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10 Attorneys for Plaintiff ARNOLD GARCIA,
on behalf of himself, all others similarly
11 situated, and on behalf of the general public

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF ALAMEDA**
14

15 ARNOLD GARCIA, on behalf of himself, all
16 others similarly situated, and on behalf of the
general public,

17 Plaintiffs,

18 v.

19 MCCOLLISTER'S TRANSPORTATION
20 SYSTEMS, INC.; MCCOLLISTER'S
GLOBAL SERVICES, INC.;
21 MCCOLLISTER'S AUTO TRANSPORT,
LLC; and DOES 1-100,

22 Defendants.
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Case No. RG21112345

[Consolidated with Case No. RG21112189]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT, AND
ENTERING OF FINAL JUDGMENT**

Date: August 29, 2023
Time: 3:00 p.m.

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Costs, Class
3 Representative Enhancement Payment, and Entering of Final Judgment ("Motion for Final Approval")
4 came before this Court, the Honorable Brad Seligman, presiding, on August 29, 2023. The Court having
5 considered the papers submitted in support of the Motion for Final Approval, HEREBY ORDERS
6 AND MAKES THE FOLLOWING DETERMINATIONS:

7 1. All terms used herein shall have the same meaning as defined in the Parties' Class
8 Action Settlement Agreement ("Settlement Agreement") and the Order Granting Plaintiff's Motion
9 for Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class
10 Notice, Setting of Final Approval Hearing Date ("Preliminary Approval Order").

11 2. The Court finds that the applicable requirements of California Code of Civil
12 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
13 to the Class and the settlement. The Court hereby makes final its earlier provisional certification of
14 the Class for settlement purposes, as set forth in the Preliminary Approval Order. The Class is hereby
15 defined to include all persons who contracted with Defendants as an owner/operator to haul freight,
16 who worked a majority of their time under the contract in California and/or had their base of
17 operations in California, whom Defendants classified as independent contractors, and who drove in
18 California at any time between September 10, 2017, through January 7, 2023 ("Class" or "Class
19 Members").

20 3. The Court has jurisdiction over the claims of the Class Members asserted in this
21 proceeding and over all parties to the proceeding.

22 4. The Notice of Class Action Settlement ("Class Notice") was mailed to Class
23 Members by first-class U.S. mail to Class Members in both English and Spanish. The Class Notice
24 informed the Class of the material terms of the settlement, of their right to receive a *pro rata* portion
25 of the Net Settlement Amount, of their right to request exclusion from the settlement, of their right
26 to comment upon or object to the settlement and to appear in person or through counsel at the Final
27 Approval Hearing and of the date set for the Final Approval Hearing. Adequate periods of time were
28 provided by each of these procedures.

1 5. In response to the Class Notice, no member of the Class submitted written objections
2 to the settlement, or stated an intention to appear at the Final Approval Hearing. No member of the
3 Class requested to be excluded from the settlement or submitted a dispute regarding the number of
4 workweeks credited to him/her.

5 6. The Court finds and determines that this notice procedure afforded adequate
6 protections to Class Members and provides the basis for the Court to make an informed decision
7 regarding approval of the settlement based on the Class Members' response. The Court finds and
8 determines that the Class Notice was the best notice practicable under the circumstances, and
9 satisfied the requirements of law and due process.

10 7. The Court further finds and determines that the terms of the settlement are fair,
11 reasonable and adequate to the Class and to each Class Member

12 8. Pursuant to California law, the Court hereby grants final approval of the settlement.
13 The Court finds that the settlement was reached as a result of informed and non-collusive arm's-
14 length negotiations facilitated by a neutral mediator. The Court further finds that the Parties
15 conducted extensive investigation, research, and discovery and that their attorneys were able to
16 reasonably evaluate their respective positions. The Court also finds that settlement will enable the
17 Parties to avoid additional and potentially substantial litigation costs, as well as delay and risks if
18 the Parties were to continue to litigate the case. The Court has considered the absence of objections
19 to and low number of requests for exclusion from the settlement, reviewed the monetary recovery
20 provided as part of the settlement, and recognizes the significant value accorded to the Class.
21 Accordingly, the Court hereby approves the terms set forth in the Settlement Agreement and finds
22 that the settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to
23 effectuate the settlement according to its terms.

24 9. A full opportunity has been afforded to the Class Members to participate in the Final
25 Approval Hearing, and all Class Members and other persons wishing to be heard have been heard.
26 The Class Members also have had a full and fair opportunity to exclude themselves from the
27 settlement. Accordingly, the Court determines that all Class Members who did not submit a timely
28 and valid request for exclusion from the settlement to the Settlement Administrator ("Settlement

1 Class Members”) are bound by this Order Granting Plaintiff’s Motion for Final Approval of Class
2 Action Settlement, Attorneys’ Fees, Costs, Class Representative Enhancement Payment, and
3 Entering of Final Judgment (“Final Approval Order and Judgment”).

4 10. The Court hereby confirms David Mara and Matthew Crawford of Mara Law Firm,
5 PC, and Hunter Pyle of Hunter Pyle Law as Class Counsel in this action.

6 11. The Court hereby confirms Plaintiff Arnold Garcia as the Class Representative in
7 this action.

8 12. The Court finds and determines that the Individual Class Settlement Shares and
9 Individual PAGA Settlement Shares provided for by the terms of the Settlement Agreement to be
10 paid to the Settlement Class Members and Aggrieved Employees are fair and reasonable. The Court
11 hereby gives final approval to and orders the payment of those amounts be made to the Settlement
12 Class Members and Aggrieved Employees in accordance with the terms of the Settlement
13 Agreement.

