

ORIGINAL

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

MAR 09 2022

BY 
JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SCOTT FISKE, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

ROBERTSON'S TRANSPORT, LTD.; and
Does 1 through 20, Inclusive,

Defendants.

Case No.: CIVDS2018316

Hon. David Cohn - Dept. S-26

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

[Motion, Declaration of Jonathan M. Lebe,
Declaration of Scott Fiske, Declaration of Erin La
Russa, Notice of Compliance with Court's
Checklist, and [Proposed] Judgment Filed
Herewith]

Hearing Information:

Date: March 9, 2022

Time: 10:00 a.m.

Location: Dept. S-26

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1 **C. Benefits of Settlement to Class Members**

2 Plaintiff recognizes the expense and length of proceedings necessary to continue the
3 litigation against Defendant through trial and through any possible appeals. Plaintiff has also
4 taken into account the uncertainty and risk of the outcome of further litigation, and the
5 difficulties and delays inherent in such litigation, including those involved in class certification.
6 Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims
7 asserted in the Litigation, Defendant's defenses thereto, and the difficulties in establishing
8 damages for Class Members. Plaintiff has also considered the significant settlement
9 negotiations conducted by the Parties and the advice of the neutral mediator. Based on the
10 foregoing, Plaintiff has determined that the terms and conditions for resolution of the Litigation,
11 set forth in the Stipulation, are fair, adequate and reasonable, and in the best interests of all
12 Class Members.

13 **D. Plaintiff and the Class Members' Claims**

14 Plaintiff and the Class Members contend that the claims, contentions, and allegations by
15 Plaintiff, individually and on behalf of the Class Members, in the Litigation have merit and
16 give rise to liability on the part of Defendant. Neither the Stipulation nor any documents
17 referred to herein, or any action taken to carry out the Stipulation is, or may be construed as or
18 may be used as, an admission by or against the Class Members or Class Counsel as to the
19 merits or lack thereof of the Litigation.

20 **E. Defendant's Denials of Wrongdoing**

21 Defendant has denied and continues to deny each of the claims, contentions, and damages
22 alleged by Plaintiff, individually and on behalf of the Class Members, in the Litigation. Defendant
23 adamantly denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged
24 in the Litigation, and believes that it has valid defenses to Plaintiff and the Class Members' claims
25 based on liability, class certification, and damages. Neither the Stipulation, nor any document
26 referred to or contemplated herein, nor any action taken to carry out the Stipulation, may be
27 construed as, or may be used as an admission, concession, or indication by or against Defendant
28 of any fault, wrongdoing or liability whatsoever, including any concession that certification of a

1 class would be appropriate in the Litigation or any other case.

2 **F. Operation of the Settlement.**

3 Pursuant to the Order Granting Preliminary Approval of Class Action Settlement and
4 Setting a Final Approval Hearing (“Preliminary Approval Order”) dated November 5, 2021, this
5 Court conditionally certified the Class and granted preliminary approval pursuant to Stipulation.
6 The Preliminary Approval Order also approved of the proposed form of notice. The Court entered
7 the Preliminary Approval Order after review and consideration of all of the pleadings filed and
8 representations and arguments made in connection herewith.

9 In compliance with the Preliminary Approval Order, the Class Notices were sent to all
10 Class Members via first class mail. Furthermore, follow-up mailings were performed for returned
11 mail. The notice program was timely completed by CPT Group, Inc on December 3, 2021.

12 This matter is now before the Court on Plaintiff’s Motion for Final Approval of the Class
13 Action Settlement (“Motion for Final Approval”), including approval of an enhancement award
14 for the Named Plaintiff and Class Counsel’s Application for attorneys’ fees and costs. The Court
15 has read, heard, and considered all the pleadings and documents submitted, all other papers filed
16 in the Litigation, and the representations and arguments made in connection with the Motion and
17 Application which came on for hearing on March 9, 2022. Appearing at the hearing were the Lebe
18 Law, APLC, as Proposed Class Counsel for the Class, and Paul Hastings LLP for Defendant.

