

Oct 08, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL VALENCIA, individually and
on behalf of all others similarly situated,
BELARMINO HERNANDEZ,
individually and on behalf of all others
similarly situated, and JUNIOR
ARACHIGA, individually and on
behalf of all others similarly situated

Plaintiffs,

v.

HOMEDELIVERY INC.

Defendant.

No. 4:18-cv-05034-SMJ

**PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Before the Court, without oral argument, is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 165, including the declarations of Plaintiffs' counsel, ECF Nos. 166 & 167. After extensive discovery, motion practice, mediation, and arm's length settlement negotiations the parties conducted an all-day settlement conference on August 12, 2020 before Magistrate Judge Mary K. Dimke, Plaintiffs Daniel Valencia, Belarmino Hernandez, and Junior Arechiga, and Defendant Homedelivery, Inc., entered into a class action

1 Settlement Agreement, subject to review under Fed. R. Civ. P. 23(a), (b)(3).

2 Plaintiffs ask the Court to (1) provisionally certify the proposed Settlement
3 Class and Subclass, (2) grant preliminary approval of the Settlement, (3) approve
4 their proposed notice to the class, (4) appoint as Class Counsel the law firms Terrell
5 Marshall Law Group PLLC and Lichten and Liss-Riordan, (5) appoint as Class
6 Representatives Belarmino Hernandez, Daniel Valencia and Junior Arechiga, and
7 (6) schedule the final fairness hearing and related dates. Defendant does not oppose
8 the motion.

9 The Court has reviewed the Settlement Agreement, as well as the documents
10 submitted and the proceedings and entire file to date in this matter. Based on its
11 preliminary examination, the Court is fully informed and grants the motion.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 **1.** Plaintiffs' Unopposed Motion for Preliminary Approval of Class
14 Action Settlement, **ECF No. 165**, is **GRANTED**.

15 **2.** *Class Certification for Settlement Purposes Only.* Under Federal Rule
16 of Civil Procedure 23(a) and (b)(3), the Court, for settlement purposes
17 only, conditionally certifies the following Settlement Class and
18 Subclass:

1 **Settlement Class.**¹ All persons who, from March 1, 2015 to
2 the date that the Court enters the Preliminary Approval Order,
3 have performed services for HDL in Washington as delivery
4 drivers.

5 **Settlement Subclass.**² All persons who, from March 1, 2015
6 to the date that the Court enters the Preliminary Approval
7 Order, have performed services for HDL in Washington as
8 delivery drivers and paid funds to HDL through check
9 deductions, including deductions from payments HDL made
10 to spouses or domestic partners of the drivers.

11 In connection with the certification, the Court also makes the following
12 preliminary findings:

13 **3.** The Settlement Class and Subclass satisfies Rule 23(a)(1) because the
14 Class appears to be at least 100 members.

15 **4.** The Settlement Class and Subclass satisfies Rule 23(a)(2) because
16 there appear to be questions of law or fact common to the Class.

17 **5.** The Settlement Class satisfies Rule 23(a)(3) because the claims and
18 defenses of the Plaintiffs named in the caption appear typical of the
19 claims and defenses of the class.

20 ¹ The Settlement Class differs from the class the Court certified, ECF No. 76 at 13,
because it now specifies the class period runs through preliminary approval. ECF
No. 165 at 13.

² The Settlement Subclass differs from the subclass the Court certified, ECF No. 76
at 13, because it now (1) specifies that the class period runs through preliminary
approval, and (2) clarifies that it includes drivers like Plaintiffs Arechiga and
Valencia who paid funds to HDL through check deductions from payments HDL
made to their spouses or domestic partners. ECF No. 165 at 13.

1 6. The Settlement Class and Subclass satisfies Rule 23(a)(4) because the
2 named Plaintiffs appear to be capable of fairly and adequately
3 protecting the interests of the above-described Class in connection
4 with the proposed Settlement and because counsel representing the
5 Class are qualified, competent, and capable of prosecuting this action
6 on behalf of the Class.

