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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CURTIS MARKSON, MARK
MCGEORGE, CLOIS MCCLENDON,
and ERIC CLARK, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CRST INTERNATIONAL, INC., CRST
EXPEDITED, INC.; C.R. ENGLAND,
INC., WESTERN EXPRESS, INC.,
SCHNEIDER NATIONAL CARRIERS,
INC., SOUTHERN REFRIGERATED
TRANSPORT, INC., COVENANT
TRANSPORT, INC., PASCHALL
TRUCK LINES, INC., STEVENS
TRANSPORT, INC., and DOES 1-10,
inclusive,

Defendants.

Case No. 5:17-cv-01261-SB (SPx)

**DECLARATION OF IAN M. GORE
IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENTS**

Judge: Hon. Stanley Blumenfeld, Jr.
Date: January 7, 2022
Time: 8:30 a.m.
Location: Courtroom 6C
350 West 1st Street
Los Angeles, CA 90012

Discovery Cutoff Date: 7/2/2021
Pretrial Conference Date: TBD
Trial Date: TBD

1 DECLARATION OF IAN M. GORE

2 INTRODUCTION

3 1. I am an attorney admitted *pro hac vice* to practice law before this Court, and
4 the federal and state courts of both New York and Washington. I am over 18 years of age. I
5 have personal knowledge of the facts set forth in this declaration and could and would testify
6 competently to them.

7 2. I am a partner in the law firm of Susman Godfrey L.L.P. (“SG,” “Co-Class
8 Counsel” or “Plaintiffs’ Counsel”), attorneys of record (along with Mayall Hurley P.C.,
9 Ackermann & Tilajef, P.C., and Melmed Law Group P.C.) for Plaintiffs Curtis Markson,
10 Mark McGeorge, Clois McClendon, and Eric Clark (“Plaintiffs”) and the proposed
11 settlement class (the “Class”). I have no knowledge of the existence of any conflicting
12 interests between my firm and any of its attorneys and our co-counsel, Mayall Hurley P.C.,
13 Ackermann & Tilajef, P.C., and Melmed Law Group P.C., on the one hand, and Plaintiffs
14 or any other Settlement Class Member, on the other.

15 3. After engaging in significant written discovery and two mediations between
16 counsel, Plaintiffs and Defendants PASCHALL TRUCK LINES, INC. (“PTL”),
17 SCHNEIDER NATIONAL CARRIERS, INC. (“SNC”), COVENANT TRANSPORT,
18 INC, (“CT”), SOUTHERN REFRIGERATED TRANSPORT, INC. (“SRT”), and
19 WESTERN EXPRESS, INC. (“WE”) (the “Settling Defendants”) reached settlements to
20 resolve Plaintiffs’ claims in this matter against the Settling Defendants *only* and have entered
21 into four separate Settlement Agreements (the “Settlement Agreements”) to that effect.
22 Collectively, the Settlement Agreements seek to fully release and discharge the Settling
23 Defendants from the claims brought against it in this action. In exchange, Defendants will
24 collectively pay the Gross Settlement Amount (“GSA”) of **\$4,250,000.00** as follows:

25 *[table of Settling Defendants on following page]*

Settling Defendant	Amount
Paschall Truck Lines, Inc.	\$700,000.00
Schneider National Carriers, Inc.	\$750,000.00
Covenant Transport, Inc. and Southern Refrigerated Transport, Inc.	\$800,000.00
Western Express, Inc.	\$2,000,000.00
TOTAL	\$4,250,000.00

4. A true and correct copy of the Settlement Agreement between Plaintiffs and PTL is attached hereto as **Exhibit 1**. A true and correct copy of the Settlement Agreement between Plaintiffs and SNC is attached hereto as **Exhibit 2**. A true and correct copy of the Settlement Agreement between Plaintiffs and CT and SRT is attached hereto as **Exhibit 3**. A true and correct copy of the Settlement Agreement between Plaintiffs and WE is attached hereto as **Exhibit 4**.

FACTUAL BACKGROUND

5. The attorneys at our law firm have performed substantial work and diligently investigated and prosecuted this case. Our work, in conjunction with the work of our co-counsel, resulted in the creation of a settlement fund for the benefit of the Class. Because of the risks involved in litigating the case, particularly the contested legal and factual issues, Plaintiff's Counsel believes these settlements to be fair, reasonable, and adequate.

6. I understand that Plaintiff Markson is a California resident and former employee of Defendant CRST Expedited, Inc.; Plaintiff McGeorge is a California resident and former employee of Defendant CRST Expedited, Inc.; Plaintiff McClendon is a former California resident, current Nevada resident, and former employee of Defendants Covenant Transport, Inc., and CRST Expedited, Inc.; and Plaintiff Clark is a former California resident, current Texas resident, and former employee of Defendant C.R. England, Inc.

