

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:19-cv-01334-SVW-SS

Date August 18, 2020

Title *Duy Nam Ly et al. v. J.B. Hunt Transport Inc.*

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [52]

1. On July 6, 2020, Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement. Dkt. 52. The Court has carefully reviewed Plaintiffs’ submission regarding the terms of the proposed settlement.

The Court recognizes that its preliminary approval must be supported by a finding “that the court will likely be able to approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(1)(B)(i). Under Rule 23(e)(2), a court must find that the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Court observes that the proposed class here has not been certified. Consequently, the Court must apply “an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e).” *Roes 1-2 v. SFBSC Management, LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019) (quoting *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 946 (9th Cir. 2011)).

After considering the factors enumerated in Rule 23(e)(2) and set forth in *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d at 945-47, the Court finds that it will likely be able to conclude at the final approval hearing that the proposed settlement is fair, reasonable, and adequate. There is no evidence that “class counsel have allowed pursuit of their own self-interests ... to infect the negotiations.” *Roes 1-2*, 944 F.3d at 946 (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)). Plaintiffs are truck drivers who allege they were misclassified as independent contractors. Dkt. 1-1, at 1-2. Their claims raise difficult and unsettled legal questions involving California’s evolving independent contractor standard and a potential federal preemption defense. Dkt. 52, at 3-4. Settlement

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negotiations were assisted and monitored by an experienced mediator, the Honorable Edward Infante (ret.). Dkt. 52, at 22. Class members’ recovery is far from de minimis. Defendant would pay a non-reversionary award of \$6.5 million to a class of only approximately 312 drivers. *Id.* at 2. The proposed fee award of 25% is within the Ninth Circuit benchmark. *Id.* at 10; *see Smadja v. PetSmart, Inc.*, 2019 WL 1744857, at *3 (C.D. Cal. 2019) (collecting cases). In light of the foregoing, the Court will likely find the proposed settlement fair, reasonable, and adequate at the final approval stage.

2. All defined terms contained herein shall have the same meaning as set forth in the Stipulation executed by the Parties and filed with this Court.

3. For settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), the Court conditionally certifies the following class:

All current and former California-resident truck drivers who signed Intermodal Independent Contractor Operating Agreements with appendices (Intermodal ICOAs) under which they performed work for J.B. Hunt Transport, Inc., in California at any time between June 25, 2014 and August 14, 2020.

4. The Court conditionally finds that, for the purposes of approving the proposed Settlement only, the proposed Class meets the requirements for certification of a settlement class under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) there are questions of law or fact common to the proposed Class; (c) certain claims of Plaintiffs are typical of the claims of the members of the proposed Class; (d) Plaintiffs and their counsel will fairly and adequately protect the interests of the proposed Class; (e) common issues predominate over individual issues, and (f) a class action is superior to the other available methods for an efficient resolution of this controversy.

If the Settlement does not become final for any reason, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and will not be admissible in connection with, the issue of whether a class in this action should be certified in a non-settlement context.

The Court’s conditional findings are limited solely to the claims brought on behalf of the proposed Class. The Court’s findings are for purposes of conditionally certifying a class and will not

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have any claim or issue preclusion or estoppel effect in any other action against J.B. Hunt, or in this Action, if the Stipulation is not finally approved.

5. The Court appoints Plaintiffs, Duy Nam Ly and Kiet Nguyen, as Class Representatives, for settlement purposes only.

6. The Court appoints for settlement purposes only the law firm of Marlin & Saltzman, LLP, 29800 Agoura Road, Suite 210, Agoura Hills, California 91301, as Class Counsel.

7. The Court finds and concludes that the Notice of Settlement and the Notice of Estimated Individual Settlement Amount and the procedure set forth in the Stipulation for providing notice to the Class will provide the best notice practicable, satisfies the notice requirements of Rule 23(e), adequately advises Class Members of their rights under the Settlement, and therefore meets the requirements of due process.

a. Notice of Settlement: The Notice of Settlement fairly, plainly, accurately, and reasonably informs Class Members of: (1) appropriate information about the nature of this Action, the definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement, including the plan of distribution; (2) appropriate information about Plaintiffs’ and Class Counsel’s forthcoming applications for the Class Representatives’ Service Payments and the Class Counsel attorney fees and litigation costs award; (3) appropriate information about how to dispute their estimated share of the Net Settlement Amount, and about Class Members’ right to appear through counsel if they desire; (4) appropriate information about how to object to the Settlement or submit an Opt-Out Request, if a Class Member wishes to do so; and (5) appropriate instructions about how to obtain additional information regarding this Action and the Settlement. The proposed plan for mailing the Notice of Settlement and the Notice of Estimated Individual Settlement Amount by first class United States mail to the Class Members’ last known addresses is an appropriate method, reasonably designed to reach all individuals who would be bound by the Settlement. The Settlement Administrator will distribute the Notice of Settlement and the Notice of Estimated Individual Settlement Amount to all Class Members by first class mail to their last known addresses, after seeking updated addresses from the U.S. Postal Service for the Class Members who are no longer under contract with J.B. Hunt. If the notices are returned as undeliverable, the Settlement Administrator will use Class Members’ social security numbers to obtain updated addresses through a skip tracing process.

The proposed Notice of Settlement and notice plan are the best practicable notice under the facts and circumstances of this case.

