

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

<p>Brink, Christian Plaintiff/Petitioner,</p> <p>vs.</p> <p>Central Valley Auto Transport, Inc. Defendant/Respondent.</p>	<p>Judicial Officer: David Mathias Clerk: Holly Bilbrey Bailiff: Jose Devora CSR: Monica Grant Interpreter: Language:</p>
<p>Minutes: Motion: Preliminary Approval Case Management Conference</p> <p>Date: February 3, 2022</p>	<p>Case No. VCU274266 Department 01</p> <p>Related Cases:</p>

- Appearances: No Appearances
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<input type="checkbox"/> Other: _____ | <input type="checkbox"/> Attorney: _____
<input type="checkbox"/> Remote Appearance
<input checked="" type="checkbox"/> Attorney: <u>Vanessa Chavez, Counsel for
Defendant</u>
<input checked="" type="checkbox"/> Remote Appearance
<input type="checkbox"/> Attorney: _____
<input type="checkbox"/> Remote Appearance |
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Case is called at 8:48 AM:

No request for oral argument.

The Court adopts the Tentative Ruling as follows:

Motions: Motion for Preliminary Approval of Class Action and PAGA Settlement

Rulings: To grant the motion to preliminarily approve the settlement. The Final Approval Hearing is set for May 19, 2022 at 8:30am in Department 1.

1. Sufficiency of Amount of Settlement (Net Estimated: \$688,375.00)

The gross settlement amount is \$1,250,000.00. Plaintiffs estimate approximately 105 members of the "Independent Contractor Class" with an average payment of approximately \$5,244.76 and 139 members of the "Company Driver Class" with an average payment of approximately \$990.47.

The Independent Contractor Class in this action consists of persons who directly signed a contract with Defendant and performed services for Defendant within the State of California, but were classified as independent contractors from June 6, 2014 through April 1, 2021 who Plaintiffs contend should have been classified as employees under the factors set forth in S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341, as well as the "ABC test" outlined in the California Supreme Court decision in Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903.

The Company Driver Class consists of all non-exempt truck drivers who are or were employed with Defendant in the State of California from June 6, 2014 through April 1, 2021.

As to the Independent Contractor Class, Plaintiffs provide estimates of the maximum recovery for each of the asserted wage and hour claims and penalties with information showing how the estimates were calculated including the damages models utilized. The total estimated maximum recovery in the event of an outright victory is \$42,948,140.00 based upon \$42,872,140.00 for failure to reimburse business expenses and 76,000.00 for wage statement violations.

As to the Company Driver Class, Plaintiffs provide estimates of the maximum recovery for each of the asserted wage and hour claims and penalties with information showing how the estimates were calculated including the damages models utilized. The total estimated maximum recovery in the event of an outright victory is \$6,695,306.00 based upon \$5,617,576.00 for unpaid wages, \$160,000.00 in wage statement violations and \$917,730.00 in waiting time penalties.

Plaintiffs also estimate that members of both classes would be entitled to maximum PAGA penalties in the amount of \$2,360,000.00 for the period of June 6, 2018 through April 1, 2021.

Plaintiffs have abandoned their meal and rest break claims based on a preemption defense asserted by Defendants as set forth in Int' Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin. (2021) 986 F.3d 841.

Plaintiffs' discussion includes evaluation of the various strengths and weaknesses of Plaintiffs' case and Defendant's defenses to Plaintiffs' claims for each category above, specifically under Maldonado, including risk of non-certification, risk of being unsuccessful on the merits of each claim and, specifically as to the Independent Contractor Class, the risk of being considered independent contractors instead of employees. Plaintiffs' discussion included individualized discounts for each claim of the maximum recovery based upon these risks.

Plaintiffs' deductions from the gross settlement of \$1,250,000.00 are proposed as follows:

Court Approved Attorney Fees:	\$ 416,825.00
Attorney Costs (up to):	\$ 50,000.00
Enhancement Payment to Plaintiff – Independent Contractor:	\$ 10,000.00
Enhancement Payment to Plaintiff – Company Driver:	\$ 10,000.00
Settlement Administrator Costs	\$ 25,000.00
<u>PAGA payment to the LWDA</u>	<u>\$ 50,000.00</u>
Net Settlement Amount	\$ 688,375.00

2. Class Notice

The settlement agreement provides no claim form will be required of class members to participate in distributions. Only those wishing to object or opt out must file notice with the settlement administrator. Objections or opt out notices are to be made within 60 days.

The Court regularly approves notice periods of 60 days or longer and finds the notice period in this case reasonable. The class notice period is preliminarily approved.

With respect to the content of the Notice, the Court finds the Class Notice to be reasonable. It clearly provides to the class member an estimate of the settlement share the employee is to receive and provides adequate instructions for any class member to opt out of the settlement or to submit an objection.

3. Enhancement Awards to Class Representatives

The court preliminarily approves Plaintiffs David Maier and Christian Brink as the Class Representatives for settlement purposes for the Independent Contractor Class and Company Driver Class, respectively. The proposed enhancement awards to Plaintiffs Maier and Brink is \$10,000.00 each.

