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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CURTIS MARKSON, MARK MCGEORGE, CLOIS MCCLENDON, and ERIC CLARK, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

CRST INTERNATIONAL, INC., CRST EXPEDITED, INC.; C.R. ENGLAND, INC., WESTERN EXPRESS, INC., SCHNEIDER NATIONAL CARRIERS, INC., SOUTHERN REFRIGERATED TRANSPORT, INC., COVENANT TRANSPORT, INC., PASCHALL TRUCK LINES, INC., STEVENS TRANSPORT, INC., and DOES 1-10, inclusive,

Defendants.

Case No. 5:17-cv-01261-SB (SPx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Judge: Hon. Stanley Blumenfeld, Jr.
Date: January 7, 2022
Time: 8:30 a.m.
Location: Courtroom 6C
350 West 1st Street
Los Angeles, CA 90012

Discovery Cutoff Date: 7/2/2021
Pretrial Conference Date: TBD
Trial Date: TBD

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I. INTRODUCTION AND OVERVIEW

This motion seeks preliminary approval of four non-reversionary class action settlements (the "Settlements") between Plaintiffs Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark ("Plaintiffs") and Defendants Paschall Truck Lines, Inc. ("PTL"), Schneider National Carriers, Inc. ("SNC"), Covenant Transport, Inc. ("CT"), Southern Refrigerated Transport, Inc. ("SRT"), and Western Express, Inc. ("WE," "Western" or Western Express) (collectively, the "Settling Defendants"). The Settling Defendants will collectively pay the Gross Settlement ("GSA") of $4,250,000.00 as follows:

Settling Defendant	Amount
Paschall Truck Lines, Inc.	$700,000.00
Schneider National Carriers, Inc.	$750,000.00
Covenant Transport, Inc. and Southern Refrigerated Transport, Inc.	$800,000.00
Western Express, Inc.	$2,000,000.00
TOTAL	**$4,250,000.00**

The Settlements were reached after conducting more than thirty depositions, as well as the exchange, processing, and review of hundreds of thousands of documents and millions of lines of data. The Settlements were negotiated with the assistance of Barbara Reeves, an experienced mediator with antitrust experience, including as an attorney with the United States Department of Justice Antitrust Division. The Settlements are with five of the eight Defendants who Plaintiffs allege took part in a conspiracy to suppress truck driver compensation by entering into "no-poaching" agreements among themselves. Because the Settlements are fair and reasonable, they should be preliminarily approved. The Settlements do not impact nor release any of the claims asserted by Plaintiffs against the remaining non-Settling Defendants in this Action and Plaintiffs continue to pursue those claims vigorously.

In connection with the Settlements,[1] Plaintiffs seek provisional certification of a class

[1] The settlement agreements between Plaintiffs and the Settling Defendants are attached as Exhibits 1-4 to the Declaration of Ian M. Gore ("Gore Decl."). Because of minor

of individuals generally defined as: all current and former motor drivers "Under Contract" with CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., and/or Stevens Transport, Inc., at any time from May 15, 2013 through the date of preliminary approval ("Class Members" or "the Class"). "Under Contract" generally means that the driver entered into an agreement with any Defendant in which the person agreed to work for a Defendant for a specified period of time in return for training provided by, funded by, or reimbursed by that Defendant, and who was employed by that Defendant between May 15, 2013 through the Preliminary Approval Date.

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements; (2) conditionally certifying the Class under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes; and (3) scheduling a hearing for final approval of the class action settlement.

II. BACKGROUND

A. The Parties

Plaintiff Markson is a California resident and former employee of Defendant CRST Expedited, Inc. Plaintiff McGeorge is a California resident and former employee of Defendant CRST Expedited, Inc. Plaintiff McClendon is a former California resident, current Nevada resident, and former employee of Defendants CT, CRST Expedited, Inc., and CRST International, Inc. Plaintiff Clark is a former California resident, current Texas resident, and former employee of Defendant C.R. England, Inc. Gore Decl. ¶ 6. PTL is a Kentucky corporation, SNC is a Wisconsin corporation, CT is a Tennessee corporation, SRT was an Arkansas corporation, and WE is a Tennessee corporation. Each Defendant corporation conducted business in the State of California. *Id.* at ¶ 7. Plaintiffs alleged that various trucking companies, including Defendants, have conspired to restrain competition through reciprocal "no poach" agreements among themselves that resulted in suppressed

differences in the specific language negotiated between the parties in the four Settlement Agreements, Plaintiffs provide only general descriptions of the terms of the agreements here.

driver compensation, including the compensation of Class Members. *Id.* at ¶ 8.

