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Clerk of the Superior Court

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County of San Diego

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Clerk of the Superior Court
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GENE THOMPSON, an individual, and on
behalf of all current and former aggrieved
employees,

Plaintiffs,

v.

RUST & SONS TRUCKING, INC.; DOES 1
through 50, inclusive,

Defendants.

Lead Case No. 37-2020-00021453-CU-OE-CTL
Consolidated Case: 37-2022-00007637-CU-OE-CTL

Judge: Hon. Judge Joel R. Wohlfeil

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT**

Date: May 19, 2023

Time: 9:00 a.m.

Dept: C-73

Complaint Filed: June 22, 2020

1 On May 19, 2023, Plaintiff Gene Thompson's ("Plaintiff" or "Class Representative")
2 Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class
3 Representative Enhancement Payment came before the Court, in Department C-73, for hearing
4 pursuant to the Order Granting Preliminary Approval of the Class Action Settlement, dated
5 January 20, 2023 ("Preliminary Approval Order").

6 Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and
7 Costs, and Class Representative Enhancement Payment is based on the Parties' Joint Stipulation
8 of Class Action Settlement ("Stipulation" or "Settlement") attached as **Exhibit 1** to the Declaration
9 of Marshall Lurtz in Support of Plaintiff's Motion for Preliminary Approval of Class Action
10 Settlement that was filed on November 17, 2022. Since full and adequate notice was given to the
11 Class as required in the Court's Preliminary Approval Order, and the Court considered all the
12 papers filed and proceedings held herein, it is ORDERED, ADJUDGED AND DECREED THAT:

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Order incorporates by reference the definitions in the Stipulation, which shall
15 have the same meanings though not defined separately herein.

16 2. This Court has jurisdiction over the subject matter of the Action and over all
17 Parties to the Action, including all Class Members.

18 3. The Motion for final approval is granted. The Court approves the settlement as
19 fair, reasonable, and adequate. Pursuant to this, the Court makes the following awards and
20 approves the following payments:

- 21 a. \$250,000 to Class Counsel as the attorneys' fees;
 - 22 b. \$15,026.97 to Class Counsel as the attorneys' costs;
 - 23 c. \$15,000 to Plaintiff as the Class Representative Enhancement Payment;
 - 24 d. \$10,000 to CPT Group, Inc. ("CPT Group"), the Settlement Administrator,
25 as the Settlement Administration Costs; and
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e. \$26,250 to the California Labor and Workforce Development Agency (“LWDA”) (out of \$35,000 allocated to the claim under the Private Attorneys General Act of 2004 (“PAGA”) as the PAGA Payment).

4. Except for the payment due under the Stipulation, the Parties are each to bear their own costs and attorneys’ fees. The Court approves the Stipulation and Defendant Rust & Son’s Trucking, Inc. (“Defendant”) and the Released Parties are discharged from all Released Claims in accordance with the terms of the Stipulation.

5. In this wage-and-hour class action lawsuit, Plaintiff sued Defendant for a variety of Labor Code violations. The operative complaints allege Defendant: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods or premiums; (5) failure to reimburse business expenses; (6) failure to provide compliant wage statement; (7) failure to pay final wages; (8) violation of PAGA; and (9) violation of Business & Professions sections 17200, *et seq.*

6. In California, the notice to class members must have “a reasonable chance of reaching a substantial percentage of the class members.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251.) More importantly, Plaintiff need not demonstrate each member of the class received notice. If the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

7. CPT Group is providing settlement administration services for this settlement. (*See Declaration of Jennifer Forst Regarding Notice and Settlement Administration (“Forst Decl.”)*.) On February 6, 2023, CPT Group received the Court-approved Notice Packet and Defendant delivered to CPT Group the Class List that contained data for one hundred and twenty-six (126) Class Members. (*Id.* at ¶ 3-5.) On February 16, 2023, CPT Group mailed Notice Packets to one hundred and twenty-six (126) Class Members via regular First-Class U.S. Mail and indicated the Response Deadline was March 23, 2023. (*Id.* at ¶ 7-8.) CPT Group remailed returned Notice Packets using forwarding addresses affixed thereto or using an Accurint search/skip-trace to locate updated addresses. (*Id.* at ¶ 8.) Ultimately, there were only four (4) undelivered Notice

1 Packets. (*Id.* at ¶ 9.) CPT Group received no disputes, objections, or requests for exclusion. (*Id.*
2 at ¶¶ 10-14.) No Class Member requested exclusion from the Settlement.

