Court's final approval order and judgment with no right
to pursue further remedies or relief. It is the intention of the Parties that the Settlement will not
become effective until the Court's final approval order and entered judgment is completely final,
and there is no further recourse by any appellant or objector who seeks to contest the Settlement.

1 employer's share of payroll taxes, which must be paid separately by Defendant NECAM to
2 the Settlement Administrator, within thirty (30) calendar days of the Effective Date.

3 b. The Settlement Administrator shall disburse the following amounts from the
4 Gross Settlement Fund of \$250,000.00:

5 i. \$8,500.00 shall be paid to Plaintiff Merrick as a Class Representative Service
6 Award;

7 ii. \$3,750.00 shall be paid to Phoenix Settlement Administrators for settlement
8 administration expenses;

9 iii. \$87,500.00 shall be paid to Class Counsel, Lawyers *for* Justice, PC, for
10 attorneys' fees; and

11 iv. \$8,211.28 shall be paid to Class Counsel, Lawyers *for* Justice, PC, for
12 reimbursement of actual litigation costs and expenses.

13 v. The remaining amount ("Net Settlement Fund") will be distributed to
14 Settlement Class Members as set forth in the NECAM Settlement
15 Agreement.

16 c. All Individual Settlement Payment checks shall be negotiable for 180 days
17 from the date of mailing. The Settlement Administrator shall distribute the funds,
18 including any unpaid cash, or remaining residue, including interest, and unclaimed or
19 abandoned funds, from this settlement to Legal Aid at Work.

20 d. **Release of Class Claims by Plaintiff Merrick and NECAM Class**
21 **Members:** Upon Defendant's funding of the Settlement, and except as to rights or claims
22 as may be created by the Settlement Agreement, all members of the Settlement Class will
23 be deemed to have fully and finally released and discharged Defendant NECAM and its
24 present and former parent companies, subsidiaries, as well as their shareholders, officers,
25 directors, employees, successors, and assigns, but excluding Nippon Express NEC
26 Logistics America, Inc. (the "Released Parties") from the any and all claims, debts, wages,
27 liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees,
28 damages, action or causes of action of whatever kind or nature, that were pled or which

1 could have been pled based on the factual allegations contained in the Operative
2 Complaint, arising under California law, including, but not limited to, any claims for
3 unpaid wages, unpaid minimum wage or overtime, record-keeping violations, wage
4 statement violations, meal period and rest period violations including claims for premium
5 pay, unreimbursed business-related expenses, interest, “waiting time” penalties,
6 violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d),
7 1194, 1197, 1197.1, 1198, 2800, and 2802, liquidated damages, restitution (including but
8 not limited to pursuant to Business & Professions Code Sections 17200, *et seq.*), costs,
9 and attorneys’ fees, which arose during the period beginning February 17, 2013 and
10 continuing up to and including July 8, 2021 (collectively, the “Released Claims”).

11 e. **Release of Claims by Merrick Plaintiff:** Merrick Plaintiff hereby fully
12 releases and forever discharges the Released Parties from any and all liability, claims and
13 demands up to the date of the Settlement Agreement and General Release, including but not
14 limited to, claims relating to Merrick Plaintiff’s alleged employment with Defendant
15 NECAM, including and not limited to, claims, demands or actions relating to thereto,
16 arising under Defendant NECAM’s policies and procedures, whether formal or informal;
17 the United States Constitution or the State of California Constitutions; Title VII of the Civil
18 Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Americans with
19 Disabilities Act; the Family and Medical Leave Act; the California Fair Employment and
20 Housing Act; the California Family Rights Act; tort, contract or common law; and any other
21 federal, state or local statute, ordinance or regulation (including without limitation, the
22 California Civil Code, the California Labor Code, the California Government Code, and the
23 California Health & Safety Code). Merrick Plaintiff hereby further agrees that,
24 notwithstanding § 1542 of the California Civil Code, all claims that Merrick Plaintiff may
25 have against Released Parties, known or unknown, suspected or unsuspected, are hereby
26 released. Section 1542 provides: “A general release does not extend to claims which the
27 creditor does not know or suspect to exist in his or her favor at the time of executing the
28 release, which if known by him or her must have materially affected his or her settlement

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with the debtor.”

5. Pursuant to California Rules of Court, rule 3.769(h), the Court retains jurisdiction over the parties, all matters arising out of, or related to the Actions, the NECLA Settlement and the NECAM Settlement (together, the “Settlements”), their administration and consummation, and the determination of all controversies relating thereto, to enforce the Settlements and the terms of this Judgment.

6. The Settlement Administrator shall post the Judgment on the Settlement Administrator’s website within seven (7) calendar days after entry of Judgment. The Settlement Administrator shall post a copy of the signed Judgment for one hundred eighty (180) calendar days on its website in compliance with Rule 3.771(b) of the California Rules of Court in order to provide notice to the Class Members of this Judgment.

7. Within 10 days after entry of this order, the Carrillo Plaintiffs shall submit this Judgment to the LWDA in accordance with Labor Code section 2699(l)(3).

8. This Judgment is a final disposition of the Actions in their entirety.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.

DATED: 01/11/2023



Lawrence P. Riff / Judge
The Hon. Lawrence P. Riff
Judge of the Superior Court