

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

OWNER-OPERATOR INDEPENDENT)	
DRIVERS ASSOCIATION, INC., ET AL.,)	
)	
Plaintiffs,)	CIVIL ACTION NO. 2:02 cv 950
)	TS
v.)	
)	
C.R. ENGLAND, INC.,)	
)	
Defendant.)	

**FINAL ORDER APPROVING CLASS ACTION SETTLEMENT
AND JUDGMENT DISMISSING ACTION WITH PREJUDICE**

This matter having come before the Court on the motion of the Plaintiffs and Class Counsel for an order and judgment finally approving the Settlement Agreement dated December 19, 2013 and preliminarily approved by Order dated March 13, 2014 (“Preliminary Approval Order”).¹ The Court having considered all papers filed and proceedings held herein, and having received declarations attesting to the mailing of the Notice and publication of the Notice on the Settlement Website in accordance with the Preliminary Approval Order, and good cause appearing therefore,

IT IS HEREBY ADJUDGED, DECREED AND ORDERED:

I. JURISDICTION

1. The Court has jurisdiction over the subject matter, the parties to this proceeding, and all Class Members.
2. Venue is proper in this District.

¹ Capitalized words in this Order shall have the meaning stated in the Settlement Agreement (Dkt. # 591-1).

II. FINAL APPROVAL OF THE SETTLEMENT

3. Pursuant to Fed. R. Civ. P 23(e), this Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and is in the best interests of all Class Members, for the following reasons: (a) the Parties negotiated the Settlement fairly and honestly at arms' length and with the assistance of an experienced mediator and experienced counsel; (b) serious questions of law exist, as demonstrated by the issues to be raised by the Parties in their pending cross-appeal before the Tenth Circuit; (c) an immediate monetary recovery is valuable to the Class, especially in light of the fact that the parties have engaged in twelve years of litigation; and (d) the Parties have offered their reasoned and well-supported judgment that the settlement is fair, reasonable and adequate to the Class.
4. The Court also finds that the plan for distribution of the Settlement Fund, as set forth in the Settlement Distribution Plan, is fair and equitable.

III. ADEQUACY OF NOTICE

5. The Court finds that Class members have been given due and adequate notice of the Settlement and Class Counsel's Fee Application and request for incentive awards for the individual named Plaintiffs, in the manner directed by this Court in its Preliminary Approval Order.
6. The Court further finds that the Notice plan approving the Court's Preliminary Approval Order and implemented in accordance with that order was the best practicable under the circumstances. The Notice plan was reasonably calculated under the circumstances to apprise the Class of (a) the terms of the Settlement and each Class Member's rights to opt-out of the Class or to object to the Settlement; (b) the maximum amount of Class Counsel's expected Fee Application; and (c) the expected request for incentive awards

for the individual named Plaintiffs. The Notice and Notice plan provided sufficient notice to all persons entitled to notice. The Notice and Notice plan satisfied all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of Due Process.

IV. ATTORNEYS' FEES AND INCENTIVE AWARDS

7. This Court hereby awards Class Counsel attorneys' fees in the amount of \$1,000,000, which is equal to 33.3% of the Settlement Fund, plus reimbursement of reasonable expenses in the amount of \$190,164. The Court finds that the amount of attorneys' fees and costs awarded herein is fair and reasonable based on: (a) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligence; (b) the action involved complex legal and factual issues and was actively prosecuted over a twelve year period; (c) had Class Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the Class might recover less or nothing from Defendant; (d) Class Counsel have spent over 10,853 hours, with a lodestar value of \$4,716,618 to achieve the Settlement; and (e) the amount of attorneys' fees awarded from the Settlement Fund is consistent with awards in similar cases. The Court also finds that the requested reimbursement of expenses is proper as the expenses, including the costs of experts, were reasonable and necessary in the prosecution of this action on behalf of the Class.
8. In accordance with the Settlement, the Settlement Administrator shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees and expenses of Class Counsel, within ten days of the effective date of this Order.
9. All payment of attorneys' fees and expenses to Class Counsel in this action shall be made

from the Settlement Fund, and Defendant C.R. England shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or expenses except as provided in the Settlement.

10. The Court also hereby awards to First Class, Inc. \$17,073.95, which shall also be paid from the Settlement Fund. The Court finds that this amount payable to First Class, Inc. reflects reasonable and necessary compensation for the services provided by First Class, Inc. in performing the function of Settlement Administrator.

11. This Court also hereby awards to Class Representatives William Piper, James Murphy and Donald Sullivan, Sr. incentive awards in the amount of \$15,000 each. The Court finds that the amount of the incentive awards is fair and reasonable based upon the services of the named Plaintiffs to the Class. The awards are to be paid from the Settlement Fund as specified in the Settlement Agreement.

V. RELEASES AND FINAL JUDGMENT

12. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Class Members who have not filed timely and valid requests for exclusion from the Class are Class Members who are bound by this Final Judgment and by the terms of the Settlement.

13. The Released Parties are hereby released and forever discharged from any and all claims by Plaintiffs and the Class which were asserted in this action, and any claims that could have been asserted by reason of, or in connection with, any matter of fact alleged therein, including those arising under 49 U.S.C. §§ 14102 or 14704, 49 C.F.R. Part 376, or any other federal, state or local laws or regulations applicable to motor carriers' leasing of motor vehicle equipment (with or without drivers). All Class Members are bound by paragraph 6 of the Settlement and are hereby and forever barred and enjoined from taking

any action in violation of that provision.

14. The Court hereby dismisses with prejudice all claims of the Plaintiffs and the Class against England asserted in the action and without costs to any of the Parties as against the others, except as provided herein.
15. The Court finds that during the course of the action, the Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.
16. Without affecting the finality of this Final Judgment in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Settlement Fund; (b) disposition of the Settlement Fund, including any application for attorneys' fees or for *cy pres* distribution of any funds remaining in the Settlement Fund at the completion of the distribution to Class Members; (c) payment of any taxes by the Settlement Fund; (d) any application for the payment of Notice-related or Settlement administration-related costs; (e) all parties hereto for the purpose of interpreting, enforcing and administering the Settlement, the Settlement Distribution Plan and this Order of Final Judgment; and (f) any other matters related to finalizing the Settlement and the distribution of the proceeds of the Settlement.
17. This Final Judgment and Order is a final judgment in the action as to all claims of the Plaintiffs and the Class against England asserted in the action.

Dated: June 19, 2014

BY THE COURT:



The Honorable Ted Stewart

EXHIBIT A

PERSONS WHO HAVE OPTED OUT OF THE CLASS

None