

1 KENNETH H. YOON (State Bar No. 198443)
2 STEPHANIE E. YASUDA (State Bar No. 265480)
3 YOON LAW, APC
4 One Wilshire Blvd., Suite 2200
5 Los Angeles, California 90017
6 Telephone: (213) 612-0988
7 Facsimile: (213) 947-1211

8 Attorneys for Plaintiffs Santiago Giovanni Jovel
9 Del Cid, Michael Harrington and Derrick
10 Carbajal

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 02 2021

BY 
JESSICA MORALES, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SANTIAGO GIOVANNI JOVEL DEL CID,
MICHAEL HARRINGTON, AND DERRICK
CARBAJAL, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

EMPIRE TRANSPORTATION, INC., an
unknown entity, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: CIVDS1806733

[Assigned for all purposes to Hon. David
Cohn, Dept. S26]

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: August 2, 2021
Time: 10:00 a.m.
Place: Department S26

1 This matter came before this Court on Plaintiffs' Motion for Final Approval of Class Action
2 Settlement.

3 **WHEREAS**, the Court has received and reviewed the Joint Stipulation of Settlement and
4 Release entered into between Plaintiffs Santiago Giovanni Jovel Del Cid, Michael Harrington and
5 Derrick Carbajal ("Plaintiffs"), on the one hand, and Defendant Empire Transportation, Inc.
6 ("Defendant," collectively the "Parties") on the other hand, and has considered the terms of the
7 proposed settlement set forth therein;

8 **WHEREAS**, all terms contained herein shall have the same meanings as set forth in the
9 Settlement Agreement, unless otherwise defined herein;

10 **WHEREAS**, on April 1, 2021, the Court entered its Order preliminarily approving the
11 Settlement of this class action, approving the form and method of notice, and setting a date and time
12 for a Final Approval and Fairness Hearing to consider whether the Settlement should be finally
13 approved by the Court pursuant to California Code of Civil Procedure Section 382 as fair, adequate,
14 and reasonable (the "Procedural Order");

15 **WHEREAS**, the Procedural Order further directed that all Class Members be given notice of
16 the Settlement and of the date for the Final Approval and Fairness Hearing;

17 **WHEREAS**, the Court has received the declaration of Kevin Lee of
18 Phoenix Settlement Administrators., the Claims Administrator, attesting to the mailing of the Class
19 Notice in accordance with the Procedural Order;

20 **WHEREAS**, the settlement administration went forth as ordered by this Court;

21 **WHEREAS**, there have been 0 objections regarding the Settlement;

22 **WHEREAS**, there have been 3 opt-outs from the Settlement; and

23 **WHEREAS**, the Court, having conducted a Final Approval and Fairness Hearing (the
24 "Fairness Hearing"), and having considered the arguments presented, all papers filed and all
25 proceedings had therein;

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

27 1. The Court retains jurisdiction over the subject matter of this action, all Class Members
28 (including Class Representatives) and Defendant to enforce the terms of the Judgment.

2. In accordance with California Code of Civil Procedure Section 382, California Rule of Court 3.769 and the requirements of due process, all Class Members have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the parties, the Settlement Agreement, the arguments of counsel, and all the files, records and proceedings in this case, the Court finds that the Class Notice and notice methodology implemented pursuant to the Settlement Agreement and the Court's Procedural Order: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of California Code of Civil Procedure Section 382, California Rule of Court 3.769, and any other applicable law.

3. The Settlement Agreement in this action warrants final approval pursuant to California Code of Civil Procedure Section 382 because it is fair, adequate, and reasonable to those it affects, and resulted from vigorously contested litigation, substantial discovery, motion practice, and extensive good-faith arm's length negotiations between the parties, and is in the public interest considering the following factors:

- (a) the strength of the Plaintiffs' case;
- (b) the risk, expense, complexity and likely duration of further litigation;
- (c) the risk of maintaining class action status throughout the trial;
- (d) the amount offered in settlement;
- (e) the extent of discovery completed, and the stage of the proceedings;
- (f) the experience and views of class counsel; and
- (g) the reaction of the class members to the proposed settlement.

