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9 Attorneys for Plaintiff NATHANIEL HELTON
10 on behalf of himself and all others similarly
11 situated and on behalf of the general public.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 NATHANIEL HELTON, on behalf of
15 himself and all others similarly situated,
16 and on behalf of the general public,

17 Plaintiff,

18 v.

19 PEPSI-COLA SALES AND
20 DISTRIBUTION, INC.; NEW BERN
21 TRANSPORT CORPORATION;
22 PEPSICO, INC.; and DOES 1 through
23 100, inclusive,

24 Defendants.

Case No. 3:17-cv-01135-EMC

[Assigned to the Honorable Edward M. Chen]

**NOTICE OF ENTRY OF ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

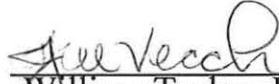
Action Filed: January 25, 2017
FAC Filed: December 12, 2017
SAC Filed: June 6, 2018
Action Removed: March 6, 2017
Trial Date: Not set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 NOTICE IS HEREBY GIVEN that on August 29, 2018, the Court issued an Order
3 Granting Preliminary Approval of Class Action Settlement. A true and correct copy of the
4 Court's Order is attached hereto as Exhibit 1.

5
6 Dated: August 30, 2018

THE TURLEY & MARA LAW FIRM, APLC

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8 _____
9 William Turley, Esq.
10 Dave Mara, Esq.
11 Jill Vecchi, Esq.
12 Attorneys for Plaintiff

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EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATHANIEL HELTON, on behalf of
himself, all others similarly situated,
and on behalf of the general public,

Plaintiff,

v.

PEPSI-COLA SALES AND
DISTRIBUTION, INC.; NEW BERN
TRANSPORT CORPORATION;
PEPSICO, INC.; and DOES 1 through
100, inclusive,

Defendants.

Case No. 3:17-cv-01135-EMC

**PRELIMINARY APPROVAL
ORDER**

1 WHEREAS, this action is pending before this Court as a class action (the
2 "Action"); and
3

4 WHEREAS, the Parties have jointly applied to this Court for an order
5 preliminarily approving the settlement of the Action in accordance with a
6 Stipulation and Settlement Agreement of Class Action Claims (the "Stipulation" or
7 "Settlement"), the Addendum, and the Second Addendum, which, together with the
8 exhibits annexed thereto, sets forth the terms and conditions for a proposed
9 settlement and dismissal of the Action with prejudice upon the terms and
10 conditions set forth therein; and the Court having read and considered the
11 Stipulation and the exhibits annexed thereto;
12

13 NOW, THEREFORE, IT IS HEREBY ORDERED:
14

15 1. This Order incorporates by reference the definitions in the Stipulation,
16 and all terms defined therein shall have the same meaning in this Order as set forth
17 in the Stipulation.
18

19 2. The Court grants preliminary approval to the Stipulation. The Court
20 preliminarily finds that the Stipulation is fair, adequate and reasonable, and
21 preliminarily approves the terms of the settlement.
22

23 3. The Court recognizes that the Class Members, Settlement Class
24 Members, and Defendants stipulate and agree to certification of a class for
25 settlement purposes only. This stipulation will not be deemed admissible in this or
26 any other proceeding should this Settlement not become final. For settlement
27 purposes only, the Court conditionally certifies the following settlement class (the
28 "Class"): "All Drivers – including those employed under the title of Bulk Drivers,

1 Delivery Bay Drivers, Drivers, Delivery Drivers, Delivery Driver Trainees, Relief
2 Drivers, GEOBox Drivers, FSV Drivers, and Transport Drivers (collectively
3 referred to herein as Drivers) - employed by Defendant New Bern in the State of
4 California during the Class Period.”

5
6 The Court finds, for settlement purposes only, the requirements of
7 Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure
8 23(b)(3) are satisfied, with the exception of the manageability requirement of Rule
9 23(b)(3) that the Court need not address for purposes the settlement. The term
10 “Class Member” means a Plaintiff who has not requested exclusion from the
11 Settlement.

