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THE HONORABLE MARYANN C. MORENO

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ORIGINAL FILED  
MAY 20 2019  
SUPERIOR COURT  
SPOKANE COUNTY, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF SPOKANE

JASON TSCHOSIK, JURGEN THIEDE, and  
AMY THOMAS, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

DIAMOND FREIGHT SYSTEMS, INC., a  
Washington corporation; NORTHWEST  
FREIGHT AND PARCEL LLC, a  
Washington limited liability company;  
PARMINDER THIND, individually; RAJIV  
SAUSON, individually; TONY  
MOUNTAINTESS, individually,

Defendants.

NO. 16-2-01247-1

~~PROPOSED~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

Plaintiffs have applied for an order preliminarily approving the settlement of this class  
action as described in the Settlement Agreement attached as Exhibit 1 to the Declaration of  
Toby J. Marshall ("Marshall Declaration") in support of Plaintiffs' Motion for Preliminary  
Approval of Class Action Settlement. The Court has read and considered the Settlement  
Agreement, the exhibit attached thereto, and the briefing and declarations submitted in support  
of preliminary approval of the settlement and is fully advised.

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1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. Unless otherwise provided herein, all capitalized terms in this Order shall have  
3 the same meaning as set forth in the Settlement Agreement.

4 2. The Court certifies the following Settlement Class for purposes of settlement:  
5 All current and former nonexempt employees of DFS Freight Inc., Diamond Freight Systems,  
6 Inc., and/or Northwest Freight and Parcel, LLC, (collectively “the Freight Company”) in the  
7 state of Washington from April 1, 2013, through March 15, 2019, who did not timely opt out  
8 following receipt of the class certification notice issued in January 2019.

9 3. Plaintiffs Jason Tschosik, Jurgen Thiede, and Amy Thomas are designated and  
10 appointed as the representatives of the Settlement Class for purposes of settlement.

11 4. The Court preliminarily approves the Settlement Agreement and the terms set  
12 forth therein—including the relief afforded the Settlement Class, the appointment of Amy  
13 Thomas as an additional Class representative, the service awards to the Plaintiffs, the attorneys’  
14 fees and costs award to Class Counsel, and the estimated Settlement Administration expenses  
15 award—as being fair, reasonable and adequate. The Settlement Agreement is the result of  
16 extensive litigation and arm’s-length negotiations between experienced attorneys who are  
17 familiar with class action litigation in general and with the legal and factual issues of this case  
18 in particular.

19 5. The Court approves the estimated expenses for administration of the settlement  
20 by a Settlement Administrator to be selected by Plaintiffs. The Court approves the Settlement  
21 Administrator to perform the functions required by the terms of the Settlement Agreement. The  
22 Court also approves reasonable compensation and costs to the Settlement Administrator in  
23 accordance with the Settlement Agreement.

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1           6.       A final fairness hearing (“Final Fairness Hearing”), for purposes of determining  
2 whether the Settlement should be finally approved, shall be held before this Court on  
3 08/30, 2019, at 1:30 a.m./(p.m.) in the courtroom of the Honorable  
4 Maryann C. Moreno at Spokane County Superior Court, Department 7, 1116 West Broadway  
5 Avenue, Spokane, Washington 99260. At the hearing, the Court will hear arguments  
6 concerning whether the proposed Settlement and the terms and conditions provided for in the  
7 Settlement Agreement should be granted final approval by the Court as fair, reasonable, and  
8 adequate.

9           7.       The Court approves, as to form and content, the Notice to be sent to the  
10 members of the Settlement Class, which is attached to the Settlement Agreement as Exhibit A,  
11 including notice that the motion for final approval of the Settlement Agreement—including  
12 Class Counsel’s request for attorneys’ fees and costs, settlement administration expenses, and  
13 service awards for the named Plaintiffs—will be available on the settlement website for Class  
14 members to review fourteen days before the objection deadline as set out in paragraph 9 of the  
15 Marshall Declaration. In addition, the Court finds that distribution of the Notice substantially  
16 in the manner set forth in Paragraph 8 of this Order and Section II.D.2 of the Settlement  
17 Agreement will meet the requirements of due process and applicable law, will provide the best  
18 notice practicable under the circumstances, and will constitute due and sufficient notice to all  
19 individuals entitled thereto.

20           8.       The procedure for distributing the Notice shall be as follows:

21           a.       Within ten days of the Court granting preliminary approval, Defendants  
22 will produce an updated class list that includes contact information for each member of the  
23 Settlement Class.

1           b.       Within twenty-four days of the date the Court issues the Preliminary  
2 Approval Order, the Settlement Administrator shall mail the Notice to all members of the  
3 Settlement Class and shall provide Class Counsel and Defendants' counsel with copies of the  
4 mail-merge spreadsheets used for the mailings, which will include the estimated settlement  
5 award for each member of the Settlement Class.

