

AARON C. GUNDZIK (State Bar No. 132137)
REBECCA G. GUNDZIK (State Bar No. 138446)
GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
Sherman Oaks, CA 91423
Telephone: (818) 290-7461
Facsimile: (818) 918-2316

MARSHALL A. CASKEY (State Bar No. 65410)
DANIEL M. HOLZMAN (State Bar No. 176663)
N. CORY BARARI (State Bar No. 295306)
CASKEY & HOLZMAN
24025 Park Sorrento, Ste. 400
Calabasas, CA 91302
Telephone: (818) 657-1070
Facsimile: (818) 297-1775

Attorneys for Plaintiff Michelle Kussner, individually,
on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MICHELLE KUSSNER, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

MV PUBLIC TRANSPORTATION, INC.,
a California Corporation; MV
TRANSPORTATION, INC., a California
Corporation; DOES 1 through 25,

Defendants.

Case No.: 21STCV12259
Assigned to Hon. Carolyn B. Kuhl
Department SSC-12

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

Date: January 16, 2024
Time: 10:00 a.m.
Place: Department SSC-12

Complaint Filed: March 30, 2021

The Court, having considered Plaintiff Michelle Kussner's Motion for Final Approval of Class Action and PAGA Settlement and the papers filed in support thereof, including the parties' Class Action and PAGA Settlement Agreement and Notice ("Settlement Agreement"), having granted preliminary approval on August 29, 2023, having directed that notice be given to all Class Members of preliminary approval of the Settlement Agreement and the final approval hearing and the right to be excluded from or object to the settlement, having read and considered all of the papers of the parties and their counsel, and having received no objections to the settlement, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 1 1. The Motion for Final Approval of the settlement is granted;
- 2 2. The parties to this action are Plaintiff Michelle Kussner (“Plaintiff”) and
- 3 Defendants MV Public Transportation, Inc. and MV Transportation, Inc.(“Defendants”).
- 4 3. After participating in an arms’-length mediation, Plaintiff and Defendants
- 5 have agreed to a proposed settlement of this action on behalf of the class that Plaintiff seeks
- 6 to represent. The terms of the proposed settlement are fully set forth in the Settlement
- 7 Agreement attached as Exhibit 1 to the Declaration of Aaron Gundzik in Support of Motion
- 8 for Final Approval of Class Action Settlement.
- 9 4. This Court has jurisdiction over the subject matter of this action (the
- 10 “Action”) and over all parties to the Action, including the Representative Plaintiff and the
- 11 Class Members.
- 12 5. The terms used in this Order have the meaning assigned to them in the
- 13 Settlement Agreement.
- 14 6. The Court finds that the Class consists of all persons employed by
- 15 Defendants in California who worked for Defendants in a non-exempt position during the
- 16 Class Period for at least one week and performed services as drivers, or assisting drivers,
- 17 including bus operators, bus aides, road supervisors and dispatchers.
- 18 7. The Class Period is from June 11, 2020, through August 29, 2023.
- 19 8. The Aggrieved Employees are all persons employed by Defendants in
- 20 California who worked for Defendants in a non-exempt position during the PAGA Period for
- 21 at least one pay period and performed services as drivers, or assisting drivers, including bus
- 22 operators, bus aides, road supervisors and dispatchers.
- 23 9. The PAGA Period is from June 11, 2020, to August 29, 2023.
- 24 10. In settlement, Defendants will pay the gross amount of \$1,350,000 and will
- 25 separately pay the employer’s share of all payroll taxes. From the gross settlement amount,
- 26 the parties propose to deduct fees for settlement administration costs in the amount of
- 27 \$46,250, PAGA Penalties totaling \$75,000, a Class Representative Service Payment to
- 28

1 Plaintiff of up to \$10,000, a Class Counsel Litigation Expenses Payment not to exceed
2 \$25,000, and a Class Counsel Fees Payment, not to exceed \$450,000.

3 11. 75% of the \$75,000 in PAGA Penalties will be paid to the LWDA. The other
4 25% will be divided among the Aggrieved Employees based on the formula specified in the
5 Settlement Agreement.

6 12. The Net Settlement Amount, which is the amount remaining after the
7 forgoing deductions, as approved by the Court, will be distributed to Participating Class
8 Members in accord with the formula specified in the Settlement Agreement.

9 13. Two Class Members, Salvador Ozorio and Andrea Owens, submitted timely
10 requests to be excluded from the settlement. Therefore, all members of the Class with the
11 exception of Salvador Ozorio and Andrea Owens are Participating Class Members and will
12 receive settlement payments and be bound by the releases and Judgment.

