

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

BC634606

**MERARDO ATILIO CRUZ ET AL VS TRANS OCEAN
CARRIER INC**

February 10, 2021

11:00 AM

Judge: Honorable Amy D. Hogue
Judicial Assistant: A. Morales
Courtroom Assistant: T. Bivins

CSR: None
ERM: Nonc
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Alvin Mark Gomez (Telephonic); Stephen Noel Ilg (Telephonic)

For Defendant(s): Adam Ryan Rosenthal (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

The matter is called for hearing.

The Motion for Preliminary Approval of Settlement filed by Merardo Atilio Cruz, Luis Armando Espana, Carlos De La Cruz, Victor Antonio Sanchez, Francisco Saul Hernandez, Erick Adiel Tenas, Mario Elias Garcia, Mario Elias Garcia, Jr., Jeurly Josue Martinez, Santos Gonzalo Escobar on 10/23/2020 is Granted. The order granting preliminary approval of settlement is signed and filed this date.

Fairness Hearing (Final) is scheduled for 05/25/2021 at 02:00 PM in Department 7 at Spring Street Courthouse.

The clerk is to give notice. Clerk's Certificate of Service By Electronic Service is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 02/11/2021 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>A. Morales</u> Deputy
PLAINTIFF: Merardo Atilio Cruz et al		
DEFENDANT: Trans Ocean Carrier Inc.		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER BC634606

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Minute Order and Order entered herein, on 02/10/2021, upon each party or counsel of record in the above entitled action, by electronically serving the document(s) on Case Anywhere at secure.caseanywhere.com on 02/11/2021 from my place of business, Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012 in accordance with standard court practices.

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 02/11/2021

By: A. Morales

Deputy Clerk

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FILED
Superior Court of California
County of Los Angeles

FEB 10 2021

Sherri R. Cartwright, Clerk
Alfredo Morales deputy
ALFREDO MORALES

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LOS ANGELES SUPERIOR COURT

FEB 01 2021

S. DREW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL SPRING STREET COURTHOUSE

MERARDO ATILIO CRUZ, CARLOS DE LA CRUZ, LUIS ARMANDO ESPANA, MARIO ELIAS GARCIA, MARIO ELIAS GARCIA, JR., SANTOS GONZALO ESCOBAR, FRANCISCO SAUL HERNANDEZ, JEURY JOSUE MARTINEZ, VICTOR ANTONIO SANCHEZ, ERICK ADIEL TENAS, AND ON BEHALF OF ALL UNAMED PLAINTIFFS SIMILARLY SITUATED,

Plaintiffs,

v.

TRANS OCEAN CARRIER INC., and DOES 1 through 50, inclusive,
Defendant.

Case No. BC634606

AMENDED [PROPOSED] ORDER GRANTING CONDITIONAL CERTIFICATION OF SETTLEMENT AND PRELIMINARY APPROVAL OF SETTLEMENT; APPROVING CLASS NOTICE AND RELATED MATERIALS; APPOINTING CLASS COUNSEL; APPOINTING SETTLEMENT ADMINISTRATOR; AND SCHEDULING FINAL APPROVAL HEARING

Hearing Date: February 10, 2021
Time: 11:00 a.m.
Judge: Hon. Amy D. Hogue
Dept.: 7

Complaint Filed: September 20, 2016
Trial Date: None Set

By Fax

1 **TO EACH PARTY AND THE COUNSEL OF RECORD FOR EACH PARTY:**

2 The Motion for Preliminary Approval of Class Action Settlement came before this
3 Court, Honorable Amy D. Hogue, presiding, on February 10, 2021. The Court, having
4 considered the papers submitted in support of the motion including, but not limited to,
5 the Stipulation and Settlement of Class, Collective, and Representative Claims (the
6 "Settlement") (attached as Exhibit B to the Notice of Lodgment in Support of
7 Supplemental Briefing in Support Preliminary Approval of Class Action Settlement),
8 **HEREBY FINDS, CONCLUDES, and ORDERS** as follows:

9 1. For settlement purposes, the Parties have proposed conditional certification
10 of the following settlement class ("the Class"): all persons who contracted directly with
11 TOC as independent contractor drivers, from September 20, 2012 through the date upon
12 which the Court grants Preliminary Approval of this Settlement. (hereafter, the "Class
13 Period"); (2) actually drove for TOC in California without hiring anyone else to perform
14 the work for TOC; and (3) were classified by TOC as an independent contractor instead of
15 an employee. (Excluded from the Class are those individuals who would otherwise be a
16 Class Member under the above definition but has: (i) entered into a separate settlement
17 or release with TOC of his or her claims arising from the performance of services as a
18 driver for TOC during the Class Period; or (ii) timely and properly excluded himself or
19 herself from the Class by submitting a valid and timely request for exclusion.) Pursuant
20 to section 382 of the California Code of Civil Procedure and Rule 3.769 of the California
21 Rules of Court, the Court hereby certifies the Class.

