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individually and on behalf of all others
similarly situated

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

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

Plaintiff,

v.

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

Defendants.

Case No. 20STCV07379

Complex Class Action

*[Assigned for all purposes to the Hon. Yvette
M. Palazuelos, Dept. 9]*

**SUPPLEMENTAL BRIEF IN RESPONSE
TO COURT'S RULING OF JULY 27, 2022
REGARDING 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

This Supplemental Brief addresses in very careful detail the Court's Final Rulings/Orders Re: Motion for Preliminary Approval of Class Action Settlement, dated July 27, 2022, in which the Court ordered the parties to address certain items and file supplemental papers by December 21, 2022. Plaintiff provides perhaps too much detail in this Supplemental Brief because, although the parties tried to get a sooner date for this follow-up hearing than January 11, 2023, they were unable to get a sooner date, and want to ensure that all that is possible has been done to allow this new hearing to be successful, so that the matter may continue towards conclusion in a reasonably timely manner.

1 A true and correct copy of the Court’s Final Rulings/Orders dated July 27, 2022, and the Checklist
2 is attached as Exhibit 6 to the concurrently filed Declaration of Greg Taylor.

3 **Revised Settlement Agreement and Revised Class Notice.** The parties have revised the
4 proposed Settlement and Release Agreement (“Settlement”) and the Notice of Proposed Class Action
5 Settlement (“Class Notice”) pursuant to the Checklist. A true and correct copy of the fully executed
6 revised Settlement is attached as **Exhibit 1** to the concurrently filed Declaration of Greg Taylor. A true
7 and correct redlined copy of the revised Settlement is attached as **Exhibit 2** to the concurrently filed
8 Declaration of Greg Taylor. A true and correct clean copy of the revised Class Notice is attached as
9 **Exhibit 3** to the concurrently filed Declaration of Greg Taylor. A true and correct redlined copy of the
10 revised Class Notice is attached as **Exhibit 4** to the concurrently filed Declaration of Greg Taylor.

11 **LWDA Submission.** Plaintiff has submitted to the LWDA the revised Settlement Agreement,
12 revised Class Notice, this Supplemental Brief, and the concurrently filed Declaration of Greg Taylor in
13 Support of Plaintiff’s Motion for Preliminary Approval. A true and correct copy of the LWDA
14 confirmation email is attached as **Exhibit 5** to the concurrently filed Declaration of Greg Taylor.

15 **Checklist Items & Resolution:**

16 **(1) Checklist Item: Moving Papers, ¶ E, Miscellaneous.**

17 ☒ *If notice will be given in English only, explain why this is sufficient.*

18 **Resolution:**

19 Plaintiff respectfully notes this Checklist item was already complied with in July 2022 prior to the
20 initially scheduled hearing. Specifically, as explained in the moving papers, “The Parties have agreed to
21 give Notice in both English and Russian, as a significant portion of Class members are Russian speaking,
22 according to counsel for Defendant. (Kick Decl. ¶ 22).” (See Motion for Preliminary Approval of Class
23 and PAGA Representative Action Settlement, § V.B.)

24 **(2) Checklist Item: Settlement Agreement, ¶ A, The Basics, Class Definition**

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

- 27
 - *The Settlement Class definition at ¶1.21 is vague, and inconsistent with the more*
28 *adequate definition provided at Notice pg. 1 (first bullet point paragraph, italicized*
language). Please resolve.

- *Why is it proper that PAGA employees and the PAGA period are not defined separately? Furthermore, the term “PAGA Members” is used at ¶VIII.C.1. but not defined.*

Resolution:

The Settlement Agreement has been revised to add the full definition of the Settlement Class to ¶I.21 to match the more detailed definition on page 1 of the Class Notice. (See Ex. 2, Settlement, ¶ I.21; Ex. 4, Class Notice, pg. 1.)

The Settlement Agreement has also been revised to define the term “PAGA Period” in ¶ I.23 of the Settlement Agreement, as it is defined on pg. 1 of the Class Notice. (See Ex. 2, Settlement, ¶ I.23; Ex. 4, Class Notice, pg. 1.)

The Settlement Agreement has also been revised to clearly define the term “PAGA Members” and “PAGA employees” used in the Settlement Agreement and attached Notice. (See Ex. 2, Settlement, ¶ I.24.)

(3) Checklist Item: Settlement Agreement, ¶ A, The Basics, Class and Release Period

☒ *Class and Release Period: ~~If the class and release periods extend beyond the preliminary approval explain why this is appropriate.~~*

- *The Court would prefer a specific end date for the Class Period be provided rather than the reference to “90 days after full execution of the long-form settlement agreement.” See ¶ I.4.*

Resolution:

The Settlement Agreement has been revised to state a specific end date for the Class Period in ¶ I.4 as “May 23, 2022.” (See Ex. 2, Settlement, ¶ I.4.)