13 14. Neither the settlement, nor any of the terms set forth in the Settlement
14 Agreement, constitute any admission by Defendants, or any of the other Released Parties, of
15 liability to the Representative Plaintiff or any Class Member, nor does this Final Approval
16 Order constitute a finding by the Court of the validity of any of the claims alleged in the
17 Action, or of any liability of Defendants or any of the other Released Parties.

18 15. The Court finds that the Notice of Class Action Settlement (“Notice of
19 Settlement”) has been mailed to all Class Members as previously ordered by the Court, and
20 that such Notice of Settlement fairly and adequately described the terms of the proposed
21 Settlement Agreement, the manner in which the Class Members could object to or
22 participate in the settlement, and the manner in which Class Members could opt out of the
23 Class, was the best notice practicable under the circumstances, was valid, due and sufficient
24 notice to all Class Members, and complied fully with Civil Code §1781(e), Rule of Court
25 3.769, due process and all other applicable laws. The Court further finds that a full and fair
26 opportunity has been afforded to Class Members to participate in the proceedings convened
27 to determine whether the proposed Settlement Agreement should be given final approval.
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1 16. The Court finally approves of the distribution of the Net Settlement Amount
2 to the Participating Class Members. Participating Class Members are not required to submit
3 a claim form in order to receive payment. Rather, the gross amount paid to each
4 Participating Class Member will be based on the number of Workweeks (as defined in the
5 Settlement Agreement) each Participating Class Member worked for Defendant in
6 California during the Class Period.

7 17. Upon the Settlement Administrator's receipt of the gross Settlement Amount
8 and the employer's share of payroll taxes, all Participating Class Members, on behalf of
9 themselves and their respective former and present representatives, agents, attorneys, heirs,
10 administrators, successors, and assigns, and each of their former and present directors,
11 officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns,
12 subsidiaries, and affiliates release Defendants from all causes of action and factual or legal
13 theories arising during the Class Period that were alleged in the Operative Complaint (or
14 LWDA notice) or arise from facts alleged in the Operative Complaint (or LWDA notice),
15 including all damages, penalties, interest and other amounts recoverable under said claims,
16 causes of action or legal theories of relief, including but not limited to claims for failure to
17 provide meal periods, failure to provide rest periods, failure to pay wages or other
18 compensation earned (including at the proper regular rate), failure to pay overtime, failure to
19 indemnify business expenses, failure to provide accurate wage statements, failure to timely
20 pay all final wages, unfair competition, civil penalties under PAGA, Labor Code sections
21 201, 202, 203, 204, 510, 512, 226, 226.7, 246, 1194, 1194.2, 2802, and 2699, Business and
22 Professions Code section 17200 et seq., and Wage Order 9. Class Members shall not waive
23 section 1542 of the California Civil Code.

24 18. Upon the Settlement Administrator's receipt of the gross Settlement Amount
25 and the employer's share of payroll taxes, all Aggrieved Employees on behalf of themselves
26 and their respective former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns release Defendants and each of their former and
28 present directors, officers, shareholders, owners, attorneys, insurers, predecessors,

1 successors, assigns, subsidiaries, and affiliates from any liability for civil penalties
2 recoverable under PAGA for violations during the PAGA Period under PAGA based on any
3 factual or legal theories that were alleged in the Operative Complaint or LWDA notice or
4 arise from facts alleged in the Operative Complaint or LWDA notice, including for the
5 following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 246, 510, 512 and
6 2802. PAGA Employees shall not waive section 1542 of the California Civil Code.

7 19. The Court finds that the Settlement Agreement is fair, reasonable and
8 adequate as to the Class, the named Plaintiff and Defendants, and is the product of good
9 faith, arms' length negotiations between the parties, and further, that the Settlement
10 Agreement is consistent with public policy, and fully complies with all applicable provisions
11 of law. Accordingly, the Court hereby finally and unconditionally approves the Settlement
12 Agreement and specifically approves of the allocation of the Gross Settlement Amount of
13 \$1,350,000 ("Gross Settlement Amount") as follows:

14 a. The Court approves of the payment of Settlement Administration Costs of
15 \$46,250 to Phoenix Settlement Administrators.

16 b. The Court approves of a Service and Release Payment in the amount of
17 \$10,000 to Representative Plaintiff Michelle Kussner, as payment for her time and efforts in
18 pursuing this Action, for the risks she has undertaken, and as additional compensation for
19 the expanded release she is providing.

20 c. The Court approves of Class Counsel's attorneys' fees request of \$450,000,
21 which is one-third of the Gross Settlement Amount, finding that it is reasonable in light of
22 the benefit provided to the Class.

23 d. The Court approves of Class Counsel's request for reimbursement of
24 litigation costs and expenses in the amount of \$25,000.

