UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 5:17-cv-01261-SB-SP	Date: February 24, 2022

Title: ***Curtis Markson et al. v. CRST International, Inc. et al.***

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**

Jennifer Graciano	N/A
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
N/A	N/A

Proceedings: **ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS [Dkt. No. 537]**

Plaintiffs Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark move for preliminary approval of their class action settlements with Defendants Paschall Truck Lines, Inc. (Paschall), Schneider National Carriers, Inc. (Schneider), Covenant Transport, Inc. (Covenant), Southern Refrigerated Transport, Inc. (Southern), and Western Express (Western) (collectively, the Settling Defendants). Dkt. No. 537 (the Motion). The other four Defendants—CRST International, Inc. and CRST Expedited, Inc. (together, CRST), C.R. England, Inc. (CRE), and Stevens Transport, Inc. (Stevens) (collectively the Non-Settling Defendants) oppose certification and raise a variety of challenges, including to the information Plaintiffs seek to require them to produce and to a

non-cooperation provision in each of the settlement agreements.[1] Dkt. No. 539. The Court held a hearing on the Motion on January 21, 2022, Dkt. No. 551, after which the settling parties stipulated to modify their settlement agreements to remove the non-cooperation provisions, Dkt. No. 554, and engaged in further, partially successful efforts to reach agreements with the Non-Settling Defendants on paying the costs the Non-Settling Defendants will incur in providing the information required for class notice, Dkt. No. 557. In light of these developments, which address the Court's most serious concerns, the Court concludes that preliminary approval is appropriate and **grants** the Motion.

BACKGROUND

Plaintiffs worked as truck drivers for CRST and CRE and other trucking companies. They 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 (Class Certification Order), which is entered concurrently with this order, and need not be repeated here.

Under the terms of the settlement agreements, the Settling Defendants agree, in exchange for release of the claims against them, to make non-reversionary payments to a settlement fund in the following amounts: $700,000 from Paschall; $750,000 from Schneider; $800,000 from Covenant and Southern, collectively[2]; and $2 million from Western. Dkt. Nos. 537-3 (Paschall settlement), 537-4 (Schneider settlement), 537-5 (Southern/Covenant settlement), 537-6 (Western settlement). From this total gross settlement amount of $4,250,000, 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 (including the value of non-cash relief), plus reimbursement of up to $1 million of the litigation costs incurred in this case;

[1] Stevens later reached its own settlement agreement with Plaintiffs, Dkt. No. 555, but it has not withdrawn its joinder in the opposition to the Motion, which in any event is still urged by CRST and CRE.

[2] Southern and Covenant are related companies that are both part of the Covenant Logistics Group, and Southern ceased operations during this litigation. Dkt. No. 537-2 ¶ 16 (Decl. of Ian Gore).

and (3) all administrative fees incurred in administering class notice and the settlement.

The settlement agreements also provide non-monetary relief to Plaintiffs, including that the Settling Defendants (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, (3) will adopt express policies that prohibit refusing to hire a driver based on "under contract" status, and (4) release entitlement to and will not pursue any collection efforts as to certain types of unpaid trucking-school debt allegedly owed by any class members.

NON-SETTLING DEFENDANTS' OBJECTIONS

The Non-Settling Defendants raise numerous arguments in opposition to the Motion, challenging the relevant legal standard, the adequacy of the information provided to the Court, and the fairness of the settlements, in addition to their objections to the non-cooperation agreement and the notice requirements. Dkt. No. 539.[3]

Defendants generally lack standing to object to a settlement between other parties to a lawsuit, although an exception applies when the defendant can demonstrate that it will sustain some formal legal prejudice from the settlement. *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 582–83 (9th Cir. 1987). Although the Court will review the appropriate legal standard and the sufficiency and fairness of the proposed settlement as part of its obligations under Rule 23, those matters impose no formal legal prejudice on the Non-Settling Defendants. At most, the Non-Settling Defendants have standing to challenge the two aspects that directly affect them: the non-cooperation agreements and Plaintiffs' request that the Non-Settling Defendants be ordered to produce information about their current and former employees that is necessary for distribution of class notice.[4]

[3] The Non-Settling Defendants also complain that Plaintiffs improperly designated the Motion as unopposed. Plaintiffs' counsel are cautioned in the future to exercise greater care when making representations about the positions of opposing counsel.

[4] Because it addresses the challenged aspects of the settlement agreements as part of its own review, the Court makes no finding as to whether their impacts on the

The settlement agreements contained clauses that prohibited the Settling Defendants from providing voluntary cooperation to the Non-Settling Defendants and even required the Settling Defendants to assert any reasonable defenses to subpoenas issued by the Non-Settling Defendants. *E.g.*, Dkt. No. 537-3 at 20. At the hearing, the Court expressed its concern that these provisions were likely improper, and Plaintiffs represented that the provisions were not material and could be eliminated. Plaintiffs and the Settling Defendants then filed a stipulation agreeing that the non-cooperation provisions are stricken from each of the settlement agreements and that the Court should construe the Motion as applying to the settlement agreements as modified by the stipulation. Dkt. No. 554 at 2. The Court accepts the stipulation, and the non-cooperation provisions are **stricken**, mooting the Non-Settling Defendants' objection.

