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on behalf of himself and of all others similarly situated

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

BRANDON NIELSEN, on behalf of himself  
and of all others similarly situated,

Plaintiff,

v.

BTR TIRES LLC, a California limited liability  
Company; BAINS TRUCK REPAIR LLC, a  
California limited liability Company; BAINS  
TOWING & RECOVERY LLC, a California  
limited liability Company; BAINS TOWING  
& REPAIR LLC, a California limited liability  
Company; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: CVCS24-0002443

[Assigned to the Hon. Laura J. Davis in Dept.  
1]

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
AND REPRESENTATIVE ACTION  
SETTLEMENT AND CERTIFYING  
CLASS FOR SETTLEMENT PURPOSES  
ONLY**

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2 This Court, having considered the Motion of plaintiff Brandon Nielsen (“Plaintiff”) for  
3 Preliminary Approval of Class and Representative Action Settlement and Provisional Class  
4 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations  
5 of Vedang J. Patel, David D. Bibiyan, Plaintiff, and Sean Hartranft, the Class and PAGA Settlement  
6 Agreement (“Settlement,” “Agreement” or “Settlement Agreement”), the proposed Notice of  
7 Proposed Class Action Settlement and Date for Final Approval Hearing (“Class Notice”), and other  
8 documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS,**  
9 **ADJUDGES AND DECREES THAT:**

10 1. The definitions set out in the Settlement Agreement are incorporated by reference  
11 into this Order; all terms defined therein shall have the same meaning in this Order.

12 2. The Court certifies the following class Member (“Class Member” or “Settlement  
13 Class Members”) for the purpose of settlement only: all persons currently or formerly employed by  
14 Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing & Recovery LLC, and Bains  
15 Towing & Repair LLC (collectively, “Defendants”), either directly or through any subsidiary,  
16 staffing agency, or professional employer organization, as non-exempt, hourly-paid employees  
17 during the period from October 8, 2020 through January 5, 2026 in the State of California.

18 3. The Court preliminarily appoints the named plaintiff Brandon Nielsen (“Plaintiff”) as  
19 Class Representative, and David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as  
20 Class Counsel.

21 4. The Court preliminarily approves the proposed class settlement upon the terms and  
22 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the  
23 settlement appears to be within the range of reasonableness of settlement that could ultimately be  
24 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement  
25 amount is fair, adequate, and reasonable as to all potential settlement class members when balanced  
26 against the probable outcome of further litigation relating to liability and damages issues. It further  
27 appears that extensive and costly investigation and research has been conducted such that counsel  
28 for the parties at this time are reasonably able to evaluate their respective positions. It further appears

1 to the Court that the settlement at this time will avoid substantial additional costs to all parties, as  
2 well as the delay and risks that would be presented by the further prosecution of the Action. It further  
3 appears that the settlement has been reached as the result of intensive, non-collusive and arms-length  
4 negotiations utilizing an experienced third-party neutral.

5 5. The Court approves, as to form and content, the Class Notice that has been submitted  
6 herewith.

7 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to  
8 the Settlement Class Members in accordance with the procedures set forth in the Settlement  
9 Agreement. The Court finds that dissemination of the Class Notice set forth in the Settlement  
10 Agreement complies with the requirements of law and appears to be the best notice practicable under  
11 the circumstances.

12 7. The Court hereby preliminarily approves the definition and disposition of the Gross  
13 Settlement Amount of \$480,000.00, which is inclusive of: attorneys' fees of not more than (35%)  
14 of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement,  
15 amounts to \$168,000.00, in addition to actual costs incurred of up to \$20,000.00; service award of  
16 up to \$10,000.00 to Plaintiff; costs of settlement administration of no more than \$5,450.00 and  
17 Private Attorneys General Act of 2004 ("PAGA") penalties in the amount of \$30,000.00, of which  
18 \$19,500.00 (65%) will be paid to the Labor and Workforce Development Agency ("LWDA") and  
19 \$10,500.00 (35%) to "Aggrieved Employees," defined as all persons currently or formerly employed  
20 by Defendants BTR Tires LLC, Bains Trust Repair LLC, Bains Towing & Recovery LLC, and  
21 Bains Towing & Repair LLC (collectively, "Defendants"), either directly or through any subsidiary,  
22 staffing agency, or professional employer organization, as non-exempt, hourly-paid employees  
23 during the period from October 4, 2023 through the end of the Class Period in the State of California.

24 8. The Gross Settlement Amount expressly excludes Employer's Share of Payroll  
25 Taxes, which will be paid separately and apart by Defendants on the wages portion of the Gross  
26 Settlement Amount.

27 9. Settlement Class Member's "Workweek" shall mean any week during which a Class  
28 Member worked for Defendants, for at least one day during the Class Period, based on hire dates,

1 re-hire dates (as applicable), and termination dates (as applicable).

2 10. Defendants represent that there are no more than 4,044 Workweeks during the Class  
3 Period. In the event the number of Workweeks during the Class Period increases by more than 10%,  
4 or 405 Workweeks, then, at Defendants' election: (1) the Gross Settlement Amount shall be  
5 increased proportionally by the Workweeks in excess of 4,449 multiplied by the Workweek Value;  
6 or (2) the Class Period shall end on the date the number of workweeks reaches 4,449. The Workweek  
7 Value shall be calculated by dividing the Gross Settlement Amount by 4,044. The Parties agree that  
8 the Workweek Value amounts to \$118.69 per Workweek ( $\$480,000.00 / 4,044$  Workweeks). Thus,  
9 for example, should there be 5,000 Workweeks in the Class Period and Defendants elect option (1),  
10 then the Gross Settlement Amount shall be increased by \$65,398.19. ( $5,000$  Workweeks —  $4,449$   
11 Workweeks x  $\$118.69/\text{Workweek}$ ). Defendants shall make its election and provide the class data  
12 to the administrator no later than 7 days after full execution of this agreement. Should Defendants  
13 fail to make its election within the above timeframe, then option (1) shall automatically apply.