Clark v. Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009). Settlements that follow sufficient discovery and genuine arm's length negotiation are presumed fair. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996), *as modified* (Sept. 30, 1996). The Court finds the settlement is entitled to a presumption of fairness.

4. The Motion for Final Approval of Class Action Settlement is hereby GRANTED, and

1 the Settlement Agreement is hereby APPROVED as fair, reasonable, adequate, and in the public
2 interest, and the terms of the Settlement Agreement are hereby determined to be fair, reasonable and
3 adequate, for the exclusive benefit of the Settlement Class Members. The Parties are directed to
4 consummate the Settlement Agreement in accordance with its terms.

5 5. The Court APPROVES the funding of the Settlement in accordance with the terms of
6 the Settlement Agreement.

7 6. The Court APPROVES payment of Class Representative's Enhancement Payments of
8 \$6,000 for Plaintiff Santiago Giovanni Jovel Del Cid, \$1,500 for Plaintiff Michael Harrington, and
9 \$1,000 for Plaintiff Derrick Carbajal in accordance with the terms of the Settlement Agreement.

10 7. The Court APPROVES payment of attorneys' fees in the amount of ~~\$99,750.00~~ ^{\$119,500} and
11 costs in the amount of \$ 110,099.80 to Class Counsel in accordance with the terms of the
12 Settlement Agreement.

13 8. The Court APPROVES the PAGA allocation of \$28,500.00 of the Gross Settlement
14 Amount to be allocated to claims under the Labor Code Private Attorney General Act of 2004,
15 California Labor Code §§ 2698 *et seq.*, with \$21,375.00 being awarded to the State of California and
16 \$7,125.00 being awarded to PAGA Settlement Members.

17 9. The Court APPROVES payment of costs to the Claims Administrator, Phoenix
18 Settlement Administrators. for Settlement Administration Costs in the amount of ~~\$20,000.00~~ ^{\$16,500.00} in
19 accordance with the terms of the Settlement Agreement.

20 10. The allocation plan is hereby APPROVED as fair, adequate, and reasonable. The Net
21 Settlement Amount, as well as the Class Representative's Enhancement Payment, Settlement
22 Administration Costs, the PAGA Payment, and Class Counsel's attorneys' fees and litigation costs
23 shall be distributed in accordance with the terms of the Settlement Agreement and any further orders
24 of this Court.

25 11. In consideration of the Net Settlement Amount, and for other good and valuable
26 consideration, each of the Class Representatives, Qualified Claimants and FLSA Settlement Class
27 Members shall have fully, finally, and forever released, relinquished, and discharged all claims against
28 the Releasees in accordance with the terms of the Settlement Agreement and as the Released Claims,

1 are defined in the Settlement, including their respective Released Class Claims, Released FLSA
2 Claims, and Released PAGA Claims.

3 12. Without affecting the finality of this Order in any way, this Court retains jurisdiction
4 over: (a) implementation of the Settlement and the terms of the Settlement Agreement; (b) distribution
5 of the Net Settlement Amount, the Class Representative's Enhancement Payment, Settlement
6 Administration Costs, and the attorneys' fees and costs amount; PAGA Payment, and (c) all other
7 proceedings related to the implementation, interpretation, administration, consummation, and
8 enforcement of the terms of the Settlement Agreement and/or the Settlement, and the administration of
9 claims by Class Members.

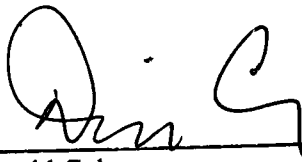
10 13. Parties request that the Court retain jurisdiction over the matter and enter Final
11 Judgment after the following three conditions are satisfied: Gross Settlement Amount is fully funded,
12 the additional amount for the employer's share of payroll taxes is paid, and the Settlement
13 Administrator has received all information from Defendant that it requires to complete its duties under
14 this Agreement (e.g., Defendant's tax information).