3 8. Based on the foregoing, the Court finds the notice provided to Class Members
4 conforms to due process requirements.

5 9. It is the duty of the Court, before finally approving the settlement, to conduct an
6 inquiry in the fairness of the proposed settlement. (*See* California Practice Guide, Civil Procedure
7 Before Trial (2012), The Rutter Group, ¶ 14:139.12.) The trial court has broad discretion in
8 determining whether a settlement is fair. In exercising that discretion, it normally considers the
9 following factors: (a) strength of the plaintiff's case; (b) risk, expense, complexity, and likely
10 duration of further litigation; (c) risk of maintaining class action status through trial; (d) amount
11 offered in settlement; (e) extent of discovery completed and stage of the proceedings; (f)
12 experience and views of counsel; (g) presence of a governmental participant; and (h) reaction of
13 the class members to the proposed settlement. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
14 1794, 1801; *In Re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) This list is not exclusive,
15 and the Court is free to balance and weigh the factors depending on the circumstances of the case.
16 (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.)

17 10. The proponent bears the burden of proof to show the settlement is fair, adequate,
18 and reasonable. (*See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
19 Cal.App.4th 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245.) There is a presumption a
20 proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. (*See*
21 2 Herbert Newburg & Albert Conte, *Newburg on Class Actions* § 11.41 at 11-88 (3d ed. 1992);
22 *Manual for Complex Litigation* (Third) § 30.42.)

23 11. If the case had not settled, there would have been additional risks and expenses
24 associated with continuing to litigate. Procedural hurdles (*i.e.*, motion practice and appeals) could
25 also have prolonged the litigation as well as any recovery by the Class Members.

26 12. There is always a risk of decertification. (*See Weinstat v. Dentsply Intern., Inc.*
27 (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should
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1 retain some flexibility in conducting class actions, which means, under suitable circumstances,
2 entertaining successive motions on certification if the court subsequently discovers that the
3 propriety of a class action is not appropriate.”].)

4 13. Defendant agreed to settle for the non-reversionary sum of \$850,000. Defendant
5 will have no obligation to pay any amount in connection with the Settlement apart from the
6 Maximum Settlement Amount. Moreover, none of the Maximum Settlement Amount will revert
7 to Defendant. According to CPT Group’s calculations, the *average* Individual Settlement Payment
8 will be approximately \$3,728.31, the *highest* Individual Settlement Payment will be approximately
9 \$14,504.62, and the *lowest* Individual Settlement Payment will be approximately \$44.38. (Forst
10 Decl., ¶ 16.)

11 14. Class Counsel’s investigation included formal and informal discovery, reviewing
12 Defendant’s policy records, reviewing class members’ driving logs, hours of service reports and
13 payroll records, reviewing Plaintiff’s payroll and personnel records, and forming a damage model
14 based on all of these. (Declaration of Marshall Lurtz In Support of Plaintiff’s Motion For
15 Preliminary Approval of Class Action Settlement filed on November 17, 2022 (“Lurtz Preliminary
16 Decl.”), ¶ 11-17.) The Parties also mediated this case with Hon. Jeffrey B. Barton (Ret.), a
17 respected and experienced mediator in wage and hour class actions. In connection with mediation
18 and through discussions with counsel for Defendant, Class Counsel also discussed all aspects of
19 the case, including the risks of litigation and the risks to both Parties of proceeding with a motion
20 for class certification, as well as the law relating piece rate work, off-the-clock work, meal and rest
21 periods, and wage statements.