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

☒ *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 (¶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.*

Resolution:

Plaintiff respectfully notes that this Checklist item was already complied with, as the released claims are restricted to claims alleged in, or arising out of facts asserted in, the Action. (See Ex. 2,

Settlement, ¶¶ II.A, VI.1.) Specifically, ¶ VI.1 defines the release of claims as “all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorneys’ fees, damages, claims for equitable relief, actions or causes of action that arise, or could have arisen, from the Action (the “Released Claims”).” (*Id.*, at ¶ VI.1.) Moreover, it is undisputed that the First Amended Complaint (“FAC”) is the operative complaint in the Action. The FAC was filed on May 11, 2022, in order to add a cause of action for PAGA, and Defendant filed its Answer to the FAC on June 14, 2022. To the extent the Court wants further assurance as to the scope of the release, the Parties agree via this filing that only the claims alleged in, or arising out of facts asserted in, the FAC are being released.

(5) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, PAGA Claim

☒ *Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. Id.*

Resolution:

The Settlement Agreement has been revised to add a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. (*See* Ex. 2, Settlement, ¶ VI.4.)

(6) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, PAGA and Class Settlement

☒ *If PAGA and Class Settlement: The Release should provide an explanation that released claims include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice and aggrieved employees will release PAGA claims even if class members request exclusion from the class. See Robinson v. Southern Counties Oil Co. (2020) 53 Cal.App.5th 476.*

Resolution:

The Settlement Agreement has been revised to explain: “Released claims shall include all PAGA claims that could have been premised on the facts alleged in the Plaintiff’s Notice to the LWDA. PAGA Members will release PAGA claims even if Class members request exclusion from the Class.” (*See* Ex. 2, Settlement, ¶ VI.4.)

(7) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, Release Effective Date

☒ *Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement*

funds are paid, explain why this is in the best interest of the class.

- *Modify the effective date of the releases to be the date on which Defendant fully funds the settlement. See ¶¶ VI.1, VI.2.*

Resolution:

The Settlement Agreement has been revised to modify the effective date of the releases as requested. (See Ex. 2, Settlement, ¶¶ VI.1, VI.2.)

(8) Checklist Item: Settlement Agreement, ¶ B, Release of Claims, Class Data

☒ *Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.*

- *See ¶ VII.C.*

Resolution:

The Settlement Agreement has been modified at ¶ VII.C to explain that keeping Class Data confidential serves the best interest of the Class by protecting their personal information, and does not impede Class Counsel's ability to discharge fiduciary duties. (See Ex. 2, Settlement, ¶ VII.C.)

(9) Checklist Item: Settlement Agreement, ¶ C, Monetary Terms of Settlement

☒ *Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.*

- *Specific amounts for attorney's fees, attorney's costs, and settlement administration costs must be provided in the terms of the Settlement Agreement.*
- *All estimated deductions from the settlement fund must also be disclosed to the Class in the Notice.*

Resolution:

The Settlement Agreement has been modified to state specific amounts for attorneys' fees, litigation costs, and settlement administration costs. (See Ex. 2, Settlement, ¶¶ I.2, I.18, V.D.1.)

The Class Notice has also been modified to state specific amounts for attorneys' fees, attorneys' costs, and settlement administration costs on page 3 beneath the section heading "How will the lawyers be paid?" (See Ex. 4, Class Notice, pg. 3.)

(10) Checklist Item: Settlement Agreement, ¶ C, Monetary Terms of Settlement

☒ *Payment Formula: Amount and manner of distribution of the compensation to each class*

member, including the estimated amount each class member will receive and the timeline on which payments will be issued.

- Provide a separate payment formula for the calculation of PAGA penalties to be paid to PAGA Members, considering the PAGA statute's applicable statute of limitations.

Resolution:

Currently, the Settlement Agreement specifies at ¶ VIII.C.1 that \$15,000 in PAGA Penalties shall be paid to PAGA Members on a *pro rata* basis, based on the total number of miles driven by each PAGA member during the PAGA Period. Moreover, the timeline for distribution of payments is specified in section VIII.E of the Settlement Agreement.

The Settlement Agreement has been modified in section VIII.C to clearly state this payment formula and the PAGA Period. (See Ex. 2, Settlement, ¶¶ VIII.C.1-5.)

