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LAW AND MOTION DEPT. 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STEVEN THAMES, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

CENTRAL TRANSPORT LLC, a Indiana
limited liability company; and DOES 1 through
50, inclusive

Defendants.

Case No. 34-2020-00283179-CU-OE-GDS

~~[PROPOSED]~~ ORDER GRANTING
FINAL APPROVAL FOR CLASS
SETTLEMENT

Date: January 27, 2021
Time: 1:30 p.m.
Dept.: 53

BY FAX

On January 27, 2021, Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Expenses, and Incentive Award came before the Court, in Department 53, for hearing pursuant to the Order of this Court, dated October 14, 2020 ("Preliminary Approval Order"), on the application of Plaintiff Steven Thames ("Plaintiff") and the Certified Class for approval of the Settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement (the "Stipulation"). Full and adequate notice having been given to the Class as required in the Court's Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefor,

[PROPOSED] FINAL APPROVAL ORDER



1 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

2 1. This Order incorporates by reference the definitions in the Stipulation, and all
3 capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

4 2. This Court has jurisdiction over the subject matter of the Action and over all parties
5 to the Action, including all Class Members.

6 3. The Motion for final approval is granted. The Court approves the settlement as fair,
7 reasonable and adequate. The Court makes the following awards and approves the following
8 payments:

- 9 a. \$200,000 in attorneys' fees and \$10,187.13 in costs to Class Counsel;
10 b. \$7,500.00 as a service award to Plaintiff Steven Thames as the Class
11 Representative; and,
12 c. \$11,500.00 in costs to the claims administrator CPT Group, Inc.

13 4. In accordance with the Settlement and the terms set forth in this order, this Order
14 shall not be deemed a judgment in favor of class members or any them and shall not constitute an
15 obligation for direct compensation of any one or any number of the Class Members, but rather it
16 simply approves and undertakes to monitor the execution of the settlement between the Parties.
17 Except for the payment due under the Stipulation, the parties are each to bear their own costs and
18 attorneys' fees. The Court approves the Stipulation and Defendant Central Transport LLC
19 ("Defendant") and the Released Parties are discharged from all Released Claims in accordance with
20 the terms of the Stipulation.

21 5. In this wage and hour class action lawsuit, Plaintiff sued Defendant for a variety of
22 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum
23 wages and overtime, failure to keep required payroll records, failure to reimburse business expenses,
24 failed to provide meal and rest breaks, periods failed to provide accurate wage statements, failed to
25 pay final wages when due, committed unfair business practices under California's Unfair
26 Competition Law ("UCL"), and violated the Private Attorneys General Act of 2004 ("PAGA"), all in
27 violation of California law. The operative complaint seeks recovery of unpaid minimum wages and
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1 overtime, premium pay for improper meal breaks and rest breaks, penalties for improper wage
2 statements, waiting time penalties, restitution under the UCL, penalties under Labor Code § 2699 *et*
3 *seq.*, prejudgment interest, post-judgment interest, and attorneys' fees and costs.

4 6. The parties settled this matter at mediation and thereafter sought and obtained
5 preliminary approval of the class action settlement on October 14, 2020. Defendant made and make
6 no admission of liability and none shall be inferred from the Stipulation or entry of judgment.
7 Neither this order nor the Stipulation shall be used or submitted into evidence in any proceeding or
8 action, except for the sole purpose of enforcing the terms hereof.

9 7. In California, the notice to class members must have "a reasonable chance of reaching
10 a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91
11 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each member of
12 the class received notice. As long as the notice had a "reasonable chance" of reaching a substantial
13 percentage of class members, it should be found effective.