6           c.       Before mailing the Notice, the Settlement Administrator will perform  
7 normal and customary address updates and verifications as necessary.

8           d.       The Notice shall provide that members of the Settlement Class who wish  
9 to object to the Settlement must send a written letter to the Settlement Administrator objecting  
10 to the Settlement on or before the Notice Deadline ("Objection"). If a member of the Settlement  
11 Class wishes to have the Court consider the written statement objecting to the Settlement, the  
12 person (i) must not have excluded himself or herself from the Settlement Class and (ii) must  
13 mail to the Settlement Administrator the written objection, along with any supporting  
14 documentation that the person wishes the Court to consider, by no later than thirty days after  
15 the Initial Mailing Date. If such Objection is submitted and overruled by the Court, the  
16 objecting member of the Settlement Class shall remain fully bound by the terms of the  
17 Settlement, including the Release, so long as the Settlement is granted final approval by the  
18 Court, and the Effective Date occurs. The Parties shall submit any responses to objections no  
19 later than forty days after the Initial Mailing Date. Any member of the Settlement Class who  
20 does not appear individually or through counsel and who does not challenge or comment upon  
21 the fairness and adequacy of the Settlement or Class Counsel's request for attorneys' fees and  
22 costs shall permanently and completely waive and forfeit any and all rights to appear separately

1 or object to the Settlement. All members of the Settlement Class shall be bound by the  
2 Settlement and by all proceedings, orders, and judgments in the Action.

3 e. The Notice shall also provide members of the Settlement Class an  
4 opportunity to exclude themselves from the Action. To exclude themselves (*i.e.*, opt out) from  
5 the Settlement Class, such members must mail a letter to the Settlement Administrator  
6 requesting exclusion from the Settlement Class on or before the Notice Deadline. An exclusion  
7 request must: (i) be in writing; (ii) state that individual's current address and telephone number;  
8 (iii) contain the following statement: "I want to be excluded from the proposed Settlement  
9 Class in *Tschosik v. Diamond Freight Systems, Inc.*"; (iv) be signed; and (v) be mailed to the  
10 Settlement Administrator at the address provided in the Notice and postmarked within thirty  
11 days after the Initial Mailing Date. Each individual who properly files a timely written request  
12 for exclusion shall be excluded from the Settlement Class and shall have no rights under the  
13 Settlement Agreement. Members of the Settlement Class who are entitled but fail to submit a  
14 valid and timely request for exclusion on or before the Notice Deadline shall be bound by all  
15 terms of the Settlement and any final judgment entered in this Action if the Settlement is  
16 approved by the Court and the Effective Date occurs, regardless of whether they have objected  
17 to the Settlement.

18 f. If a Notice is returned as undeliverable with a forwarding address  
19 provided by the United States Postal Service, the Settlement Administrator will promptly  
20 resend the Notice to that forwarding address. If a Notice is returned as undeliverable and  
21 without a forwarding address, the Settlement Administrator shall perform one skip trace only.  
22 If it obtains a more recent address, the Settlement Administrator shall resend the Notice. The  
23 Settlement Administrator shall also mail, or email if applicable, a Notice to any member of the  
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1 Settlement Class who contacts the Settlement Administrator or one of the Parties and requests a  
2 Notice.

3 9. The parties agree that neither they nor their counsel will, directly, or indirectly,  
4 solicit, suggest to, entice or otherwise encourage any member of the Settlement Class to opt out  
5 or object to the Settlement.

6 10. No later than sixteen days after the Initial Mailing Date, Class Counsel shall file  
7 a motion requesting that the Court grant final approval of the Settlement, including payment of  
8 attorneys' fees and costs, and that the Court enter a final judgment. No later than ten (10)  
9 calendar days after the Notice Deadline (or forty (40) days after the Initial Mailing Date), Class  
10 Counsel will file a supplemental memorandum in support of final approval of the Settlement to  
11 inform the Court of any members of the Class who have opted out of the Settlement and to  
12 respond to any Objections to the Settlement.

13 11. The Court reserves the right to adjourn the date of the Final Fairness Hearing  
14 without further notice to the members of the Class and retains jurisdiction to consider all  
15 further applications arising out of or connected with the proposed Settlement Agreement.

16 12. If final approval does not occur, the parties shall be deemed to have reverted to  
17 their respective status as of the date and time immediately prior to the execution of the  
18 Settlement Agreement, and the Settlement Agreement shall be deemed null and void.

19 IT IS SO ORDERED.

20 DATED this 20 day of MAY, 2019.

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MARYANN C. MORENO  
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SUPERIOR COURT JUDGE