

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	<b>FILED</b> Superior Court of California County of Los Angeles <b>04/12/2021</b>
PLAINTIFF/PETITIONER: Jesus Salguero, in his representative capacity under the Private Attorney General Act ("PAGA") et al	Sherri R. Carter, Executive Officer / Clerk of Court By: <u>          H. Garcia          </u> Deputy
DEFENDANT/RESPONDENT: Deliv, Inc., a Delaware Corporation et al	
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 19STCV32534

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Motion - Other for Preliminary Approval of Settlement) of 04/12/2021 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Jaime B. Laurent  
 Littler Mendelson, P.C.  
 2049 Century Park East  
 5th Floor  
 Los Angeles, CA 90067

John M. Bickford  
 Parris Law Firm  
 43364 10th Street West  
 Lancaster, CA 93534

Dated: 04/12/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By:           H. Garcia            
 Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 31

**19STCV32534**

**JESUS SALGUERO vs DELIV, INC.**

April 12, 2021

8:30 AM

Judge: Honorable Yolanda Orozco  
Judicial Assistant: Hortencia Garcia  
Courtroom Assistant: Theresa De La Paz

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): Jaime B. Laurent (Video)

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**NATURE OF PROCEEDINGS:** Hearing on Motion - Other for Preliminary Approval of Settlement

The Court's tentative ruling is posted online for parties to review.

The matter is called for hearing.

All parties submit to the Court's tentative ruling by e-mail on 04/11/2021.

The Court adopts its tentative ruling as the final order of the Court as follows:

The Motion re: PRELIMINARY APPROVAL -[Res ID: \_7279] filed by Jesus Salguero, in his representative capacity under the Private Attorney General Act ("PAGA") on 01/06/2021 is Granted.

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT IS GRANTED.**

**Background**

On September 12, 2019, Plaintiff Jesus Salguero, individually and on behalf of all members of the putative class, and in his representative capacity under the Private Attorney General Act ("PAGA") filed the instant action against Defendant Deliv, Inc. and Does 1 through 100. On November 25, 2019, Plaintiff filed the First Amended Complaint ("FAC"). The FAC asserts causes of action for:

- (1) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (2) Violation of California Labor Code § 1198 (Unpaid Overtime);
- (3) Violation of California Labor Code § 226.7 (Unpaid Meal Period Premiums);

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- (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
  - (5) Violation of California Labor Code §§ 201 and 2020 (Final Wages Not Timely Paid);
  - (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
  - (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
  - (8) Violation of California Business & Professions Code §§ 17200, et seq.; and
  - (9) Violation of California Labor Code §§ 2698 et seq. (Private Attorney General Act of 2004).

Plaintiff now seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Proposed Settlement”). On January 28, 2021 and March 11, 2021, the Court continued the hearing on the instant motion allowing the parties to address substantive deficiencies in the papers. Having considered the supplemental briefing, the Court now rules as follows.

#### Legal Standard

As a “fiduciary” of the absent class members, the trial court’s duty is to have before it sufficient information to determine if the settlement is fair, adequate, and reasonable. (7-Eleven Owners for Fair Franchising v. The Southland Corp. (2000) 85 Cal.App.4th 1135, 1151 [citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801, 1802 (“Dunk”)].)

California Rules of Court, rule 3.769 governs settlements of class actions. Any party to a settlement agreement may submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. California Rules of Court, rule 3.769(c).

In determining whether to approve a class settlement, the court’s responsibility is to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, “may not have been given due regard by the negotiating parties.” (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 60.)

#### Discussion

##### Fairness of the Settlement Agreement

In an effort to aid the Court in the determination of the fairness of the settlement, Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 244-245 (“Wershba”), discusses factors that the Court should consider when testing the reasonableness of the settlement.

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A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the Court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (Id. at 245, citing *Dunk*, supra, 48 Cal.App.4th at 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (Id. at 250.)

In making this determination, the Court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128 ("Kullar"), citing *Dunk*, supra, 48 Cal.App.4th at 1801.)

"The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (City of Detroit v. Grinnell Corp. (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ["[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators."].)

#### Terms of the Settlement Agreement

A fully executed copy of the Amended Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement") is attached to the Kitty K. Szeto in support of the instant motion as Exhibit "B."