Plaintiffs have provided declarations indicating the number of hours worked on the case and why the proposed service award is reasonable considering any estimated distributions to the other employees. As noted above, 105 members of the Independent Contractor Class will receive an average payment of approximately \$5,244.76 and 139 members of the Company Driver Class will receive an average payment of approximately \$990.47.

Plaintiff Maier indicates he has spent 25 hours on phone calls with his attorneys, providing documents, stayed in contact with current drivers to stay updated on policies and practices, reviewed and approved the settlement documents.

Plaintiff Brink indicates he has spent approximately 20 hours on phone calls with his attorneys and preparing to have his deposition taken.

Based on these declarations, the Court will approve enhancement awards of \$10,000.00.

4. Attorneys' Fees and Costs

Attorneys' fees of 33 1/3% of the gross settlement fund of \$1,250,000.00 or \$416,825.00 and costs not to exceed \$50,000 are sought by Plaintiff's counsel.

Counsel has submitted a declaration providing a breakdown of each attorneys' hours and hourly rate as well as a total number of hours and lodestar calculation. Plaintiffs' firm has expended a total of 593.1 hours and provided a lodestar calculation of \$380,405.00, creating a multiplier of 1.1. The Court finds the fees reasonable and preliminarily approves the fee request.

Counsel has also indicated that costs of \$25,476.24 have been incurred to date. The Court preliminarily approves costs of no more than \$50,000.00.

The Court does find that Plaintiffs' counsel are experienced class action attorneys through the declaration of counsel.

5. Claims Administrator

The court preliminarily approves Phoenix Settlement Administrators as the claims administrator for this class action based both on prior experience with this settlement administrator in other class actions litigated in this court and on the Declaration of Jodey Lawrence, Vice President of Business Development for Phoenix. The Court preliminarily approves administration costs not to exceed \$10,250.00 based upon the Declaration of Lawrence and the itemized estimate.

6. Unclaimed Settlement Proceeds

The court preliminarily approves the distribution of unclaimed settlement proceeds to The Boys and Girls Club of Tulare County.

Additionally, the Court has received a declaration from Plaintiffs' counsel, Defendant and Defendant's counsel that confirms neither their law firms nor the parties involved have any interest or conflict that would preclude the appointment of The Boys and Girls Club of Tulare County such that The Boys and Girls Club of Tulare County would be an acceptable cy pres for any unclaimed settlement proceeds in this PAGA action.

7. Release

The Court finds the proposed release of claims reasonable under the circumstances.

8. LWDA Notice

Plaintiffs have provided evidence of confirmation from the LWDA of receipt of submission of the proposed settlement agreement. (Lab. Code, § 2699, subd. (1)(2).)

9. Provisional Class Certification

Code of Civil Procedure section 382 permits certification "when the question is of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382.) The plaintiff bears the burden of demonstrating that class certification under section 382 is proper. (See *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460.) To do so, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

Here, the Motion and accompanying declaration of Plaintiffs sufficiently sets forth the basis for finding both classes are numerous and ascertainable as 105 members of the Independent Contractor Class and 139 members of the Company Driver Class have been identified through Defendant's employment records. Additionally, common questions of law and fact predominate within the individual causes of action based on class wide policies

and procedures of Defendant. Further, the class representatives, through their declarations, indicate they will adequately and fairly represent the Class Members and will not place their interests above any Class Member. The Class Representatives were employed by Defendant during the relevant time period and thus worked under the same policies and procedures as the Class Members. The requirements of Code of Civil Procedure section 382 are met in this case.

Accordingly, the Motion is granted and the class action and PAGA settlement is preliminarily approved. The Final Approval Hearing is set for May 19, 2022 at 8:30am in Department 1.

Case Management Conference is taken off calendar.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

FEB 03 2022

STEPHANIE CAMERON, CLERK

BY: 

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**
Visalia Division
221 S Mooney Blvd, Room 303
Visalia, CA 93291
559.730.5000

Brink, Christian
Plaintiff/Petitioner,

vs.

Central Valley Auto Transport, Inc.
Defendant/Respondent.

Case No. VCU274266

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause.


I certify that I caused the Minute Order dated February 3, 2022 to be served on the persons listed below in the following manner:

BY MAIL: I placed the documents for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on February 3, 2022.

BY EMAIL: I transmitted the documents by electronic-mail to the parties designated email address on the date shown. The email and this certification occurred at Visalia, California on February 3, 2022.

BY INTEROFFICE MAIL: I transmitted the documents by interoffice mail to the parties designated location on the date shown. The interoffice mailing and this certification occurred at Visalia, California on February 3, 2022.

STEPHANIE CAMERON,
CLERK OF THE SUPERIOR COURT
COUNTY OF TULARE


By
Holly Bilbrey, Deputy Clerk

Names and Mailing/E-Mail Address of Person(s) Served:

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