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8 individually and on behalf of all others
similarly situated

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10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
11 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

12 DMYTRO MARTYNIUK, individually, and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 USKO EXPRESS, INC., a California
16 Corporation; JS EXPRESS, LLC, a California
Limited Liability Company; and DOES 1
through 100, inclusive,

17 Defendants.
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Case No. 20STCV07379

Complex Class Action

[Assigned to Hon. Yvette M. Palazuelos, Dept. 9]

**RESPONSE TO COURT'S TENTATIVE OF
JANUARY 9, 2023 IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL**

Date: January 11, 2023

Time: 10:00 a.m.

Place: Dept. 9, Spring Street Courthouse

Action Filed: February 26, 2020

Trial Date: None Set

22 This memorandum addresses the Court's Tentative Ruling/Orders Re: Motion for Preliminary
23 Approval dated January 9, 2023 ("January 9 Tentative"), which is attached as Exhibit 1 to the concurrently
24 filed Supplemental Declaration of Greg Taylor ("Taylor Decl."). The parties now have further revised the
25 proposed Settlement and Release Agreement ("Settlement") and the Notice of Proposed Class Action
26 Settlement ("Class Notice") to comply with the new items raised in the January 9 Tentative. A true and
27 correct redlined copy of the further revised Settlement is attached to the Taylor Decl. as Exhibit 2. A true
28 and correct clean copy of the further revised Class Notice is attached to the Taylor Decl. as Exhibit 3. A

true and correct redlined copy of the revised Class Notice is attached to the Taylor Decl. as Exhibit 4. The remainder of this memo sets out how the issues raised in the January 9 Tentative have been resolved.

(1) Checklist Item: Settlement Agreement, ¶ A, The Basics

☒ *Class definition. If a PAGA representative action is settled with a proposed Class Settlement consider whether there should be separate definitions for Class Members and Aggrieved Employees.*

- *The Court prefers that the PAGA Members / PAGA Employees definition (¶I.24) does not refer to “members of the Settlement Class,” but should be sufficiently descriptive on its own in specifying the job category of aggrieved employees that it covers.*

Resolution: The definition of “PAGA Members / PAGA Employees” at paragraph I.24 of the Settlement has been revised as requested in the January 9 Tentative. (See Ex. 2, Settlement, ¶ I.24.)

(2) Checklist Item: Settlement Agreement, ¶ B, Release of Claims

☒ *Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the operative complaint should be based on the facts alleged in the operative complaint. (See Amaro v. Anaheim Arena Mgmt. (2021) 69 Cal. App. 5th 521, 537 and FN. 5; Uribe v. Crown Building Maintenance Co. 70 Cal. App. 5th 986, 1005.)*

- *Modify the release of claims language (¶VI.1) to specify that Class Members will only release claims alleged in, or arising out of facts asserted in, the operative First Amended Complaint, rather than “the Action.”*

Resolution: The release of claims language at paragraph VI.1 of the Settlement has been revised to specify Class Members will only release claims alleged in or arising from “the operative complaint, the First Amended Complaint” rather than “the Action.” (See Ex. 2, Settlement, ¶ VI.1.)

(3) Checklist Item: Settlement Agreement, ¶ D, Notice Administration

☒ *Indicate how notices returned to the administrator as undeliverable will be handled.*

- *See ¶VII.F – What is the deadline for the administrator to re-mail any returned notices?*

Resolution: The Settlement has been revised at ¶ VII.F to state the settlement administrator must re-mail returned notices within 5 business days of identifying an updated address. (See Ex. 2, Settlement, ¶ VII.F.)

(4) Checklist Item: Settlement Agreement, ¶ F, Cy Pres Distribution

☒ *Provide declarations disclosing the interest or involvement (or lack thereof) by any counsel or party in the governance or work of the cy pres recipient.*

- *Plaintiff, Defendant and Defendant’s counsel should also file declarations disclosing any interest or involvement in the governance or work of the cy pres recipient Public Citizen Foundation.*

1 **Resolution:** The parties have removed the proposed *cy pres* term from the Settlement entirely, and instead
2 contract that funds from unclaimed or undeliverable checks will be distributed to the California State
3 Controller’s Unclaimed Property Fund. (See Ex. 2, Settlement, ¶ VIII.E.2.)

4 **(5) Checklist Item: Settlement Agreement, ¶ G, Miscellaneous**

5 ☒ *Assure the Settlement Agreement and Notice are consistent and that the Settlement*
6 *Agreement has been signed by all parties and counsel. Carefully proofread both.*

- 7 • *The class and PAGA releases disclosed to Class Members in the notice should be*
8 *verbatim to the releases in the Settlement Agreement. Please review carefully and*
9 *resolve. For example, the latest draft of the Notice form still states that the release*
of claims will occur “Upon the Court’s final approval of the settlement...” which is
inconsistent with the revised language in the agreement (¶VI.1).

10 **Resolution:** The releases in the Class Notice have been revised to be verbatim to the releases in the
11 Settlement at paragraph VI.1 (See Ex. 4, Class Notice, pg. 3.)

12 **(6) Checklist Item: Exhibits to the Motion**

13 ☒ *Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code,*
14 *§ 2699, subd. (l)(2).)*

- 15 • *This also applies to any further revised versions of the settlement agreement (if applicable).*

16 **Resolution:** Plaintiff as of today has submitted to the LWDA the further revised Settlement and Class
17 Notice, and this memo and the Supplemental Taylor Decl., and will also submit the Settlement
18 to the LWDA yet again once it is fully executed, which is anticipated to be by the end of this week. (See
19 Ex. 5 to Taylor Decl.)

20 Dated: January 9, 2023

Respectfully submitted,
The Kick Law Firm, APC

21 /s/ Taras Kick

22 Taras Kick
23 Greg Taylor
24 Attorneys for Plaintiff
25 Dmytro Martyniuk and the putative class
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PROOF OF SERVICE

I am attorney for the plaintiffs herein, over the age of eighteen years, and not a party to the within action. My business address is 815 Moraga Drive, Los Angeles, CA 90049. On the below date of execution, I served the within document(s):

- **RESPONSE TO COURT'S TENTATIVE OF JANUARY 9, 2023 IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL;**
- **SUPPLEMENTAL DECLARATION OF GREG TAYLOR IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; EXHIBITS**

Electronic Service Pursuant to Court Order: I caused such envelope to be delivered by e-mail (Case Anywhere) to:

MEDINA McKELVEY LLP

Alexander M. Medina (SBN 222015)

Email: alex@medinamckelvey.com

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925 Highland Pointe Drive, Suite 300

Roseville, California 95678

I declare under penalty of perjury that the above is true and correct.

Executed on January 9, 2023, at Los Angeles, California.

/s/ Greg Taylor

Greg Taylor