B. Summary of Claims and Procedural History.

1. *Claims asserted by Plaintiff.*

In Plaintiffs' Fourth Amended Complaint, Plaintiffs assert causes of action against the Settling Defendants for:

(1) violation of Section One of the Sherman Act (15 U.S.C. § 1); and

(2) violation of the Cartwright Act (Cal. Bus. & Prof. Code §§ 16702, *et seq.*).

The Settling Defendants denied (and continue to deny) all of Plaintiffs' claims.

As part of the alleged conspiracy, Plaintiffs allege that Defendants agreed to refrain from hiring each other's "Under Contract" drivers, and that absent the conspiracy, the affected Under Contract drivers would otherwise have been offered employment by one or more of the Defendants. *See* Fourth Amended Complaint ("FAC"), Dkt. No. 228 at ¶ 2. Specifically, Plaintiffs allege that Defendants entered into a "no-poaching" arrangement whereby they agreed not to hire drivers who at the time of their application remain "Under Contract" with another trucking company. The "Under Contract" designation is generally used for individuals who agreed to be employed by a Defendant for a specified period of time to receive training offered by, funded by, or reimbursed by the Defendant. If the driver remains employed with the Defendant for a set period, then certain of the driver training school tuition costs are waived. However, in some instances, if the driver is terminated or quits before the end of that period, the driver must repay the company for some or all of the training. So long as the driver remains "Under Contract," Plaintiffs allege that Defendants refuse to hire the driver. *Id.*

Plaintiffs allege that Defendants enforced their agreement by monitoring the hiring practices of competing trucking companies and attempting to prevent the hiring of any "Under Contract" drivers. *Id.* at ¶ 8. For example, certain Defendants sent letters to other trucking companies informing them that the applicant remains "Under Contract" and urging them not to interfere with the contract by hiring the driver. In furtherance of the alleged conspiracy, Plaintiffs allege that Defendants have enforced this policy by refusing

to hire drivers that remain "Under Contract" with the other Defendants.

Defendants' conspiracy is alleged to have unreasonably restrained trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and as to some of the Defendants, the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 *et seq.*, and constitutes unfair competition in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq*.

2. *Procedural History, Discovery, and Settlement.*

On May 15, 2017, Plaintiffs Markson and McGeorge filed their class action complaint in San Bernardino County Superior Court against Defendants CRST International, Inc. and CRST Expedited, Inc. alleging causes of action for unreasonable charges and penalties associated with training for CDL licenses and unlawful unfair or fraudulent business practices. On June 22, 2017, the CRST Defendants removed the action to the Central District of California. Thereafter, the Parties engaged in significant discovery, including depositions of the CRST Defendants' 30(b)(6) designee.

On March 1, 2018, the Parties stipulated to the filing of Plaintiffs' First Amended Complaint. Dkt. No. 42. The First Amended Complaint pled two additional causes of action against the CRST Defendants for fraudulent business practices in violation of Labor Code section 2802 and violations of Labor Code sections 201 and 202. *Id.*

Thereafter, on April 30, 2018, Plaintiffs Markson and McGeorge filed their Second Amended Complaint alleging an additional cause of action under the Private Attorneys General Act.

On July 26, 2018, Plaintiffs filed their Third Amended Complaint adding Clois McClendon and Eric Clark as additional Plaintiffs, and adding C.R. England, Western Express, Schneider National, and Southern Refrigerated as additional defendants. Most notably, the Third Amended Complaint also added new causes of action for violations of the Sherman Act and California's Cartwright Act. Dkt. No. 55. Schneider filed a motion to dismiss the Third Amended Complaint on September 10, 2018, Dkt. No. 85, and it was denied on October 22, 2018, Dkt No. 103. Subsequently, all of the Defendants named in the Third Amended Complaint filed a Rule 12(b)(6) motion to dismiss and it was also

denied. *See* Dkt. No. 130.