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b. Notice of Estimated Individual Settlement Amount: The proposed Notice of Estimated Individual Settlement Amount allows Class Members a full and fair opportunity to submit a dispute of their estimated share of the Net Settlement Amount under the Settlement. The Notice of Estimated Individual Settlement Amount fairly, accurately, and reasonably informs Class Members that the failure to dispute the Estimated Individual Settlement Amount, in the manner and time specified, will constitute a waiver of any right to obtain any different share of the Net Settlement Amount under the Settlement.

The Notice of Settlement and Notice of Estimated Individual Settlement Amount (collectively, the Notice Packet) and the manner of distributing the Notice of Settlement and Notice of Estimated Individual Settlement Amount to the Class are approved.

8. The Parties are ordered to carry out the Settlement according to the terms of the Stipulation.

9. The Court appoints CPT Group, Inc. as the Settlement Administrator. Promptly following the entry of this order, the Settlement Administrator will prepare final versions of the Notice Packets, incorporating into them the relevant dates and deadlines set forth in this order.

10. Within 14 days after J.B. Hunt’s receipt of notice of the Preliminary Approval Date, J.B. Hunt will provide to the Settlement Administrator, in electronic form, an updated spreadsheet or database containing the names, last known addresses, telephone numbers, and social security numbers of the Class Members, as well as the information needed to determine when such Class Members were members of the Class, the number of Qualifying Work Weeks for each Class Member, and their starting and (if applicable) ending dates of employment. This Class List shall be based on J.B. Hunt’s compensation and driver records and in a format acceptable to the Settlement Administrator. The Settlement Administrator shall maintain this Class List, and all data contained within this Class List, as private and confidential. Neither Class Counsel nor the Settlement Administrator may use the Class List for any purpose other than to administer the Settlement as provided herein. J.B. Hunt will also provide a copy of the Class List to Class Counsel, with the social security numbers redacted; Class Counsel shall not to use the Class List to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against J.B. Hunt, or for any other purpose other than to administer the Settlement as provided herein.

11. Within 14 days after receipt of the Class List from J.B. Hunt, or as soon thereafter as is practicable, the Settlement Administrator, after conducting a search using the U.S. Postal Service

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National Change of Address database to validate or update the addresses of the Class Members who are former members of the Class, shall send the Notice Packets to all Class Members via first class U.S. Mail.

12. The Settlement Administrator is directed to mail the Notice Packets in the manner provided in the Stipulation and take all other actions in furtherance of claims administration as specified in the Stipulation.

13. Any Class Members who wish to exclude themselves from the Class (“Opt Out”) must advise the Settlement Administrator in writing of that intent postmarked no later than the Opt-Out Deadline of 42 days after the initial mailing of the Class Notice or, where a second Notice Packet has been mailed to the Class member, no later than seven days after the Opt-Out Deadline. Class Members who timely submit both an Opt-Out Request and dispute of the Qualifying Weeks Worked, which is used to estimate their Individual Settlement Amount, will be sent a letter by the Settlement Administrator, requesting clarification of the Class Member’s intent. The letter will state that, unless the Class Member clarifies that he or she intends to opt out, by the Opt-Out Deadline or no later than seven days after the date the Settlement Administrator mails the letter requesting clarification, the Class Member will be deemed to be a Class Participant, as defined in the Stipulation.

14. Class Members who wish to dispute the number of Qualifying Weeks Worked used for their Estimated Individual Settlement Amount must complete and return a timely notice of dispute to the Settlement Administrator in the manner provided in the Stipulation. The mailing deadline for submitting a dispute is 42 days after the first date of mailing of the Notice Packets, as evidenced by the postmark, or if applicable, the Opt-Out Deadline. Class Members who do not submit timely notice of their dispute will still receive their Individual Settlement Amount from the Net Settlement Amount to which they are entitled, unless they have submitted an Opt-Out Request.

15. The Settlement Administrator shall have the full authority to resolve all disputes after seeking input from counsel for the Parties. The Settlement Administrator’s decision shall be binding and non-appealable by the Plaintiffs, J.B. Hunt, and the Class Member. J.B. Hunt will promptly provide any information or documents reasonably requested by the Settlement Administrator to make its determination.

16. All objections to the Settlement must be in writing and be served and filed with the Court within 42 days after the initial mailing of the Notice Packets by the Settlement Administrator. All

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objections must be served on the Settlement Administrator, Class Counsel, and J.B. Hunt’s Counsel, and filed with the Court. Only Class Members who do not submit Opt-Out Requests may file objections. The date of filing shall be the exclusive means for determining whether an objection has been timely filed. An objection must include the name and number of the case, the identity of the objector, and a statement of the reasons why the objector believes that the Court should find that the proposed Settlement is not in the best interest of the Settlement Class, and the reasons why the Stipulation should not be approved. If an objector also wishes to appear at the Final Approval Hearing, in person or through an attorney, he or she must also submit a Notice of Intention to Appear at the same time as the objection is filed with the Court and served on the Settlement Administrator, Class Counsel, and J.B. Hunt’s Counsel.

17. The Court will conduct a Final Approval hearing on December 14, 2020, at 1:30 PM, to determine: (a) whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved by the Court; (b) the amount of attorneys’ fees and costs to award to Class Counsel; and (c) the amount of Service Fee Awards for the Class Representatives, if any.

18. Plaintiffs’ Motion for Final Approval of the settlement, and Class Counsel’s motion for awards of attorney fees and costs and shall be filed on or before November 16, 2020. Any opposition to such motions shall be filed on or before November 23, 2020. Any reply briefs in support of such motions shall be filed on or before November 30, 2020.

19. In the event the Settlement is not finally approved, or otherwise does not become effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Stipulation.

IT IS SO ORDERED.

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