19 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
20 FOLLOWS:

21 1. This Court finds that the Stipulation appears to be the product of serious, informed,
22 non-collusive negotiations, has no obvious deficiencies, and does not improperly grant
23 preferential treatment to any individuals. The Court finds that the Stipulation was entered into
24 in good faith pursuant to California *Code of Civil Procedure* section 877.6. The Court further
25 finds that the Stipulation is fair, reasonable, and adequate and that the Plaintiff has satisfied the
26 standards for final approval of a class action settlement under California law. Under the
27 provisions of California *Code of Civil Procedure* section 382 and Federal Rule of Civil Procedure
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23, as approved for use by the California state court in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971), the trial court has discretion to certify a class where:

[Q]uestions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the available methods for fairly and efficiently adjudicating the controversy ... Fed. R. Civ. Proc. 23.

Certification of a settlement class is the appropriate judicial device under these circumstances.

2. The Court, for purposes of this Order, adopts all defined terms as set forth in the Stipulation.

3. The Court has jurisdiction over the subject matter of the Litigation, the Class Representative, the Class Members, and Defendant.

4. The Court finds that the dissemination of the Notice of Proposed Class Action Settlement as provided for in the Order Granting Preliminary Approval, constituted the best notice practicable under the circumstances to all Persons within the definition of the Class, and fully met the requirements of California law and due process under the United States Constitution. Based on evidence and other material submitted in conjunction with the Settlement Hearing, the actual notice to the class was adequate.

5. The Court approves the settlement of the above-captioned action, as set forth in the Stipulation, each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling Parties and Settlement Class Members. The Parties are directed to perform in accordance with the terms set forth in the Stipulation, the Order Granting Preliminary Approval, and this Final Approval Order and Judgment.

As 6 out of 934 Class Members timely requested exclusion, all of the Released Claims of the Class Members are hereby released upon the Effective Date as to the 928 Class Members who did not timely request exclusion. If the 6 Class Members who timely requested to be excluded from the Class Action are also aggrieved employees, they are not excluded from the PAGA portion of the Settlement.

6. Except as otherwise provided in the Stipulation, the Settling Parties are to bear their

own costs and attorneys' fees.

7. Solely for purposes of effectuating this Stipulation, this Court has certified a class of all Class Members, as those terms are defined in and by the terms of the Stipulation, and the Court deems this definition sufficient for purposes of California Rules of Court 3.765(a) and 3.771. The Court hereby certifies the following Class for settlement purposes only:

All current and former non-exempt employees who held the position of Transport Driver of Defendant in California who, based on Defendant's records, were employed during the class period from April 6, 2016 through November 5, 2021.

8. The Court hereby confirms Jonathan M. Lebe and Annaliz Loera of Lebe Law, APLC as Class Counsel.

9. The Court hereby confirms the Plaintiff Scott Fiske as the Class Representatives in this Action.

10. With respect to the Settlement Class and for purposes of approving the settlement only and for no other purpose, this Court finds and concludes that: (a) the Members of the Settlement Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined community of interest among Members of the Settlement Class with respect to the subject matter of the claims in the Litigation; (c) the claims of the Class Representative is typical of the claims of the Members of the Settlement Class; (d) the Class Representative has fairly and adequately protected the interests of the Members of the Settlement Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in their individual and representative capacity and for the Class Members.

11. Defendant shall fund \$1,590,000 of the Total Settlement Amount pursuant to the terms of the Stipulation.

12. The Court approves the Individual Settlement Payments, which shall be distributed pursuant to the terms of the Stipulation of Settlement and Release.

1 13. Out of the Total Settlement Amount and through the Settlement Administrator,
2 Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of \$500,000
3 reimbursement of costs in the amount of \$11,101.31; (b) enhancement award to the Class
4 Representative Scott Fisk to reimburse him for his unique services in the amount of \$7,500; (c)
5 the sum of \$11, 250 to the Labor and Workforce Development Agency for its share of penalties
6 under the Labor Code's Private Attorneys General Act; and (d) \$12,500 to the Settlement
7 Administrator, CPT Group, Inc., for its fees and costs relating to the settlement administration
8 process. All employee's share of state and federal employment and payroll taxes shall be
9 withheld from the Individual Settlement Payments by the Settlement Administrator. The Court
10 finds that these amounts are fair and reasonable. Defendant is directed to make such payments
11 in accordance with the terms of the Stipulation.

