UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

| Case No.: 5:17-cv-01261-SB-SP | Date: April 1, 2022 |
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Title: ***Curtis Markson et al. v. CRST International, Inc. et al.***

| Present: The Honorable | **STANLEY BLUMENFELD, JR., U.S. District Judge** |
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| Jennifer Graciano<br>Deputy Clerk | N/A<br>Court Reporter |
| Attorney(s) Present for Plaintiff(s):<br>N/A | Attorney(s) Present for Defendant(s):<br>N/A |

**Proceedings:** **ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEFENDANT STEVENS TRANSPORT, INC. [Dkt. No. 564]**

Plaintiffs Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark move for preliminary approval of their class action settlement with Stevens Transport, Inc. (Stevens). Dkt. No. 564 (the Motion). This settlement is similar to Plaintiffs' settlement with five other Defendants, which the Court preliminarily approved on February 24, 2022. Dkt. No. 562. No party has objected to the settlement, either in writing or at the hearing on April 1, 2022. For largely the same reasons stated in the February 24 preliminary approval order, the Court concludes that preliminary approval is appropriate and **grants** the Motion.

## BACKGROUND

Plaintiffs worked as truck drivers for some Defendants and allege that Defendants conspired to restrain compensation among themselves by refusing to hire employees who remain "under contract" with another trucking company, in violation of California and federal antitrust law. The allegations in Plaintiffs'

Fourth Amended Complaint, Dkt. No. 228, are described in the Court's order denying Plaintiffs' motions for class certification, Dkt. No. 561.

Under the terms of the settlement agreement, Stevens agrees, in exchange for release of the claims against it, to make a non-reversionary payment of $5,500,000. Dkt. No. 564-3 (Settlement Agreement). From this gross settlement amount, the parties ask the Court to preliminarily approve the following deductions: (1) service awards of up to $25,000 for each named Plaintiff; (2) payment to Plaintiffs' counsel of up to one fourth of the value of the settlement,[1] plus reimbursement of up to $1.8 million of the litigation costs incurred in this case; and (3) all administrative fees incurred in administering class notice and the settlement.

The settlement agreement also provides non-monetary relief to Plaintiffs, including that Stevens (1) will not send "under contract" letters to other Defendants concerning the class members, (2) will not sue any of the Defendants for hiring any class member based on his or her "under contract" status, and (3) will adopt an express policy that prohibits refusing to hire a driver based on "under contract" status. The settlement agreement does not contain a non-cooperation agreement like those the Court found objectionable in Plaintiffs' settlement agreements with other Defendants, which were subsequently excised by stipulation. And unlike the earlier settlements, all parties are unopposed to the Court's approval of this settlement.

## DISCUSSION

### A. Conditional Certification of the Class

Plaintiffs seek provisional certification of the following class (the Settlement Class):

> [A]ll current and former drivers "Under Contract" as motor vehicle carrier drivers with CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National

[1] The settlement agreement itself contemplates that Plaintiffs may request "an award of attorneys' fees not in excess of one-third of the benefits created for the Settlement Class," Dkt. No. 564-3 at 20, but Plaintiffs have requested only up to 25% of the settlement's value.

> Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., and Stevens Transport, Inc., at any time from May 15, 2013 through the date of preliminary approval ("Class Members" or "the Class"). "Under Contract" refers to individuals whose costs for obtaining a Commercial Drivers' License or other training or education were paid for or advanced (in whole or in any part) by a trucking carrier directly or reimbursed (in whole or in any part) by a trucking carrier, including but not limited to, any individuals who (i) attended any of the Defendants' company-sponsored or partner truck driving schools, or (ii) executed an agreement with any Defendant in which the individual agreed to work for any of the Defendants for a specified period of time in return for education or training provided by, funded by, or reimbursed by that Defendant, and who was employed by that Defendant, for any length of time, between May 15, 2013 through the Preliminary Approval Date.

Dkt. No. 564-1 at 2. This class definition differs from the class preliminarily certified in the Court's February 2 order, although none of the differences materially alter the Court's analysis.[2]

To be certified, a class action must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and must also meet the requirements for one of the three types of class actions specified in Rule 23(b). *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019). The criteria are applied differently depending on whether the class is being certified for litigation or settlement. *Id.* For example, when certifying a settlement class, concerns about manageability at trial are not implicated, but a district court must give heightened attention to the protecting the interests of absent class members. *Id.* at 556–57.

For the same reasons the Court explained in pages 5–8 of its February 24 order, Dkt. No. 562, which apply equally here, the Court preliminarily finds that the Settlement Class is ascertainable; that it satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a); that "the questions of law or

[2] At the hearing, counsel explained that the changed language accounted for variations in the Defendant's training programs and contracts with their drivers and represented that the differences were not material.

fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy," as required under Rule 23(b)(3); and that Plaintiffs' counsel adequately represent the class and should be appointed class counsel under Rule 23(g).

## B. Preliminary Approval

The Court may approve a settlement agreement only "after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Preliminary approval is appropriate if "the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). In making such a determination, courts generally consider factors including: (1) the strength of the plaintiff's 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 of the proposed settlement. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

Considering these and other factors, the Court finds at this stage that the settlement appears fair, reasonable, and appropriate. The parties reached the settlement after significant arm's length negotiations with an experienced third-party mediator. *See In re First Capital Holdings Corp. Financial Prods.*, No. MDL 901, 1992 WL 226321, at *2 (C.D. Cal. June 10, 1992) ("[T]here is typically an initial presumption of fairness where the settlement was negotiated at arm's length"). The settlement follows nearly two years of litigation between these parties.[3] Discovery has been extensive, including more than thirty depositions and review of hundreds of thousands of documents. All parties are represented by experienced counsel who concluded, after investing substantial effort in litigating this case, that the settlement is fair and in the best interests of the class.