12
13 4. The Court further finds, for settlement purposes only, that conditional
14 certification of the Action as a collective action under section 216(b) of the Fair
15 Labor Standards Act (“FLSA”) is appropriate. The term “Settlement Class
16 Member” means a Class Member who has returned a valid and timely Claim
17 Form/FLSA Consent Form pursuant to the Stipulation.

18
19 5. Named Plaintiff Nathaniel Helton (“Named Plaintiff”) is hereby
20 appointed and designated, for all purposes, as the representative of the class, and
21 the following attorneys are hereby appointed and designated as counsel for Named
22 Plaintiff and the Class (“Class Counsel”):

23
24 William Turley
25 David Mara
26 Jamie Serb
27 Tony Roberts
28 THE TURLEY & MARA LAW FIRM,
APLC
7428 Trade Street

San Diego, California 92121

1
2 Class Counsel is authorized to act on behalf of Class Members and
3 Settlement Class Members with respect to all acts or consents required by, or
4 which may be given pursuant to, the Settlement, and such other acts reasonably
5 necessary to consummate the Settlement. Any Class Member and Settlement Class
6 Members may enter an appearance through counsel of such Class Member and
7 Settlement Class Member's own choosing and at such Class Member and
8 Settlement Class Member's own expense. Any Class Member and Settlement
9 Class Member who does not enter an appearance or appear on his or her own will
10 be represented by Class Counsel.

11
12 6. The Court hereby approves on a preliminary basis the Stipulation and
13 settlement contained therein, including the definition and disposition of the
14 Settlement Fund and related matters provided for in the Stipulation. It appears to
15 the Court on a preliminary basis that the settlement amount and terms are fair,
16 adequate and reasonable as to all potential Class Members and Settlement Class
17 Members when balanced against the probable outcome of further litigation relating
18 to liability and damages issues. It further appears that extensive and costly
19 investigation and research have been conducted such that counsel for the Parties at
20 this time are able to reasonably evaluate their respective positions. It further
21 appears to the Court that settlement at this time will avoid substantial additional
22 costs by all Parties, as well as avoid the delay and risks that would be presented by
23 further prosecution of the Action. It further appears that the Settlement has been
24 reached as the result of intensive, serious and non-collusive, arms-length
25 negotiations.

26
27 7. A hearing (the "Settlement Hearing") shall be held before this Court
28 on January 17, 2019, at 1:30 p.m. at the United States District Court for the

1 Northern District of California, 450 Golden Gate Avenue, San Francisco,
2 California 94102, to determine all necessary matters concerning the Settlement,
3 including: whether the proposed settlement of the Action on the terms and
4 conditions provided for in the Stipulation is fair, adequate and reasonable and
5 should be finally approved by the Court; whether a Judgment, as provided in the
6 Stipulation, should be entered herein; whether the plan of allocation contained in
7 the Stipulation should be approved as fair, adequate and reasonable to the Class
8 Members and Settlement Class Members; and to finally approve Class Counsel's
9 Fees and Costs Award, the Named Plaintiff's Service Award/General Release
10 Payment, the PAGA payment to the LWDA, and the claims administration
11 expenses. The Final Approval hearing may be continued without further notice to
12 Plaintiffs. The Parties shall file a Motion for Attorneys Fees, Service Award, and
13 Final Approval 21 days before the end of the Notice Period. The Parties shall file a
14 Supplemental Brief in Support of the Motion for Final Approval to address the
15 Class Member's response to the Settlement on or before December 13, 2018 (35
16 days before the Final Approval Hearing).