14 8. CPT Group, Inc. is providing settlement administration services for this settlement.
15 (Declaration of Jeremy Talavera with Respect to Notification with the Final Approval Motion, ¶ 1.)
16 On November 13, 2020, CPT received the class information from Defendant; the list contained 550
17 individuals class members. (Id. at ¶ 5.) CPT conducted a search of the NCOA to update addresses
18 and, on November 25, 2020, mailed notice to all class members. (Id. at ¶¶ 4, 6.) CPT forwarded
19 notice packets returned with forwarding addresses and performed skip searches on all other returned
20 mail. (Id. at ¶¶ 7-8.) Ultimately, 60 notice packets were undeliverable. (Supplemental Declaration of
21 Jeremy Talavera with Respect to Notification with the Final Approval Motion, at ¶ 3.) CPT received
22 no objections (Class Members Dante Gaytan's and Samuel Torres' counsel served their objections on
23 Plaintiff's and Defendant's counsel on January 11, 2021), only 5 requests for exclusion, and no
24 disputes. (Id. at ¶¶ 5-7.) Based on the foregoing, the Court finds that the notice provided to class
25 members conforms to due process requirements.

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

11 10. The proponent bears the burden of proof to show the settlement is fair, adequate and
12 reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
13 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
14 settlement is fair and reasonable when it is the result of arms'-length negotiations. 2 Herbert
15 Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *Manual for*
16 *Complex Litigation* (Third) §30.42.

17 11. At the time of preliminary approval, Class Counsel's claim that Defendant failed to
18 pay minimum wage/overtime claim were valued in terms of maximum exposure at \$402,393.60
19 (Yeremian Declaration re: Preliminary Approval, at ¶ 28. The meal break claims at \$321,914.88. (Id.
20 at ¶ 32.) The rest break claims at \$321,914.88. (Id. at ¶ 34.) The failure to reimburse business
21 expenses were valued at \$89,820.00. (Id. at ¶ 42.) The paystub violations were valued at
22 \$1,793,900. (Id. at ¶ 37.) The claim for failure to pay final wages valued at \$430,080. (Id. at ¶ 41.)
23 The claim under Labor Code § 2699 *et seq.* was valued at \$1,793,900 (Id. at ¶ 46.)

24 12. Had this case not settled, there would have been additional risks and expenses
25 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also
26 likely to prolong the litigation as well as any recovery by the class members.

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

5 14. As part of the Court's analysis of this factor, the Court should take into consideration
6 the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*,
7 objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be
8 fair, reasonable, and adequate without any evidence of the amount to which class members would be
9 entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the
10 agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate
11 responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be
12 considered in making that determination, and a trial court was not required to decide the ultimate
13 merits of class members' claims before approving a proposed settlement, an informed evaluation
14 could not be made without an understanding of the amount in controversy and the realistic range of
15 outcomes of the litigation.

16 15. Defendant has agreed to settle for the non-reversionary amount of (\$601,037.52 all in,
17 with no additional sums being due from Defendant for damages, costs, attorneys' fees, contributions,
18 reimbursements or for any other reason. According to the claims administrator's calculations, the
19 average settlement payment will be over \$657.17 per Class Member (Talavera Declaration, ¶ 15.)

20 16. Class Counsel conducted an investigation that included informal discovery, reviewed
21 time records, reviewed Plaintiff's documents, and formed damage models based on all of these.
22 (Yeremian Declaration re: Preliminary Approval, ¶ 14.) The parties also mediated this case with
23 Hon. Michael A. Latin (Ret.), a respected and highly experienced mediator in wage and hour class
24 actions. In connection with mediation and through discussions with counsel for Defendant, Class
25 Counsel also discussed all aspects of the case, including the risks of litigation and the risks to both
26 parties of proceeding with a motion for class certification as well as the law relating to meal and rest
27 periods. (Yeremian Declaration re: Preliminary Approval, ¶ 16.)
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1 17. Class Counsel has experience with wage and hour class litigation. (Yeremian
2 Declaration re: Preliminary Approval, ¶¶ 3-9.) He is of the opinion that this settlement is in the best
3 interest of the class (Yeremian Declaration re: Final Approval, ¶ 6.) and provides substantial benefit
4 to class members. (Id. at ¶ 8.)

5 18. The class reacted very positively with 99.1% participation rate. (Supplemental
6 Talavera Declaration, ¶ 14.)

7 19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final
8 approval is warranted.