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

☒ ~~Indicate the administrator for the settlement and why the bid for administration is fair.~~

Resolution:

The Settlement Agreement has been modified to explain why the bid for administration from Simpluris, Inc. is fair. (See Ex. 2, Settlement, ¶ V.D.1.)

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

☒ Provide the qualifications and experience of the Administrator, including evidence that the settlement administrator has procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds.

Resolution:

The Settlement Agreement has been modified to provide the qualifications and experience of the Administrator. (See Ex. 2, Settlement, ¶ V.D.2.)

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

☒ Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive and how that amount was calculated. A separate breakdown for PAGA payments should be provided. The terms of the release(s) should be reflected in the Notice.

Resolution:

Plaintiff respectfully believes this Checklist item was complied with already, but to ensure

1 compliance, the Class Notice has been modified to clearly include separate breakdowns for Class and
2 PAGA payments. (*See* Ex. 4, Class Notice, pg. 1.)

3 The proposed Class Notice complies with CRC rule 3.766(d) as follows:

4 (1) A brief explanation of the case is stated on page 2 of the proposed Notice, including in the
5 sections titled “What is the Lawsuit about?” and “Why is there a settlement?”

6 (2) A statement that the court will exclude the member from the class if the member so requests
7 by a specified date is stated on page 3 of the proposed Notice, including in the section titled
8 “How can I opt out of this settlement?”

9 (3) A procedure for the member to follow in requesting exclusion from the class is also stated
10 on page 3 of the proposed Notice.

11 (4) A statement that the judgment, whether favorable or not, will bind all members who do not
12 request exclusion is provided in this way:

13 ▪ On page 3 of the proposed Notice in the section titled “What am I releasing?” where
14 it states that the Plaintiff and Class Members who have not effectively opted-out
15 will fully release all Released Claims.

16 ▪ On page 4 of the Notice in the section titled “What happens if I do nothing at all?”
17 class members are informed that by doing nothing, they “will be bound by the
18 release as set forth herein.”

19 (5) A statement that any member who does not request exclusion may, if the member so
20 desires, enter an appearance through counsel, is provided in this way:

21 ▪ Page 2 of the proposed Notice states, “You have the right to attend a fairness
22 hearing that will be conducted by the Court” and “you may ask to speak about your
23 objection at the hearing.” Page 4 of the Notice also states, “You may appear
24 yourself, and you may also hire your own lawyer to attend.”

25 ▪ Page 3 of the proposed Notice states, “If you want to be represented by your own
26 lawyer, you may hire one at your own expense.”

27 Moreover, the Class Notice properly indicates the specific amount the class member will receive
28 and how that amount was calculated. (*See* Ex. 4, Class Notice, pg. 1.) The Class Notice also properly

1 indicates the terms of the release. These terms are explained on page 3 of the Notice. (See Ex. 4, Class
2 Notice, pg. 3.)

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

4 *☑ Ensure the notice accurately reflects the Court’s current social distancing procedures*
5 *for attendance at hearings and review of court files. (Counsel should check the Court*
6 *website for most current information.)*

7 **Resolution:**

8 Class members are informed on page 4 of the Class Notice in the section titled “Do I have to come
9 to the hearing?” that they can attend the fairness hearing remotely and are provided with a link to the
10 Court’s website for “more information on how to appear remotely as well as the Court’s social distancing
11 protocols.”

12 In addition, the Class Notice has been revised on page 4 to state the current protocol, which
13 strongly recommends face masks inside all Los Angeles County courthouses in alignment with Los
14 Angeles County Department of Public Health guidance. (See Ex. 4, Class Notice, pg. 4.)

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

16 *☑ Explain how re-mailed notices, if any, will be handled. Will class members who receive*
17 *re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute*
18 *workweeks)?*

19 **Resolution:**

20 The Settlement Agreement has been revised to explain that if any Class Member’s Notice must be
21 re-mailed, the deadline for that Class Member to submit a dispute, objection, or opt-out request will be
22 extended by 14 days. (See Ex. 2, Settlement, ¶ VII.G.)

23 **(16) Checklist Item: Settlement Agreement, ¶ D, Notice Administration**

24 *☑ Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule*
25 *3.771(b)) (e.g. Posted on claims administrator’s website.)*

26 **Resolution:**

27 Plaintiff respectfully notes this Checklist item was already complied with at ¶ X.C of Settlement
28 Agreement, which states, “The executed Final Order and Judgment shall be posted on the Settlement
Administrator’s website.” (See Ex. 2, Settlement, ¶ X.C.)