After learning more through discovery about the scope of the wrongful conduct of the Defendants' conspiracy, on February 14, 2020, Plaintiffs moved to file their Fourth Amended Complaint to add three new Defendants, Covenant Transport, Stevens Transport, and Paschall Truck Lines. Plaintiffs also sought to expand the geographic scope of the class to a nationwide class. Dkt No. 213-1. On April 14, 2020, the Court granted Plaintiffs' motion for leave to file the Fourth Amended Complaint, Dkt. No. 226, which Plaintiffs subsequently filed on April 15, 2020. Dkt No. 228. *Id.*

On June 4, 2020, the CRST Defendants, C.R. England, Western Express, and Schneider filed a motion to dismiss the Fourth Amended Complaint. Dkt No. 272. Additionally, on June 22, 2020, Covenant/Southern Refrigerated, Stevens, and Paschall filed separate motions to dismiss the Fourth Amended Complaint. Dkt Nos. 278 and 281, respectively. *Id*. On February 10, 2021, the Court denied Defendants' motions to dismiss. Dkt No. 381. *Id.*

Thereafter, the Parties engaged in significant additional written discovery and depositions, and the Parties attended a mediation with experienced mediator, Barbara Reeves, on June 25, 2021. Gore Decl. ¶ 9. Shortly before the mediation, and with the mediator's assistance, Plaintiffs and Paschall reached a settlement. The other parties engaged in settlement discussions for a full day on June 25, 2021, and additional settlement discussions occurred afterward with the assistance of the mediator. After several additional months of negotiating with and through the mediator, Plaintiffs and the Settling Defendants were able to agree on the terms of the Settlements now before the Court for preliminary approval. *Id.*

C. Summary of the Proposed Settlements

1. *Economic Terms.*

Under the terms of the Settlements, each of the Settling Defendants is discharged of all claims asserted in the lawsuit by the Settlement Class in exchange for the Settling Defendants' agreement to pay their respective portions of the collective Gross Settlement Amount ("GSA") of $4,250,000.00. From the GSA, Plaintiffs request the following

deductions to arrive at the Net Settlement Amount: (1) the fees and expenses of the Settlement Administrator; (2) Plaintiffs' Incentive Awards of up to $25,000.00 each; (3) attorneys' fees not in excess of 25% of the benefits created for the Settlement Class (that is, the value of the Settlement Fund plus the value of non-cash relief secured); and (4) reimbursement of expenses and costs incurred up to $1,000,000.00.

If the Court approves the settlement, the Net Settlement Fund shall be distributed to the Settlement Class pursuant to a distribution formula to be developed by Settlement Class Counsel and approved by the Court.

2. *Additional Non-Cash Relief and Benefits*

In addition to the $4.25 million non-reversionary cash benefits, the Settling Defendants generally agree to injunctive relief intended to benefit the Settlement Class. The specific injunctive relief agreed to by each Settling Defendant varies, and is governed by the respective settlement agreements, but the injunctive relief generally includes the following:

- The Settling Defendants will not send "Under Contract" letters to other Defendants concerning any member of the Settlement Class.
- The Settling Defendants will not sue any of the Defendants for hiring any member of the Settlement Class due to Under Contract status.
- The Settling Defendants will adopt express policies that prohibit refusing to hire a driver previously employed by another carrier on the sole basis that the driver is Under Contract with another carrier.
- The Settling Defendants agreed to release entitlement to and not pursue any collection efforts as to any member of the Settlement Class for certain types of unpaid CDL trucking-school debt allegedly owed to it by any member of the Settlement Class. The Settling Defendants also agreed to instruct third-party collection agencies and any other entities that may be involved in collection efforts for the Settling Defendants to do the same. The Settling Defendants also agreed not to provide any negative references for any member of the Settlement Class for having allegedly defaulted on any amounts released. (PTL S.A. ¶ 26; SNC S.A. ¶ 23; CT SRT S.A. ¶ 23; WE S.A. ¶ 23).