12 14. The Court further orders, adjudges and decrees that the Class Members (other than
13 the six Class Members who timely requested to be excluded from the Settlement) and each of
14 them, fully and finally release and forever discharge the Class Members' Released Parties (as
15 that term is defined in the Settlement Agreement), and each of them, of and from from any and
16 all claims, rights, demands, liabilities of every nature and description within the scope of or
17 arising from the allegations of the Lawsuit (and all amendments thereto), and specifically, all
18 claims for: (a) failure to pay wages owed, including unpaid minimum wages and overtime
19 premium pay; (b) failure to pay wages at the correct rate, including overtime pay at the correct
20 regular rate of pay; (c) failure to provide meal and/or rest periods in accordance with applicable
21 law, including payments at the correct rate or at all for non-compliant meal and/or rest periods
22 and alleged non-payment of wages for meal periods worked and not taken; (d) failure to timely
23 pay wages, both during employment and upon termination and/or resignation of employment; (e)
24 unlawful deductions from wages; (f) failure to provide accurate itemized wage statements; (g)
25 unfair business practices; (h) recordkeeping violations; and (i) and all other civil and statutory
26 penalties including those recoverable under the PAGA ("Class Members' Released Claims"),
27 arising during the period from April 6, 2016 to November 5, 2022 ("Class Members' Release
28 Period"). The Class Members' Released Claims include without limitation claims meeting the

1 above definition(s) under any and all applicable statutes, including without limitation California
2 Labor Code §§ 200, *et seq.*, including §§ 201-204, 210, 218, 218.6, 221, 223, 226, 226.2, 226.3,
3 226.7 and 256 in particular; California Labor Code §§ 500, *et seq.*, including §§ 510-512, 558,
4 and 558.1 in particular; California Labor Code §§ 1174, 1174.5, 1175, 1182.12, 1194, 1194.2,
5 1197, 1197.1, 1198, and 1199; California Labor Code §§ 2800, 2802 and 2804; the California
6 Unfair Competition Act, and in particular, California Bus. & Prof. Code §§ 17200, *et seq.*;
7 California Labor Code §§ 2698, *et seq.*; California Civil Procedure Code § 1021.5; and any other
8 provision of the California Labor Code or any applicable California Industrial Welfare
9 Commission Wage Orders, in all of their iterations.

10 15. Upon the Effective Date, the action captioned as *Scott Fiske v. Robertson's Transport,*
11 *Ltd.*, San Bernardino County, Case Number Case No. CIVDS2018316, shall be resolved pursuant
12 to the terms of the Stipulation of Settlement and Release.

13 16. The Court reserves exclusive and continuing jurisdiction over the Litigation, the
14 Class Representative, the Class Members, and Defendant for the purposes of supervising the
15 implementation, enforcement, construction, administration, and interpretation of the
16 Stipulation.

17 17. Pursuant to the Stipulation, Settlement Checks not cashed within 120 days after
18 issuance will become void and the funds represented by the uncashed checks will be paid to
19 Inclusion Matters by Shane's Inspiration, a nonprofit child advocacy organization.

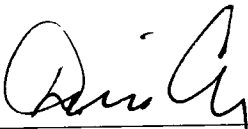
20 18. The Court sets a non-appearance case review hearing regarding compliance with all
21 fund distribution requirements under the Stipulation for 3-9-23 at 9:00^{am}, in Dept. S-
22 26 of the above-entitled Court. A declaration from the Settlement Administrator regarding
23 compliance shall be filed with the Court no later than five court days prior to this date. No
24 appearance by the parties is required at the Order to Show Cause hearing if the Settlement
25 Administrator's declaration is timely filed and the Settlement Administrator reports that all of
26 the distributions under the Settlement are complete.

27 19. In accordance with California Rule of Court 3.771(b), the parties are ordered to give
28 notice of this final Order and the Judgment to all Class Members by posting the Order and the

1 Judgment on the Settlement Administrator's website.

2 IT IS SO ORDERED.

3 Date: 3/9/27

4 
5 Judge David S. Cohn