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FILED  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO DISTRICT

JAN - 7 2025

BY   
 Jessica Garcez

9  
 10 Attorneys for Plaintiff DAVID R. SIERRA  
 individually and on behalf of all others similarly situated.

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

13 DAVID R. SIERRA, individually and on  
 behalf of all others similarly situated,

Case No.: CIVSB2222831  
 Related to Case No.: CIVSB2227785

14 Plaintiff,

Judge: Hon. Joseph T. Ortiz  
 Department: S17

15 v.

16  
 17 NATIONAL RETAIL TRANSPORTATION,  
 18 INC., a Pennsylvania Corporation and DOES 1  
 - 50, inclusive,

**[PROPOSED] ORDER GRANTING  
 MOTION FOR PRELIMINARY  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT**

19 Defendant.  
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Date: December 6, 2024  
 Time: 1:30 p.m.

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**ORDER**

This matter came on for hearing on December 6, 2024, at 1:30 p.m. in Department S17 of the above-captioned court on the Motion for Preliminary Approval of Class Action Settlement, upon the terms and conditions set forth in the Stipulation for Class Action Settlement (hereinafter “Settlement Agreement”).

The Court, having fully reviewed the Motion for Preliminary Approval of Class Action Settlement, the Memorandum of Points and Authorities and Declarations filed in support thereof, the Settlement Agreement, including the proposed Class Notice of Proposed Settlement Class Action Settlement, and in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to Settlement Class Members in accordance with due process requirements, and to set a Final Approval Hearing to consider the proposed Settlement Agreement as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, and having heard the argument of Counsel for the respective parties, the Court

**HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

It appears to the Court on a preliminary basis that the Gross Settlement Amount (“GSA”) is fair and reasonable to the Class Members when balanced against the probable outcome of further litigation relating to class certification, the liability and damages issues involved, and the potential for appeals. It further appears that sufficient investigation, research, and litigation has been conducted such that counsel for the Parties at this time is able to reasonably evaluate their respective positions. It further appears that the Settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It further appears that the proposed Settlement has been reached as the result of intensive, serious and non-collusive negotiations between the Parties. ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY GRANTED, AND AS A PART OF SAID PRELIMINARY APPROVAL, THE COURT HEREBY ORDERS THAT THE SETTLEMENT CLASS BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY, AND THAT JAMES HAWKINS, APLC

1 AND BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP BE  
2 CONDITIONALLY AND PRELIMINARILY APPOINTED CLASS COUNSEL. MORE  
3 SPECIFICALLY, THE COURT FINDS AS FOLLOWS:

4 The Court finds on a preliminary basis that the Settlement between Plaintiffs and  
5 Defendant appear to be within the range of reasonableness of a settlement which could ultimately  
6 be given final approval by this Court. The Court preliminarily finds that the terms of the  
7 Settlement are fair, reasonable, and adequate, pursuant to Section 382 of the California Code of  
8 Civil Procedure.

9 The Court notes that Defendant has agreed to a non-reversionary GSA of \$1,050,000.00.  
10 Defendant will pay out the entirety of the GSA to the Participating Class Members and PAGA  
11 Settlement Group Members, less deductions for attorneys' fees and costs, the Named Plaintiffs'  
12 Enhancement Awards, reasonable expenses of the third-party Settlement Administrator, and the  
13 LWDA for PAGA penalties.

14 The Court finds that the elements of numerosity, commonality, typicality and adequacy  
15 have been established to support conditional certification of the Settlement Class for settlement  
16 purposes, with Plaintiffs DAVID R. SIERRA and KEITH HALLER acting as the Class  
17 Representatives.

18 The Court hereby appoints, for settlement purposes, Plaintiffs DAVID R. SIERRA and  
19 KEITH HALLER as the Class Representatives and finds Plaintiffs are adequate representatives  
20 for the Settlement Class for settlement purposes. The Court further finds that James Hawkins  
21 APLC and Blumenthal Nordrehaug Bhowmik De Blouw have preliminarily established adequacy  
22 to be appointed as Class Counsel and appoints them as Class Counsel.

23 The Class as identified in the Settlement is provisionally certified by this Order.

24 The Court finds that the proposed manner of class notice is adequate.

25 The Court approves APEX Class Action Settlement Administration to serve as the  
26 Settlement Administrator.

27 The Court further hereby approves the proposed Notice of Class Action Settlement and  
28 Orders to the notice to be mailed to the Settlement Class.

