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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

DECLARATION OF MAGGIE K. REALIN IN SUPPORT OF PLAINTIFF'S [UNOPPSED] MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date: TBD 4/14/26
Time: 9:00 a.m.
Dept.: 11B

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

FILE BY FAX

I, Maggie K. Realin, declare as follows:

1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-counsel of record for Plaintiff Angel Cuellar in this action. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement. The following facts are within my personal knowledge and if called to testify I could and would competently testify to them.

2. Plaintiff Angel Cuellar filed a class action complaint on July 25, 2024 in San Joaquin Superior Court, on behalf of himself and other New Bern Transport Corporation ("New Bern" or "Defendant")'s California drivers, alleging claims for: (1) failure to pay minimum and/or regular wages; (2) failure to pay correctly-calculated sick pay; (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to reimburse business expenses; (6) failure to provide itemized wage statements; (7) failure to timely pay all wages due upon termination of employment; and (8) unfair competition.

3. Plaintiff filed an amended complaint, adding a cause of action under PAGA on September 16, 2024. Plaintiff then agreed to remove his meal and rest period claims as preempted by the Motor Carrier Safety Act's hours-of-service regulations, consistent with *Int'l Bhd. of Teamsters, Local 2785 v. FMCSA* (9th Cir. 2021) 986 F.3d 841, 849, and filed the Second Amended Complaint on December 18, 2024.

4. After some litigation and discovery, the Parties attended a private mediation on September 4, 2025 with Steven Serratore, Esq. The case eventually settled. For purposes of settlement, the Parties stipulated to filing a Third Amended Complaint ("TAC"); all claims released in the settlement are alleged in the TAC, which was filed on April 11, 2026.

5. The Parties conducted a thorough investigation of the claims and facts alleged in this action, and we analyzed the legal principles applicable to Plaintiff's claims against New Bern. Defendant produced over 25,000 pages of documents and other information, including policies, handbooks, data points, in discovery, and a 5% class sample of time and pay records for mediation purposes. We engaged an expert to prepare a class-wide damages model. As a result of this careful investigation, the Parties developed a clear understanding of their

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respective claims and defenses.

6. Although Plaintiff remains confident in his position, he recognizes several risks in prevailing on the certification and the merits.

7. In 2019, New Bern resolved a similar action involving its California drivers for $5,000,000 in *Helton v. Pepsi-Cola Sales and Distribution, Inc., et al.*, Case No. 3:17-cv-01135-EMC (N.D. Cal.). That settlement occurred before the Federal Motor Carrier Safety Administration ("FMCSA")'s preemption of California's meal and rest break claims took effect. New Bern will contend that, following *Helton*, it had already implemented measures to address the pay and break practices at issue in the present case, substantially reducing its liability in this action.

8. With respect to Plaintiff's off-the-clock claims, New Bern is expected to argue that its written policies are compliant and expressly prohibit any off-the-clock work, including during meal periods, and that employees are provided with contact information for an anonymous HR hotline to report any violations. Further, New Bern contends that drivers were required by Department of Transportation Regulations to record all on-duty time. New Bern also contends that all drivers were issued company devices capable of clocking in remotely, eliminating any need to wait to use the timeclock inside the building. Additionally, New Bern argues driver shift start times were staggered, thereby reducing or eliminating any alleged delays or lines at the timeclock.

9. Regarding meal and rest period claims, New Bern asserts that these claims are preempted under the FMCSA. New Bern further argues that it had no actual or constructive knowledge of Plaintiff working during breaks, which its policies expressly prohibit.

10. As to Plaintiff's claim that he was paid sick pay at his base rate rather than his regular rate of pay, New Bern argues that the evidence shows only a single occurrence in which Plaintiff was paid two different hourly rates and received sick pay at the lower rate. According to New Bern, this happened because Plaintiff received a raise mid-week and took sick leave during that same week—an exceedingly rare circumstance. Therefore, New Bern will contend that this claim is *de minimis* in value, at best.

