

11/29/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: _____ A. He _____ Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDWIN PORTILLO, et al.,
Plaintiffs,

v.

AJR TRUCKING, INC., et al.
Defendants.

Case No. 19STCV15591

The Honorable Stuart M. Rice,
Dept. 1

**RULING ON MOTION FOR FINAL
APPROVAL
(OBJECTIONS FILED)**

Hearing Date: November 9, 2022

I. INTRODUCTION

The Court has spent additional time reviewing the entire case history of both Portillo as well as the related case of *Smith v. MDB Transportation Inc. et al.*, Los Angeles Superior Court Case No. BC719084. The parties are well aware that much litigation occurred in both cases prior to the undersigned taking over these cases in May of 2022. Indeed, this judge’s first introduction to these cases was an informal discovery conference on July 23, 2022 in the *Smith* case. It was obvious that the two excellent plaintiffs’ firms on these cases were embroiled in conflicts that were not novel when two or more related wage and hour class actions are pending. These issues are commonly worked out between the parties without the need for court intervention, but there is no requirement that they do so.

That being said, the objections filed by counsel for plaintiffs Smith et al. were filed in good faith, are thorough, detailed, and included financial analysis. While Portillo’s filings in support of

1 the motion for final approval lacked the same degree of monetary calculation, they are otherwise
2 more than adequate for the Court to grant approval for the benefit of the class members in the
3 *Portillo* case. Smith's concerns that this settlement is not fair, adequate or reasonable has been
4 considered and is discussed below. The two companies involved in these related cases are separate
5 entities with common ownership. Approval of Portillo's settlement with AJR Trucking, Inc. does
6 not improperly undermine Smith's open case against MDB Transportation et al. The Court's
7 analysis is more fully described below.

8 **II. ANALYSIS OF SETTLEMENT AGREEMENT**

9 **a. Does a Presumption of Fairness Exist?**

10 The Court preliminarily found in its Order on July 6, 2022 that the presumption of
11 fairness should be applied. No facts have come to the Court's attention that would alter
12 that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of
13 fairness as set forth in the preliminary approval order. The Court recognizes that due to a
14 clerical error, preliminary approval was granted without a formal hearing or oral argument.
15 The objectors are advised that their concerns were considered at that time and again in
16 connection with this motion. Additionally, a lengthy opportunity to orally argue took place
17 at the November 9, 2022 hearing.

18 **b. Is the Settlement Fair, Adequate, and Reasonable?**

19 The settlement was preliminarily found to be fair, adequate and reasonable. Notice
20 has now been given to the Class and the LWDA. A summary of the responses to the
21 proposed settlement by the putative class is set forth below:

22 Number of class members: 826 (Singh Decl. ¶5.)

23 Number of notice packets mailed: 826 (Id. at ¶7.)

24 Number of undeliverable notices: 1 (Id. at ¶9.)

25 Number of opt-outs: 3 [4 total, 1 was duplicate] (Id. at ¶11.)

26 Number of objections: 1 (Ibid.)

27 Number of participating class members: 823 (Id. at ¶11.)

1 Average individual payment: \$834.36 [\$686,681.5 Net / 823]

2 Highest individual payment: \$4,762.66 (Id. at ¶15.)

3 **III. OBJECTIONS**

4 As a preliminary matter, Objectors request the Court take judicial notice of the
5 Amici Curiae Brief Re: Motion for Preliminary Approval they filed in this action on June
6 8, 2022. Judicial notice of this document is unnecessary as it is already properly before the
7 court and has been considered at the time of Preliminary Approval and in connection with
8 this hearing.

9 Ira John Gilmore and Michael Smith (“Objectors”) object to final approval of the
10 settlement on the grounds that the settlement amount is “nominal” and “unfair” based on
11 Objectors’ counsel’s valuation of the same claims, that the release is overbroad, and that
12 the settling parties reached the settlement through a reverse action. The Court overrules the
13 objection for the following reasons:

14 **a. Notice to Smith**

15 Objector Smith asserts that he did not receive notice of the settlement. (Smith
16 Decl. ¶9.) However, the Settlement Administrator represents that Smith is not a class
17 member. (Singh Decl. ¶11.) Defendant AJR’s Vice President represents that Smith was
18 never employed by AJR. (Khudikyan Decl. ¶5.) As Smith is not within the settlement
19 class, he was not entitled to notice, his potential claims would be unaffected by the present
20 settlement, and he lacks standing to object.