The Settlement Agreement settles Los Angeles County Superior Court case no. 19STCV32534 and Appellate Civil Case no. B304732. (Settlement Agreement ¶ 1.) The class consists of all independent contractor delivery specialists engaged to perform services for Defendant and/or the Released Parties who worked or resided in the State of California during the class period, but excludes Ashley Young, who has filed a separate lawsuit currently pending in the State of California. (Id. at ¶ 7.) The class period is September 12, 2015 to August 25, 2019. (Id. at ¶ 7.) There are approximately 3,022 Class Members, of which 1,345 are Aggrieved Employees under PAGA. (Bickford Decl. ¶ 10.)

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The Settlement amount is \$635,000.00 (Settlement Agreement ¶ 9) and includes:

- \$292,750.00 to the Class Members;
- A PAGA award of \$50,000.00, of which 75% or \$37,500.00 will be paid to the California Labor and Workforce Development Agency, and 25% or \$12,500.00 will be to the Aggrieved Employees (Id. at ¶ 16, 36);
- A Class Representative Enhancement payment of \$10,000.00 (Id. at ¶ 8, 33);
- Up to \$222,250.00, which represents 35% of the Gross Settlement Amount, in Class Counsel's attorneys' fees (Id. at ¶ 2, 32);
- Up to \$40,000.00 in litigation expenses (Id. at ¶ 2, 32); and
- Up to \$20,000.00 in class and PAGA administration costs (Id. at ¶ 4).

Each Class Member's individual class settlement payment will be calculated and apportioned from the Net Settlement Amount based on the number of pre-Dynamex and post-Dynamex work weeks each Class Member worked. (Id. at ¶ 38.) Pre-Dynamex workweeks are the number of weeks each Class Member worked between September 12, 2015 and April 30, 2018. (Id. at ¶ 38(a).) Post-Dynamex workweeks means the number of weeks each Class Member worked between May 1, 2018 and August 25, 2019. (Id. at ¶ 38(a).)

Additionally, each Class Member who worked during the PAGA Period, defined as the period between September 12, 2018 through August 24, 2019, is eligible to receive a proportionate amount of twenty five percent (25%) of the PAGA Settlement Payment ("Individual PAGA Settlement Payment"). (Id. at ¶ 18, 38(d).) Individual PAGA Settlement Payments will be determined by dividing each Class Member's respective number of Individual PAGA Workweeks by the Total PAGA Workweeks; the total will then be multiplied by \$12,500.00. (Id. at ¶ 38(d).) Individual PAGA Workweeks are the total number of workweeks during which a Class Member worked for Defendant in California during the PAGA Period based on Defendant's records. (Id. at ¶ 38(d).)

In exchange for the monetary relief outlined above, Plaintiff and the Class Members will release Defendant for all claims arising from the allegations in the FAC. (Id. at ¶ 27.) Additionally, Defendant will dismiss with prejudice its arbitration demand against Plaintiff in the action Deliv

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v. Salguero, AAA Case no. 01-19-0004-2451. (Id. at ¶ 51.)

The Claims Administrator is identified as Phoenix Settlement Administrators. (Id. at ¶ 3.)

### Analysis of the Settlement Agreement

#### Presumption of Fairness

Here, the Settlement was reached through arm's length bargaining. The parties engaged in a full-day mediation with experienced mediator, Michael J. Loeb. (Bickford Decl. ¶ 6.) The mediation was successful and resulted in a class action and PAGA settlement that was memorialized in a Memorandum of Understanding. (Bickford Decl. ¶ 6.) An initial settlement agreement was executed on October 20, 2020, and a final settlement agreement was entered into on December 15, 2020. (Bickford Decl. ¶ 6.) Counsel attests to the fact that at all times, the negotiations have been adversarial, non-collusive, in good faith, and at arm's length. (Bickford Decl. ¶ 6.)

The parties have conducted enough informal discovery to allow an evaluation into the fairness of the Settlement Agreement. Plaintiff's counsel has investigated the veracity, strength, and scope of the Class Members' claims. (Bickford Decl. ¶ 6.) There has been extensive research into legal and factual issues, and informal discovery, including the exchange of Class Members' pay data prior to mediation. (Bickford Decl. ¶ 6.)

Additionally, Plaintiff's counsel has extensive experience in handling PAGA actions, class actions, and complex litigation matters. (Bickford Decl. ¶ 7) Finally, the percentage of the class that has objected cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 14:139.18 ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

Based on the foregoing, the Court finds that a presumption of fairness exists.

Fair, Adequate, & Reasonable

#### Strength of Plaintiff's Case

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar, supra, 168 Cal.App.4th at 130.)

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Here, Plaintiff alleges Defendant willfully misclassified him and the other Class Members as independent contractors. Specifically, Plaintiff alleges delivery drivers are under the control and direction of Defendant in connection with the performance of their work, perform work that is part of the usual course of Defendant's business, and are not customarily engaged in an independently established trade, occupation, or business in the same nature of the work performed for Defendant.