17
18 8. The Stipulation specifies a Fees Award in an amount not to exceed
19 \$1,250,000.00, Costs in an amount not to exceed \$65,000.00, a Service
20 Award/General Release Payment of \$7,500.00 to the Named Plaintiff, \$25,000.00
21 for Claims Administration Expenses, and \$75,000.00 to the Labor and Workforce
22 Development Agency ("LWDA") as the LWDA's 75% share of the \$100,000.00
23 allocated to Private Attorney General Act ("PAGA") claims in this Action.
24 However, the Court will not approve the amount of attorneys' fees and costs until
25 the Final Approval Hearing. Similarly, the Court will not decide the amount of the
26 Service Award/General Release Payment until the Final Approval Hearing. If the
27 Court decides to award less than the amounts set forth above, then the unawarded
28 Fees, Costs, Service Award/General Release Payment, and Claims Administration

1 Expenses, in addition to any remaining unclaimed funds will be distributed *cy pres*
2 to the United Way of Northern California's National Workforce Readiness
3 Credential program. It appears to the Court that this provision is appropriate, fair,
4 and reasonable.

5
6 9. The Court hereby approves, as to form and content, the Notice
7 annexed as Exhibit 1 to the Second Addendum to Stipulation and Settlement of
8 Class Action Claims and the Claim Form annexed as Exhibit 2 to the Stipulation.
9 The Court finds that the distribution of the Notice and Claim Form substantially in
10 the manner and form set forth in the Stipulation and this Order meets the
11 requirements of due process, is the best notice practicable under the circumstances,
12 and shall constitute due and sufficient notice to all persons entitled thereto.

13
14 10. The Court hereby appoints CPT Group, Inc., as Claims Administrator
15 and hereby directs the Claims Administrator to mail or cause to be mailed to
16 Plaintiffs the Notice and Claim Form by first class mail within fourteen (14) days
17 after the receipt of the Class List and Data from Defendants (the "Notice Date")
18 using the procedures set forth in the Stipulation. Class Members will automatically
19 receive their State Law Awards. Class Members who wish to receive an additional
20 Federal Law Award ("Settlement Class Members") must complete and return the
21 Claim Form pursuant to the instructions contained therein by first class mail or
22 equivalent, postage paid, within sixty (60) days of the Notice Date.

23
24 11. Any Plaintiff may choose to opt out of and be excluded from the Class
25 as provided in the Notice by following the instructions for requesting exclusion
26 from the Class that are set forth in the Notice. All requests for exclusion must be
27 submitted as provided in the Notice. Any such person who chooses to opt out of
28 and be excluded from the Class will not be entitled to any recovery under the

1 Settlement and will not be bound by the Settlement or have any right to object,
2 appeal or comment thereon. Any written request to opt out must be signed by each
3 such person opting out. Class Members who have not requested exclusion shall be
4 bound by all determinations of the Court, the Stipulation and Judgment, with the
5 exception as to the federal claims that only those Settlement Class Members filing
6 the Claim Form will be bound.

7
8 12. Any Class Member or Settlement Class Member may appear at the
9 Settlement Hearing and may object or express his or her views regarding the
10 Settlement, and may present evidence and file briefs or other papers, that may be
11 proper and relevant to the issues to be heard and determined by the Court as
12 provided in the Notice. However, no Class Member, Settlement Class Member, or
13 any other person shall be heard or entitled to object, and no papers or briefs
14 submitted by any such person shall be received or considered by the Court, unless
15 on or before sixty (60) days after the Notice Date, that person has served by hand
16 or by first class mail written objections and copies of any papers and briefs in
17 support of their position and verification of their membership in the Class upon: (1)
18 The Turley & Mara Law Firm, APLC, attn.: Dave Mara and Jamie Serb, 7428
19 Trade Street, San Diego, California 92121; and (2) Sheppard, Mullin, Richter &
20 Hampton LLP, attn.: Samantha Hardy and Ashley Hirano, 501 West Broadway,
21 19th Floor, San Diego, CA 92101, and filed the objections, papers and briefs with
22 the Clerk of this Court. In order to be valid, the papers must be filed with the
23 Clerk of this Court and received by all of the above counsel on or before sixty (60)
24 days after the Notice Date. Any Class Member who does not make his or her
25 objection in the manner provided for in this Order shall be deemed to have waived
26 such objection and shall forever be foreclosed from making any objection to the
27 Settlement.

