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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT
CORPORATION, a Delaware Corporation;
PEPSI-COLA SALES AND
DISTRIBUTION, INC., a Delaware
Corporation; PEPSICO, INC., a North
Carolina Corporation; and Does 1-10,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0008803
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Robert T. Waters
Department 11B

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S [UNOPPOSED] MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: TBD
Time: 9:00 a.m.
Dept.: 11B

Complaint filed: July 25, 2024
Trial Date: Not set

1 WHEREAS, this action is pending before this Court as a class action (the “Action”); and

2 WHEREAS, the Parties have jointly applied to this Court for an order preliminarily
3 approving the settlement of the Action in accordance with a Stipulation and Settlement of Class
4 Claims (the “Stipulation” or “Settlement”), which, together with the exhibits annexed thereto,
5 sets forth the terms and conditions for a proposed settlement and dismissal of the Action with
6 prejudice upon the terms and conditions set forth therein; and the Court having read and
7 considered the Stipulation and the exhibits annexed thereto;

8 NOW, THEREFORE, IT IS HEREBY ORDERED:

9 1. This Order incorporates by reference the definitions in the Stipulation, and all
10 terms defined therein shall have the same meaning in this Order as set forth in the Stipulation.

11 2. The Court recognizes that the Plaintiffs and Defendants stipulate and agree to
12 certification of a class for settlement purposes only. For settlement purposes only, the Court
13 conditionally certifies the following settlement class (the “Class”): “all hourly-paid, non-
14 exempt drivers employed by New Bern Transport Corporation in California at any time during
15 July 25, 2020, and ending on December 3, 2025, excluding any weeks covered by the
16 settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).”

17 3. For settlement purposes only, the Court conditionally certifies the following
18 PAGA settlement class (the “PAGA Class”): “all hourly-paid, non-exempt drivers employed
19 by New Bern Transport Corporation in California at any time during July 25, 2023, and ending
20 on December 3, 2025, excluding any weeks covered by the settlement in *Stevens v. PepsiCo,*
21 *Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y).”

22 4. The Court finds, for settlement purposes only, the requirements of California
23 Code of Civil Procedure section 382 are satisfied. The term “Class Member” means a Plaintiff
24 who has not requested exclusion from the Settlement.

25 5. Named Plaintiff Angel Cuellar (“Named Plaintiff”) is hereby appointed and
26 designated, for all purposes, as the representative of the class, and the following attorneys are
27 hereby appointed and designated as counsel for Named Plaintiff and the Class (“Class
28 Counsel”):

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Class Counsel is authorized to act on behalf of Class Members with respect to all acts or consents required by, or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to consummate the Settlement.

6. The Court hereby approves on a preliminary basis the Stipulation and settlement contained therein, including the definition and disposition of the Settlement Fund and related matters provided for in the Stipulation. It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to liability and damages issues. It further appears that extensive and costly investigation and research have been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by further prosecution of the Action. It further appears that the Settlement has been reached as the result of intensive, serious and non-collusive, arms-length negotiations.

1 7. A hearing (the “Settlement Hearing”) shall be held before this Court on
2 _____, at _____.m. at the Superior Court of the State of California for the
3 County of San Joaquin, 180 E Weber Avenue, San Joaquin, CA 95202, to determine all
4 necessary matters concerning the Settlement, including: whether the proposed settlement of the
5 Action on the terms and conditions provided for in the Stipulation is fair, adequate and
6 reasonable and should be finally approved by the Court; whether a Judgment, as provided in the
7 Stipulation, should be entered herein; whether the plan of allocation contained in the
8 Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to
9 finally approve Class Counsel’s Fees and Costs Award, the Named Plaintiff’s Service
10 Award/General Release Payment, the PAGA payment to the LWDA, and the settlement
11 administration expenses. The Settlement Hearing may be continued without further notice to
12 Plaintiffs. The Parties shall file a Motion for Final Approval and/or a Motion for Attorneys’
13 Fees and Costs on or before _____, 2026.

