

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HECTOR ALVARADO, MIKEY AMAYA, and
JUSTIN TITUS on behalf of themselves and
others similarly situated.

PLAINTIFF,

vs.

OAK HARBOR FREIGHT LINES, INC.; and
DOES 1 TO 100, INCLUSIVE.

DEFENDANTS.

Case No. 3:17-cv-06425-SK

Magistrate Judge Sallie Kim

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

*[Filed concurrently with Declaration of
Malcolm Clayton Regarding Amended Class
Notice]*

Date: June 10, 2024

Time: 9:30 a.m.

Dept: Courtroom C, 15th Floor

Complaint Filed: September 11, 2017

ORDER

WHEREAS, a putative class action and Private Attorneys General Act (“PAGA”) representative action is pending before the Court entitled *Hector Alvarado, et al. v. Oak Harbor Freight Lines, Inc. et al.*, Case No. 3:17-cv-06425-SK (“Action”);

WHEREAS, Plaintiffs Hector Alvarado, Mikey Amaya, and Justin Titus (“Plaintiffs”) and Defendant Oak Harbor Freight Lines, Inc. (“Defendant” or “OHFL”) (collectively, the “Parties”), have agreed to settle and enter into a Judgment resolving this Action in accordance with the terms and conditions of the Joint Stipulation of Class and Representative Action Settlement and Release of Claims (the “Settlement Agreement” or the “Settlement,” attached as **Exhibit 1** to the accompanying Declaration of Malcolm Clayton); and

WHEREAS, the Court has considered all papers submitted on Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement, including the Settlement Agreement and all exhibits attached thereto, records and prior proceedings to date in this matter, and good cause appearing based on the record,

The Court HEREBY ORDERS as follows:

1. The definitions in the Settlement Agreement are hereby incorporated herein as though fully set forth in this Order, and all other terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement along with the amended class notice submitted by the Plaintiffs on June 11, 2024 (which shall now be considered Exhibit A to the Settlement Agreement), is preliminarily approved as fair, reasonable, and adequate, and in the best interests of the Classes as set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class and PAGA action, and provides substantial relief to the Classes without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Settlement is not a finding or admission of liability by Defendant or any other person, nor a finding of the validity of any claims asserted in this Action and/or any other lawsuit or of any wrongdoing or any violation of law by Defendant and/or any of the other Released Parties.

3. Plaintiffs, by and through their counsel, have investigated the pertinent facts and have evaluated the risks associated with continued litigation, trial and/or appeal. The Court finds that the Settlement Agreement: (a) is the result of arm's-length negotiations between the Parties and experienced counsel; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Classes; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23.

Conditional Certification of the Classes

4. For purposes of settlement only: (a) the law firms of Lavi & Ebrahimian, LLP and Mayall Hurley P.C. are appointed Class Counsel for the two settlement Classes; and (b) Plaintiffs Hector Alvarado, Mikey Amaya, and Justin Titus are appointed Class Representatives. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiffs will adequately protect the interests of the two settlement Classes defined below.

5. For purposes of settlement only and for purposes of disseminating the amended Class Notice, and without prejudice to Defendant's right to contest class certification if the Settlement Agreement is not finally approved, the Court conditionally certifies the following two settlement Classes as defined in the Settlement Agreement: (1) all current and former hourly, non-exempt workers, except drivers, employed by OHFL in the State of California from September 11, 2013, through October 2, 2023 (the "Nondriver Class"); and (2) all current and former non-exempt drivers who were employed by OHFL in the State of California from May 27, 2017, through October 2, 2023 (the "Driver Class", and together with the Nondriver Class the "Settlement Class").

6. The Court finds, subject to the Final Approval Hearing, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Nondriver Class and Driver Class satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, and specifically, that: the Nondriver Class and Driver Class are each so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Nondriver Class and Driver Class; the claims of the Class Representatives are typical of the claims of the members of the Nondriver Class and the Driver Class; the Class Representatives and Class Counsel will fairly and adequately protect the interests of the members of the Nondriver Class and the Driver

Class; common questions of law or fact predominate over questions affecting individual members for the Nondriver Class and the Driver Class; and a class action is a superior method for fairly and efficiently adjudicating the Action. All of these findings are for purposes of settlement only.

7. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's conditional grant of class certification shall be vacated, null, and void in all respects, and the Class Representatives and the two settlement Classes will once again bear the burden of establishing the propriety of class certification for purposes of litigation. In such case, neither the conditional certification of the Classes for settlement purposes only (e.g., this Order and any of the motion practice related to it) nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

Notice and Administration

8. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the amended Notice submitted on June 11, 2024 (which is now Exhibit A to the Settlement Agreement), and finds that such Notice is reasonable and the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the amended Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of due process. The Court further finds that the amended Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the two settlement Classes of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Classes. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the amended Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

9. The Court approves the request for the appointment of ILYM Group, Inc. ("ILYM") as Settlement Administrator of the Settlement Agreement.

10. The Settlement Administrator is directed to publish the Notice on the Settlement Website

and to send direct notice by U.S. Mail in accordance with Section 8.2 of the Notice procedures called for by the Settlement Agreement.

Submission of Requests for Exclusion from Settlement Class

11. Any person falling within the definition of either of the settlement Classes may, upon valid and timely request, exclude themselves or “opt out” from the applicable Driver Class or Nondriver Class. Any such person may do so if, on or before the Objection/Exclusion Deadline (i.e., 60 days after mailing of the Notice, plus an additional 14 days if Notice is re-mailed to such Class Member,) he or she sends a written request to the Settlement Administrator requesting to opt out). Any Class Members so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits, although they would still be part of the PAGA settlement if they are part of either of the PAGA Groups.

12. Any members of the two settlement Classes who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator, by fax, email, or mail received or postmarked no later than the Objection/Exclusion Deadline [i.e., 60 days after mailing of the Notice, plus an additional 14 days if Notice is re-mailed to such Class Member]. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice. However, members of the settlement Classes who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement or received any benefit or award from the settlement. Members who elect to “opt out” need not provide their social security numbers.

Submission of Requests for Objection from Settlement Class

13. Any person falling within the definition of the settlement Classes who does not submit a timely Request for Exclusion (a “Participating Class Member”) shall be permitted to object to the Settlement before Final Approval. Any written objections must be sent to the Administrator, Class Counsel, and Defense Counsel, by fax, email, or mail on or before the Objection/Exclusion Deadline (i.e., 60 days after mailing of the Notice, plus an additional 14 days if Notice is re-mailed to such Class Member). The Settlement Administrator is to include all written objections and requests for exclusion as exhibits in a signed declaration submitted to Class Counsel, which Class Counsel shall include in its

1 papers filed with the Court in advance of the Final Approval Hearing.

2 14. Participating Class Members may appear in Court (or hire an attorney to appear in Court)
3 to present verbal objections at the Final Approval Hearing.

4 15. If the Court rejects a Participating Class Member's objection, the Participating Class
5 Member will still be bound by the terms of the Settlement Agreement, including the release.

6 **Final Approval Hearing**

7 16. The Final Approval Hearing shall be held before this Court on January 27, 2025, at 9:30
8 a.m. in Courtroom C, 15th Floor, at the San Francisco United States Courthouse, 450 Golden Gate
9 Avenue, San Francisco, California, to determine: (a) whether the proposed settlement of this Action on
10 the terms and conditions provided for in the Settlement Agreement (including as it may be modified
11 prior to the Final Hearing date) is fair, reasonable, and adequate and should be given final approval by
12 the Court; (b) whether a judgment and order of dismissal should be entered; (c) whether to approve the
13 Fee and Costs Award to Class Counsel; and (d) whether to approve the payment of the incentive awards
14 to the Class Representatives. The Court may adjourn the Final Approval Hearing without further notice
15 to members of the settlement Classes. The new date of hearing, if any, shall be published on the Court's
16 docket and on the Settlement Administrator's Website.

17 17. Class Counsel shall file papers in support of their Motion for Final Approval, and their
18 Motion for Fees and Costs Award and Class Representative's incentive award in accordance with the
19 local rules and Federal Rules of Civil Procedure.

20 **Further Matters**

21 18. All further proceedings in this Action are ordered stayed until Final Judgment or
22 termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary
23 to obtain and/or effectuate final approval of the Settlement Agreement. Additionally, pending this
24 Court's determination as to whether to finally approve the Settlement, the Court hereby prohibits and/or
25 enjoins any other person, entity or counsel (other than successful opt-outs to this Settlement) from
26 representing or from commencing, prosecuting, participating in or assisting in any lawsuit or proceeding
27 against the Released Parties on any matters within the scope of the Released Claims.

28 19. The Court may approve the Settlement, with such modifications as may be agreed to by

1 the Parties, if appropriate, without further notice to the Class.

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3 Dated: June 21, 2024

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The Hon. Sallie Kim
United States Magistrate Judge