15 14. Per California Rules of Court, Rule 3.771(b), Phoenix Settlement Administrators is
16 directed to post the final judgment, once entered, on its website.

17 15. Because of the payment schedule to fund the Gross Settlement Amount, this Court sets
18 a Status Conference regarding payment status for 8/2/, 2022 at 9:00 am. If prior to that
19 hearing date, Defendant has completed all conditions necessary for the Settlement Administrator to
20 complete its duties under the Settlement Agreement, Plaintiffs shall file the necessary papers for this
21 Court to enter Judgment and vacate the status conference.

22 **IT IS SO ORDERED.**

23
24 Dated: 8/2/21

25 
Hon. David Cohn
Judge of the California Superior Court

PROOF OF SERVICE

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

ss.

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not
4 a party to the within action; my business address is One Wilshire Boulevard, Suite 2200, Los Angeles, California
5 90017.

6 On July 9, 2021, I served the following document(s) described as:

7 **[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS**
8 **ACTION SETTLEMENT**

9 on all interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as
10 shown on the attached mailing list.

11 ☐ (BY FACSIMILE)

12 I am readily familiar with the business practices of this office. The telephone number of the facsimile
13 machine I used was (213) 489-9961. This facsimile machine complies with Rules 2003(3) of the
14 California Rules of Court. Upon transmission, no error was reported by the facsimile machine and a
15 printed copy of the machine's transmission record indicating that the transmission was successfully
16 completed is attached to this declaration.

17 ☐ By having copies personally delivered to the designated party(ies).

18 ☐ (BY E-MAIL)

19 The documents were sent as an attachment to an email, with two types of delivery confirmation:
20 Delivery Receipt and Read Receipt. Upon sending, no error was reported and I received a
21 Delivery Receipt, confirming that the message and documents reached the above email address.

22 ☒ (BY MAIL AND COURTESY E-MAIL)

23 I am familiar with my employer's mail collection and processing practices; know that mail is collected
24 and deposited with the United States Postal Services on the same day it is deposited in interoffice mail;
25 and know that postage thereon is fully prepaid.

26 ☐ (BY ELECTRONIC SERVICE)

27 Based on a court order to accept service by electronic means, I caused a true and correct copy of the
28 document(s) to be served electronically on counsel of record by transmission to an e-service provider
designated by the Court.

☐ (BY FEDERAL EXPRESS COURIER)

I am "readily familiar" with the firm's practice of collection and processing correspondence for
Federal Express delivery. Under that practice it would be deposited with the Federal Express Courier
on that same day at Los Angeles, California in the ordinary course of business.

☒ (State) I declare under penalty of perjury that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member the Bar of this Court at whose
direction the service was made.

Executed on Friday, July 9, 2021, at Los Angeles, California.


DIANA JIMENEZ

PROOF OF SERVICE

Santiago Giovanni Jovel Del Cid v. Empire Transportation, Inc.
Superior Court of California, County of San Bernardino, Case No. CIVDS1806733

SERVICE LIST

Attorneys for Defendant
Empire Transportation, Inc.

Cynthia J. Emry
Cynthia.Emry@jacksonlewis.com
Dorothy L. Black
Dorothy.Black@jacksonlewis.com
JACKSON LEWIS, P.C.
725 S. Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: (213) 689-0404
Facsimile: (213) 689-0430

Attorneys for Defendant
Empire Transportation, Inc.

Tom Nagashima
tnagashima@grsm.com
Jillian Stanley
jstanley@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101
Telephone: (619) 696-6700
Facsimile: (619) 696-7124
jstanley@grsm.com

Attorneys for Plaintiff
Deborah Jo Erickson

Kashif Haque
Samuel A. Wong
Jessica L. Campbell
jcampbell@aegislawfirm.com
Clare M. Wernet
cwernet@aegislawfirm.com
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251