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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

EDMUNDO BAQUIRING, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CALIFORNIA SIERRA EXPRESS, INC., a
Nevada Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.: RG21106254
Consolidated with Case No. 21CV00142
Hon. Evelio Grillo

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 3, 2023
Time: 10:00 a.m.
Dept.: 21

1 **ORDER**

2 This matter came on for hearing on February 3, 2023 at 10:00 a.m. in Department 21 of the
3 above-captioned court on the Motion for Preliminary Approval of Class Action Settlement, upon
4 the terms and conditions set forth in the Stipulation for Class Action Settlement (hereinafter
5 “Settlement Agreement”).

6 The Court, having fully reviewed the Motion for Preliminary Approval of Class Action
7 Settlement, the Memorandum of Points and Authorities and Declarations filed in support thereof,
8 the Settlement Agreement, including the proposed Notice of Proposed Settlement Class Action
9 Settlement, and in recognition of the Court's duty to make a preliminary determination as to the
10 reasonableness of any proposed class action settlement, and if preliminarily determined to be
11 reasonable, to ensure proper notice is provided to Settlement Class Members in accordance with due
12 process requirements, and to set a Final Approval Hearing to consider the proposed Settlement
13 Agreement as to the good faith, fairness, adequacy and reasonableness of any proposed settlement,
14 and having heard the argument of Counsel for the respective parties, the Court **HEREBY MAKES**
15 **THE FOLLOWING DETERMINATIONS AND ORDERS:**

16 It appears to the Court on a preliminary basis that the Total Settlement Amount (“TSA”) is
17 fair and reasonable to the Class Members when balanced against the probable outcome of further
18 litigation relating to class certification, the liability and damages issues involved, and the potential
19 for appeals. It further appears that sufficient investigation, research, and litigation has been
20 conducted such that counsel for the Parties at this time is able to reasonably evaluate their respective
21 positions. It further appears that the Settlement at this time will avoid substantial costs, delay and
22 risks that would be presented by the further prosecution of the litigation. It further appears that the
23 proposed Settlement has been reached as the result of intensive, serious and non-collusive
24 negotiations between the Parties. ACCORDINGLY, GOOD CAUSE APPEARING, THE
25 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY
26 GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE COURT HEREBY
27 ORDERS THAT THE SETTLEMENT CLASS BE CONDITIONALLY CERTIFIED FOR
28 SETTLEMENT PURPOSES ONLY, AND THAT JAMES HAWKINS, APLC AND

1 BLUMENTHAL, NORDREHAUG, BHOWMIK AND DE BLOUW, LLP BE CONDITIONALLY
2 AND PRELIMINARILY APPOINTED CLASS COUNSEL. MORE SPECIFICALLY, THE
3 COURT FINDS AS FOLLOWS:

4 The Court finds on a preliminary basis that the Settlement between Plaintiffs and Defendant
5 appear to be within the range of reasonableness of a settlement which could ultimately be given final
6 approval by this Court. The Court preliminarily finds that the terms of the Settlement are fair,
7 reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

8 The Court notes that Defendants have agreed to a non-reversionary TSA of \$425,000.00.
9 Defendant will pay out the entirety of the TSA to the Participating Class Members and PAGA
10 Settlement Group Members, less deductions for attorneys' fees and costs, the service payment,
11 reasonable expenses of the third-party Settlement Administrator, and the LWDA for PAGA
12 penalties.

13 The Court finds that the elements of numerosity, commonality, typicality and adequacy have
14 been established to support conditional certification of the Settlement Class for settlement purposes,
15 with Plaintiff acting as the Class Representative.

16 The Court hereby appoints, for settlement purposes, Plaintiff Edmundo Baquiring as the
17 Class Representative and finds Plaintiff is an adequate representative for the Settlement Class for
18 settlement purposes. The Court further finds that James Hawkins APLC has preliminarily
19 established adequacy to be appointed as Class Counsel and appoints them as Class Counsel.

20 The Class as identified in the Settlement is provisionally certified by this Order.

21 The Court finds that the proposed manner of class notice is adequate.

22 The Court approves ILYM Group, Inc., to serve as the Settlement Administrator.

23 The Court further hereby approves the proposed Notice of Class Action Settlement and
24 Orders to the notice to be mailed to the Settlement Class.