22 15. Class Counsel has extensive experience with wage-and-hour class litigation.
23 (Lurtz Preliminary Decl., ¶¶ 3-7.) Class Counsel are of the opinion the Settlement is in the best
24 interest of the Class and provides substantial benefit to Class Members.

25 16. The Class reacted positively with participation rate of one hundred percent
26 (100%). (Forst Decl., at ¶ 14.)
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1 17. On balance, this is a fair settlement that satisfies the *Dunk* factors such that final
2 approval is warranted.

3 18. Class Counsel requested attorneys' fees of \$250,000. Courts employ multiple
4 methods for evaluating fee requests, including the lodestar method and the "percentage of the
5 common fund" method. The lodestar method reflects the actual work performed, plus a multiplier
6 (if applicable) to recognize counsel's efforts. In common fund cases, the Court may employ a
7 percentage of the benefit method, as cross-checked against the lodestar. (*See Laffitte v. Robert Half*
8 *Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)

9 19. Fees are sought pursuant to the percentage method. The determination of what
10 constitutes an appropriate percentage "is somewhat elastic and depends largely on the facts of a
11 given case, but certain factors are commonly considered. Specifically, the court may address the
12 percentage likely to have been negotiated between private parties in a similar case, percentages
13 applied in other class actions, the quality of class counsel, and the size of the award." (*In re Ikon*
14 *Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.)

15 20. These factors favor the requested attorneys' fees. As for the first factor, private
16 contingency fee agreements are routinely thirty percent (30%) to forty percent (40%) of the
17 recovery. (*In re Ikon Office Solutions, Inc., Securities Litigation, supra*, 194 F.R.D. at 194.) As for
18 the second factor, although the median percentage of attorney fees in class action is twenty-five
19 percent (25%), "most fees appear to fall in the range of nineteen to forty-five percent." (*Id.*) As
20 for the third factor, Class Counsel have experience in class actions, including wage-and-hour cases.
21 Most importantly, Class Counsel achieved reasonable results for the Class as evidenced by the
22 Class Members' reaction to the Settlement. As for the fourth factor, Class Counsel negotiated a
23 \$850,000 Maximum Settlement Amount. Applying the lodestar cross-check, Class Counsel
24 indicate it invested 355.4 of attorney time on this matter. (Lurtz Final Decl., ¶ 22.) The lodestar
25 fees for Class Counsel are \$211,463.00. (*Id.*) The hourly rate appears to be reasonable for attorney
26 with his respective years of experience, and the hours spent are reasonable for this case, which has
27 been pending for nearly three (3) years. It appears Class Counsel utilized skill in litigating this case
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1 and have good reputations in the legal community. It also appears Class Counsel spent appreciable
2 time on the case, which time could have been spent on other meritorious fee generating cases.
3 Based on the lodestar fee of \$211,463.00, the request attorneys' fees translates into a positive
4 multiplier of 1.18. (*Id.*) Because the requested attorneys' fees is based on a reasonable percentage
5 of the settlement fund, is supported by the lodestar calculation, and did not receive objections from
6 the Class, the Court awards the requested attorneys' fees. For these reasons, the Court hereby
7 grants final approval of the requested attorneys' fees of \$250,000.

8 21. Class Counsel requested attorneys' costs of up to \$20,000. (Lurtz Final Decl., ¶
9 31.) Class Counsel's actual costs and expenses incurred total \$15,026.97 and consist of filing fees,
10 service fees, mediation fees, court appearances, copying, filing, and service. (*Id.*) These costs
11 appear reasonable and necessary to the conduct of the litigation. Furthermore, as with the requested
12 attorneys' fees, the maximum cost request was disclosed to Class Members, and no valid
13 objections were submitted. (*Id.*) For these reasons, the Court hereby grants final approval of the
14 requested attorneys' costs of \$15,026.97.

15 22. CPT Group requests Settlement Administration Costs of \$10,000. (Forst Decl., ¶
16 17.) Based upon the work performed and yet to be performed, including the fact the Class was
17 provided notice of up to \$10,000 will be allocated as the Settlement Administration Costs and no
18 one objected to the Settlement Administration Costs, the request for Settlement Administration
19 Costs of \$10,000 is granted.