28

1 13. All claims administration expenses shall be paid from the Settlement
2 Fund.

3
4 14. To the extent permitted by law, pending final determination as to
5 whether the settlement contained in the Stipulation should be approved, the
6 Plaintiffs, whether directly, representatively, or in any other capacity, whether or
7 not such persons have appeared in the Action, shall not institute or prosecute any
8 Released State Law Claims or Released Federal Law Claims against the Released
9 Parties. The Settlement is not a concession or admission, and shall not be used
10 against Defendants or any of the Released Parties as an admission or indication
11 with respect to any claim of any fault or omission by Defendants or any of the
12 Released Parties. Whether or not the Settlement is finally approved, neither the
13 Settlement, nor any document, statement, proceeding or conduct related to the
14 Settlement, nor any reports or accounts thereof, shall in any event be:

15
16 a. Construed as, offered or admitted in evidence as, received as or
17 deemed to be evidence for any purpose adverse to the Released
18 Parties, including, but not limited to, evidence of a
19 presumption, concession, indication or admission by
20 Defendants or any of the Released Parties of any liability, fault,
21 wrongdoing, omission, concession or damage; or

22
23 b. Disclosed, referred to, or offered or received in evidence
24 against any of the Released Parties in any further proceeding in
25 the Action, or in any other civil, criminal or administrative
26 action or proceeding, except for purposes of settling the Action
27 pursuant to the Stipulation.
28

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

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

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

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18 Dated: 8/29/2018



19 HON. EDWARD M. CHEN
20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

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1 *Case Name:* **Nathaniel Helton v. Pepsi-Cola Sales AND**
2 *Court:* **DISTRIBUTION, INC. and DOES 1 through 100, inclusive**
3 *Case Number:* **Northern District of California**
4 **3:17-cv-01135-EMC**

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

7 I am employed in the County of: San Diego, State of California.

8 I am over the age of 18 and not a party to the within action; my business address is:
9 7428 Trade Street San Diego, CA 92121

10 On, August 30, 2018 I served the foregoing document(s) described as:

11 **NOTICE OF ENTRY OF ORDER GRANTING PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT**

13 On interested parties in this action by placing a true copy thereof enclosed in a sealed
14 envelope addressed as follows:

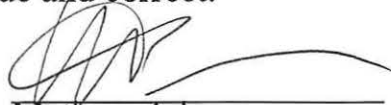
15 SAMANTHA D. HARDY, Cal. Bar No. 199125
16 ASHLEY T. HIRANO, Cal. Bar No. 265282
17 DANIEL F. DE LA CRUZ, Cal. Bar No. 292537
18 DANIELLE GARCIA, Cal Bar No. 306587
19 **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**
20 501 West Broadway, 19th Floor
21 San Diego, California 92101-3598
22 Telephone: 619.338.6500
23 Facsimile: 619.234.3815
24 Email: shardy@sheppardmullin.com
25 ahirano@sheppardmullin.com
26 ddelacruz@sheppardmullin.com
27 dagarcia@sheppardmullin.com
28

1 [XX] (BY E-MAIL) On August 30, 2018, I caused the documents to be sent to the
2 persons at the electronic notification addresses of the parties named above. I
did not receive, within a reasonable time after the transmission, any electronic
message or other indication that the transmission was unsuccessful.

3 [XX] (BY UNITED STATES MAIL) On August 30, 2018, I enclosed the
4 documents in a sealed envelope or package addressed to the persons at the
addresses named above and deposited the sealed envelope with the United
States Postal Service, with the postage fully prepaid.

5 [XX] (DECLARATION) I declare under penalty of perjury under the laws of the
6 State of California that the above is true and correct.

7 Dated: August 30, 2018


8 Mathew Adame