1 **(17) Checklist Item: Settlement Agreement, ¶ E, Responses to Notice**

2 *☒ Indicate the deadline to submit objections, requests for exclusion, claim forms (if*
3 *applicable), and/or disputes to workweeks. Confirm the deadline is reasonable and that*
4 *class members who receive re-mailed notices will be given an extension.*

- 5
 - *The deadline to submit requests for exclusion, written objections, and/or disputes to*
6 *workweeks should be a date 45 or more days from the date on which notice is*
7 *initially mailed. Also, the term “Response Deadline” is used at ¶VIII.D.6 but not*
8 *defined.*

9 **Resolution:**

10 The Settlement Agreement and Class Notice have been revised to make the deadline to submit
11 requests for exclusion, written objections, and/or disputes to workweeks 45 days from the date on which
12 notice is initially mailed. (See Ex. 2, Settlement, ¶¶ I.25, IX.A.1; See also Ex. 4, Class Notice, pgs. 3-4.)

13 The Settlement Agreement has also been modified to include a definition of the term “Response
14 Deadline”, which is used at ¶VIII.D.6. (See Ex. 2, Settlement, ¶ I.25.)

15 **(18) Checklist Item: Settlement Agreement, ¶ D, Notice Administration**

16 *☒ Do not include language indicating that class members may only be heard at final*
17 *approval if they have complied with all objection procedures or that they must use specific*
18 *language to request exclusion, or, if a specific procedure is sought, explain why it is*
19 *necessary. In general, the court will hear from any class member who attends the final*
20 *approval hearing and asks to speak regarding his or her objection.*

- 21
 - *Remove any requirement or implication that Class Members must use specific*
22 *language to request exclusion. See Notice pg. 3.*
 - *Make clear that the court will hear from any class member who attends the final*
23 *approval hearing and asks to speak regarding his or her objection, regardless of*
24 *whether a written objection was submitted.*

25 **Resolution:**

26 The Class Notice has been revised at page 3 to remove any requirement or implication that Class
27 Members must use specific language to request exclusion. (See Ex. 4, Class Notice, pg. 3.)

28 The Class Notice has also been revised in the table on page 2 to state: “The court will hear from
any class member who attends the final approval hearing and asks to speak regarding his or her objection,
regardless of whether a written objection was filed.” (See Ex. 4, Class Notice, pg. 2.)

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

☒ Explain why the cy pres distribution fills the purposes of the lawsuit or is otherwise

appropriate. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; *Code Civ. Proc.*, § 384.)

Resolution:

The Settlement Agreement has been revised to explain why the proposed cy pres distribution to Public Citizen Foundation, a section 501(c)(3) non-profit organization, is appropriate and fulfills the purposes of the lawsuit. (*See* Ex. 2, Settlement, ¶ VIII.E.2.) To the extent this Court prefers something else, the parties will comply with the Court’s preference and agree to whatever this Honorable Court prefers at the January 11, 2023 hearing, so as to avoid any further delay.

(20) 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.*

Resolution:

The Settlement Agreement has been revised at ¶ VIII.E.2 to reference the Declaration of Taras Kick, filed in support of the Motion for Preliminary Approval, which attests at ¶ 24 to the lack of any involvement in the governance of the cy pres recipient. (*See* Ex. 2, Settlement, ¶ VIII.E.2.)

(21) Checklist Item: Settlement Agreement, ¶ G, Miscellaneous

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

Resolution:

The revised Settlement Agreement and Class Notice have been proofread and the Settlement Agreement has been signed by all parties and counsel. (*See* Ex. 1, Signed Settlement.)

(22) Checklist Item: Exhibits to the Motion

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

- *This also applies to any further revised versions of the settlement agreement.*

Resolution:

Per the Court's instruction, Plaintiff has submitted to the LWDA the revised Settlement Agreement, revised Class Notice, this Supplemental Brief, and the concurrently filed Declaration of Greg Taylor in

1 Support of Plaintiff's Motion for Preliminary Approval. (See Ex. 5 to the concurrently filed Declaration
2 of Greg Taylor, Proof of LWDA Submission.)

3 Plaintiff hopes the above addresses the issues raised by the Court in July 2022, and to the extent
4 there might be any further questions, that they can be resolved at the January 11, 2023, hearing.

5 Dated: December 21, 2022

Respectfully submitted,
THE KICK LAW FIRM, APC

7 By: /s/ Taras Kick
8 Taras Kick
9 Greg Taylor
Attorneys for Plaintiffs 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 following document(s):

- **SUPPLEMENTAL BRIEF IN RESPONSE TO COURT’S RULING OF JULY 27, 2022, REGARDING MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT;**
- **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:

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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 December 21, 2022, at Los Angeles, California.

/s/ Alina Muresan

Alina Muresan