Plaintiff argues it will not be possible for Defendant to satisfy the B prong of the ABC test under Dynamex. Plaintiff asserts that the usual course of Defendant's business is providing logistic and delivery services for its clients. (Bickford Decl. ¶ 3.) Plaintiff contends that it does this by exclusively relying on its delivery drivers. Plaintiff argues that Defendant could not function without them.

Defendant maintains several defenses to Plaintiff's theory of liability, which if successfully argued and proven, has the potential to eliminate or substantially reduce recovery. (Bickford Decl. ¶ 8.) Throughout the litigation, Defendant maintained that it had legally compliant employment policies and practices and properly classified its delivery drivers as independent contractors. (Bickford Decl. ¶ 8.) Defendant denies that it ever violated any provision of the Labor Code, including those sections for which Plaintiff seeks penalties under PAGA. (Bickford Decl. ¶ 8.) Defendant further denied, and continues to deny, the lawsuit is appropriate for representative treatment for any purpose other than settlement. (Bickford Decl. ¶ 8.)

Although Plaintiff steadfastly maintains that the class and PAGA actions are meritorious, Plaintiff acknowledges that his position includes real risks and uncertainties, especially in the face of Defendant's defenses. While Plaintiff maintains that he would overcome these defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this matter, and this factor therefore supports approval of the Proposed Settlement.

**Risk, Expense, Complexity, and Likely Duration of Further Litigation & Risk of Maintaining Class Action Status Through Trial**

Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the class and PAGA claims. (Bickford Decl. ¶ 6.) Prior to mediation, the parties conducted informal discovery and exchange of information. (Bickford Decl. ¶ 6.) In addition, the parties exchanged documents and data relevant to Plaintiff's claims and Defendant's defenses thereto, including but not limited to Plaintiff's and the delivery driver's driving records, pay data, and Defendant's operations and employment policies, and procedures. (Bickford Decl. ¶ 6.) Counsel for the parties undertook significant investigation, and invested time reviewing and analyzing

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relevant documents and data to evaluate Plaintiff's claims and calculating the potential monetary recovery for the class claims and under PAGA. (Bickford Decl. ¶ 11–30.)

Plaintiff argues that had this case not settled, the parties would have conducted additional extensive formal discovery, including additional written discovery, and multiple depositions of witnesses in California, to prepare the case for trial. (Bickford Decl. ¶ 9.) Plaintiff asserts that even if Defendant failed on its defenses, litigating a complex class and PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings. (Bickford Decl. ¶ 9.)

Plaintiff contends that when balanced against these risks, the \$635,000 settlement is fair, adequate and reasonable in light of the risks associated with litigating a class action. Plaintiff argues that this considerable amount is preferable to the multi-tiered risks associated with proceeding with a class certification determination, trial and a likely appeal, and is in the Class Members' best interests. Plaintiff asserts that if he had rejected this settlement, the case would have to proceed through class certification and eventually a class wide jury trial. Plaintiff contends that as with all class action cases, there is considerable risk for both sides, which is further amplified by the number of class members in this case. Plaintiff argues that were he to succeed in prevailing at class certification and a class action jury trial, the resulting money judgment would likely be subject to many rounds of appeals, where, again, both sides would face considerable risk—for Plaintiff and the Class Members the jury verdict could be overturned, as could a favorable ruling for the defense. Plaintiff asserts that in addition, money judgments must be bonded, and interest accrues during the pendency of appeal. Plaintiff contends that the Class Members still would not have yet received any money during the appeal process, and Class Counsel could have to spend years defending its judgment in possibly several rounds of appeal.

Plaintiff argues that while there are considerable risks associated with a class certification determination, a class action trial and resulting appeals, Class Counsel has taken class action cases to trial, and stood, and stand, ready and willing to do so again in this case. Plaintiff asserts that with that said, when presented with a settlement that will benefit the entire class in the very near future, the risk of later potentially recovering nothing must be candidly recognized and evaluated.

Plaintiff contends that most importantly, on August 4, 2020, Defendant ceased all operations and began the process of winding down its affairs. (Maidy Decl. ¶ 3.) Plaintiff argues that additionally, on September 18, 2020, Defendant entered into a liquidating trust and all assets were transferred into the trust to be distributed to creditors and shareholders. (Maidy Decl. ¶ 4.) Plaintiff asserts that avoiding these risks and the likelihood of future contentious litigation, which

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would involve significant costs, favors settlement.