7. I understand that PTL is a Kentucky corporation and at all relevant times hereto was conducting and transacting business in the State of California. SNC is a Wisconsin corporation and at all relevant times hereto was conducting and transacting business in the State of California. CT is a Tennessee corporation and at all relevant times

1 hereto was conducting and transacting business in the State of California. SRT was an
2 Arkansas corporation and at all relevant times hereto was conducting and transacting
3 business in the State of California. WE is a Tennessee corporation and at all relevant times
4 hereto was conducting and transacting business in the State of California.

5 8. This case involves Defendants’ alleged violations of federal and California
6 antitrust laws. Plaintiffs alleged that various trucking companies, including Defendants,
7 have conspired to restrain competition through reciprocal “no poach” agreements among
8 themselves to suppress driver compensation, including Class Members. There are
9 approximately 84,000 members of the Settlement Class.

10 **MEDIATION**

11 9. The Parties participated in a mediation pursuant to the Court’s scheduling
12 order with experienced mediator, Barbara Reeves, on June 25, 2021. The settlement
13 negotiations at the mediation were non-collusive and conducted at arms’ length. Plaintiffs
14 and Defendant Paschall Truck Lines, Inc. were able to reach a settlement days prior to the
15 June 25, 2021 mediation with the assistance of the parties’ chosen mediator. During the
16 mediation, Plaintiffs and the Defendants (other than Paschall) participated in a full day of
17 negotiations. After several additional months of additional negotiations, Plaintiffs and
18 Schneider, Covenant, Southern Refrigerated, and Western Express were able to agree on the
19 terms of the Settlements now before the Court for preliminary approval.

20 **FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT**

21 10. Pursuant to the Settlement Agreements, Defendants collectively agree to pay
22 their respective shares of the collective gross settlement amount of \$4,250,000 (pursuant to
23 the table in paragraph 3 above) to the Settlement Class defined as, “all current and former
24 drivers “Under Contract” as motor vehicle carrier drivers with CRST International, Inc.,
25 CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National
26 Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall
27 Truck Lines, Inc., and/or Stevens Transport, Inc., at any time from May 15, 2013 through
28 the date of preliminary approval.” This is the first cluster of settlements with Defendants

1 who Plaintiffs allege took part of a conspiracy to suppress truck driver wages through
2 Defendants entering into reciprocal “no-poaching” agreements among themselves. As
3 explained below, each of the four settlements are fair and reasonable as to each of the
4 Settling Defendants.

5 11. When considering the fairness and reasonableness of the settlements, Plaintiffs
6 had to consider a wide range of factors and variables including, among other things, the
7 overall size of each of the Settling Defendants, the relative size of each of the Settling
8 Defendants compared to the remaining Defendants, the proportion of class members
9 employed by the Settling Defendants compared to the remaining Defendants, the proportion
10 of “Under Contract” drivers employed by the Settling Defendants relative to the number of
11 non-contract drivers they employed, financial challenges (if any) facing the Settling
12 Defendants, and the degree of each of the Settling Defendant’s participation in the alleged
13 conspiracy.

14 12. First, the Settling Defendants drivers represent a small portion of the overall
15 Class. According to Plaintiffs’ experts, the Settling Defendants’ drivers represent
16 approximately 10% of the total Class (8,500 out of 84,000). Accordingly, the Settlements,
17 which contemplate a \$4,250,000 total settlement amount, are patently fair and reasonable
18 given the relative size of the Class employed by the Settling Defendants compared to the
19 non-Settling Defendants.

20 13. Second, Plaintiffs understand that several of the Settling Defendants are
21 smaller enterprises compared to the other Defendants in this litigation. For example, PTL,
22 SRT, CT, and WE are relatively smaller motor carriers compared to companies such as
23 CRST and C.R. England.

24 14. Third, while all of the Defendants implemented policies not to hire drivers
25 who were “Under Contract” with another Defendant, other associated conduct varied
26 among the Settling Defendants. For example, CT and SNC did not send cease and desist
27 letters to other motor carriers to inform them that a driver was “Under Contract” with them.
28 In addition, CT, SRT, and SNC did not utilize non-compete provisions in their driver

1 contracts like many of the other Defendants. The Settling Defendants also did not operate
2 a trucking school during the Class period or operated one for only a short period of time
3 compared to the Non-Settling Defendants.

4 15. Fourth, the relative proportion of “Under Contract” drivers during the Class
5 period was not as high at the Settling Defendants compared to the Non-Settling Defendants.
6 For example, the vast majority of drivers hired by the Non-Settling Defendants are hired as
7 “Under Contract” drivers. This was not the case for the Settling Defendants.