21 **b. Reverse Auction**

22 Objectors accuse the settling parties of engaging in a reverse auction to arrive at a
23 settlement of the class claims for “grossly inadequate” consideration. (Objection at 1:17-
24 18.) The evidence does not support this conclusion.

- 25 1. Where a settlement is presented by some, rather than all, of the class
26 representatives, the Court needs to scrutinize the settlement to ensure that
27 it was not a “reverse auction” that undervalues class claims. “Reverse
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1 auction: is “the label for a defendant's collusive selection of the weakest
2 attorney among a number of plaintiff attorneys who have filed lawsuits
3 dealing with the same subject matter; in other words, a reverse auction is
4 the ‘sale’ of a settlement to the lowest bidder among counsel for competing
5 or overlapping classes.” Barbara J. Rothstein & Thomas E. Willging,
6 *Managing Class Action Litigation: A Pocket Guide for Judges* 14 (Federal
7 Judicial Center 2005).

8 2. Objectors contend that Defendant AJR should be treated as a single
9 enterprise with MDB Transportation, Inc. – the main defendant in the
10 related case *Smith, et al. v. MDB Transportation, et al.* (Case No.
11 BC719084). Objectors point to a list of factors creating an implication that
12 AJR and MDB are a single enterprise. (Objection at 5:6-19.)

13 3. However, Class Counsel and Defendant’s VP represent that AJR and MDB
14 are distinct entities and enterprises that share the same owners. (See
15 Kenner Decl. ISO Final ¶49; Khudikyan Decl. ¶¶16-19.) Class Counsel
16 also represents that all plaintiffs in the related *Smith* action worked directly
17 for MDB, not AJR. (Kenner Decl. ISO Final ¶¶49-50.) While it appears
18 that a modest number of class members in *Portillo* and putative class
19 members in *Smith* may have performed services for both companies, this
20 does not alter the Court’s conclusion.

21 4. As such, the release of the present settlement does not affect the rights of
22 putative MDB class members in the *Smith* action. The classes in the two
23 cases are distinct, and the *Smith* action lacks a class representative who
24 worked for AJR (see Kenner Decl. ISO Final ¶49). There is no evidence
25 to support a showing of a reverse auction here as the classes in the two
26 cases provides little overlap. Even a class member who performed work
27 for both AJR and MDB provides the release in this settlement as to AJR
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1 only, leaving undisturbed any potential claims against MDB.

2 **c. Breadth of Class Release**

3 Objectors contend that the class release in the present settlement is overbroad.
4 (Objection at 4:4-9.) As the Court found at preliminary approval and reaffirms here, the
5 class release (Settlement Agreement ¶24) is properly defined as being based on the facts
6 alleged in the operative complaint in the action. See *Amaro v. Anaheim Arena Mgmt.* (2021)
7 69 Cal. App. 5th 521, 537.

8 **d. Value of Settlement**

9 As to Objectors’ arguments about the settlement value and the fairness of the
10 settlement - A judge has broad discretion to determine whether a class action settlement is
11 fair and reasonable. (*Carter v. City of Los Angeles* (2014) 224 Cal.4th 808, 819.)

12 1. As the Court found when granting preliminary approval and now upon
13 final approval, the four factors identified in *Dunk v. Ford Motor Co.* (1996)
14 48 Cal.App.4th 1794, 1801 are present here. It is undisputed that this case
15 settled following a mediation with the Honorable Carl J. West (Ret.); Class
16 Counsel has experience in similar litigation; out of the 826 putative Class
17 Members, only 1 (representing just .001% of the total class) has objected;
18 and out of the 826 putative Class Members, only 3 have validly requested
19 exclusion (99.6% participation rate).