14 8. The Court hereby approves, as to form and content, the Notice annexed as
15 Exhibit 1 to the Stipulation. The Court finds that the distribution of the Notice substantially in
16 the manner and form set forth in the Stipulation and this Order meets the requirements of due
17 process, is the best notice practicable under the circumstances, and shall constitute due and
18 sufficient notice to all persons entitled thereto.

19 9. The Court hereby appoints Apex Class Action Administration as Settlement
20 Administrator and hereby directs the Settlement Administrator to mail or cause to be mailed to
21 Plaintiffs the Notice by first class mail by no later than thirty (30) calendar days after
22 Preliminary Approval, or receipt of the Class List/Data Report, whichever is later (the “Notice
23 Date”) using the procedures set forth in the Stipulation. Plaintiffs who do not opt out of the
24 settlement will become Class Members and will automatically receive their Individual
25 Settlement Awards.

26 10. Any Plaintiff may choose to opt out of and be excluded from the Class as
27 provided in the Notice by following the instructions for requesting exclusion from the Class
28 that are set forth in the Notice. All requests for exclusion must be submitted as provided in the

1 Notice. Any such person who chooses to opt out of and be excluded from the Class will not be
2 entitled to any recovery under the Settlement and will not be bound by the Settlement or have
3 any right to object, appeal or comment thereon. Any written request to opt out must be signed
4 by each such person opting out. Class Members who have not timely and validly requested
5 exclusion shall be bound by all determinations of the Court, the Stipulation and Judgment.

6 11. Any Class Member may appear at the Settlement Hearing and may object or
7 express his or her views regarding the Settlement, and may present evidence and file briefs or
8 other papers, that may be proper and relevant to the issues to be heard and determined by the
9 Court as provided in the Notice.

10 12. To the extent permitted by law, pending final determination as to whether the
11 settlement contained in the Stipulation should be approved, the Plaintiffs, whether directly,
12 representatively, or in any other capacity, whether or not such persons have appeared in the
13 Action, shall not institute or prosecute any Released Claims against the Released Parties. The
14 Settlement is not a concession or admission, and shall not be used against Defendants or any of
15 the Released Parties as an admission or indication with respect to any claim of any fault or
16 omission by Defendants or any of the Released Parties. Whether or not the Settlement is
17 finally approved, neither the Settlement, nor any document, statement, proceeding or conduct
18 related to the Settlement, nor any reports or accounts thereof, shall in any event be:

- 19 a. Construed as, offered or admitted in evidence as, received as or deemed to
20 be evidence for any purpose adverse to the Released Parties, including, but
21 not limited to, evidence of a presumption, concession, indication or
22 admission by Defendants or any of the Released Parties of any liability,
23 fault, wrongdoing, omission, concession or damage; or
24 b. Disclosed, referred to, or offered or received in evidence against any of the
25 Released Parties in any further proceeding in the Action, or in any other
26 civil, criminal or administrative action or proceeding, except for purposes
27 of settling the Action pursuant to the Stipulation.
28

1 13. As of the date this Order is signed, all dates and deadlines associated with the
2 Action shall continue to be stayed, other than those related to the administration of the
3 Settlement of the Action.

4 14. In the event the Settlement does not become effective in accordance with the
5 terms of the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or
6 fails to become effective for any reason, this Order shall be rendered null and void and shall be
7 vacated, and the Parties shall revert to their respective positions as of before entering into the
8 Stipulation.

9 15. The Court reserves the right to adjourn or continue the date of the Settlement
10 Hearing and all dates provided for in the Stipulation without further notice to Plaintiffs, and
11 retains jurisdiction to consider all further applications arising out of or connected with the
12 proposed Settlement

13 **IT IS SO ORDERED.**

14
15 Dated: _____, 2026

The Honorable Robert T. Waters
Judge of the Superior Court