7 7. The Settlement Class and Subclass satisfies Rule 23(b)(3) because, for
8 purposes of Settlement approval and administration, common
9 questions of law and fact appear to predominate over questions
10 affecting only individual Class Members and because the settlement
11 with the above-described Class and Subclass appears to be superior to
12 other available methods for the fair and efficient resolution of the
13 claims of the Class. The Class appears to be sufficiently cohesive to
14 warrant settlement by representation.

15 In making the foregoing findings, the Court has exercised its discretion in
16 conditionally certifying a Settlement Class.

17 8. ***Preliminary Approval of Proposed Settlement.*** The Agreement, its
18 terms, and any appended exhibits are preliminarily approved as fair,
19 reasonable, and adequate; they are hereby incorporated as though fully
20 set forth in this Order. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027

1 (9th Cir. 1998) (citation omitted); *see also In re Online DVD-Rental*,
2 779 F.3d 934, 944 (9th Cir. 2015) (noting that when settlement
3 precedes formal class certification, approval of a settlement requires a
4 “higher standard of fairness”). Capitalized terms shall have the
5 meanings attributed to them in the Agreement. The Court finds that (a)
6 the Agreement resulted from extensive arm’s-length negotiations, and
7 (b) the Agreement is sufficient to warrant notice thereof to members
8 of the Settlement Class.

9 **9. *Class Representatives.*** For settlement purposes only, the Court hereby
10 designates Plaintiffs BELARMINO HERNANDEZ, DANIEL
11 VALENCIA, and JUNIOR ARECHIGA as class representatives
12 (“Class Representatives”) under Rule 23 and finds that they have and
13 will continue to fairly and adequately protect the interests of the
14 Settlement Class.

15 **10. *Class Counsel.*** For settlement purposes only, the Court designates
16 Terrell Marshall Law Group PLLC and Lichten & Liss-Riordan as
17 Class Counsel for purposes of settlement. For purposes of these
18 settlement proceedings, the Court finds that Class Counsel are
19 competent and capable of exercising their responsibilities.
20

1 **11. *Settlement Administrator.*** The Court appoints Lichten & Liss-Riordan
2 as the Settlement Administrator that shall fulfill the settlement
3 administration functions, duties, and responsibilities as set forth in the
4 Agreement.

5 **12. *Final Fairness Hearing.*** A final approval hearing (the “Final Fairness
6 Hearing”) is **SET for February 4, 2021 at 10:30 A.M. in Richland,**
7 Washington for the Court to determine whether the Agreement is fair,
8 reasonable, and adequate, and to give final approval. The Court may
9 reset the Final Fairness Hearing at any time without notice.

10 **13. *Notices.*** The Court approves the form and content of the notices set
11 forth as Exhibits C and D of the Agreement, ECF No. 166 at 56–62,
12 63–65. Both notices are hereby incorporated as though fully set forth
13 in this Order. Within twenty-eight (28) days of entry of this Order,
14 Lichten & Liss-Riordan shall deliver notices to all Class Members who
15 can be identified with reasonable effort and published in the manner
16 set forth in the Agreement. Notices sent by U.S. Mail or email and
17 published shall be substantially in the same form as Exhibits C and D,
18 ECF No. 166 at 56–62, 63–65.

19 **14. *Findings Concerning Notices.*** The Court finds that the notices and the
20 manner of its dissemination described in the Agreement constitutes the

1 best practicable notice under the circumstances and is reasonably
2 calculated, under all the circumstances, to apprise Class Members of
3 the pendency of this action, the terms of the Agreement, and their right
4 to object to or exclude themselves from the Settlement Class. The
5 Court finds that the notice plan is reasonable; that it constitutes due,
6 adequate, and sufficient notice to all persons entitled to receive notice;
7 and that it meets the requirements of due process, Rule 23, and any
8 other applicable laws.