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11. With respect to unreimbursed business expenses under Labor Code section 2802, New Bern argues that it did not require employees to use personal phones for work, as all drivers were issued company phones. Moreover, if any employee used a personal phone for business purposes, New Bern maintains that it had an internal portal through which employees could submit reimbursement requests.

12. Regarding Plaintiff's claim for unreimbursed uniform maintenance costs, New Bern asserts that it provides each employee with five sets of pants, shorts, and vests, along with one pair of shoes every year, at no cost.

13. To the extent Plaintiff or other drivers did not request reimbursement for such expenses, New Bern asserts the claim is subject to summary adjudication.

14. Plaintiff's wage statement and untimely wage claims are derivative of his underlying unpaid time, meal, and rest break claims. New Bern asserts that unpaid wages cannot serve as the basis for derivative penalties under *Maldonado v. Epsilon Plastics* (2018) *Inc*., 22 Cal. App. 5th 1308, 1336–37.

15. The settlement in *Stevens v. PepsiCo, Inc. et al*., Case No. 22-cv-00802 (S.D.N.Y) is a global nationwide hybrid FLSA/State law common fund settlement, with Class and Collective Members who were employed by a number of entities, including New Bern, "during the seventeen pay periods between December 5, 2021 and April 8, 2022." The *Stevens* release covers "any and all claims under state laws relating to or arising out of the Kronos Outage, including, without limitations, all state and local claims for unpaid wages (including, but not limited to minimum wage and overtime), failure to timely pay wages, failure to record hours worked, paystub requirements, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amount."

16. New Bern represents that the number of employees covered by the Settlement is 1,780 and the number of workweeks covered is 241,768. Using this data, the average individual settlement payment is $2.349 per workweek; or approximately $319.05 per Class Member (without accounting for the number of workweeks worked).

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17. The payment under PAGA is reasonable because New Bern will argue that the recent PAGA amendments limit Plaintiff's recovery and that any penalties are capped at 15% under Labor Code Section 2699(g). Defendant will contend it took "all reasonable steps" to comply with the law before receiving the PAGA notice, including maintaining lawful wage and hour policies, conducting regular audits, training supervisors, and promptly correcting a minor calculation error. Because these compliance measures were in place prior to the notice, Defendant will argue that it qualifies for the 15% cap. Thus, the PAGA penalties to be paid under this Settlement represent 1.6% of the total potential maximum PAGA penalties for Plaintiff's direct claims, assuming class members could prove they suffered four types of violations in every single pay period (52,089 pay periods) times $100, multiplied by 4 penalties for unpaid wages, meal breaks, rest breaks, and unreimbursed expenses per pay period times 15% = $3,125,340).

18. According to Defendant's records, Class Members collectively worked approximately 241,768 workweeks as of the date of mediation. The average hourly rate is $30.64.

19. Defendant's maximum exposure for Plaintiff's Unpaid Time Claim was calculated to be $7,096,354.22. This is based on Plaintiff's estimate Class Members worked about 30 additional minutes per shift. Thus, New Bern's exposure for unpaid wages is $14,192,708.44 (463,208.50 total unpaid hours times $30.64 hourly rate). However, this claim should be discounted by at least 50% to account for the risks associated with class certification, given that Defendant denies all liability, and maintains its policies prohibit off-the-clock work and there is no electronic evidence supporting such work—only anecdotal accounts. This results in a realistic exposure of $7,096,354.22.

20. Defendant's maximum exposure for Plaintiff's Meal Break Claim was calculated to be $11,353.65. Where data shows a 4% violation rate, New Bern's exposure for unpaid meal break premiums is as follows: 37,055 unique violations times $30.64 = $1,135,365.2. However, because this claim is preempted by the FMCSA, Defendant argues the claim should be valued at zero. Plaintiff discounts it by 99%, to result in New Bern's nominal exposure for unpaid meal

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break premiums at $11,353.65.