8 16. CT and SRT are both part of the Covenant Logistics Group. However, over
9 the course of this litigation, the Covenant Logistics Group underwent a corporate
10 restructuring that included ceasing active operations for SRT. As a result, SRT is a defunct
11 trucking company that ceased operations approximately 1.5 years ago.

12 17. The Settlements are fair and reasonable and were negotiated at arm’s length
13 between counsel at a private mediation. Counsel for both parties were thoroughly familiar
14 with the complex legal and factual questions at issue in this litigation. The Settlements are
15 the product of intensive negotiations with the assistance of an experienced mediator
16 familiar with antitrust litigation, supported by investigation and direct exchanges of
17 information through formal discovery and depositions.

18 18. Although Plaintiffs believe that there is a strong possibility of certifying a class
19 regarding their antitrust claims, we also recognize the potential risk, expense, and
20 complexity posed by litigation, such as class certification, summary judgment, trial and/or
21 on the damages awarded, and an appeal that can take several more years to litigate.

22 19. Given my experience and the experience of my co-counsel, and our own
23 investigation and evaluation of the facts, I believe the proposed Settlements address all of
24 the allegations of violations of California state law and federal law by the Settling
25 Defendants, and provide adequate monetary relief to Plaintiffs and Class Members.

26 20. Whereas proceeding with litigation would impose significant risk of no
27 recovery as well as ongoing, substantial additional expenditures of time and resources, the
28 Settlements achieved confer a benefit on Plaintiffs and Class Members. If these Settlements

1 were not achieved, continued litigation of the claims would take substantial time and
2 possibly confer no benefit on Class Members. By contrast, the Settlements will yield a
3 prompt, certain, and substantial recovery for Class Members, which also benefits the parties
4 and the Court. The Settlements are fair and reasonable in light of the complexities of the
5 case, the state of the law, and uncertainties of class certification and litigation. Given the
6 risks inherent in litigation and the defenses asserted, the settlements are fair, adequate,
7 reasonable, and in the best interests of Class Members, and should be preliminarily
8 approved.

9 **FAIRNESS OF THE PROPOSED INCENTIVE AWARDS**

10 21. I believe the proposed Service Awards of \$25,000 for each the Named
11 Plaintiffs are fair and reasonable. Plaintiffs were instrumental in prosecuting this lawsuit
12 and were an important source of information during the course of litigation.

13 22. Plaintiffs provided invaluable assistance to Class Counsel and the Class in this
14 case, including providing factual background for the mediations and Complaints;
15 participating in phone calls to discuss litigation and settlement strategy; cooperating in the
16 collection of thousands of documents and cell phone records; having their depositions
17 taken; and reviewing the settlement documents. Plaintiffs agreed to participate in this case
18 with no guarantees of personal benefit. Further, Plaintiffs agreed to undertake the financial
19 risk of serving as Class Representatives and exposed themselves to the risk of negative
20 publicity by anyone who opposed this case. The Settlement Class would have received no
21 benefit from the Settling Defendants had it not been for the contributions of Plaintiffs.

22 **ATTORNEYS' FEES AND COSTS**

23 23. Through my practice, I have gained experience regarding the obligations and
24 burdens of representing a class in antitrust actions. This knowledge has allowed me and my
25 firm, Susman Godfrey L.L.P., to successfully represent plaintiffs in many class actions and
26 antitrust actions in the past years. Numerous courts in California have found that my firm
27 is competent and capable of representing classes similar to the one here at issue.

28 24. Under the terms of the Settlement Agreements, Class Counsel is requesting an

1 amount up to 25% of the GSA. This fee amount is fair, reasonable and consistent with
2 awards obtained in similar cases preliminarily approved by courts. Class Counsel is also
3 requesting reimbursement of litigation costs in the amount of \$1 million. To date, Class
4 Counsel has incurred \$2.2 million in litigation costs which does not include costs incurred
5 after execution of the four Settlement Agreements here. The amount requested for litigation
6 cost reimbursement is reasonable because here four of the seven Defendants are settling
7 and Class Counsel is requesting less than four-sevenths of their total litigation costs
8 incurred to date ($\$2.2 \text{ million} * 4/7 = \sim \1.25 million).

9 25. If the Court grants preliminary approval to the settlement and authorizes the
10 dissemination of a Class Notice, Plaintiffs' Counsel will file a Fee and Expense Application
11 that will be scheduled to be heard concurrently with the Motion for Final Approval Hearing.

12 26. As noted, Class Counsel intend to seek approval of attorneys' fees in the
13 amount of 25% of the combined GSA, which is a reasonable fee, and within the normal
14 range of fee awards for antitrust actions where fees are awarded as a percentage of the
15 common fund.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct.

18 Executed on December 6, 2021 in Seattle, Washington.

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21 By: /s/ Ian M. Gore
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