20 2. Regarding Objectors’ arguments about the sufficiency of Class Counsel’s
21 investigation and discovery (Objection at 3:11-4:2), the key inquiry is
22 whether the record “establish[es] in any meaningful way what
23 investigation counsel conducted or what information they reviewed on
24 which they based their assessment of the strength of the class members’
25 claims” and whether “the record contain[s] information sufficient for the
26 court to intelligently evaluate the adequacy of the settlement.” *Kullar v.*
27 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. Here, Class
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1 Counsel provided sufficient detail (see Kenner Decl. ISO Prelim ¶¶13-14;
2 Supp. Kenner Decl. ¶3) regarding the specific documents and data
3 reviewed prior to reaching settlement. Furthermore, Class Counsel has
4 provided the Court with information regarding Defendant’s maximum and
5 realistic exposure for each of the claims asserted in the operative complaint
6 (see Kenner Decl. ISO Prelim ¶¶19-20), allowing the Court to make an
7 independent determination as to the settlement’s adequacy.

8 3. To the extent the objection is based on a belief that the class should recover
9 some higher amount (Objection at 2:17-3:8, 9:10-19), it is axiomatic that
10 settlements, “need not obtain 100 percent of the damages sought in order
11 to be fair and reasonable,” and that even if the relief is substantially less
12 than what would be available after a successful outcome, “this is no bar to
13 a class settlement because ‘the public interest may indeed be served by a
14 voluntary settlement in which each side gives ground in the interest of
15 avoiding litigation.’” (Wershba v. Apple Computer, Inc. (2001) 91
16 Cal.App.4th 224, 250, citing Air Line Stewards, etc., Loc. 550 v. American
17 Airlines, Inc. (7th Cir. 1972) 455 F.2d 101, 109.) At preliminary approval,
18 Plaintiffs’ counsel estimated Defendant’s maximum exposure at
19 \$3,801,063.29 and realistic exposure at \$1,472,455.32. Plaintiffs’ counsel
20 obtained a \$1,095,000 non-reversionary settlement. This is approximately
21 28.8% of Defendant’s maximum exposure and 74.4% of Defendant’s
22 realistic exposure, which the Court found, given the uncertain outcomes
23 and Defendant’s financial condition, was within the “ballpark of
24 reasonableness.”

25 **e. AJR Trucking’s Ability to Satisfy the Settlement**

26 Another factor raised by *Portillo* is the financial wherewithal of AJR Trucking to
27 satisfy the terms of this settlement. Statements made under oath support the conclusion that

1 this was a legitimate factor in determining that the settlement is fair, adequate, and
2 reasonable.

3 **IV. CONCLUSION**

4 The Court finds that the notice was given as directed and conforms to due process
5 requirements. Given the reactions of the Class Members and the LWDA to the proposed
6 settlement and for the reasons set forth in the Preliminary Approval order, the settlement is
7 found to be fair, adequate, and reasonable and is therefore approved.

8 The objections of Ira John Gilmore and Michael Smith are OVERRULED.

9 The Court hereby GRANTS final approval and awards/approves the following:

- 10 (1) **\$365,000** for attorney fees to Class Counsel, Shegerian & Associates, Inc. and Law
11 Office of Edward Antonino;
12 (2) **\$8,318.50** for attorney costs to Class Counsel;
13 (3) enhancement payment of **\$5,000 each** to the class representatives, Edwin Portillo and
14 Mauricio Portillo;
15 (4) **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA; and
16 (5) **\$10,000** for settlement administration costs to CPT Group, Inc.

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18 The Court orders class counsel to file a final report summarizing all distributions
19 made pursuant to the approved settlement, supported by declaration. The Court will set a
20 non-appearance date for submission of a final report for August 11, 2023. Clerk to give
21 notice to all interested parties.



Stuart M. Rice / Judge

24 THE HONORABLE STUART M. RICE
25 JUDGE OF THE SUPERIOR COURT
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DATED: November 29, 2022