20 23. The Court approves the payment to the LWDA of \$26,250 as its portion of the
21 PAGA Payment (out of \$35,000 allocated to the claim under PAGA as the PAGA Payment).

22 24. Finally, Class Counsel seeks a Class Representative Enhancement Payment of
23 \$15,000 for the Class Representative Plaintiff Gene Thompson. The Court considers the following
24 factors, among others, in determining whether to pay an incentive or enhancement award to a class
25 representative: (a) whether an incentive was necessary to induce the class representative to
26 participate; (b) actions taken by the class representative to protect the interests of the class; (c)
27 degree to which the class benefited from those actions; (d) amount of time and effort the class
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1 representative expended in pursuing the litigation; (e) risk to the class representative in
2 commencing suit, both financial and otherwise; (f) notoriety and personal difficulties encountered
3 by the class representative; (g) duration of the litigation; and (h) personal benefit (or lack thereof)
4 enjoyed by the class representative as a result of the litigation. (See California Practice Guide,
5 Civil Procedure Before Trial, ¶ 14:146.10 (The Rutter Group 2012) [citing *Clark v American*
6 *Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115
7 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
8 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412].)
9 Plaintiffs devoted several hours to this litigation. (See Declaration of Gene Thompson In Support
10 of Plaintiff's Motion For Final Approval of Class Action Settlement ("Thompson Decl."), ¶ 6-14.)

11 25. Plaintiff assisted his attorneys by having numerous conferences and phone calls
12 with them and by providing documents. (Thompson Decl., ¶¶ 6-14.) Plaintiff also helped Class
13 Counsel understand time and payroll practices, prepare for discovery, as well as prepare for
14 mediation in which Plaintiff participated. (*Id.*) Plaintiff freely chose to champion the rights of the
15 class, accepted the risks and sacrifices associated with acting as the Class Representative, and does
16 not have interests averse to the Class. (*Id.*) The Court grants the Class Representative Enhancement
17 Payment of \$15,000 to Plaintiff for the following reasons: (a) the significant time Plaintiff spent
18 on this matter; (b) the benefits Plaintiff's action conferred onto the Class; and (c) the risks and
19 sacrifices associated with serving as the Class Representative that Plaintiff accepted and endured.

20 26. All Parties, including each and all Class Members, are bound by this Order of Final
21 Approval and Judgment and by the Settlement. All Class Members shall be deemed to have entered
22 the Settlement and the releases provided therein. But this Order of Final Approval and Judgment
23 does not bar or otherwise enjoin Class Members from prosecuting the Released Claims, thereby
24 exposing them to potential contempt charges. Moreover, Class Members shall not be deemed to
25 have agreed not to sue on any Released Claims or any other provision that may expose them to
26 potential liability for either breach of contract or misrepresentation.

1 27. The Court previously certified the Action as a class action under Code of Civil
2 Procedure section 382. The Class is defined as all current and former employees of Defendant who
3 worked as truck drivers and were paid on a piece-rate basis (i.e, paid per mile) at any time from
4 December 1, 2016 through January 20, 2023 (or if any such person is incompetent, deceased, or
5 unavailable due to military service, the person's legal representative or successor in interest
6 evidenced by reasonable verification). "Class Members" shall not include any person who submits
7 a timely and valid request for exclusion.

8 28. The certified Class continues to meet all the requirements of Code of Civil
9 Procedure section 382 and for the reasons set forth in the Court's Preliminary Approval Order.

10 29. Plaintiff Gene Thompson is the Court-appointed Class Representative.

11 30. Marshall Lurtz, Esq. of Lurtz Legal, P.C. is the Court-appointed Class Counsel.

12 31. CPT Group is hereby directed to mail the Individual Settlement Payments in
13 envelopes that bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS
14 ENCLOSED" and take all other actions in furtherance of the settlement administration.