14 11. The Court deems Apex Class Action Administration ("Apex" or "Settlement  
15 Administrator"), the settlement administrator, and preliminarily approves payment of administrative  
16 costs, not to exceed \$5,450.00 out of the Gross Settlement Amount for services to be rendered by  
17 Apex on behalf of the settlement class.

18 12. Not later than 30 days after the Court grants Preliminary Approval of the Settlement,  
19 Defendants will deliver to the Administrator a Microsoft Excel spreadsheet containing the Class  
20 Data. "Class Data" means the following Settlement Class Member identifying information in  
21 Defendants' custody, possession, or control: (1) name; (2) last known address(es); (3) last known  
22 telephone number(s); (4) Social Security Number(s); and (5) the dates of employment (i.e., hire  
23 dates, and, if applicable, re-hire date(s) and/or separation date(s)).

24 13. To protect Settlement Class Members' privacy rights, the Administrator must  
25 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and  
26 for no other purpose, and restrict access to the Class Data to Administrator's employees who need  
27 access to the Class Data to effect and perform under this Agreement.

28 14. The Settlement Administrator shall perform an address search using the United

1 States Postal Service National Change of Address (“NCOA”) database and update the addresses  
2 contained on the Settlement Class List with the newly found addresses, if any.

3 15. “Response Deadline” means forty-five (45) days after the Administrator mails the  
4 Class Notice to Settlement Class Members and shall be the last date on which a Settlement Class  
5 Member may: (a) timely mail to the Administrator his or her Request for Exclusion, or (b) timely  
6 mail to the Administrator his or her Objection to the Settlement. Any Settlement Class Member  
7 whose Class Notice is re-mailed after having been returned to the Administrator as undeliverable  
8 shall have an additional 15 days beyond the Response Deadline to (a) timely mail to the  
9 Administrator his or her Request for Exclusion, or (b) timely mail to the Administrator his or her  
10 Objection to the Settlement.

11 16. Settlement Class Members who wish to exclude themselves from (opt out of) the  
12 Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion  
13 postmarked no later than 45 days after the Administrator mails the Class Notice (plus an additional  
14 15 days for Settlement Class Members whose Class Notice is re-mailed). A Request for Exclusion  
15 is a letter from a Settlement Class Member that contains: (a) the Settlement Class Member’s name,  
16 address, telephone number, and the last four digits of his or her Social Security number; (b) a  
17 statement that reasonably communicates the Settlement Class Member’s wish to be excluded from  
18 the Settlement; and (c) the Settlement Class Member’s signature.

19 17. Every Settlement Class Member who does not submit a timely and valid Request for  
20 Exclusion is deemed to be a Participating Settlement Class Member under this Agreement, entitled  
21 to all benefits and bound by all terms and conditions of the Settlement, including the Release by  
22 Participating Settlement Class Members and the PAGA Release under Paragraphs 5.2 and 5.3 of the  
23 Agreement, regardless of whether the Participating Settlement Class Member actually receives the  
24 Class Notice or objects to the Settlement.

25 18. Only Participating Settlement Class Members may object to the class action  
26 components of the Settlement and/or this Agreement, including contesting the fairness of the  
27 Settlement and/or the amounts requested for the Class Counsel Fees Payment, the Class Counsel  
28 Litigation Expenses Payment, the Class Representative Service Payment and/or the Administration

1 Expenses Payment. Participating Settlement Class Members may send written objections to the  
2 Administrator by mail. In the alternative, Participating Settlement Class Members may appear in  
3 Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval  
4 Hearing. A Participating Settlement Class Member who elects to send a written objection to the  
5 Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice  
6 (plus an additional 15 days for Settlement Class Members whose Class Notice was re-mailed).

7 19. If a Settlement Class Member submits an Objection and a Request for Exclusion, the  
8 Request for Exclusion will control, and the Objection will be overruled.

9 20. Each Settlement Class Member shall have 45 days after the Administrator mails the  
10 Class Notice (plus an additional 15 days for Settlement Class Members whose Class Notice is re-  
11 mailed) to challenge the number of Settlement Class Workweeks and/or PAGA Pay Periods  
12 allocated to the Settlement Class Member as stated in the Settlement Class Member's Class Notice.  
13 The Settlement Class Member may challenge the allocation by communicating with the  
14 Administrator via mail or email.

15 21. Defendants shall fully fund the Gross Settlement Amount, and also fund the amount  
16 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the  
17 Administrator no later than October 29, 2026, or 30 days after the Effective Date, whichever date is  
18 later.

19 22. For any Settlement Class Member whose Individual Class Payment check or  
20 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
21 shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid at Work.

22 23. All papers filed in support of final approval, including supporting documents for  
23 attorneys' fees and costs, shall be filed by \_\_\_\_\_.

24 24. A Final Approval Hearing shall be held with the Court on \_\_\_\_\_  
25 at \_\_\_\_:\_\_\_\_.m in Department 1 of the above-entitled Court to determine: (1) whether the proposed  
26 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the  
27 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award  
28 to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the

1 amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

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4 **IT IS SO ORDERED.**

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6 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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