Additionally, in return for the release and discharge set forth in the Settlement Agreement, the Settling Defendants agree to use their best efforts to continue to provide satisfactory and timely Cooperation, including by agreeing to:

- timely prepare a declaration, pursuant to Rule 902(11) of the Federal Rules of Evidence, to authenticate the Documents produced by the Settling Defendant in this Action;
- use best efforts to answer all reasonable questions posed by Settlement Class Counsel concerning the content or circumstances of the Documents produced by the Settling Defendant in this litigation; and
- provide no voluntary cooperation to the other Defendants in the Action. (PTL S.A. ¶ 34; SNC S.A. ¶ 31; CT SRT S.A. ¶ 31; WE S.A. ¶ 31).

3. *Settlement Mechanics.*

Plaintiffs shall, at an appropriate time, submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all members of the Settlement Class (the "Notice Motion"). In order to mitigate the costs of notice and the administration of the settlement, the Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements or judgments that have been reached or are entered in the Action at the time the Notice Motion is filed. (PTL S.A. ¶ 18; SNC S.A. ¶ 15; CT SRT S.A. ¶ 15; WE S.A. ¶ 15). In order to effectuate providing notice to the Class, Plaintiffs request that the Court order all Defendants—including the Non-Settling Defendants—to provide class member contact information (including full name, associated driver identification number, last known address(es), last known phone number(s), and last known email address(es) to the Settlement Administrator.

Within seven days following entry of any order preliminary approving the Settlement Agreements, the Settlement Amounts paid by PTL and SNC shall be paid into an escrow account. (PTL S.A. ¶ 24; SNC S.A. ¶ 21). Within fifteen days following entry of any order preliminarily approving the Settlements, the Settlement Amount paid by CT and SRT shall be paid into an escrow account. (CT SRT S.A. ¶ 21). Within seven days following entry of any order preliminarily approving the Settlements, 5% of the Settlement

Amount paid by WE shall be paid into an escrow account and the remaining balance will be paid within seven days after final approval of the Settlement Agreements by the Court. (WE S.A. ¶ 21).

4. *The Release of Class Members with the Settling Defendants*

The following is a general description of the releases in the Settlement Agreements. In consideration of payment of the Settlement Amounts in the Settlement Agreements, and for other valuable consideration, the Settling Defendants[2] shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action under any federal, state or local law of any jurisdiction in the United States, that Plaintiffs[3] ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future arising out of any conduct that was or could have been alleged in the Complaints or any act or omission of the Releasees (or any of them), concerning the Settling Defendants' participation, from May 15, 2013 through the Preliminary Approval Date, in a conspiracy among Defendants not to hire truck drivers Under Contract with another Defendant. The releases, however, do not settle or compromise any claim by Plaintiffs or any Settlement Class Member asserted in the Action against any Defendant or alleged co-conspirator other than the Settling Defendants. All rights against such other

[2] Each of the Settlement Agreement defines Releasees differently. The relevant definitions follow: (1) for PTL, "Releasees" shall refer to PTL and to all of its current and former officers, owners, employees, agents, and representatives. "Releasees" does not include any Defendant in the Action or alleged co-conspirator other than Paschall, PTL S.A. ¶ 8; (2) for SNC, "Releasees" shall refer to SNC and its corporate parents, subsidiaries, affiliates, or divisions, and the respective current and former officers, owners, directors, employees, agents, attorneys, insurers, and representatives of the foregoing. "Releasees" does not include any Defendant in the Action or alleged co-conspirator other than SNC, SNC S.A. ¶ 6; (3) for CT and SRT, "Releasees" shall refer to both Covenant Transport, Inc. and Southern Refrigerated Transport, Inc., their current and former parents, subsidiaries, and affiliated companies and entities within the Covenant Logistics Group, and their current and former officers, owners, directors, managers, employees, affiliates, subsidiaries, attorneys, insurers, reinsurers, agents, and representatives. "Releasees" does not include any other Defendant in the Action or alleged co-conspirator other than Covenant and SRT, CT SRT S.A. ¶ 6; (4) for WE, "Releasees" shall refer to WE, its current and former parents, subsidiaries, and affiliated companies and entities, and each of the foregoing's respective current and former officers, owners, directors, managers, employees, affiliates, subsidiaries, attorneys, insurers, agents, and representatives. "Releasees" does not include any Defendant in the Action or alleged co-conspirator other than Western and the aforementioned related parties, WE S.A. ¶ 6.