**Extent of Discovery Completed, the Stage of the Proceedings, and the Experience and Views of Counsel**

As discussed above, after the parties agreed to mediation, and in response to Plaintiff's counsel's informal discovery requests, Defendant provided substantial information and documents pertaining to Plaintiff and the Class Members. (Bickford Decl. ¶ 6.) Defendant provided the Class Members driving records, pay data, and Defendant's operations and employment policies, and procedures. (Bickford Decl. ¶ 6.) Plaintiff's counsel was then able to investigate Plaintiff's allegations and value the class and PAGA claims. (Bickford Decl. ¶ 11–30.)

Further, Plaintiff's counsel are highly experienced in complex representative and class action wage-and-hour litigation. (Bickford Decl. ¶ 7.) In the view of Plaintiff's counsel, the benefit conferred by the proposed settlement is fair, adequate, and reasonable, and is in the best interests of the LWDA and Class Members in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Proposed Settlement.

**Presence of a Governmental Participant & Reaction of the Class Members to the Proposed Settlement**

As to presence of a governmental participant, that factor is not applicable here. Further, the class members' reactions will not be known until they receive notice and are afforded an opportunity to object or opt out. This factor becomes relevant during the fairness hearing.

**Scope of Release**

Each settlement class member who has not submitted a timely and valid written request for exclusion agrees to release the following:

all claims, rights, demands, liabilities, and causes of action, that were or could have been pleaded based on, arising from, or related to, the factual allegations set forth in the First Amended Class Action Complaint, including: (i) all claims for unpaid minimum wages; (ii) all claims for unpaid overtime; (iii) all claims for meal and rest break violations; (iv) all claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for wage statement violations; (vii) all claims for the failure to keep requisite payroll records; (viii) all claims for failure to reimburse business expenses; (ix) all claims for willful misclassification, (x) all claims that could arise under Business & Professions

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Code §§ 17200, et seq. Released Claims also means any claims, rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts, obligations, attorneys' fees, costs, any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, and causes of action, that could potentially arise from the receipt of any monies as a result of this settlement by any member of the Settlement Class.

(Settlement Agreement ¶ 27.)

The Court finds the scope of the release to be permissible, because it is limited to claims arising from the facts alleged in the First Amended Complaint.

**Class Representative's Released Claims**

In addition to the release of claims noted above, the Class Representative also agrees to the additional following general release:

In consideration of Defendant's promises and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and all Released Claims and also generally releases and discharges the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of or relating to Plaintiff's employment by Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

(Settlement Agreement ¶ 53.)

The Court finds that the general release and Section 1542 waiver are permissible, as they are in

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exchange for the service award and Plaintiff is represented by counsel.

**Conditional Class Certification**

Under California law, the party seeking class certification must establish three things: “(1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives.” (Brinker Restaurant Corp. v. Sup.Ct. (2012) 53 Cal.4th 1004, 1021.) “Ascertainability” is a due process requirement that ensures notice can be given to putative class members who will be bound by the judgment and as to whom it will have res judicata effect. The determination is made by examining the class definition, the size of the class and the means available to identify class members. (Sotelo v. MediaNews Group, Inc. (2012) 207 Cal.App.4th 639, 647-648.) “The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470.)

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified. (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk, supra, 48 Cal.App.4th at 1807, fn. 19.) Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. (Global Minerals & Metals Corp. v. Superior Court (2003) 113 Cal.App.4th 836, 859.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240.)

Here, as an initial matter, the proposed class must be certified for settlement.

As to numerosity, there are approximately 3,022 Class Members, of which 1,345 are Aggrieved Employees under PAGA. (Bickford Decl. ¶ 10.) Thus, numerosity has been sufficiently established. (See Rose v. City of Hayward (1981) 126 Cal.App.3d 926, 934 [stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples wherein classes of 10 [Bowles v. Superior Court (1955) 44 Cal.2d 574] and 28 [Hebbard v. Colgrove (1972) 28 Cal.App.3d 1017] were upheld].)

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As for ascertainability, the classes are defined by paragraphs 7, 16, 18, 22, 24, 36 of the Settlement Agreement. This class definition “is precise, objective and presently ascertainable.” (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.)

Regarding community of interest, as for the first factor, the class members share common questions of law and fact regarding whether Defendants misclassified them as independent contractors. As to the second and third factors, Class Counsel argues that Plaintiff is typical of the Settlement Class, as Plaintiff’s claims arise out of the same course of conduct as the other Class Members, i.e., Deliv’s alleged misclassification of him as an independent contractor. Class Counsel asserts that, additionally, there are no defenses unique to Plaintiff that will be a major focus of the litigation nor does Plaintiff have any interests antagonistic to the Settlement Class.