25 The Court finds that the Notice of Class Action Settlement constitutes the best notice
26 practicable under the circumstances, is in full compliance with the laws of the State of California
27 and, to the extent applicable, the United States Constitution and the requirements of due process.
28 The Court further finds that the Notice of Class Action Settlement fully and accurately informs

1 Settlement Class Members of all material elements of the proposed Settlement, of each Settlement
2 Class Member's right to be excluded from the Settlement Class, and each Settlement Class Member's
3 right and opportunity to object to the proposed Settlement. The Notice of Class Action Settlement
4 adequately advises the Class about: the Class Action; the terms of the proposed Settlement and the
5 benefits available to each Settlement Class Member; each Settlement Class Member's right to
6 participate, submit an exclusion/Opt-Out, or Objection to the proposed Settlement, and the timing
7 and procedures for doing so; the temporary and conditional certification of the Settlement Class for
8 settlement purposes only; preliminary Court approval of the proposed Settlement; timing and
9 procedures for distributing the Gross Settlement and the Individual Settlement Payments to the
10 Participating Class Members; and the date of the Final Approval Hearing as well as the rights of the
11 Settlement Class to file documentation in support of or in opposition to and appear in connection
12 with said hearing.

13 ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES
14 THE PROPOSED CLASS NOTICE PACKET TO THE CLASS AND FINDS that mailing to the
15 last known address of the Settlement Class, as specifically described within the Settlement
16 Agreement, constitutes an effective method of notifying Settlement Class Members of their rights
17 with respect to the proposed Settlement. ACCORDINGLY, IT IS HEREBY ORDERED that:

18 Within thirty (30) calendar days of the Court granting preliminary approval of this
19 Agreement, Defendant shall provide the Settlement Administrator with the Class Information for
20 purposes of mailing the Class Notice. The Settlement Administrator shall maintain the Class
21 Information as private and confidential and shall not disclose such data to any persons or entities
22 other than Counsel for Defendant, except that, subject to Defendant's approval, relevant
23 information can be provided to Class Counsel if necessary for Class Counsel to respond to
24 inquiries or requests from Class Members. The Class Information is being supplied solely for
25 purposes of the administration of the Settlement set forth in this Agreement and cannot be used by
26 the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the
27 Class Information will not be used to solicit Class Members to file any claim, charge, or complaint
28 of any kind whatsoever against the Defendant and/or the Released Parties and will only be used to

1 administer the Settlement under the terms provided herein.

2 IT IS FURTHER ORDERED that no later than three (3) calendar days after receipt of the
3 Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has
4 been received and state the number of Class Members on the list.

5 IT IS FURTHER ORDERED that within 30 days of receipt of the Class Information, the
6 Settlement Administrator will mail copies of the Class Notice via regular First-Class U.S. Mail.

7 IT IS FURTHER ORDERED that any Class Notice returned to the Settlement Administrator
8 as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
9 address affixed thereto. If no forwarding address is affixed, the Settlement Administrator shall
10 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
11 name, address and/or social security number of the Class Member whose notice was undeliverable,
12 and shall then re-mail all returned, undelivered mail within ten (10) days of receiving notice that a
13 Class Notice was undeliverable. Class Members who receive a re-mailed Class Notice shall have
14 their Response Deadline extended twenty (20) days from the original Response Deadline.

15 IT IS FURTHER ORDERED that Class Members who disagree with the number of Eligible
16 Workweeks stated on their Class Notice may provide documentation and/or a written explanation
17 to the Settlement Administrator to show contrary information by the Response Deadline. If there is
18 a dispute, the Settlement Administrator will consult with the Parties to determine whether an
19 adjustment is warranted. The Settlement Administrator shall determine a Class Member's eligibility
20 for, and the amounts of, any Individual Settlement Payment under the terms of this Agreement. The
21 Settlement Administrator's determination of the eligibility for and amount of any Individual
22 Settlement Payment will be binding upon the Class Members and the Parties. Defendant's records
23 will be given a rebuttable presumption of accuracy.

24 IT IS FURTHER ORDERED that any disputes not resolved by the Settlement Administrator
25 concerning the administration of the Settlement will be resolved by the Court under the laws of the
26 State of California. Prior to any such involvement of the Court, counsel for the Parties will confer
27 in good faith to attempt to resolve the dispute without involving the Court.

