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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

PEDRO CORTEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BG TRUCKING, INC., an California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00010743-CU-OE-CTL

[Assigned for All Purposes to Hon. Joel R.
Wohlfeil, Dept. C-73]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: March 24, 2023
Time: 9:00 a.m.
Dept.: C-73

Reservation Number: 2932578

Complaint Filed: March 10, 2021

1 Plaintiff Pedro Cortez's ("Plaintiff") Motion for Preliminary Approval of Class and
2 Representative Action Settlement was filed with the Court on January 30, 2023, and a hearing
3 was held before this Court on March 24, 2023. Plaintiff and Defendant BG Trucking, Inc.
4 ("Defendant") appeared through their respective counsel of record.

5 The Court has considered the Joint Stipulation of Class and Representative Action
6 Settlement ("Agreement" or "Settlement Agreement") and all other papers filed in this action.

7 NOW THEREFORE, IT IS HEREBY ORDERED:

8 1. This Court grants preliminary approval of the Settlement Agreement between
9 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,
10 and reasonable to the Class;

11 2. Plaintiff and Defendant (together, "Parties"), through their counsel of record in
12 the Litigation, have reached an agreement to settle all claims in the Litigation on behalf of the
13 Class (as defined below and in the Settlement Agreement) as a whole;

14 3. The Court hereby conditionally certifies the following Class for settlement
15 purposes only: all current and former non-exempt employees of Defendant in the State of
16 California who were paid on a mileage basis at any time from March 10, 2017, through
17 September 30, 2022.

18 4. Should for whatever reason the Settlement Agreement not become Final, the fact
19 that the Parties were willing to stipulate to certification of a class as part of the Settlement
20 Agreement shall have no bearing on, or be admissible in connection with, the Litigation or the
21 issue of whether a class should be certified in a non-settlement context.

22 5. The Court appoints and designates: (a) Plaintiff Pedro Cortez as the Class
23 Representative and (b) Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity
24 Law Group, P.C. as Class Counsel for the Class. Class Counsel is authorized to act on behalf of
25 the Class with respect to all acts or consents required by, or which may be given, pursuant to the
26 Settlement Agreement, and such other acts reasonably necessary to finalize the Settlement
27 Agreement and its terms. Any Class Member may enter an appearance through his or her own
28 counsel at such Class Member's own expense. Any Class Member who does not enter an

1 appearance or appear on his or her own behalf will be represented by Class Counsel.

2 6. The Court hereby approves the terms and conditions provided for in the
3 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
4 falls within the range of reasonableness of a settlement, and appears to be presumptively valid,
5 subject only to any objections that may be raised at the final fairness hearing and final approval
6 by the Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate,
7 and reasonable as to all potential Class Members when balanced against the probable outcome of
8 further litigation relating to liability and damages issues. It also appears that investigation,
9 research, and court proceedings have been conducted so that counsel for the Settling Parties are
10 able to reasonably evaluate their respective positions. It appears to the Court that settlement at
11 this time will avoid substantial additional costs by all Settling Parties, as well as avoid the delay
12 and risks that would be presented by the further prosecution of the Litigation. It also appears that
13 settlement has been reached as a result of intensive, serious, and non-collusive arm's-length
14 negotiations.

15 7. A Final Fairness and Final Approval Hearing on the question of whether the
16 proposed Settlement Agreement, the allocation of payments to Settlement Class Members,
17 attorneys' fees and costs to Class Counsel, settlement administration costs, and the Class
18 Representative Payment should be finally approved as fair, reasonable, and adequate as to the
19 members of the Class is hereby set for _____ at _____ in this Court.

20 8. The Court hereby approves, as to form and content, the Notice of Class Action
21 Settlement ("Class Notice") to be sent to Class Members, which is attached as **Exhibit A** to the
22 Settlement Agreement. The Court finds that distribution of the Class Notice to Class Members
23 substantially in the manner and form set forth in the Settlement Agreement and this Order meets
24 the requirements of due process and shall constitute due and sufficient notice to all parties
25 entitled thereto.

26 9. The Court appoints and designates Phoenix Settlement Administrators as the
27 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
28 approved Class Notice to Class Members using the procedures set forth in the Settlement

1 Agreement.

2 10. Any Class Member may choose to opt out of and be excluded from the settlement
3 as provided in the Settlement Agreement and Class Notice and by following the instructions to
4 request exclusion. Any person who timely and properly opts out of the settlement will not be
5 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.
6 Any opt out request must be in writing and signed by each such Class Member opting out and
7 must otherwise comply with the requirements delineated in the Class Notice. Class Members
8 who have not requested exclusion by submitting a valid and timely opt out request, by the opt out
9 deadline, shall be bound by all determinations of the Court, the Settlement Agreement, and
10 Judgment.

11 11. Any Class Member may object to the Settlement Agreement or express his or her
12 views regarding the Settlement Agreement, and may present evidence and file briefs or other
13 papers that may be proper and relevant to the issues to be heard and determined by the Court as
14 provided in the Class Notice.

15 12. The Motion for Final Approval shall be filed by the Class Representative no later
16 than sixteen (16) court days before the Final Fairness and Final Approval Hearing.

17 13. The Court reserves the right to adjourn or continue the date of the Final Fairness
18 and Final Approval Hearing and all dates provided for in the Settlement Agreement without
19 further notice to the Class, and retains jurisdiction to consider all further applications arising out
20 of or connected with the Class Settlement Agreement.

21 IT IS SO ORDERED.

22
23 DATED: _____

24 HON. JOEL R. WOHLFEIL
25 SUPERIOR COURT OF CALIFORNIA
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