[3] "Releasors" shall refer to Plaintiff Class Representatives and the members of the Settlement Class. *See* PTL S.A. ¶ 9; SNC S.A. ¶ 6; CT SRT S.A. ¶ 6; WE S.A. ¶ 6.

Defendants or alleged co-conspirators are specifically reserved by the Plaintiffs and the Settlement Class. *See* PTL S.A. ¶ 22; SNC S.A. ¶ 19; CT SRT S.A. ¶ 19; WE S.A. ¶ 19.

In addition, Plaintiffs individually hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits, as to their claims concerning the Settling Defendants' participation, from May 15, 2013 through the Preliminary Approval Date, in a conspiracy not to hire truck drivers Under Contract with another carrier, and which are conferred by § 1542 of the California Civil Code. (PTL S.A. ¶ 23; SNC S.A. ¶ 20; CT SRT S.A. ¶ 20; WE S.A. ¶ 20).

III. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES UNDER FED R. CIV. P. 23

Plaintiffs seek to certify a settlement class pursuant to Fed. R. Civ. P. 23. Rule 23 requires that all class action settlements satisfy two primary prerequisites before a court may grant certification for purposes of preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified, *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); and (2) that the settlement is fair, reasonable, and adequate, *see* Fed. R. Civ. P. 23(e)(2). Here, both requirements for preliminary approval of this class action settlement are satisfied.

A. The Settlement Class Satisfies Fed. R. Civ. P. 23(a) and (b)

Rule 23(a) sets out four prerequisites for certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Rule 23(b)(3) further provides that a class action may be maintained if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

1. *Rule 23(a)(1) Numerosity*

The first prerequisite of class certification requires that the class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). Plaintiffs need not state the exact number of class members; "[a] reasonable estimate . . . satisfies the numerosity requirement." *Franklin v. Midwest Recovery Sys., LLC*, 2021 WL 1035121, at

*2 (C.D. Cal. Feb. 5, 2021) (Blumenfeld, J.). And "[i]t's generally accepted that when a proposed class has at least forty members, joinder is presumptively impracticable based on numbers alone." *In re Banc of Cal. Secs. Litig.*, 326 F.R.D. 640, 646 (C.D. Cal. 2018). Numerosity is easily satisfied because there are approximately 84,000 members in the Settlement Class. Gore Decl. ¶ 8.

2. *Rule 23(a)(2) Commonality*

The requirement to show common questions of fact and law is not an onerous one: a single common question of fact or law will do. *See Franklin*, 2021 WL 1035121, at *2. "Where an antitrust conspiracy has been alleged," as here, "courts have consistently held that the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist." *Tawfilis v. Allergan, Inc.*, 2017 WL 3084275, at *11 (C.D. Cal. June 26, 2017) (quoting *In re High-Tech Employee Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013)) (quotation marks omitted).

This case involves common class-wide issues that are apt to drive the resolution of Plaintiffs' claims. There are significant common questions in that Defendants' alleged conspiracy deprived thousands of workers with better compensation and denied them opportunities to advance careers at other companies. Here, the central question is the lawfulness of Defendants' illicit agreement, which is applied uniformly to all Class Members during the Class Period. Because all Class Members were subject to Defendants' alleged conspiracy, commonality is readily satisfied.

3. *Rule 23(a)(3) Typicality*

Typicality requires that the plaintiffs' claims be typical of the claims of the class. "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Castillo v. Bank of Am., NA*, 980 F.3d 723, 729 (9th Cir. 2020) (quotation marks omitted). Plaintiffs "must show that: (1) other members have the same or similar injury; (2) the action is based on conduct which is not unique to the named plaintiffs; and (3) other class members have been injured by the same course of conduct." *Franklin*, 2021 WL 1035121, at *3 (quotation marks omitted). "In antitrust cases,

typicality usually will be established by plaintiffs and all class members alleging the same antitrust violations by defendants." *Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270, 284 (N.D. Cal. 2016). Here, the Plaintiffs were employed in the same or similar position as all other Class members and were "Under Contract" drivers subject to the alleged conspiracy. Moreover, Plaintiffs and the Class allege the same injuries arising from the Defendants' common conduct: suppression of compensation caused by the Defendants' illegal no-poaching conspiracy. "This is all that is required to show typicality." *Nitsch*, 315 F.R.D. at 285.