As to adequacy of Class Counsel, Class Counsel has experience in complex representative and class action wage-and-hour litigation. (Bickford Decl. ¶ 7.) Accordingly, Class Counsel is adequate.

Finally, as to superiority, Class Counsel argues that there is little dispute that class treatment is superior for purposes of settlement. Class Counsel asserts that absent class treatment, each former delivery driver would have to engage in separate, duplicative settlement negotiations even though they rely on the same arguments and collective evidence.

Based on the foregoing, the Court finds that the prerequisites for conditional class certification have been satisfied.

#### Notice to Class

California Rules of Court, rule 3.769(e) provides: “If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.” Additionally, rule 3.769(f) states: “If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

#### Form of Notice

The class notice is attached to the Declaration of Alexander R. Wheeler as Exhibit “A.” The

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notice contains all necessary information, including a definition of the class, a discussion of the litigation and the terms of the settlement, the different options for responding to the notice, and information about when and where the fairness hearing will be held. Class members are also informed about the attorneys' fees and the other deductions that will be requested from the settlement fund, and it identifies that names and contact information for all counsel. The settlement administrator is to mail notice packets consisting of the class notice. The notice clearly explains the options for class members (do nothing and receive payment, submit a request for exclusion, or submit an objection) and instructions on how to do each. The notice also clearly explains the method of calculation of individual settlement awards from the net settlement award and includes the Class Member's estimated share of the net settlement amount. The notice provides the deadlines for filing exclusions or objections.

#### Method of Notice

Within five (5) calendar days of receiving the Class List, the Claims Administrator shall update the mailing addresses on the Class List using the National Change of Address Database maintained by the United States Postal Service and mail the Notice of Class Action Settlement to all Class Members via first class mail in English and Spanish. (Settlement Agreement ¶ 41.) Class Members shall have thirty-five (35) days after the date of mailing to dispute their estimated Individual Settlement Payment Amount, exclude themselves from the Settlement, or object to the Settlement. (Settlement Agreement ¶ 41.)

Once the Final Judgment is entered, the Settlement Administrator will post the judgment on its website pursuant to California Rules of Court, Rule 3.771(b). (Id. at ¶ 40(g).)

#### Attorneys' Fees & Costs

California Rules of Court, rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

An award of attorney fees is made by the Court at the fairness hearing. (Laffitte v. Robert Half Intern., Inc. (2016) 1 Cal.5th 480.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Co. (2004) 118 Cal.App.4th 123, 128.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 31

**19STCV32534**

**JESUS SALGUERO vs DELIV, INC.**

April 12, 2021

8:30 AM

Judge: Honorable Yolanda Orozco

CSR: None

Judicial Assistant: Hortencia Garcia

ERM: None

Courtroom Assistant: Theresa De La Paz

Deputy Sheriff: None

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Accordingly, the question of whether Class Counsel is entitled to fees up to \$222,250.00 will be addressed at the fairness hearing when Class Counsel brings a noticed motion for attorney fees. With the motion, counsel must provide an overall summary of the time spent by each attorney or paralegal who worked on this matter. (*Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal.5th 480, 505 (“The trial court in the present case exercised its discretion in this manner, performing the cross-check using counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task.”).) Furthermore, any agreement about how attorney fees will be paid, including fee splitting and whether the client has given written approval, should be provided. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct, §2-200; Cal. Rules of Court, Rule 3.769.)

Counsel should also be prepared to justify any costs sought by detailing how such costs were incurred.

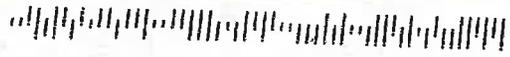
Conclusion

Plaintiff’s unopposed motion for preliminary approval of class action settlement is GRANTED.

The parties are strongly encouraged to attend all scheduled hearings virtually or by audio. Effective July 20, 2020, all matters will be scheduled virtually and/or with audio through the Court’s LACourtConnect technology. The parties are strongly encouraged to use LACourtConnect for all their matters. All social distancing protocols will be observed at the Courthouse and in the courtrooms.

Clerk hereby gives notice.

Certificate of Mailing is attached.



Stanley Mosk Courthouse  
111 North Hill Street- Dept. 31  
Los Angeles, CA 90012



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John M. Bickford  
Parris Law Firm  
43364 10th Street West  
Lancaster, CA 93534