9 **15. *Exclusion from Settlement Class.*** Each Class Member who wishes to
10 exclude himself or herself from the Settlement Class and follows the
11 procedures set forth in Part III § (J)(5)(d) of the Agreement shall be
12 excluded. The exclusion request must: (i) be in writing; (ii) state the
13 Settlement Class Member's current address; (iii) containing the
14 following statement: "I request that I be excluded from the settlement
15 Class in the vase of Valencia v. HDL" (or the Spanish equivalent; (iv)
16 be signed; and (v) be mailed to Class Counsel at the address provided
17 in the Notice and postmarked by the Response deadline.

18 a. Any member of the Settlement Class who submits a timely and
19 valid exclusion request shall not: (i) be bound by the Final
20 Approval Order and Judgment; (ii) be entitled to relief under the

1 Settlement Agreement; (iii) gain any rights by virtue of the
2 Settlement Agreement; or (iv) be entitled to object to any aspect
3 of the Settlement Agreement.

4 **16. *Objections and Appearances.***

5 a. ***Objections.*** Settlement Class members will have sixty days
6 from the date the notice and claim form are mailed to submit a
7 claim form, opt out of the settlement, or submit objections as
8 provided in Part III § (A)(12) of the Agreement. Class members
9 wishing to object must follow the procedures set forth in Part III
10 § (J)(5)(c) of the Agreement. All untimely objections or
11 objections that do not conform with the Agreement shall be
12 barred.

13 b. ***Responses to Objections.*** The Parties shall submit any
14 responses to objections no later than fourteen (14) days after the
15 Response Deadline. *See* Agreement Part III § (J)(5)(c).

16 **17. *Appearance at Final Fairness Hearing.*** Any objecting Class Member
17 who wishes to address the Court at the Final Fairness Hearing must
18 indicate his or her intent to do so in writing to Class Counsel at the
19 same time that the Class Member submits the objection. Class Counsel
20 will inform the Court and Defendant's counsel accordingly.

1 **18. *Papers for Fees and Expenses.*** Under *In re Mercury Interactive Corp.*
2 *Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010), the Court directs Class
3 Counsel to file a motion for approval of attorneys’ fees, costs, and
4 service awards no later than **thirty (30) days** before the deadline to
5 submit claims, exclusions, and objections. Class Counsel will make
6 their request for attorneys’ fees and costs available on the Settlement
7 Website within twenty-four hours after filing.

8 **19.** If oral argument is requested, the motion will be heard final fairness
9 hearing on **February 4, 2021 at 10:30A.M. in Richland**, Washington.

10 **20. *Discretion of Counsel.*** Counsel are hereby authorized to take
11 reasonable steps in connection with approval and administration of the
12 Settlement not materially inconsistent with this Order or the
13 Agreement, including, without further approval of the Court, making
14 minor changes to the content of the Notice that they jointly deem
15 reasonable or necessary.


16 **21. *Reservation of Rights and Retention of Jurisdiction.*** The Court
17 reserves the right to adjourn or reset the date of the Final Fairness
18 Hearing without further notice to the Class Members and retains
19 jurisdiction to consider all further applications arising out of or
20 connected with the proposed Settlement.

22. The following timeline will govern proceedings through the Final Fairness Hearing:

DEADLINE	EVENT
October 19, 2020	Deadline for Lichten & Liss-Riordan to send CAFA notice
Twenty-eight days after entry of this Order	Deadline to mail or email notice Settlement Website established
Fifty-eight days after entry of this Order	Class Counsel files request for fees, costs, and service awards
Eighty-eight days after entry of this Order	Settlement Class members to submit claims, exclusions, and file objections
102 days after entry of this Order	Final Approval Motion, Response to Objections, and Lichten & Liss-Riordan declaration Regarding Notice to be filed
February 4, 2021	Final Fairness Hearing

IT IS SO ORDERED. The Clerk’s Office is directed to enter this Order and provide copies to all counsel.

DATED this 8th day of October 2020.



 SALVADOR MENDOCÑA, JR.
 United States District Judge