Plaintiffs' Motion requests that the Court order "all of the Defendants to provide contact information for members of the settlement class to the claims administrator for purposes of providing notice to the class." Dkt. No. 537 at 3. The Non-Settling Defendants objected that being ordered to take affirmative actions in support of the proposed settlement is inequitable and improper, particularly if the Non-Settling Defendants are required to bear the cost of obtaining the information. When a defendant can identify class members who must receive class notice more efficiently than the representative plaintiff, the court has discretion under Rule 23(d) to order the defendant to do so and to allocate the cost of complying with the order. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350 (1978). The court should generally "place the cost of the defendant's performing an ordered task on the representative plaintiff, who derives the benefit," unless the expense involved is "so insubstantial as not to warrant the effort required to calculate it and shift it to the representative plaintiff." *Id.* at 358–59.

It is undisputed that Defendants, including the Non-Settling Defendants, are best positioned to identify their current and former employees who are members of the settlement class, and the Court will require them to provide the requested information. At the hearing, the parties disputed the difficulty and cost of compiling the information, and the Court ordered them to confer further and attempt to reach agreement. After negotiating, the parties filed a joint status report

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Non-Settling Defendants are sufficient under *Waller* to confer standing to challenge the settlements.

indicating that (1) Stevens determined that it could provide the class list without substantial time or cost and did not need to be reimbursed for its efforts, (2) Plaintiffs and CRE had resolved their dispute and agreed that CRE would be reimbursed $9,500 from the settlement fund for its reasonable costs incurred in providing the required contact information, and (3) Plaintiffs and CRST were unable to reach an agreement. Dkt. No. 557. CRST then filed a response estimating that it will cost approximately $50,000 to collect and verify the requested contact information of its 40,000 drivers and representing that Plaintiffs' proposal for a cheaper alternative method of obtaining the information is unworkable and would not provide a cost savings. Dkt. No. 558. Plaintiffs responded, arguing that CRST's $50,000 estimate is manifestly unreasonable and depends on paying an expensive litigation consulting firm and CRST's counsel for unnecessary work, when most of the required data was already compiled in connection with the *Montoya* settlement.[5] Dkt. No. 560.

The costs of compiling the notice lists, although small relative to the size of the settlement, are not *de minimis*, and they are appropriately borne by Plaintiffs, who will benefit from the notice. *Oppenheimer*, 437 U.S. at 358–59. The Court accepts the parties' agreement for CRE to be reimbursed $9,500 from the settlement fund for its costs incurred in providing the required contact information. The Court does not find CRST's requested costs to be reasonable, especially given the significantly cheaper options suggested by Plaintiffs. CRST shall receive reimbursement from the settlement fund for the actual costs in incurs in compiling the required information, up to a maximum of $20,000. CRST may choose to compile the data in the more expensive manner it proposes, but if it does so, it must bear all costs in excess of $20,000.

DISCUSSION

A. Conditional Certification of the Class

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

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

[5] The *Montoya* settlement, which involves claims against CRST that substantially overlap with Plaintiffs' claims here, is discussed in the Class Certification Order.

> 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.

Dkt. No. 537-1 at 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.

The proposed class definition is nearly identical to the antitrust class sought to be certified in Plaintiffs' separate motion for class certification, which the Court addresses in its concurrently filed Class Certification Order, except that the Settlement Class includes employees of all Defendants rather than only CRST, CRE, and Stevens. For the reasons explained in greater depth in the Class Certification Order, the Court preliminarily finds that the Settlement Class is ascertainable and satisfies the requirements of Rule 23(a). The Settlement Class contains an estimated 84,000 members, and their joinder would plainly be impracticable. The nature of Plaintiffs' antitrust conspiracy claims gives rise to common questions, including whether Defendants conspired to avoid hiring each other's "under contract" drivers, whether the per se rule applies, and whether Defendants' anticompetitive behavior affected drivers' compensation. Plaintiffs allege the same injuries as other putative class members, arising from the same conduct of Defendants, satisfying the typicality requirement. Plaintiffs and their counsel have demonstrated both the inclination and the capability to vigorously prosecute this case, and there are no apparent conflicts of interest between Plaintiffs, their counsel, and the class. Plaintiffs therefore appear to adequately

represent the interests of the Settlement Class. Accordingly, the Court finds that all four elements of Rule 23(a) are satisfied.

The Court also preliminarily finds that the proposed settlement class satisfies Rule 23(b)(3), which requires a finding that "the questions of law or 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." Fed. R. Civ. P. 23(b)(3).

