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

Plaintiffs EDDIE ESCAMILLA and
GUSTAVO ESCAMILLA, on behalf of
themselves, all others similarly situated,
and on behalf of the general public.

Plaintiffs,

vs.

KEYSTONE FREIGHT CORP.;
NATIONAL RETAIL
TRANSPORTATION, INC.; and DOES 2
through 100,

Defendants.

Case No.: CIVDS1931366

[Assigned to Hon. David Cohn, Dept. S-26]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT AND SETTING A
SETTLEMENT FAIRNESS HEARING**

Complaint Filed: October 18, 2019
Trial Date: Not Set Yet

1 Plaintiffs' application for an Order Preliminarily Approving a Class Action Settlement and
2 setting a settlement hearing was heard by the court on _____, 2022.

3 The Court has considered the Joint Stipulation of Class Action and PAGA Settlement and Release
4 (and its exhibits) (the "Stipulation") and all other papers filed in this action.

5 NOW THEREFORE, IT IS HEREBY ORDERED:

6 1. All defined terms contained herein shall have the same meanings as set forth in the
7 Stipulation.

8 2. The Class Representatives and Defendants, through their counsel of record in the
9 Litigation, have reached an agreement to settle all claims in the Litigation on behalf of the Class as
10 a whole.

11 3. The Court hereby conditionally certifies the following Class for settlement purposes
12 only: any and all persons that performed work for Defendants in California pursuant to owner-
13 operator agreements ("Direct Contractors") and/or pursuant to being hired by Direct Contractors to
14 perform the work under the owner-operator agreements without being a party to the agreements
15 ("Secondaries") during the time period of October 18, 2015, through April 11, 2022.

16 4. For purposes of this Settlement, the Second Amended Complaint ("SAC"), attached
17 as Exhibit 2 to the Declaration of David Mara filed with Plaintiffs' motion for preliminary approval,
18 is deemed filed and responded to via Defendant's Answer currently on file

19 5. Should for whatever reason the Stipulation and Judgment not become Final, the fact
20 that the parties were willing to stipulate to certification of a class as part of the Stipulation shall have
21 no bearing on, or be admissible in connection with the issue of whether a class should be certified
22 in a non-settlement context.

23 6. The Court appoints and designates: (a) Plaintiffs Arturo Escamilla, Eddie Escamilla
24 and Gustavo Escamilla as the Class Representatives and (b) David Mara and Matthew Crawford of
25 MARA LAW FIRM, PC are qualified to serve as Class Counsel for the Class. Class Counsel is
26 authorized to act on behalf of the Class with respect to all acts or consents required by, or which
27 may be given, pursuant to the Stipulation, and such other acts reasonably necessary to finalize the
28 Stipulation and its terms. Any Class Member may enter an appearance through his or her own

1 counsel at such Class Member's own expense. Any Class Member who does not enter an
2 appearance or appear on his or her own behalf will be represented by Class Counsel.

3 7. The Court hereby approves the terms and conditions provided for in the Stipulation.

4 8. The Court hereby preliminarily approves the Stipulation and the Maximum
5 Settlement Amount in the amount of \$1,500,000, which is to be distributed as follows: Out of the
6 Maximum Settlement Amount, (a) \$10,000.00 is to be paid to each of Class Representatives Eddie
7 Escamilla and Gustavo Escamilla and \$5,000 is to be paid to Class Representative Arturo Escamilla
8 for their services to the Class; (b) \$500,000 shall be paid to Class Counsel for attorneys' fees and
9 reimbursement and up to \$20,000 for actual costs incurred; (c) \$56,250 shall be paid to the
10 California Labor and Workforce Development Agency for PAGA Penalties, and (d) the Claim
11 Administrator shall be paid for its fees and costs relating to the claims administration process which
12 is expected to not exceed \$15,000.00 The Court further hereby preliminarily approves the Claims
13 Payout Fund, and the formulas provided in the Stipulation regarding Individual Settlement
14 Amounts.