1           The Court finds that the Notice of Class Action Settlement constitutes the best notice  
2 practicable under the circumstances, is in full compliance with the laws of the State of California  
3 and, to the extent applicable, the United States Constitution and the requirements of due process.  
4 The Court further finds that the Notice of Class Action Settlement fully and accurately informs  
5 Settlement Class Members of all material elements of the proposed Settlement, of each Settlement  
6 Class Member's right to be excluded from the Settlement Class, and each Settlement Class  
7 Member's right and opportunity to object to the proposed Settlement. The Notice of Class Action  
8 Settlement adequately advises the Class about: the Class Action; the terms of the proposed  
9 Settlement and the benefits available to each Settlement Class Member; each Settlement Class  
10 Member's right to participate, submit an exclusion/Opt-Out, or Objection to the proposed  
11 Settlement, and the timing and procedures for doing so; the temporary and conditional  
12 certification of the Settlement Class for settlement purposes only; preliminary Court approval of  
13 the proposed Settlement; timing and procedures for distributing the Gross Settlement and the  
14 Individual Settlement Payments to the Participating Class Members; and the date of the Final  
15 Approval Hearing as well as the rights of the Settlement Class to file documentation in support of  
16 or in opposition to and appear in connection with said hearing.

17           ACCORDINGLY, GOOD CAUSE APPEARING, THE COURT HEREBY APPROVES  
18 THE PROPOSED CLASS NOTICE PACKET TO THE CLASS AND FINDS that mailing to the  
19 last known address of the Settlement Class, as specifically described within the Settlement  
20 Agreement, constitutes an effective method of notifying Settlement Class Members of their rights  
21 with respect to the proposed Settlement. ACCORDINGLY, IT IS HEREBY ORDERED that:

22           Within 15 business days after entry of the Preliminary Approval Order, Defendant will  
23 provide to the Settlement Administrator a list of Class Members that identifies each Class Member  
24 by name, Social Security Number, and last-known address; and specifies the number of weeks  
25 worked by each Class Member in a non-exempt position in California during the Class Period and  
26 the PAGA Period (the "Class List"). Defendant will provide the Class List in an Excel file or  
27 other format reasonably acceptable to the Settlement Administrator. The Class Data provided to  
28 the Settlement Administrator will remain confidential, shall be used solely to administer the

1 Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax  
2 authorities, pursuant to Defendant's express written consent, or by order of the Court. The  
3 Settlement Administrator will be required to sign and provide to Defendant a Certification  
4 Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as  
5 entered by the Court. The Settlement Administrator shall use due care with respect to the storage,  
6 custody, use, and/or dissemination of the confidential information. Such information must be  
7 stored in a secure fashion and all persons who access the data must agree to keep it confidential.

8         IT IS FURTHER ORDERED Upon receipt of the Class List, the Settlement Administrator  
9 shall perform a search based upon the National Change of Address Database to update and correct  
10 any known or identifiable address changes. The Settlement Administrator shall exercise its best  
11 judgment to determine the current mailing address for each Class Member. Within 14 business  
12 days after receipt of the Class List from Defendant, the Settlement Administrator will send the  
13 Class Notice to each Class Member via First Class U.S. Mail. Receipt of the Class Notice shall  
14 be presumed as to every Class Member whose Class Notice is not returned to the Settlement  
15 Administrator as undeliverable within 14 business days after mailing.

16         IT IS FURTHER ORDERED The Settlement Administrator will re-mail any notice packet  
17 returned by the United States Postal Service with a forwarding address on or before the expiration  
18 of the Notice Period. It shall be conclusively presumed that those Class Members whose re-mailed  
19 Class Notice is not returned to the Settlement Administrator as undeliverable within 14 business  
20 days after re-mailing, have received the Class Notice. Class Members who receive a re-mailed  
21 Class Notice shall have 45 days from the date of the re-mailing to object, opt out, or dispute the  
22 workweeks attributed to them.

23         IT IS FURTHER ORDERED The Settlement Administrator will use the appropriate skip  
24 tracing and National Change of Address searches to increase the likelihood of delivery of the  
25 Class Notice to Class Members, and to re-mail the notice packets returned by the Postal Service  
26 without a forwarding address upon locating new or alternate addresses after a reasonable search.

27         IT IS FURTHER ORDERED A Class Member will not be entitled to opt out of the  
28 settlement established by the Settlement Agreement unless the Class Member submits a valid opt-

1 out request (“Opt-Out Request”). A valid Opt-Out Request must:

- 2 (i) contain the Class Member’s full name and current address;
- 3 (ii) the Action name and/or case number;
- 4 (iii) a statement clearly expressing the Class Member’s desire to be excluded from (or  
5 opt out of) the Settlement; and
- 6 (iv) be returned so that it is postmarked on or before the expiration of the Notice Period.

7 Alternatively, a Class Member may fill out the Opt-Out Request Form attached to the Class Notice  
8 and return it so that it is postmarked on or before the expiration of the Notice Period. Any Class  
9 Members who worked during the PAGA Period and who opt out of the Settlement will still be  
10 considered Aggrieved Employees for purposes of the Settlement Agreement.