22 2. The Court finds and concludes that Plaintiffs Merardo Atilio Cruz, Carlos
23 De La Cruz, Luis Armando Espana, Mario Elias Garcia, Mario Elias Garcia, Jr., Santos
24 Gonzalo Escobar, Francisco Saul Hernandez, Jeury Josue Martinez, Victor Antonio
25 Sanchez, Erick Adiel Tenas, Harvey Pineda Coffin, Josue Hernandez, and Angel Macias
26 have claims typical of Class members and are adequate representatives of them. The
27 Court hereby appoints Plaintiffs to serve as Class Representative for the Class.

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1 3. The Court finds and concludes that Alvin M. Gomez and Stephen N. Ilg of
2 Gomez Law Group have significant experience and expertise in prosecuting wage-and-
3 hour class actions. The Court appoints Alvin M. Gomez and Stephen N. Ilg of Gomez Law
4 Group as Class Counsel for the Class.

5 4. The Court has reviewed the terms of the Settlement Agreement, including
6 the plan of allocation and the release of claims. The Court has read and considered the
7 Declaration of Alvin Gomez in support of the Motion for Preliminary Approval and the
8 Declaration of Alvin M. Gomez in Support of Supplemental Briefing in Support of
9 Preliminary Approval of Class Action Settlement. The Court has also read and considered
10 the Supplemental Memorandum of Points and Authorities in Support of Preliminary
11 Approval of Class Action Settlement. Based on review of those papers, and the Court's
12 familiarity with this case, the Court finds and concludes that the Settlement is the result
13 of arms-length negotiations between the parties conducted after Class Counsel had
14 adequately investigated Plaintiffs' claims and become familiar with their strengths and
15 weaknesses. The assistance of two experienced mediators in the settlement process
16 confirms that the Settlement is non-collusive. Based on all of these factors, the Court
17 concludes that the Settlement meets the criteria for preliminary settlement approval. The
18 Settlement has no obvious defects and falls within the range of possible approval as fair,
19 adequate, and reasonable, such that notice to the Class is appropriate.

20 5. The Court hereby approves, as to form and content, the proposed Class
21 Notice, attached as Exhibit D to the Notice of Lodgment in Support of Preliminary
22 Approval of Class Action Settlement, and directs that the Class Notice shall be issued in
23 substantially the same form as Exhibit D. The Court hereby also approves, as to form and
24 content, the proposed Claim Form, attached as Exhibit B to the Settlement in the
25 Declaration of Alvin M. Gomez in Support of Motion for Preliminary Approval of Class
26 Action Settlement, and directs that the Claim Form shall be issued in substantially the
27 same form as Exhibit B.

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1 6. The Court finds that the proposed Class Notice and notice plan constitute
2 the best notice practicable under the circumstances and shall constitute due and sufficient
3 notice to all persons entitled thereto in full compliance with applicable law. The Court
4 further finds that distribution of the Class Notice in the manner set forth in the Settlement
5 meets the requirements of the California Rules of Court, including Rule 3.769(f), and the
6 requirements of due process under California and federal law. The Court further finds
7 that the proposed Class Notice fully and accurately informs the Class of all material
8 elements of the Settlement, of their right to be excluded from the Settlement Class, their
9 right and opportunity to object to the Settlement, their right and opportunity to receive a
10 settlement award, and their right to dispute Defendant's records regarding their gross
11 wages earned for the purpose of calculating their settlement award.

12 7. The Court appoints Phoenix Settlement Administrators as the Settlement
13 Administrator and preliminarily approves costs of administration to be paid from the
14 gross settlement fund, currently estimated to be less than \$6,750.00.

15 8. The Court orders that the Notice be delivered via first-class regular U.S.
16 Mail to the Class according to procedures specified in the Settlement Agreement. The
17 Court further Orders that the notice, objection, opt-out, and dispute process be carried
18 out according to provisions of the Settlement.

19 9. The Court sets a final fairness hearing for 5/25/21, 2021, at 2:00 p.m.
20 in Department 7 of the Los Angeles County Superior Court. At the final fairness hearing,
21 the Court will determine whether the proposed settlement of the litigation on the terms
22 and conditions provided for in the Settlement are fair, reasonable, and adequate and
23 should be approved by the Court; whether judgment should be entered pursuant to
24 California Rule of Court 3.769(h); the amount of attorneys' fees and costs that should be
25 awarded to Class Counsel; and the amount of the Incentive Payments that should be
26 awarded to the Named Plaintiffs.

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10. All papers in support of Plaintiffs' requests for attorneys' fees and costs and the amount of the Incentive Payment to each Named Plaintiff shall be filed and served no later than 16 court days prior to hearing

11. All papers in support of final approval of the Settlement shall be filed and served no later than 16 court days prior to hearing

12. The Court reserves the right to adjourn the date of the final approval hearing without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: 2/10/21



Honorable Amy D. Hogle
JUDGE OF THE SUPERIOR COURT