1 IT IS FURTHER ORDERED that individuals who fall within the definition of the Class may
2 choose to exclude themselves as Participating Class Members. The Class Notice shall state that
3 Class Members who wish to exclude themselves from the Settlement must submit a Request for
4 Exclusion by the Response Deadline. The Request for Exclusion must be in writing and: (1) contain
5 the name, address, telephone number, and the last four digits of the Social Security number of the
6 Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects
7 to be excluded from the Settlement in a form that is the same or substantially similar to the following:
8 “I wish to exclude myself from the class settlement reached in the matter of *Edmundo Baquiring v.*
9 *California Sierra Express*. I understand that by excluding myself, I will not receive money from the
10 class settlement of my individual claims”; (3) be signed by the Class Member; and (4) be postmarked
11 by the Response Deadline and returned to the Settlement Administrator at the specified address.
12 The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the
13 exclusive means used to determine whether a Request for Exclusion has been timely submitted.

14 IT IS FURTHER ORDERED that any Class Members who validly and timely exclude
15 themselves from the Settlement will not receive an Individual Settlement Payment and will not be
16 bound by the Released Claims, but will be bound by the PAGA Release and will be sent their
17 Individual PAGA Payment provided that the Class Members are PAGA Settlement Group
18 Members.

19 IT IS FURTHER ORDERED that every Class Member who does not validly and timely
20 exclude themselves shall be deemed a Participating Class Member. The Parties’ counsel shall
21 receive a copy of all valid Requests for Exclusion from the Settlement Administrator within ten (10)
22 calendar days after the Response Deadline.

23 IT IS FURTHER ORDERED that the Class Notice shall state that Class Members who wish
24 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any
25 written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the
26 Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
27 determining that a Notice of Objection was timely received. The Notice of Objection must be signed
28 by the Class Member and state: (1) the full name and address of the objecting Class Member, and

1 the approximate dates of his or her employment with Defendant; (2) the basis for each specific
2 objection and any legal support in clear and concise terms; and (3) whether the Class Member
3 intends to formally intervene and become a party of record in the action, and/or appear at the Final
4 Approval Hearing. Class Counsel will ensure that any Notice of Objection received by the
5 Settlement Administrator by the Response Deadline is filed with the Court along with the Motion
6 for Final Approval. Any of the Parties may file a response to any objection before the Final Approval
7 Hearing. Any attorney who will represent an individual objecting to this Settlement who has not
8 filed a written objection must file a notice of appearance with the Court and serve Class Counsel
9 and counsel for Defendant with this notice no later than the Response Deadline. It will also inform
10 Class Members that if they first request exclusion from, and opt out of, the Class and then object,
11 the objections would not be considered valid and that if the Class Members object and then request
12 exclusion from, and opt out of the Class, the Class Members would be deemed to have waived their
13 objection.

14 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on _____,
15 2023 at _____ a.m./p.m. in Department 21 of the above captioned Courthouse to consider the
16 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this
17 Order Granting Preliminary Approval, and to consider the application of Class Counsel for an award
18 of attorneys' fees, costs, and class representative enhancement. The Court may continue the Final
19 Approval Hearing to another date at its discretion.

20 IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting
21 Final Approval and application for attorneys' fees and costs and class representative enhancement
22 shall be filed with this Court no later than sixteen (16) court days before the date set for the Final
23 Approval Hearing.

24 IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file an
25 Order Granting Final Approval and Judgment, or if the Effective Date does not occur for any reason
26 whatsoever, the Settlement Agreement and the proposed Settlement which is the subject of this
27 Order and all evidence and proceedings had in connection therewith shall be without prejudice to
28

1 the status quo ante rights of the Parties to the litigation as more specifically set forth in the Settlement
2 Agreement.

3 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in
4 this matter except those contemplated herein and in the Settlement Agreement are stayed.

5 The Court expressly reserves the right to adjourn or continue the Final Fairness Approval
6 Hearing from time to time without further notice to the Class.

7 **IT IS SO ORDERED.**

8
9 Dated: _____, 2023

Honorable Evelio Grillo
JUDGE OF THE SUPERIOR COURT

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