4. *Rule 23(a)(4) Adequacy*

Rules 23(a)(4) and 23(g) require that class representatives and class counsel be capable of fairly and adequately representing the interests of the class. "Representation is adequate if (1) the named plaintiffs and their counsel are able to prosecute the action vigorously[;] (2) the named plaintiffs do not have conflicting interests with the unnamed class members; and (3) the attorney representing the class is qualified and competent." *Franklin*, 2021 WL 1035121, at *3.

"Plaintiffs and members of the proposed class share an interest in proving that [d]efendants' conduct violated the antitrust laws and suppressed their compensation, and [p]laintiffs have diligently litigated this case." *Nitsch*, 315 F.R.D. at 285. Plaintiffs have produced thousands of documents, responded to numerous interrogatories and requests for admission, and have each been deposed. Moreover, plaintiffs do not have any conflicts with the proposed classes.

Likewise, Class Counsel have no conflicts of interest and have vigorously prosecuted the action on behalf of Plaintiffs and the Settlement Class. Gore Decl. ¶¶ 2-3 . Susman Godfrey L.L.P, Mayall Hurley P.C., Ackermann & Tilajef, P.C., and Melmed Law Group P.C. all have significant experience litigating class actions and have been certified by numerous state and federal courts as competent and adequate class counsel. *See* Declaration of Marc M. Seltzer in Support of Plaintiffs' Motion for Class Certification of their Antitrust Claims ("Seltzer Cert. Decl."), Dkt. No. 483-39; Declaration of Robert J. Wasserman in Support of Plaintiffs' Motion for Class Certification of their Antitrust

Claims ("Wasserman Cert. Decl."), Dkt. No. 483-47; Declaration of Craig J. Ackermann in Support of Plaintiffs' Motion for Class Certification of their Antitrust Claims ("Ackermann Cert. Decl."), Dkt. No. 483-48; and Declaration of Jonathan Melmed in Support of Plaintiffs' Motion for Class Certification of their Antitrust Claims ("Melmed Cert. Decl."), Dkt. No. 483-49.

5. *Rule 23(b)(3) Predominance and Superiority*

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted). The rule requires two different inquiries, specifically a determination as to whether: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members[;]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 321-22 (C.D. Cal. 2016).

a. Predominance

Predominance "requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 459 (2013) (emphasis in original). The rule "does *not* require" that each element of a plaintiffs' claim be susceptible to classwide proof. *Id.* at 469 (emphasis in original). "Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 125, 1134 (9th Cir. 2016). Thus, "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016) (quotation marks omitted).

The "purpose of class certification is merely to select the method best suited to

adjudication of the controversy fairly and efficiently." *Stockwell v. City & Cnty. of San Francisco*, 749 F.3d 1107, 1112 (9th Cir. 2014) (quotation marks and alteration omitted). So while the predominance inquiry may entail some overlap with the merits of plaintiffs' claims, it is not a license to engage in "free-ranging merits inquiries at the certification stage." *Amgen*, 568 U.S. at 465-66. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining" whether class certification is appropriate. *Id.* at 466.

In antitrust cases, such as here, "courts repeatedly have held that the existence of the conspiracy is the predominant issue and warrants certification even where significant individual issues are present." *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002) (quotation marks omitted); *see also Wortman v. Air New Zealand*, 326 F.R.D. 549, 558 (N.D. Cal. 2018) ("Plaintiffs satisfy this part of the predominance inquiry due to the nature of [d]efendant's alleged antitrust violation."). In fact, the Supreme Court has observed that "[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

b. Superiority

Determining whether a class action is superior requires the Court to consider the following factors: "the class members' interests in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). Generally, "if common questions are found to predominate in an antitrust action," as they do here, "then courts generally have ruled that the superiority [requirement] is satisfied." Wright et al., Federal Practice & Procedure § 1781 (3d ed. 2021).