15 32. As set forth in the Settlement, any checks issued to Class Members will remain
16 negotiable for one hundred twenty (120) calendar days. Any check not cashed within one hundred
17 twenty (120) calendar days will be void. Any checks that, after an appropriate skip trace, are
18 undeliverable, shall become void. The funds from the uncashed checks will be redistributed by
19 CPT Group to the Class Members who did cash their checks. CPT Group shall make the
20 redistribution not later than twelve (12) days after the expiration of the 120-day period.

21 33. If any of the Class Members are current employees of Defendant and the
22 distribution mailed to those employees is returned to CPT Group as being undeliverable and CPT
23 Group is unable to locate a valid mailing address, CPT Group shall arrange with Defendant to have
24 those distributions delivered to the employees at their place of employment.

25 34. This Order of Final Approval and Judgment restricts Plaintiff and Defendant from
26 offering the Settlement into evidence in actions between each other but shall not prevent other
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1 parties from doing so or to otherwise predetermine the Settlement's admissibility in litigation
2 involving third parties.

3 35. Once the Court grants this Order of Final Approval and Judgment, CPT Group
4 will mail a notice of entry of judgment to Class Members alongside their Individual Settlement
5 Payment checks via first-class mail. The notice of entry of judgment will state, "The Superior
6 Court of California, County of San Diego, granted final approval of the *Gene Thompson v. Rust &*
7 *Son's Trucking, Inc.* matter, Case Number 37-2020-00021453-CU-OE-CTL, on May 19, 2023.
8 Pursuant to this, CPT Group has enclosed your Individual Settlement Payment check alongside
9 this notice of entry of judgment."

10 36. Without impacting the finality of this Order in any way, this Court hereby retains
11 continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution
12 of Maximum Settlement Amount, interest earned thereon; (b) disposition of the Maximum
13 Settlement Amount; (c) hearing and determining applications for the Attorneys' Fees and Costs in
14 the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and administering
15 the Settlement.

16 37. There is no just reason for any delay in the entry of this Order of Final Approval
17 and Judgment approving the Settlement. Pursuant to this, immediate entry by the Clerk of the
18 Court is expressly directed.

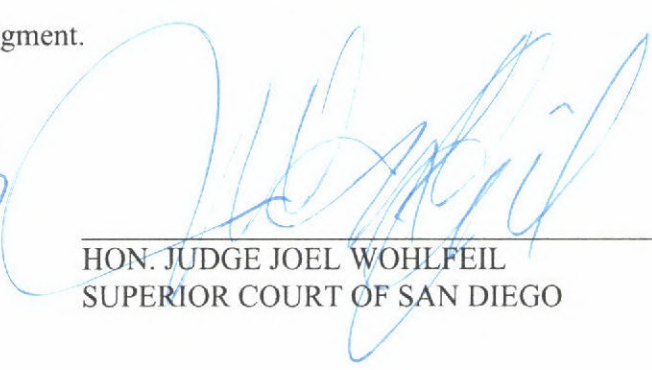
19 38. Without impacting the finality of this Order of Final Approval and Judgment, the
20 Court shall retain continuing jurisdiction over this Action and the Parties, including all Class
21 Members and over all matters pertaining to the implementation and enforcement of the terms of
22 the Settlement. Except as provided to the contrary herein, any disputes or controversies arising
23 with respect to interpretation, enforcement, or implementation of the Settlement shall be presented
24 by motion to the Court for resolution.

25 39. A hearing for Final Report (Nonappearance) is scheduled for
26 _____, before this same court and department. The deadline for the filing of
27 the Final Report shall be _____.
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1 40. This Order of Final Approval and Judgment is intended to be a final disposition of
2 the above-captioned action in its entirety and is intended to be immediately appealable. Subject to
3 the Court's continuing jurisdiction as set forth above, the Court directs the Clerk of the Court to
4 enter Order of Final Approval and Judgment.

5 **IT IS SO ORDERED.**

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7 DATED: 5-19-23



HON. JUDGE JOEL WOHLFEIL
SUPERIOR COURT OF SAN DIEGO