25 e. The Court approves of a payment to the Labor and Workforce Development
26 Agency ("LWDA") in the amount of \$56,250 and a payment of \$18,750 to the Aggrieved
27 Employees (to be distributed based on the number of PAGA Pay Periods that they worked
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1 during the PAGA Period) in settlement of claims under the California Labor Code Private
2 Attorneys General Act (“PAGA”).

3 f. The Court approves of payment of the remainder of the Gross Settlement
4 Amount (the “Net Settlement Amount”), approximately \$743,750, to the Participating
5 Settlement Class Members, pursuant to the terms of the Settlement Agreement, Paragraph
6 3.2.4, and that all settlement payments be deemed one-third wages, one-third interest and
7 one-third penalties.

8 g. If a Participating Class Member’s settlement check(s) is not cashed within
9 180 days of issuance, it shall be voided and the funds from all such uncashed checks shall be
10 sent to the California State Controller as unclaimed property in the name of the Settlement
11 Class Member.

12 20. The Court approves of the following implementation schedule for further
13 proceedings:

14 • Settlement Effective Date: Pursuant to Paragraph 1.18 of the Settlement
15 Agreement, the Effective Date is the date the Court enters a Judgment on its Order Granting
16 Final Approval of the Settlement and the Judgment is final.

17 • Deadline for Defendant to deliver the Gross Settlement Amount of
18 \$1,350,000 plus the employer’s portion of payroll taxes to the Settlement Administrator:
19 Within ten (10) calendar days after the Effective Date.

20 • Mailing of Payments to Class Members and Aggrieved Employees: Within
21 ten (10) calendar days of Defendant’s deposit of the Gross Settlement Amount and
22 employer’s portion of payroll taxes with the Settlement Administrator.

23 • Payment to the Class Representative: Within ten (10) calendar days of
24 Defendant’s deposit of the Gross Settlement Amount and employer’s portion of payroll
25 taxes.

26 • Payment to Class Counsel of Class Counsel’s attorneys’ fees and Class
27 Counsel’s costs: Within ten (10) calendar days of Defendant’s deposit of the Gross
28 Settlement Amount and employer’s portion of payroll taxes.

1 • Payment to the Settlement Administrator: Within ten (10) calendar days of
2 Defendant's deposit of the Gross Settlement Amount and employer's portion of payroll
3 taxes.

4 • Final Report from the Settlement Administrator: After final distribution of
5 Net Settlement Fund.

6 21. A non-appearance review is set for _____. If a satisfactory
7 compliance status report is filed at least 5 court days before the compliance hearing, no
8 appearances will be required.

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10 Dated: _____

Hon. Carolyn B. Kuhl

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On December 20, 2023, I served the following document described as

- **[PROPOSED] ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection 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 one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served through Case Anywhere pursuant to the Court's Order Authorizing Electronic Service dated June 18, 2021, to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on December 20, 2023, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

Case Name: **Kussner, et al. v. MV Public Transportation, Inc.**

Case Info: **21STCV12259, Los Angeles Superior Court**

Caskey & Holzman

Cory Barari, Esq. (nbarari@caskeyholzman.com)
Marshall Caskey, Esq. (mcaskey@caskeyholzman.com)
Daniel Holzman, Esq. (dholzman@caskeyholzman.com)
24025 Park Sorrento, Suite 400
Calabasas, CA 91302
Phone: (818) 657-1070
Fax: (818) 297-1775

Representing:

Michelle Kussner, individually and on behalf of all others similarly situated

Gundzik Gundzik Heeger LLP

Aaron Gundzik, Esq. (aaron.gundzik@gghllp.com)
Rebecca Gundzik, Esq. (rebecca.gundzik@gghllp.com)
14011 Ventura Boulevard, Suite 206E
Sherman Oaks, CA 91423
Phone: (818) 290-7461
Fax: (818) 918-2316

Representing:

Michelle Kussner, individually and on behalf of all others similarly situated

Littler Mendelson, P.C.

Sarah Ross, Esq. (sross@littler.com)
2049 Century Park East, Fifth Floor
Los Angeles, CA 90067
Phone: (310) 553-0308
Fax: (310) 553-5583

Representing:

MV Public Transportation, Inc.

Littler Mendelson, P.C.

Greg Iskander, Esq. (giskander@littler.com)
Michael Nelson, Esq. (mwnelson@littler.com)
Treat Towers
1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597
Phone: (925) 932-2468
Fax: (925) 946-9809

Representing:

MV Public Transportation, Inc.

The Service List is compiled from information provided to Case Anywhere and is not independently reviewed for accuracy.

Only attorneys are listed. Other authorized users may also receive case notifications by email.