In a case with tens of thousands of class members, as here, "a class action promotes efficiency and judicial economy." *Franklin*, 2021 WL 1035121, at *8. It would be inefficient and cost prohibitive to litigate thousands of individual proceedings rather than

on a class-wide basis. That is especially so "[i]n antitrust cases such as this," where the claims of individual drivers "are likely to be too small to justify litigation, but a class action would offer those with small claims the opportunity for meaningful redress." *In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, 276 F.R.D. 364, 375 (C.D. Cal. 2014) (quotation marks omitted). Moreover, requiring class members to litigate their claims individually would merely multiply the number of trials asking the same questions and relying on the same evidence. In addition, there is no other related litigation regarding the Defendants' conspiracy, and prosecution of separate actions by individual class members would create an undue risk of inconsistent rulings. Given "[t]he nature of defendants' alleged overarching conspiracy and the desirability of concentrating the litigation in one proceeding . . . class treatment is superior to other methods of adjudication." *Nitsch*, 315 F.R.D.at 316.

B. The Settlements are Fair, Reasonable, and Adequate.

In deciding whether to approve a proposed class action settlement, the Court must find that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). What matters are the unique facts of the case at hand. *See Cotter v. Lyft Inc.*, 176 F. Supp. 3d 930, 942 (N.D. Cal. 2016) ("a trial court must assess the adequacy and reasonableness of a proposed settlement in light of unique facts of the case at hand, in light of the proposed settlement as a whole, and in light of the particular risks involved").

In exercising their discretion to approve class action settlements, courts regularly consider whether the settlement is fair, non-collusive, and "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 179-80 (5th Cir. 1979). Included in this analysis are considerations of "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the

proposed settlement." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). Importantly, there is a presumption of fairness "if the settlement is recommended by class counsel after arm's-length bargaining." *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011). There is "a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). Applying these factors, the proposed settlement is fair.

C. The Settlement Amounts are a Fair Compromise in Light of the Risks

The Settlements represent a fair compromise given the risks and uncertainties presented by continued litigation. Gore Decl. ¶¶ 10-20. As noted, the Settling Defendants asserted and would have continued to assert legal and factual grounds to defend against this action. *Id.* While Plaintiffs remain confident in their claims against the Settling Defendants, Plaintiffs found it prudent to secure a substantial recovery from the Settling Defendants on behalf of the Class and avoid the risks of further litigation with the Settling Defendants. Moreover, continued litigation with the Settling Defendants would be costly, time consuming, and uncertain in outcome. *Id.* The Settlements ensure timely relief and a substantial recovery for the Class. *Id.* The Settling Defendants collectively employed a small percentage of Class Members and thus their pro rata responsibility to finance settlement amounts is arguably smaller.

These are the first settlements with Defendants who Plaintiffs allege took part of a conspiracy to suppress truck driver wages through Defendants entering into reciprocal "no-poaching" agreements among themselves. *Id.* ¶ 10. As explained below, each of the four settlements is fair and reasonable as to each of the Settling Defendants. *Id.*

When considering the fairness and reasonableness of the settlements, Plaintiffs had to consider a wide range of factors and variables including, among other things, the overall size of each of the Settling Defendants, the relative size of each of the Settling Defendants compared to the remaining Defendants, the proportion of "Under Contract" drivers employed by the Settling Defendants compared to the remaining Defendants, the

proportion of "Under Contract" drivers employed by the Settling Defendants relative to the number of non-contract drivers they employed, financial challenges (if any) facing the Settling Defendants, and the degree of each of the Settling Defendant's participation in the alleged conspiracy. *Id.* ¶ 11.

The Settling Defendants' drivers represent a small portion of the overall Class. *Id.* ¶ 12. According to Plaintiffs' experts, the Settling Defendants' drivers represent approximately 10% of the total Class (8,500 out of 84,000). Accordingly, the Settlements, which contemplate a $4,250,000 total settlement amount, are patently fair and reasonable given the number of Class Members employed by the Settling Defendants. *Id.* Similarly, several of the Settling Defendants are smaller enterprises compared to some of the Non-Settling Defendants in this litigation. For example, PTL, SRT, CT, and WE are relatively smaller motor carriers compared to companies such as CRST and C.R. England. *Id.* at ¶ 13.