9 20. Class Counsel requested attorneys' fees of \$200,000. The Court employs the lodestar
10 method in awarding fees, as opposed to a "percentage of the common fund" method. This amount
11 would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's
12 efforts. In common fund cases, the Court may employ a percentage of the benefit method, as cross-
13 checked against the lodestar. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.

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

20 22. These factors favor the \$200,000 award. As for the first factor, private contingency
21 fee agreements are routinely 30% to 40% of the recovery. (Id. at 194.) As for the second factor,
22 although the median percentage of attorney fees in class action is 25%, "most fees appear to fall in
23 the range of nineteen to forty-five percent." (Id.) As for the third factor, Class Counsel has
24 experience in class actions, including wage and hour cases. Most importantly, Class Counsel
25 achieved good results for the class as evidenced by the class members' reaction to the settlement. As
26 for the fourth factor, Class Counsel negotiated a \$601,037.52 Gross Settlement Fund. Applying the
27 lodestar cross-check, Class Counsel states that members of his firm have spent at least 221 hours on
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1 this case, with an estimated 15 hours yet to come. (Yeremian Declaration re: Final Approval, ¶¶ 13,
2 14.) At the firm's blended billing rate of \$600, the lodestar is calculated at \$132,600. (Yeremian
3 Declaration re: Final Approval, ¶ 21.) The hourly rates appear to be reasonable for attorneys with
4 their respective years of experience. (Yeremian Declaration re: Final Approval, ¶ 16), and the hours
5 spent is reasonable for this case, which has been pending for three years. It appears that Class
6 Counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal
7 community; at the very least, there is no evidence before the Court to indicate that the attorneys have
8 negative reputations in the legal community. It also appears that Class Counsel spent appreciable
9 time on the case, which time could have been spent on other meritorious fee-generating cases. Based
10 on the \$133,700 lodestar, the fee request of \$200,000.00 translates into a multiplier of 1.49. Because
11 the fee request is based on a reasonable percentage of the settlement fund and is supported by the
12 lodestar calculation, and because the class was provided with notice of the fee request and did not
13 object, the Court awards fees in the amount requested.

14 23. Class Counsel requests costs in the amount of \$10,187.13. (Yeremian Declaration re:
15 Final Approval, ¶ 31, and Exhibit F thereto.) Class Counsel's actual costs, totaling \$10,187.13,
16 consist of filing fees, mediation fees, court appearances, copying, filing and service. These costs
17 appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the
18 maximum cost request was disclosed to class members and deemed unobjectionable. For these
19 reasons, the cost request is granted in the amount of \$10,187.13.

20 24. Claims administrator CPT requests administration costs of \$11,500.00. (Talavera
21 Declaration, ¶16.) Based upon the work performed and yet to be performed, and the fact that the
22 class was provided notice of up to \$11,500.00 for claims administration expense and none objected,
23 the request for administration costs of \$11,500.00 is granted.

24 25. The Court also approves the payment to the Labor and Workforce Development
25 Agency ("LWDA") in the amount of \$18,750.00 (out of \$25,000.00 as allocated to the claim under
26 the California Private Attorneys General Act).

27 26. Finally, Class Counsel seeks an incentive payment of \$7,500.00 to the class
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1 representative. The Court considers the following factors, among others, in determining whether to
2 pay an incentive or enhancement award to a class representative: whether an incentive was necessary
3 to induce the class representative to participate in the case; actions, if any, taken by the class
4 representative to protect the interests of the class; the degree to which the class benefited from those
5 actions; the amount of time and effort the class representative expended in pursuing the litigation;
6 the risk to the class representative in commencing suit, both financial and otherwise; the notoriety
7 and personal difficulties encountered by the class representative; the duration of the litigation; and
8 the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.
9 California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing
10 *Clark v American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins.*
11 *Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186
12 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
13 Cal.App.4th 399, 412. Plaintiff devoted number hours to this litigation. (Steven Thames Declaration
14 "Thames Decl." ¶5.) He assisted his attorneys by having multiple conferences with them and by
15 providing documents. (Ibid.) Plaintiff also helped Class Counsel prepare for mediation. (Ibid.)
16 Plaintiff freely chose to champion the rights of the class and accepted the risks associated with acting
17 as a class representative. (Thames Decl. ¶ 7.) The Court grants an enhancement award of \$7,500.00
18 each to Plaintiff for the following reasons: Plaintiff spent significant time on this litigation;
19 Plaintiff's actions benefitted the class; and Plaintiff accepted the risks and notoriety that are
20 associated with acting as a class representative.