15 9. The Court finds that on a preliminary basis the Stipulation appears to be within the
16 range of reasonableness of a settlement, including the amount of the PAGA penalties, Class
17 Representatives' service awards, Class Counsel fees and costs, the claims administration fees and
18 the allocation of payments to Participating Claimants, that could ultimately be given final approval
19 by this Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate and
20 reasonable as to all potential Class Members when balanced against the probable outcome of further
21 litigation relating to liability and damages issues. It also appears that extensive and costly
22 investigation, research and court proceedings have been conducted so that counsel for the Settling
23 Parties are able to reasonably evaluate their respective positions. It appears to the Court that
24 settlement at this time will avoid substantial additional costs by all Settling Parties, as well as avoid
25 the delay and risks that would be presented by the further prosecution of the Litigation. It also
26 appears that settlement has been reached as a result of intensive, serious and non-collusive, arms-
27 length negotiations.

28 10. A hearing (the "Settlement Fairness Hearing") shall be held before this Court on

1 _____ at _____ in the
2 Superior Court of the State of California, County of San Bernardino to determine all necessary
3 matters concerning the Stipulation, including whether the proposed settlement of the action on the
4 terms and conditions provided for in the Stipulation is fair, adequate and reasonable and should be
5 finally approved by the Court and whether a Judgment, as provided in the Stipulation, should be
6 entered herein. At this same time, a hearing on Class Counsel's motion for attorneys' fees and
7 reimbursement of litigation costs and the Class Representatives' service awards shall also be held.

8 11. The Court hereby approves, as to form and content, the Notice of Proposed Class
9 Action Settlement to be sent to Class Members, which was attached as Exhibit 1 to the Stipulation.
10 The Court finds that distribution of the Class Notice to Class Members substantially in the manner
11 and form set forth in the Stipulation and this Order meet the requirements of due process and shall
12 constitute due and sufficient notice to all parties entitled thereto.

13 12. The Court appoints and designates Phoenix Class Action Administration Solutions
14 as the Claims Administrator. The Court hereby directs the Claims Administrator to provide: (a) the
15 approved Notice of Proposed Class Action Settlement to Class Members within twenty (20) calendar
16 days of Preliminary Approval Order using the procedures set forth in the Stipulation.

17 13. Any Class Member may choose to opt out of and be excluded from the settlement as
18 provided in the Stipulation and Class Notice and by following the instructions for requesting
19 exclusion. Any person who timely and properly opts out of the settlement will not be bound by the
20 Stipulation or have any right to object, appeal or comment thereon. Any Opt Out request must be
21 signed by each such Class Member opting out and must otherwise comply with the requirements
22 delineated in the Class Notice and Opt Out Form. Class Members who have not requested exclusion
23 by submitting a valid and timely Opt Out Form, by the Opt Out Deadline, shall be bound by all
24 determinations of the Court, the Stipulation and Judgment.

25 14. Any Class Member may object to the Stipulation or express his or her views
26 regarding the Stipulation, and may present evidence and file briefs or other papers that may be
27 proper and relevant to the issues to be heard and determined by the Court as provided in the Class
28 Notice. No Class Member, however, shall be heard or entitled to object, and no papers or briefs

1 submitted by any such person shall be received or considered by the Court, unless on or before the
2 Objection Deadline the Class Member or Person or his or her counsel properly filed their objections
3 with the Court and served their objections on Class Counsel and Defense Counsel as provided in the
4 Stipulation and Class Notice. Any Class Member who does not make his or her objection in the
5 manner provided for in the Stipulation and Class Notice, including by the Objection Deadline, shall
6 be deemed to have waived such objection and shall forever be foreclosed from making any objection
7 to the Stipulation.

8 15. Defendants must exercise any right it may have to terminate the Stipulation by no
9 later than thirty (30) calendar days after the Opt Out Deadline.

10 16. The Motion for Final Approval shall be filed by Class Representatives no later than
11 sixteen (16) court days before the Settlement Fairness Hearing.

12 17. In the event that the Effective Date occurs, all Settlement Class Members and Class
13 Representatives will be deemed to have forever released and discharged the Released Claims
14 applicable to them.

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

18 **IT IS SO ORDERED.**

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21 DATED:

The Honorable David Cohn
Judge of the Superior Court