[3] Although this case was filed almost five years ago, Stevens was not named as a Defendant until April 15, 2020. Dkt. No. 228.

The $5.5 million settlement amount exceeds the total of $4.25 million that the other five settling Defendants collectively have already agreed to pay. It represents more than 47% of the damages Plaintiffs estimate are attributable to Stevens's role in the alleged conspiracy. Dkt. No. 564-1 at 17. Considering the expense, uncertainty, and risk of continued litigation—particularly in light of the Court's denial of class certification as to the non-settling Defendants—the settlement amount seems fair and favorable to the class. The settlement agreement also provides valuable non-monetary benefits to the class, including agreements by Stevens to stop its allegedly anticompetitive behavior.

The requested deductions from the settlement award for attorney's fees, administrative fees, and incentive awards to the named Plaintiffs appear to be reasonable, although they will be reviewed further at the final approval stage when Plaintiffs' counsel provide more information about the hours spent litigating the case, the costs incurred, and the participation by the named Plaintiffs. The requested attorney's fees of no more than 25% of the monetary value of the settlement are within the realm of commonly approved fees. *See In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) ("Twenty-five percent is the 'benchmark' that district courts should award in common fund cases."). The payment of expenses incurred in administering the settlement is also proper: "Courts regularly award administrative costs associated with providing notice to the class." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015). And although it was unclear from the papers, the parties confirmed at the hearing that the incentive awards of up to $25,000 per Plaintiff are the same awards the Court already preliminarily approved, and not additional sums to be deducted from the settlement fund. As the Court previously held, incentive awards to the named Plaintiffs are reasonable and appropriate in an amount to be determined by the Court, but each named Plaintiff will be required before final approval to provide a declaration detailing his active participation and the services he provided to the class.

The Court has some concerns about the parties' request to deduct up to $1.8 million in costs from the settlement fund. In connection with the motion for preliminary approval of the first settlement, the parties represented that Plaintiffs had incurred $2.2 million in costs, and the Court in its February 24 order preliminarily approved a deduction of up to $1 million. Dkt. No. 562 at 9. At the April 1 hearing, counsel represented that Plaintiffs incurred substantial additional expert expenses in connection with the class certification motions, and their total costs have risen to approximately $2.8 million. Counsel clarified that they now seek to recover the remainder of their costs by requesting $1.8 million *in addition*

*to* the costs of up to $1 million already awarded. The Court is unpersuaded that Plaintiffs have shown on this record that it is fair or reasonable for them to recover the entirety of their incurred costs from the settling Defendants, especially considering that (1) the Defendants who employed the most class members—CRST International, Inc. and CRST Expedited, Inc. (collectively, CRST) and C.R. England, Inc.—have not settled, and (2) CRST was the only Defendant when the case was filed and some of Plaintiffs' litigation, including one of its recent class certification motions, was directed solely against CRST. However, the Court agrees that *some* additional deduction of costs is warranted, even if not the full $1.8 million requested. The Court will require the parties to provide documentation of their costs and additional authority supporting the requested cost award before it finally determines what sum of costs is fair and reasonable.

On this understanding, the settlement agreement between Plaintiffs and Stevens appears to be fair, reasonable, and adequate, and the Court preliminarily approves the class settlement.

## C. Notice

For any class certified under Rule 23(b)(3), class members must be afforded "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In connection with the earlier preliminary settlement approval, the parties requested that class notice be delayed so that it could be combined with the Stevens settlement notice. The Court set a schedule for disseminating class notice and for a hearing for final approval of all settlements on July 29, 2022. Dkt. No. 567. Those deadlines apply equally to the Stevens settlement. Consistent with the Court's scheduling order, Plaintiffs no later than April 5, 2022 shall file a motion to disseminate class notice as to all settlements.

## CONCLUSION

The Court **GRANTS** Plaintiffs' motion for preliminary approval of the class action settlement as follows:

1. The Settlement Class is preliminarily certified.

2. Plaintiffs Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark are preliminarily appointed as class representatives for the Settlement Class.

3. Mark M. Seltzer, Steven G. Sklaver, Matthew Berry, Krysta Kauble Pachman, and Ian M. Gore of Susman Godfrey L.L.P., William J. Gorham and Robert J. Wasserman of Mayall Hurley P.C., Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C., and Jonathan Melmed of Melmed Law Group, P.C. are preliminarily appointed as class counsel for the Settlement Class.

4. The Court preliminarily approves the settlement between Plaintiffs and Stevens as fair, adequate, and reasonable.

5. A hearing for final approval of all settlements is set for July 29, 2022 at 8:30 a.m. The parties shall comply with all deadlines set in the Court's March 7, 2022 scheduling order, filed at Dkt. No. 567.

6. Plaintiffs no later than April 5, 2022 shall file a motion to disseminate class notice as to all settlements.

7. The Court orders all Defendants no later than April 29, 2022, to provide reasonably available contact information for members of the Settlement Class, consisting of full name, driver ID (or similar designation as used by each Defendant), last known address(es), last known phone number(s), last known email address(es), date(s) of hire, and date(s) of termination of employment to the Settlement Administrator to effectuate notice to the Settlement Class. Any reimbursement of costs of providing class list information shall be consistent with the Court's order on Plaintiffs' prior motion for preliminary approval, Dkt. No. 562. No further reimbursement shall be necessary as a result of preliminarily approving the settlement reached between Plaintiffs and Stevens.

**IT IS SO ORDERED.**