21. Defendant's maximum exposure for Plaintiff's Rest Break Claim was calculated to be $56,770.83. Plaintiff estimates he was not able to take a rest break once a week. Thus, New Bern's realistic exposure for unpaid rest break premiums is 926,417 shifts over 3.5 hours times $30.64 divided by 5 = $5,677,083. However, because this claim is preempted by the FMCSA, Defendant argues the claim should be valued at zero. Plaintiff discounts it by 99%, to result in New Bern's nominal exposure for unpaid rest break premiums at $56,770.83.

22. Defendant's maximum exposure for Plaintiff's Unreimbursed Business Expenses Claim was calculated to be $2,305,620. Plaintiff estimates he was owed $40 per month ($10 per workweek) in cellphone reimbursement, and $10 per month ($2.5 per workweek) for uniform maintenance, for a total of $50 in unreimbursed monthly expenses (or $12.5 per workweek). Thus, Plaintiff calculates Defendant's total potential exposure under the Section 2802 claim is $2,882,025 (based on 230,562 workweeks at $12.50 per workweek). Plaintiff has reduced this amount by 20% to account for the portion attributable to uniform maintenance expenses, as New Bern provided uniforms to class members and did not require any special cleaning procedures. Accordingly, New Bern's estimated exposure for the Section 2802 claim is $2,305,620.

23. Defendant's maximum exposure for Plaintiff's Sick Pay Claim was calculated to be $7,811.32. In the pay period ending January 21, 2023, Plaintiff received sick pay at a rate of $28.62 per hour, but he alleges his regular rate was $31.45 per hour, resulting in an underpayment of $2.83 per hour. Extrapolated across the class, this would yield a potential exposure of $781,132 (based on 276,018 total sick hours taken by class members multiplied by $2.83). However, Plaintiff has assigned his claim only a nominal value and discounted by 99%, as the underpayment resulted from a unique circumstance in which Plaintiff received a mid-week raise and took sick leave during that same week—an exceedingly rare situation not reflected in the broader class data. Accordingly, New Bern's estimated exposure for this claim is $7,811.32.

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24. Defendant's maximum exposure for Plaintiff's Wage Statement Penalties Claim was calculated to be $2,362,000. This is based on 1,181 Class Members and 52,089 pay periods during the applicable limitations period, with $50 for the initial violation per employee ($50 × 1,181 employees = $59,050) plus $100 for each subsequent violation (($100 × 50,908 pay periods (52,089 total pay periods – 1,181 initial pay periods) = $5,090,800)), resulting in a total exposure of $5,149,850. However, this amount equates to an average recovery of $4,360.58 per employee, which exceeds the statutory cap of $4,000 per employee. Accordingly, Plaintiff has calculated New Bern's total exposure for this claim to $4,724,000 ($4,000 × 1,181 class members). Plaintiff has discounted further by 50% to account for the fact this is a purely derivative claim, resulting in a realistic exposure of $2,362,000.

25. Defendant's maximum exposure for Plaintiff's Waiting Time Penalties Claim was calculated to be $3,361,153.50. Plaintiff calculated daily wages for approximately 708 former employees at $326.51 (10.33-hour shift length at $30.64/hour), times 30 days, for a total of $6,722,307. It should be further discounted by 50% to account for the fact this is a purely derivative claim, resulting in a realistic exposure of $3,361,153.50.

26. Plaintiff asserts this settlement represents **10.55%** of New Bern's maximum realistic exposure for Plaintiff's direct, non-derivative claims, and **6.57%** of New Bern's potential total liability for all of Plaintiff's claims. This result is well within the range of – and exceeding - settlements commonly approved by California state and district courts.

27. Class Members will receive a portion of the Gross Settlement Amount based on the number of workweeks they worked for New Bern during the Class Period. This formula is realistic because Class Members' individual recovery is proportionate to the amount of time the Class Members worked for Defendant.

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28. I have no conflicts of interest with the class or with the class representative. I am not related to the representative Plaintiff. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well–suited to act as Class Counsel and will continue to vigorously represent the interests of the class.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration is executed on February 12, in San Diego, California.

Maggie K. Realin

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