While Plaintiffs allege that all of the Defendants implemented policies not to hire drivers who were "Under Contract" with another Defendant, other associated conduct varied among the Settling Defendants. For example, CT and SNC did not send cease and desist letters to other motor carriers to inform them that a driver was "Under Contract" with them. Additionally, CT, SRT, and SNC did not utilize non-compete provisions in their driver contracts like many of the other Defendants. The Settling Defendants also did not operate a trucking school during the Class period or operated one for only a short period of time compared to the Non-Settling Defendants. *Id.* at ¶ 14.

The relative proportion of "Under Contract" drivers during the Class period was not as high at the Settling Defendants compared to the Non-Settling Defendants. For example, the majority of drivers hired by the Non-Settling Defendants were hired as "Under Contract" drivers. The Settling Defendants did not hire as many drivers in an "Under Contract" status compared to the Non-Settling Defendants. *Id.* at ¶ 15.

SRT is also no longer an operating company. Due to a corporate restructuring that took place over the course of this litigation, SRT ceased active operations. *Id.* at ¶ 16.

Accordingly, the settlement amount, negotiated at arms'-length, is fair and reasonable

in light of the strengths and weaknesses of Plaintiffs' case against the Settling Defendants and the Settling Defendant's defenses. Moreover, "it is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not … render the settlement inadequate or unfair" *Officers for Justice*, 688 F.2d at 628. Indeed, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). As such, "[t]he 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." *Id.* Accordingly, district courts have found that settlements for substantially less than the plaintiff's claimed damages were fair and reasonable, especially when taking into account the uncertainties involved with litigation. *See In re: High-Tech Employee Antitrust Litigation*, Case No. 11-CV-02509-LHK (N.D. Cal. September 2, 2015) (Dkt. No. 1112); *see also, Nitsch v. Dreamworks Animation SKG Inc.*, 2017 U.S. Dist. LEXIS 86124 (N.D. Cal. June 5, 2017).

D. The Parties Investigated this Matter to Allow Counsel and this Court to Conclude that the Settlement is Fair and Reasonable

As detailed above, the parties engaged in a significant exchange of substantive information relating to Class Members' claims, including formal discovery, more than thirty depositions, as well as the exchange of hundreds of thousands of documents and millions of lines of data. Based upon the record that was developed through this investigation and discovery process, Plaintiffs' Counsel were able to estimate class damages and assess the risks of further litigation. Gore Decl. ¶¶ 17-20. It was only after the parties investigated and evaluated the strengths and weaknesses of the case and engaged in hard-fought negotiations with the assistance of an experienced mediator that the settlements with the Settling Defendants were reached. *Id.* at ¶ 9. This litigation, therefore, has reached the stage where the parties have a clear view of the strengths and weaknesses of their cases sufficient to support the Settlement. See *Lewis v. Starbucks Corp.*, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008) ("approval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and

weaknesses of their cases").

E. The Settlement was the Product of Informed, Non-Collusive, and Arms'-Length Negotiations Between Experienced Counsel

Courts routinely presume a settlement is fair where it is reached through arms'-length bargaining as it was here. *See Hanlon*, 150 F.3d at 1027. As the U.S. Supreme Court has held, "[o]ne may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length bargaining…" *Ortiz v. Fibreboard Corp*., 527 U.S. 815, 852 (1999). Here, the Settlements are a product of intensive, adversarial litigation between the parties including the Settling Defendants' moving for dismissal of Plaintiffs' Third and Fourth Amended Complaints. In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex antitrust and employment litigation and experience litigating and settling similar class actions. Seltzer Cert. Decl., Dkt. No. 483-39; Wasserman Cert. Decl. ¶¶ 3-10, Dkt. No. 483-47; Ackermann Cert. Decl. ¶¶ 3-10, Dkt. No. 483-48; and Melmed Cert. Decl. ¶¶ 2-6, Dkt. No. 483-49. The parties' settlement negotiations also occurred through a mediator with significant experience in litigating antitrust cases.

Moreover, the views of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) . The parties' counsel believes that this settlement is fair, adequate, and reasonable and in the best interests of Class, and should be preliminarily approved. Gore Decl. ¶ 27.

IV. CONCLUSION

For these reasons, Plaintiffs' motion for preliminary approval of the parties' class action Settlement should be granted.

Respectfully submitted,

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