"Predominance is a test readily met in certain cases alleging . . . violations of the antitrust laws." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *cf. Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002) ("In price-fixing cases, 'courts repeatedly have held that the existence of the conspiracy is the predominant issue and warrants certification even where significant individual issues are present.'" (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 518 (S.D.N.Y. 1996) (collecting cases))). Here, the central question is whether Defendants conspired to engage in anticompetitive behavior to the detriment of class members whose wages were suppressed or who were unable to obtain alternative employment as truckers. This common question focuses on Defendants' conduct and would be proven at trial by evidence common to all class members. In the Class Certification Order, the Court finds that Plaintiffs have not satisfied Rule 23(b)(3) because they have not shown a reliable damages model that can measure damages on a classwide basis, but that finding does not preclude approval of a settlement class because the Court need not determine the impact of the alleged antitrust violations on each class member. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at *46 n.112 (N.D. Cal. Jan. 8, 2013) ("[C]ourts considering settlement class certifications . . . [need not] grapple with such issues as whether or how the fact of damage, or 'antitrust impact,' could be proved on a classwide basis in order to find that common issues predominate. Proof of injury has no practical application if the defendant has offered compensation to all class members and the case is not going to be tried."), *report and recommendation adopted*, 2014 WL 12879520 (N.D. Cal. June 27, 2014); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420 YGR (DMR), 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020) (approving class settlement despite having denied motion for class certification because plaintiffs failed to offer reliable method of common proof for class-wide impact and damages).

The Court is therefore satisfied that the core common questions in this case—the lawfulness of Defendants' practices and agreements not to hire each

other's "under contract" drivers—predominate over any differences between the individual class members. Moreover, the superiority requirement is easily met, at least for purposes of preliminary approval. The Court is unaware of any class member who has sought to or wishes to prosecute his or her claims individually. Given the predominance of common issues, individual litigation likely would not be of interest to class members and would result in increased cost, judicial inefficiency, and limited recovery. Nor does this case appear to present manageability concerns. Accordingly, the Court concludes that conditional class certification for settlement purposes is proper.

Rule 23(g) requires the appointment of class counsel when a class is certified and identifies factors for the court to consider when appointing class counsel. Plaintiffs' counsel have vigorously and capably represented Plaintiffs for several years since filing this suit. They have extensive experience litigating class actions and have demonstrated their knowledge of the applicable law in this suit. The Court therefore finds 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 four years of litigation, including multiple rounds of motions to dismiss and extensive discovery. 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.

The Settling Defendants are smaller entities than the Non-Settling Defendants and collectively employed only about 10% of the total class members. Plaintiffs therefore estimate that the damages attributable to the Non-Settling Defendants are approximately $11.25 million. Dkt. No. 540 at 9. The $4.25 million settlement fund represents approximately 38% of Plaintiffs' total potential recovery against the Settling Defendants. 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 agreements also provide valuable non-monetary benefits to the class, including agreements by the Settling Defendants to stop both their allegedly anticompetitive behavior and their collection of the debts allegedly owed by class members for the training provided to them.

The requested deductions from the settlement award for attorney's fees, costs, administrative fees, and service awards to the named Plaintiffs also 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 and the costs incurred. The requested attorney's fees of no more than 25% of the value of the settlement[6] are squarely 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."). Moreover, Plaintiffs' counsel represent that they have incurred more than $2.2 million in litigation costs, and they seek to recover less than half of those costs from the Settling Defendants. At this preliminary stage, Plaintiffs' request for reimbursement of these expenses is not plainly unreasonable. The payment of expenses incurred in administering the settlement is also proper: "Courts regularly award administrative costs associated with providing notice to

[6] The settlement agreements provide for attorney's fees of up to 25% of the value of the settlement, including non-cash relief. When questioned at the hearing, Plaintiffs' counsel represented that the value of the settlement used for this calculation will not be significantly greater than $4.25 million and that counsel would likely seek less than 25%.

the class." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015). Finally, Plaintiffs seek incentive awards of "up to $25,000.00" for each of the named Plaintiffs. Although incentive awards are common in class actions, they are discretionary and subject to scrutiny by the court. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). $25,000 is higher than the incentive awards typically granted in class actions, *see Bellinghausen*, 306 F.R.D. at 267 ("Incentive awards typically range from $2,000 to $10,000."), but this case has been litigated for nearly five years, and a higher-than-average award might be justified based on Plaintiffs' involvement. The Court preliminarily finds that some incentive award, even if less than $25,000, is justified. Each named Plaintiff will be required to provide a declaration in support of final approval detailing his active participation and the services he provided to the class.

Because the settlement agreements appear to be fair, reasonable, and adequate, 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). Anticipating further settlements, and to maximize the class members' recovery by avoiding the administrative costs of sending multiple notices, Plaintiffs seek to delay the sending of notice. After the hearing, Plaintiffs announced their settlement with Stevens. The Court has not received any indication that further settlements are forthcoming. While the Court shares the parties' desire to avoid inefficiencies, this case has been pending for years, and the Court is reluctant to permit substantial further delay. Accordingly, Plaintiffs and the Settling Defendants within seven days shall jointly propose a schedule for the collection of the class members' contact information, the dissemination of notice, the filing of a motion for final approval, and the final approval hearing on the proposed settlement. The final approval hearing shall be held no later than July 1, 2022.

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 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. Plaintiffs and the Settling Defendants **within seven days** after entry of this Order shall jointly file a proposed schedule, together with a proposed order, setting forth all deadlines required for disseminating notice to the class and setting a hearing for final approval of the settlement no later than July 1, 2022.

IT IS SO ORDERED.