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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 VALERIY BYKOV, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 DC TRANSPORT, INC., a California
24 Transport Company; DC TRANSPORT,
25 INC., a Texas Corporation; DC
26 TRANSPORTATION SERVICES, INC.
27 dba DC TRANSPORT state of
28 corporation unknown; and DOES 1 to 10
inclusive,

Defendants.

No. 2:18-cv-1691 DB

**JOINT STIPULATION AND
ORDER TO AMEND FINAL
APPROVAL ORDER *NUNC
PRO TUNC* TO DIRECT FUNDS
ASSOCIATED WITH
UNCASHED SETTLEMENT
CHECKS TO CY PRES
RECIPIENT**

JOINT STATUS TO AMEND FINAL
APPROVAL ORDER *NUNC PRO TUNC*

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Attorneys for Defendant DC TRANSPORTATION SERVICES, INC., dba DC
TRANSPORT (also erroneously sued as DC Transport, a California Transport
Company and DC Transport, a Texas Corporation)

1 **JOINT STIPULATION TO AMEND FINAL APPROVAL ORDER**
2 **NUNC PRO TUNC TO DIRECT FUNDS ASSOCIATED**
3 **WITH UNCASHED SETTLEMENT CHECKS TO CY PRES**

4 1. The class action settlement of this matter was finally approved through an
5 order issued on March 3, 2020. Dkt. 29. Final judgment was entered March 3, 2020
6 (Dkt. 30).

7 2. The Settlement Agreement in this case provides, “Class Participants shall
8 have 180 days to cash their checks. Any funds associated with uncashed checks shall
9 be paid in accordance with California Code of Civil Procedure section 384. (See
10 Settlement Agreement, at par. 7 on p. 17, Ex. A to CJA Declaration in support of
11 Plaintiff’s Motion for Preliminary Approval, filed Feb. 11, 2020).

12 3. Section 384 of the California Code of Civil Procedure provides that funds
13 associated with uncashed checks in class actions shall be distributed *inter alia* to
14 “nonprofit organizations or foundations to support projects that will benefit the class or
15 similarly situated persons...” See C.C.P. Section 384(b).

16 4. The court-appointed Settlement Administrator here, CPT Group, through
17 Tarus Dancy, the case manager for this case, has reported to counsel for the parties that
18 more than 180 days have now elapsed since the class members’ settlement checks were
19 issued, and that approximately \$19,577.66 remains in funds associated with uncashed
20 settlement checks.

21 5. The parties have met and conferred over an appropriate cy pres recipient
22 for these remaining funds associated with uncashed checks, pursuant to the settlement
23 agreement, and they have agreed that the Trucker Non-Profit Assistance Fund, which
24 is an IRC section 501(c)(3) nonprofit organization that assists truckers with various
25 financial needs, funeral expenses, and health care needs in emergencies, is an
26 appropriate cy pres recipient for the funds associated with uncashed settlement checks
27 in this case. See www.truckersassistancefund.com. Since the class members here were
28 truck drivers, the parties proposed cy pres recipient meets the requirements of C.C.P.

1 Section 384 and satisfies the Ninth Circuit’s test for an appropriate cy pres as well. *See*
2 *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011) (cy pres recipient must have some
3 sort of nexus to class members and/or types of individuals or claims of the class
4 members).

5 6. Notably, neither the parties nor any of their counsel have any interest in
6 the Trucker Non-Profit Assistance Fund.

7 7. Significantly, the Trucker Non-Profit Assistance Fund has been approved
8 in other wage and hour class actions on behalf of truckers in California as an appropriate
9 cy pres recipient for funds associated with uncashed settlement checks. *See, e.g.,*
10 *Maldonado v. Heavy Weight Transport, Inc.*, Case No. 2:16-cv-08838-CVAS-RAOx
11 (Hon. Judge Cristina Snyder Order Directing Uncashed Checks to Cy Pres Recipient,
12 the Trucker Non-Profit Assistance Fund), Docket No. 44, entered April 30, 2020.

13 **THEREFORE, IT IS HEREBY STIPULATED** by and between the parties,
14 through their respective undersigned counsel, that all unclaimed funds associated with
15 uncashed settlement checks from the Settlement be directed by the court-appointed
16 settlement administrator to the Trucker Non-Profit Assistance Fund.

17 Respectfully submitted,

18
19 Dated: Sept. 29, 2020

/s/ Timothy B. Nelson
Brandon R. McKelvey, Esq.
Timothy B. Nelson, Esq.
MEDINA MCKELVEY LLP
Attorneys for Defendants

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21
22 Dated: Sept. 29, 2020

/s/ Craig Ackermann
Craig J. Ackermann, Esq.
ACKERMAN & TILAJEF, P.C.
Jonathan Melmed, Esq.
MELMED LAW GROUP P.C.
Attorneys for Plaintiff

1 **ORDER AMENDING FINAL APPROVAL ORDER *NUNC PRO TUNC***

2 Good cause appearing, and based on the parties’ Stipulation, the Court hereby
3
4 amends its order granting final approval, dated March 3, 2020, *nunc pro tunc*, as
5 follows:

6 Paragraph 3 on page 17 of the Court’s Order is amended to state as follows:

7
8 “3. The parties are ordered to act in accordance with the settlement agreement,
9 and the court further orders any funds associated with any uncashed settlement checks
10 after 180 days following their issuance to be distributed by the Settlement
11 Administrator to the Trucker Non-Profit Assistance Fund as the non-profit *cy pres*
12 recipient.”

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14 All other terms of the Final Approval Order and Final Judgment remain
15 unchanged and in full force and effect.

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17 Dated: October 1, 2020

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21 
22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE

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25 DLB:6
26 DB/orders/orders.consent/bykov1691.stip.am.judg.ord