11 IT IS FURTHER ORDERED Any Class Member who fails to submit a timely, complete,  
12 and valid Opt-Out Request will be barred from opting out of the Settlement Agreement or the  
13 settlement, unless otherwise ordered by the Court. If the Settlement Administrator receives a  
14 timely Opt-Out Request that is incomplete, it will make reasonable attempts to contact the Class  
15 Member to cure the defect. The Settlement Administrator will not consider any Opt-Out Request  
16 postmarked after the end of the Notice Period but will report its receipt of any such requests to  
17 Class Counsel and counsel for Defendant. It shall be presumed that if an Opt-Out Request is not  
18 postmarked on or before the end of the Notice Period, the Class Member did not make the request  
19 in a timely manner. Absent good cause found by the Court, a declaration submitted by any Class  
20 Member attesting to the mailing of an Opt-Out Request on or before the expiration of the Notice  
21 Period shall be insufficient to overcome the conclusive presumption that the Opt-Out Request was  
22 untimely. Under no circumstances shall the Settlement Administrator have the authority to extend  
23 the deadline for Class Members to submit a request to opt out of the settlement without the Parties’  
24 joint written consent.

25 IT IS FURTHER ORDERED Any Class Member may object to the Settlement. Any  
26 written objection must be mailed to the Settlement Administrator (who shall promptly provide a  
27 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel  
28 will ensure that any written objections get filed with the Court concurrently with the final approval

1 documents by having it attached to the Settlement Administrator's Declaration. Class Members  
2 who have not objected in writing may still appear and be heard at the Settlement Hearing. Written  
3 objections to the Settlement must contain at least the following: (i) the objecting Class Member's  
4 full name and current address; (ii) a clear reference to the Action by name and/or case number;  
5 and (iii) a statement of the specific reasons why the objector believes the Settlement is unfair or  
6 objects to the Settlement.

7           Alternatively, a Class Member may fill out the Notice of Objection to Class and PAGA  
8 Action Settlement Form attached to the Class Notice. In addition, though not required, the Parties  
9 ask that any objecting Class Member also include a statement of whether the objector intends to  
10 appear at the final approval hearing, either in person or through counsel and, if through counsel,  
11 a statement identifying that counsel by name, bar number, address, and telephone number. In  
12 addition, Class Members may appear at the final approval hearing to state their objection even if  
13 they do not submit a written objection during the Notice Period.

14           IT IS FURTHER ORDERED Class Counsel or Defendant's counsel may, up to five court  
15 days before the Final Hearing Date, file responses to any written objections submitted to the Court.

16           Unless they opt out of the Settlement as specified in Paragraph 61 of the Settlement  
17 Agreement, Class Members who object to the proposed settlement or the Agreement will remain  
18 Participating Class Members, and shall be deemed to have voluntarily waived their right to pursue  
19 an independent remedy against Defendant and the other Released Parties. To the extent any  
20 Participating Class Member objects to the proposed settlement or Agreement and such objection  
21 is overruled in whole or in part, such individuals will be bound by the Court's Final Approval  
22 Order. In the event that any person objects to or opposes this proposed settlement or the  
23 Agreement, or attempts to intervene in or otherwise enter the Actions, the Parties and Class  
24 Counsel will use their best efforts to defend the Settlement. A Class Member cannot both opt out  
25 and object to the Settlement. If a Class Member both objects and opts out of the Settlement, the  
26 opt-out will control and the objection will be deemed invalid.

27           IT IS FURTHER ORDERED that any disputes not resolved by the Settlement  
28 Administrator concerning the administration of the Settlement will be resolved by the Court under

1 the laws of the State of California. Prior to any such involvement of the Court, counsel for the  
2 Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

3 IT IS FURTHER ORDERED that the Final Approval Hearing shall be held on  
4 May 12, 2025 at 1:30 ~~a.m.~~ <sup>p.m.</sup> in Department S17 of the above captioned  
5 Courthouse to consider the fairness, adequacy and reasonableness of the proposed Settlement  
6 preliminarily approved by this Order Granting Preliminary Approval, and to consider the  
7 application of Class Counsel for an award of attorneys' fees, costs, and Named Plaintiffs  
8 Enhancement Awards. The Court may continue the Final Approval Hearing to another date at its  
9 discretion.

10 IT IS FURTHER ORDERED that all briefs and materials in support of an Order Granting  
11 Final Approval and application for attorneys' fees and costs and class representatives  
12 enhancements shall be filed with this Court no later than sixteen court days before the date set for  
13 the Final Approval Hearing.

14 IT IS FURTHER ORDERED that, if for any reason the Court does not execute and file  
15 an Order Granting Final Approval and Judgment, or if the Effective Date does not occur for any  
16 reason whatsoever, the Settlement Agreement and the proposed Settlement which is the subject  
17 of this Order and all evidence and proceedings had in connection therewith shall be without  
18 prejudice to the status quo ante rights of the Parties to the litigation as more specifically set forth  
19 in the Settlement Agreement.


20 IT IS FURTHER ORDERED that, pending further order of this Court, all proceedings in  
21 this matter except those contemplated herein and in the Settlement Agreement are stayed.

22 The Court expressly reserves the right to adjourn or continue the Final Fairness Approval  
23 Hearing from time to time without further notice to the Class.

24 **IT IS SO ORDERED.**

25 Dated: Jan. 7, 2025, 2024

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HON. JOSEPH T. ORTIZ  
JUDGE OF THE SUPERIOR COURT