

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DWAYNE BALLARD,

Plaintiff,

vs.

**THE KENAN ADVANTAGE GROUP,
INC.,**

Defendant.

Case No. 5:20-cv-1042

Magistrate Judge Carmen E. Henderson

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

The Unopposed Motion of Plaintiff Dwayne Ballard (“Plaintiff”) for Preliminary Approval of Class Action Settlement (“Motion”) was submitted to the Court on August 23, 2021. The Court, having considered the Stipulation of Settlement,¹ and the Settlement Protocol, the amended Class Notices to the Disclosure and Adverse Action Classes, the calculation of settlement payments, and the declaration of counsel filed concurrently with this Motion; having considered Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, memorandum of points and authorities in support thereof, and good cause appearing, **HEREBY**

ORDERS THE FOLLOWING:

1. The Court **GRANTS** preliminary approval of the class action settlement as set forth in the Stipulation and finds its terms to be within the range of reasonableness of a settlement that

¹ All capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to them in the the Stipulation of Settlement. On September 9, 2021, in accordance with Court's instructions, Plaintiff filed Amended Exhibits B through G to the Stipulation of Settlement. All references to Class Notices refer to the amended Class Notices (ECF No. 93).

ultimately could be granted approval by the Court at a Final Approval hearing. The Court preliminarily approves the terms of the Settlement Agreement and finds that they fall within the range of approval as fair, adequate, and reasonable. Based on a review of the papers submitted by Plaintiff, the Court finds that the settlement is the result of arm's-length negotiations conducted after Plaintiff and/or his counsel adequately investigated the claims and became familiar with the strengths and weaknesses of the claims. The assistance of experienced mediators Jill R. Sperber and the Honorable Diane Walsh (Ret.) in the settlement process supports the Court's conclusion that the settlement is non-collusive and reasonable. The settlement is presumptively valid, subject only to any objections that may be raised pursuant to the terms of the Settlement Agreement.

2. Class Members who do not effectively opt out of the Settlement as provided herein may object to the terms of the Settlement and participate at the Final Approval Hearing. Class Members seeking to file a written objection to the terms of the Settlement must submit the written objection to the Settlement Administrator and/or file it with the Court and provide notice to all counsel identified in Sections 1.6 and 1.14 of the Stipulation of Settlement no later than 35 calendar days after the original date on which the Settlement Administrator emails or mails the initial notice. Written objections must be signed by the objector and must include (1) the name of the Civil Action and case number, "*Dwayne Ballard v. The Kenan Advantage Group, Inc.*, Civil Action No. 5:20-cv-1042;" (2) the objector's name, address, telephone number, and email address; (3) the basis upon which the objector claims to be a Class Member; (4) the grounds for the objection, including supporting law or evidence, if any; (5) the name and contact information of attorneys representing, advising, or assisting the objector in connection with the objection or who may profit from the pursuit of the objection; and (6) a statement indicating whether the objector intends to appear at the Final Approval Hearing personally or through counsel. Any interested party can file

a reply to any objection to the Settlement no later than 5 court days before the Final Approval Hearing, or as otherwise directed by the Court. To the extent a timely objection is withdrawn before final approval, such an objection shall be treated as though no objection has been made.

3. The procedures and requirements for submitting objections in connection with the Final Approval hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

4. For purposes of the Settlement, the Court finds that the proposed Settlement Classes are ascertainable and that there is a sufficiently well-defined community of interest among the Class Members in questions of law and fact. Therefore, for Settlement purposes only, the Court grants conditional certification of the following Settlement Classes as follows:

The **Disclosure Class**, which includes:

All persons residing in the United States: (1) who applied for a company driver position with Defendant described by 15 U.S.C. § 1681b(b)(2)(C) during the Class Period; (2) about whom Defendant procured a Consumer Report; and (3) whom Defendant did not hire.

The **Adverse Action Class**, which includes:

All persons residing in the United States: (1) who are members of the Disclosure Class; and (2) who are listed on KAG's Tenstreet tracking notes with at least one reference to "MVR," "DAC," "Speed" or "Fals."

5. For purposes of the Settlement, the Court designates Dwayne Ballard as Class Representative, and designates CounselOne, P.C. and O'Toole, McLaughlin, Dooley & Pecora Co., L.P.A. as Class Counsel.

6. The Court designates American Legal Claim Services, LLC as the third-party Settlement Administrator for disseminating notices.

7. The Court approves, as to form and content, the amended Class Notices attached as Amended Exhibits B and C of the Stipulation. (ECF No. 93)

8. The Court finds that the form of notice to the Settlement Class Members regarding the pendency of the action and of the Settlement Agreement and the methods of giving notice to Settlement Class Members constitute the best notice practicable under the circumstances and constitute valid, due, and sufficient notice to all Class Members. The form and method of giving notice complies fully with the requirements of the Federal Rules of Civil Procedure and the United States Constitution and other applicable law.

9. The Court further approves the procedures for Class Members to opt out of or object to the settlement, as set forth in the amended Class Notices and the Settlement Agreement. Class Members wishing to opt out of the Settlement must send a signed letter by U.S. Mail to the Settlement Administrator that includes (a) their full name, (b) the last four digits of their social security number, and (c) a clear statement communicating that they elect to be excluded from the Settlement Classes, do not wish to be a Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement; and (d) the case name and case number. Class Members must opt-out of the Settlement individually. Any opt-out must be postmarked on or before the Bar Date.

10. The Court directs the Settlement Administrator to send the amended Class Notice to Settlement Class Members in accordance with the terms of the Stipulation.

11. The Final Approval hearing on the question of whether the Stipulation should be finally approved as fair, reasonable, and adequate is scheduled on March 1 2022, at 10:00 a.m. before United States Magistrate Judge Carmen E. Henderson, Room 242, Thomas D. Lambros Federal Building & US Courthouse, 125 Market Street, Youngstown, Ohio 44503. The Court may, in its discretion, schedule the Final Approval Hearing virtually due to the ongoing COVID-19 pandemic. The Court reserves the right to continue the date of the Final

Approval hearing without further notice to Class Members. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement.

12. At the Final Approval hearing, the Court will consider: (a) whether the Stipulation of Settlement should be approved as fair, reasonable, and adequate for the Settlement Classes; (b) whether a judgment granting final approval of the Stipulation of Settlement should be entered; and (c) whether Plaintiff's request for a Service Award, Settlement Administration Expenses, and Class Counsel's Attorneys' Fees and Expenses should be granted.

13. Counsel for the Parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the settlement and Plaintiff's request for a Service Award, Settlement Administration Expenses, and Class Counsel's Attorneys' Fees and Expenses prior to the Final Approval hearing according to the time limits set by the Federal Rules of Civil Procedure.

14. Pending the Final Approval hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the settlement and this Order, are stayed.

15. Counsel for the Parties are hereby authorized to use all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement.

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16. In the event the Settlement is not finally approved, or otherwise does not become effective in accordance with the terms of the settlement, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Settlement.

IT IS SO ORDERED.

Dated: 9/10/2021

s/ Carmen E. Henderson
The Honorable Carmen E. Henderson
United States Magistrate Judge