21 27. All Parties, including each and all class members, are bound by this Final Approval
22 Order and by the Stipulation. All Class Members shall be deemed to have entered into the
23 Stipulation and the releases provided therein. Defendant shall have no obligation to pay any sums in
24 excess of the \$601,037.52 settlement payment set forth in the Stipulation (save and except for the
25 additional employer payroll taxes associated therewith). Other than as provided in the Stipulation,
26 Defendant shall have no obligation after entry of judgment to pay any sum to any person, whether
27 for costs, attorneys' fees, class member reimbursement or contribution, as a result of entry of
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1 judgment.

2 28. The Court previously certified the Action as a class action under California Code of
3 Civil Procedure section 382. The Class is defined as follows:

4 a. "Settlement Class Members:" as all current and former hourly-paid, non-exempt
5 dock workers who worked for Defendant Central Transport LLC in the State of
6 California during the Class Period.

7 b. "Class Period:" is defined as January 1, 2017 through September 28, 2020.

8 29. Excluded from the Class would have been those persons who validly requested
9 exclusion in accordance with the requirements set forth in the Preliminary Approval Order.

10 30. The certified Class continues to meet all the requirements of California Code of Civil
11 Procedure section 382, as already found, and for the reasons set forth, in the Court's Preliminary
12 Approval Order.

13 31. Plaintiff Steven Thames is the Court-appointed Class Representative for the Claims
14 Class.

15 32. David Yeremian of the law firm David Yeremian & Associates, Inc., is the Court-
16 appointed Class Counsel.

17 33. As set forth in the Stipulation any checks issued to Class Members will expire one
18 hundred and eighty (180) days from the date they are issued by the Claims Administrator and any
19 uncashed checks will be will be distributed pursuant to Cal. Code Civ. Proc. § 384(b) to California
20 Rural Legal Assistance, Inc. a nonprofit organization that fights wage theft, wrongful termination,
21 and discriminatory employment practices and has child advocacy programs in California.

22 34. Upon the Effective Date (as defined in the Stipulation), all Released Claims of each
23 and every member of the Classes, save and except for those who timely requested exclusion, are and
24 shall be deemed to be conclusively released as against the Releasees. All persons and entities who
25 are in the Classes are hereby forever barred and enjoined from commencing, prosecuting or
26 continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction or
27 forum, any and all Released Claims (as defined in the Stipulation).
28

1 35. Without affecting the finality of this Order in any way, this Court hereby retains
2 continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of
3 the Gross Settlement Fund, including interest earned thereon; (b) disposition of the Gross Settlement
4 Fund; (c) hearing and determining applications for attorney fees and expenses in the Action; and (d)
5 all parties hereto for the purpose of construing, enforcing, and administering the Stipulation and the
6 Settlement therein.

7 36. There is no just reason for delay in the entry of judgment approving the Class
8 Settlement and immediate entry by the Clerk of the Court is expressly directed.

9 IT IS SO ORDERED
10 FEB - 8 2021

11 DATED: _____


HON. SHAMA H. MESIWALA
JUDGE OF THE SUPERIOR COURT
SIGNATURE PURSUANT
TO CCP 635

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

On January 29, 2021, I served the foregoing: **[PROPOSED] ORDER GRANTING FINAL APPROVAL FOR CLASS SETTLEMENT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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☐ (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☒ (ONLY BY ELECTRONIC TRANSMISSION) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on January 29, 2021 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

☐ (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 29, 2021, at Glendale, California.


Natalia Bermudes