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MERCED COUNTY
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CLERK OF THE SUPERIOR COURT
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED
(UNLIMITED JURISDICTION)**

GEORGE SWAIN, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DIRECT DAIRY TRANSPORT, LLC, a California limited liability company; BRAD NYMAN, an individual; and DOES 1-50, inclusive,

Defendant(s).

Case No.: 19CV-00913

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed: February 28, 2019
Hearing Date: August 3, 2020
Hearing Time: 8:15 a.m.
Hearing Dept: 8, Hon. Brian McCabe



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

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Plaintiff GEORGE SWAIN'S ("Swain" or "Plaintiff") unopposed Motion for Preliminary Approval of a Class Action Settlement was scheduled for hearing before the Court on August 3, 2020, at 8:15 a.m., before the Honorable Brian McCabe, Judge presiding. The Court having considered the papers submitted in support of the motion, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Class based upon the terms set forth in the Stipulation of Class Action Settlement and Release (the Settlement) filed herewith. All capitalized terms used herein shall have the same meaning as defined in the Settlement. The Court finds that the terms of the Settlement are fair, adequate, and reasonable to the Class. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final hearing and final approval by this Court.

2. For purposes of this Order, the Class is defined as follows: All current and former local drivers, long haul drivers, over the road drivers, dispatchers, and comparable positions Defendants employed in California at any time during the Class Period. The Class excludes Brad Nyman and employees for any period they were members of management for Direct Dairy Transport. The Class is preliminarily certified for settlement purposes only.

3. The Court hereby preliminarily finds that the Settlement was the product of serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making this preliminary finding, the Court considered the nature of the claims set forth in the pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the Class, and the fact that the Settlement represents a compromise of the Parties' respective positions. The Court further preliminarily finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant preferential treatment to any individual Class member. Accordingly, the Court preliminarily finds that the Settlement was entered into in good faith.

4. The Court finds that the dates set forth in the Settlement Agreement for mailing and distribution of the Notice of pendency of Class Action Settlement and Final Approval Hearing meets the requirements of due process and provide the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled thereto, and directs the mailing of the Notice Packet by first class mail to the Class as set forth in the Settlement.



1 Accordingly, the Court orders the following implementation schedule for further proceedings:
2 a. Within ten (10) business days following the date of this Preliminary
3 Approval Order, Defendants shall provide CPT Group, Inc., the appointed Settlement
4 Administrator, the Class List consisting of the names, most recent known mailing addresses,
5 telephone numbers, social security numbers, dates of employment and the total number of
6 Qualifying Pay Periods for all Class members during the Class Period;
7 b. Within thirty (30) calendar days following the date of this Preliminary
8 Approval Order, the Settlement Administrator shall mail the Notice of pendency of Class Action
9 Settlement and Final Approval Hearing along with a pre-printed postage paid return envelope, to
10 all Class members pursuant to the terms of the Settlement, by First Class U.S. Mail, postage
11 prepaid using the most current mailing address information available. The Notice Packet shall be
12 in English and Spanish.
13 c. Within sixty (60) calendar days following the mailing of the Notice
14 Packet, all requests to be excluded from the Settlement must be returned to the Settlement
15 Administrator postmarked by U.S. Mail, as set forth in the Settlement.
16 d. Within thirty (30) calendar days following the mailing of the Notice
17 Packet, the Settlement Administrator shall mail to each Class Member who has not requested
18 exclusion from the Settlement a postcard in English and Spanish reminding them of the deadline
19 to request exclusion from the Settlement.
20 e. The Court will consider any written or oral objections or comments from
21 Class Members at the time of the Final Approval Hearing, as set forth in the Notice. Written
22 objections to the proposed settlement should state the basis for the objection and be mailed
23 together with copies of all papers and briefs in support thereof to the Settlement Administrator
24 within sixty (60) calendar days following the mailing of the Notice.
25 5. The Court approves, as to form and content, the Notice (in substantially the form
26 attached as Exhibit 1 to the Settlement). The Court also approves the procedure for members of
27 the Class to object to the Settlement set forth in the Notice.
28 6. The Court approves, for settlement purposes only, David Spivak of The Spivak
Law Firm and Walter Haines of the United Employees Law Group as Class Counsel.
7. The Court approves, for settlement purposes only, George Swain as the Class
Representative.



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8. The Court approves CPT Group, Inc. as the Settlement Administrator.

9. A Final Approval Hearing shall be held at 9:15 a.m. on October 26, 2020 in Department 8 of the Superior Court for the State of California, County of Merced, located at 627 West 21st Street Merced, CA 95340, to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order, and to consider the application of Class Counsel for an award of reasonable attorneys' fees and costs incurred and the Enhancement Award. All briefs and materials in support of the Motion for an Order of Final Approval and Judgment and Application for Attorneys' Fees and Costs shall be filed with this Court on or before September 25, 2020

10. If for any reason the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this Order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

11. Pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement are hereby stayed.

12. The Court further ORDERS that to facilitate administration of this Settlement, all Class members, including Plaintiff, are hereby enjoined from filing or prosecuting any claims, cases, suits or administrative proceedings (including filing or pursuing claims with the California Division of Labor Standards Enforcement) regarding claims released by the Settlement, unless and until such Class members have filed valid and timely written requests for exclusion with the Settlement Administrator.

13. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class.

IT IS SO ORDERED.

Date: 08/05/2020

Donald J. Proietti
Honorable ~~Brian McCabe~~ **Donald J. Proietti**
Judge of the Merced Superior Court



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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Thursday, July 09, 2020, I served the foregoing document described as ~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT on interested parties with the email listed below:

Stacy L. Henderson, Esq.
Terpstra Henderson
578 N Wilma Ave., Ste. A
Ripon, CA 95366
shenderson@thtlaw.com

____ (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the home/offices of the addressee.

____ (BY FAX TRANSMISSION) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

~~XXXX~~ (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address lizzett@spivaklaw.com.

EXECUTED on Thursday, July 09, 2020, at Pasadena, California.

~~XXXX~~ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



LIZZETT CORTEZ