

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

**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 AND JUDGMENT
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: November 3, 2023
Time: 9:00 a.m.
Dept.: C-73

Complaint Filed: March 10, 2021

1 Plaintiff Pedro Cortez (“Plaintiff”) and Defendant BG Trucking, Inc. (“Defendant”)
2 (collectively, the “Settling Parties”) have entered into the Joint Stipulation of Class and
3 Representative Action Settlement (“Agreement” or “Settlement Agreement”) to settle the above-
4 captioned class action subject to the Court’s approval (the “Settlement”). This matter is now
5 before the Court on Plaintiff’s Motion for Final Approval of Class and Representative Action
6 Settlement. The Court has read, heard, and considered all the pleadings and documents
7 submitted, and the presentations made in connection with the Motion which came on for hearing
8 on November 3, 2023.

9 Due and adequate notice having been given to the Class, and the Court having reviewed
10 and considered the Settlement, Plaintiff’s Notice of Motion and Motion for Final Approval of
11 Class Action Settlement, the supporting declarations and exhibits thereto, all papers filed and
12 proceedings had herein, and the absence of any written objections received regarding the
13 proposed Settlement, and having reviewed the record in this action, and good cause appearing
14 therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

15 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
16 Settlement Agreement filed in this case.

17 2. The Court has jurisdiction over all claims asserted in the Action, Plaintiff, the
18 Settlement Class Members, and Defendant.

19 3. The Court finds that the Settlement appears to have been made and entered into
20 in good faith and hereby approves the Settlement.

21 4. Plaintiff and Settlement Class Members, shall have, by operation of this Final
22 Order and Judgment, fully, finally, and forever released, relinquished, and discharged Released
23 Parties from all Released Class Claims, as defined in the Settlement.

24 5. “Settlement Class Members” means all current and former non-exempt
25 employees of Defendant in the State of California who were paid on a mileage basis at any
26 time from March 10, 2017, through September 30, 2022, who do not opt out of the Settlement.

27 6. No Class Members have objected to the terms of the Settlement. No Class
28 Members have requested exclusion from the Settlement.

1 7. “Class Period” means March 10, 2017, through September 30, 2022.

2 8. The “Released Parties” means Defendant, and its parents, predecessors,
3 successors, subsidiaries, affiliates, partners, and trusts, and all of its employees, officers,
4 agents, attorneys, stockholders, fiduciaries, clients, other service providers, and assigns.

5 9. “Released Class Claims” means all claims, including penalties, interest, costs,
6 and attorneys’ fees related thereto, that were or could have been brought under the facts and
7 allegations made in the operative Second Amended Complaint for violation of Labor Code
8 sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 558, 1194, 1197, and 1197.1 during the
9 Class Period.

10 10. Plaintiff and all Aggrieved Employees shall have, by operation of this Final
11 Order and Judgment, fully, finally, and forever released, relinquished, and discharged the
12 Released Parties from all Released PAGA Claims, as defined in the Settlement.

13 11. “Aggrieved Employees” means all current and former non-exempt employees of
14 Defendant in the State of California who were paid on a mileage basis at any time from
15 February 12, 2020, through September 30, 2022.

16 12. “PAGA Released Claims” means all claims for penalties under the California
17 Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto,
18 predicated on the violation of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510,
19 558, 1194, 1197, and 1197.1 that accrued during the PAGA Period and were alleged in the
20 PAGA Notice and operative Second Amended Complaint.

21 13. The Notice provided to the Class conforms with the requirements of California
22 Rules of Court 3.766 and 3.769, and constitutes the best notice practicable under the
23 circumstances, by providing individual notice to all Class Members who could be identified
24 through reasonable effort, and by providing due and adequate notice of the proceedings and of
25 the matters set forth therein to the Class Members. The Notice fully satisfies the requirements
26 of due process.

27 14. The Court finds the Gross Settlement Amount and the methodology used to
28 calculate and pay each payment are fair and reasonable. The Court authorizes the Settlement

1 Administrator to pay the Settlement Class Members and Aggrieved Employees in accordance
2 with the terms of the Settlement.

3 15. Defendant shall pay the total Gross Settlement Amount of One Hundred Thirty
4 Thousand Dollars (\$130,000.00) to resolve the Action. Within thirty calendar days from the
5 date of this Order, Defendant shall deposit the Gross Settlement Amount and employer taxes
6 through the Settlement Administrator. Thereafter, compensation to the Settlement Class
7 Members and Aggrieved Employees shall be disbursed pursuant to the terms of the Settlement
8 (i.e., within fifteen (15) calendar days of funding).

9 16. From the Gross Settlement Amount, Three Thousand Seven Hundred Fifty
10 Dollars (\$3,750.00) shall be paid to the California Labor and Workforce Development Agency,
11 representing 75% of the civil penalties awarded under the terms of the Settlement Agreement
12 pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code
13 section 2698, *et seq.*

14 17. From the Gross Settlement Amount, One Thousand Two Hundred Fifty Dollars
15 (\$1,250.00), shall be distributed to Aggrieved Employees, representing 25% of the civil
16 penalties awarded under the terms of the Settlement Agreement pursuant to the Labor Code
17 Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*

18 18. From the Gross Settlement Amount, Five Thousand Dollars (\$5,000.00) shall be
19 paid to Plaintiff for his service as a class representative and for his agreement to a general
20 release of claims.

21 19. From the Gross Settlement Amount, Three Thousand Two Hundred Fifty
22 Dollars (\$3,250.00) shall be paid to the Settlement Administrator, Phoenix Settlement
23 Administrators.

24 20. The Court hereby confirms Larry W. Lee, Kristen M. Agnew, and Nicholas
25 Rosenthal of Diversity Law Group, P.C. as Class Counsel.

26 21. From the Gross Settlement Amount, Class Counsel is awarded Forty-Three
27 Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$43,333.33) for their
28 reasonable attorneys' fees and Eight Thousand Four Hundred Forty-Two Dollars and Twenty-

1 Nine Cents (\$8,442.29) for their reasonable costs incurred in the Action. The fees and costs
2 shall be distributed to Class Counsel as set forth in the Settlement. The Court finds that the fees
3 are reasonable in light of the benefit provided to the Class.

4 22. Without affecting the finality of this Order in any way, this Court retains
5 continuing jurisdiction over the implementation, interpretation, and enforcement of the
6 Settlement with respect to all Parties to this action, and their counsel of record.

7 23. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby
8 granted and the Court directs that judgment shall be entered in accordance with the terms of
9 this Order.

10 24. The Parties shall bear their own respective attorneys' fees and costs, except as
11 otherwise provided for in the Settlement and approved by the Court.

12 25. A Final Accounting Hearing is set for _____, 2024 at ____ a.m. The
13 Settlement Administrator is to file a declaration no later than ____ calendar days in advance to
14 confirm that the distribution of funds is complete, including any distribution to the *cy pres*
15 recipient, Legal Aid at Work, per the Settlement Agreement

16 IT IS SO ORDERED AND ADJUDGED.

17
18 DATED: _____

19 HON. JOEL R. WOHLFEIL
20 SUPERIOR COURT OF CALIFORNIA
21
22
23
24
25
26
27
28