14 13. The Court finds and determines the Class Representative Enhancement in the sum of
15 \$7,500 to Plaintiff Arnold Garcia is fair and reasonable. The Court hereby orders the Settlement
16 Administrator to make the payment to the Plaintiff/Class Representative Arnold Garcia in the
17 amount of \$7,500 for the Class Representative Enhancement in accordance with the terms of the
18 Settlement Agreement.

19 14. The Court finds and determines that the payment to the Settlement Administrator,
20 Phoenix Settlement Administrators, in the sum of \$4,995 for its fee and expenses incurred and to be
21 incurred for the notice and settlement administration process is fair and reasonable. The Court
22 hereby orders the Settlement Administrator to make payment to itself in the amount of \$4,995 for
23 Administration Costs in accordance with the terms of the Settlement Agreement.

24 15. Pursuant to the terms of the settlement, and the authorities, evidence and argument
25 submitted by Class Counsel, the Court hereby approves of an attorneys’ fee award in the sum of
26 \$133,333.33 and a Cost Award of \$14,901.58 to Class Counsel. The Court finds such amounts to
27 be fair and reasonable. The Court hereby orders the Settlement Administrator to make payment to
28 Class Counsel in the amount of \$133,333.33 for attorneys’ fees, with the exception of the ten percent

1 (10%) holdback of fees described in paragraph 22 below, and \$14,901.58 for litigation expenses in
2 accordance with the terms of the Settlement Agreement.

3 16. The Court finds and determines that the payment to the Labor and Workforce
4 Development Agency (“LWDA”), in the sum of \$18,750 (which is 75% of the \$25,000 allocated to
5 claims under the Private Attorneys General Act of 2004 (“PAGA”)), is fair and reasonable. The
6 Court hereby orders the Settlement Administrator to make the payment to the LWDA in the amount
7 of \$18,750 for the PAGA payment in accordance with the terms of the Settlement Agreement.

8 17. Neither Defendants nor any related persons or entities shall have any further liability
9 for costs, expenses, interest, attorneys’ fees, or for any other charge, expense, or liability, except as
10 provided for by the Settlement Agreement.

11 18. The Court finds and determines that the releases contained in the Settlement
12 Agreement is appropriate and shall bind all Settlement Class Members, Plaintiff, and the LWDA.

13 19. Nothing in this Final Approval Order and Judgment shall preclude any action to
14 enforce the Parties’ obligations pursuant to the Settlement Agreement or pursuant to this Final
15 Approval Order and Judgment, including the requirement that Defendants make payments to
16 Settlement Class Members and Aggrieved Employees in accordance with the Settlement
17 Agreement.

18 20. The Court finds and determines that nothing in the Settlement Agreement or this
19 Final Approval Order and Judgment (1) is intended or will be construed as an admission of liability
20 or wrongdoing by Defendants or (2) may be offered in evidence against Defendants (other than
21 solely in connection with this settlement).

22 21. The Court hereby enters final judgment in this action in accordance with the terms
23 of the Settlement Agreement, Preliminary Approval Order, and this Final Approval Order and
24 Judgment.

25 22. The Court also orders that the Settlement Administrator hold in an interest-bearing
26 account 10% of the attorneys’ fees, pending the submission and approval of a final compliance
27 status report after completion of the distribution process. A final compliance hearing will be set for
28 _____ at __:____.m. A compliance status report and proposed

1 Amended Judgment per CCP 384 must be filed at least 5 court days prior to the compliance hearing.
2 Pursuant to Code Civ. Proc. §384, the compliance report shall specify the total amount paid to class
3 members, and the residual of unclaimed funds that will be paid to the entity identified as the recipient
4 of such funds in the proposed settlement, along with a proposed amended judgment.

5 23. The Parties shall bear their own costs and attorneys' fees except as otherwise
6 provided for by the Settlement Agreement and this Final Approval Order and Judgment.

7 24. Without affecting the finality of this Final Approval Order and Judgment in any way,
8 the Court retains jurisdiction of all matters relating to the interpretation, administration,
9 implementation, effectuation and enforcement of this order and the Settlement.

10 **JUDGMENT**

11 25. This document shall constitute a judgment for purposes of California Rules of Court,
12 Rule 3.769(h). In accordance with, and for the reasons stated in this Final Approval Order and
13 Judgment, judgment shall be entered within the meaning and for purposes of Code of Civil Procedure
14 sections 577, 904.1(a), and Rules 3.769, and 8.104 of the California Rules of Court whereby named
15 Plaintiff/Class Representative and all Settlement Class Members shall take nothing from Defendants
16 except as expressly set forth in the Settlement Agreement, in conjunction with Plaintiff's Unopposed
17 Motion for Preliminary Approval of the Class Action Settlement. The Court, pursuant to California
18 Rule of Court 3.769(h), shall retain jurisdiction over the parties to enforce the terms of the judgment.

19 26. Notice of entry of this Final Approval Order and Judgment shall be given to the Class
20 Members by posting a copy of the Final Approval Order and Judgment on the settlement website for a
21 period of at least sixty (60) calendar days after the date of entry of this Final Approval Order and
22 Judgment. Individualized notice is not required.

23 **IT IS SO ORDERED.**

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25 Dated:

26 Honorable Brad Seligman
27 Alameda County Superior Court Judge
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