

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

PAUL LOVE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

VIRGINIA LAND IMPROVEMENT
CORPORATION and CROSSING
PLACE TRANSPORT INC.,

Defendants.

Case No. 1:19-cv-00252-TSE-TCB

**ORDER GRANTING PLAINTIFF'S
MOTION FOR FINAL APPROVAL
OF THE JOINT STIPULATION OF
CLASS SETTLEMENT AND
RELEASE, ATTORNEYS' FEES,
SERVICE AWARD, AND
SETTLEMENT ADMINISTRATOR
COSTS**

WHEREAS, on behalf of himself and other Class Members, Plaintiff Paul Love (“Plaintiff” or “Class Representative”) alleges that Defendants Virginia Land Improvement Corporation and Crossing Place Transport, Inc. (collectively, “Defendants”) regularly failed to compensate Plaintiff and similarly situated non-exempt dump truck drivers for all hours worked during weeks in which the drivers worked over forty hours, in violation of the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and Virginia state common law (collectively, the “Class Claims”);

WHEREAS, Defendants deny liability for the Class Claims;

WHEREAS, on December 14, 2018, the Parties to this Lawsuit entered into a Joint Stipulation of Class Settlement and Release to settle the Class Claims;

WHEREAS, on April 16, 2019, the Court preliminarily approved the Joint Stipulation of Class Settlement and Release, deeming it to be a fair and reasonable result for the Class; provisionally certified the Class; appointed Plaintiff Love as the Class Representative and

Plaintiff's Counsel, Sanford Heisler Sharp, LLP, as Class Counsel; approved RG/2 Claims Administration LLC ("RG/2 Claims") as the Settlement Administrator; approved the distribution of notice to all Class Members; and approved the establishment of a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder (Dkt. No. 19);

WHEREAS, on May 31, 2019, the Parties stipulated to amend the definitions of the "Class" and "Settlement Workweeks" in the Joint Stipulation of Class Settlement and Release, and on June 4, 2019, the Court approved the amendments. (Dkt. No. 22.) As amended, the Joint Stipulation of Class Settlement and Release is referred to herein as the "Settlement Agreement," "Settlement," or "Agreement";

WHEREAS, on June 4, 2019, the Court approved the amended Notice of Settlement of Class Action ("Notice" or "Class Notice") (Dkt. No. 22);

WHEREAS, the Settlement Administrator has certified that the Court-approved Notice of Settlement of Class Action was distributed to Class Members as approved by the Court (Declaration of Melissa Baldwin Detailing the Settlement Administrator's Due Diligence in the Settlement Administration Process ("Baldwin Decl."));

WHEREAS, on August 9, 2019, Plaintiff filed a Motion for Final Approval of the Joint Stipulation of Class Settlement and Release, Attorneys' Fees, Service Award, and Settlement Administrator Costs (the "Motion"), and no party opposed the Motion;

WHEREAS, a Final Approval Hearing was held on September 10, 2019;

WHEREAS, only one Class Member requested to be excluded from the Settlement, and no Class Member has submitted an objection to the Settlement Administrator (Baldwin Decl. ¶¶ 12-13);

WHEREAS, Class Member Louis Bonanno, Sr. has clarified that his submission to the Court (Dkt. No. 23) did not constitute an objection to the Settlement. (Declaration of Michael D. Palmer in Support of Plaintiff's Motion for Final Approval of the Joint Stipulation of Class Settlement and Release, Attorneys' Fees, Service Award, and Settlement Costs ("Palmer Decl."), Ex. 6.)

WHEREAS, the Court has analyzed and considered all terms and agreements between the Parties relating to the Settlement, including without limitation, the terms relating to the Class Notice, the terms relating to the calculation and distribution of monetary awards to Class Members, and the terms relating to Class Counsel's attorney fees, settlement administration costs, and the service award for Class Representative Love;

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's Motion for Final Approval of the Joint Stipulation of Class Settlement and Release, Attorneys' Fees, Service Award, and Settlement Administrator Costs is hereby GRANTED in its entirety. The Settlement is ORDERED APPROVED in its entirety. The terms of the Settlement Agreement are incorporated, and made part of this Order, as if copied herein, and shall be effective, implemented, and enforced as provided in the Settlement Agreement. The Parties to the Settlement are directed to effectuate its terms.

2. All terms contained and not otherwise defined herein shall have the same meaning set forth in the Settlement Agreement.

Final Certification of the Rule 23 Class Action and the FLSA Collective Action

3. The Court makes the following findings for settlement purposes:
- a. The members of the Class are so numerous as to make joinder impracticable; therefore, Federal Rule of Civil Procedure 23(a)(1) is satisfied;

- b. Plaintiff and Class Members share common questions of fact and law; therefore, Federal Rule of Civil Procedure 23(a)(2) is satisfied;
- c. Plaintiff's claims for unpaid wages arise from the same factual and legal circumstances that form the bases of the Rule 23 Class Members' claims; therefore, Federal Rule of Civil Procedure 23(a)(3) is satisfied;
- d. Plaintiff and Class Counsel have protected and will fairly and adequately protect the interests of Class Members; therefore, Federal Rule of Civil Procedure 23(a)(4) is satisfied; and
- e. Class Members' common factual allegations and common legal theory predominate over any factual or legal variations among Class Members, and a class action is superior to all other available methods for fairly and efficiently resolving the Class Claims; therefore, Federal Rule of Civil Procedure 23(b)(3) is satisfied.

4. Accordingly, for purposes of settlement only, pursuant to Federal Rule of Civil Procedure 23, the Court grants final certification of the Rule 23 Class, defined as:

All persons employed by Defendants as non-exempt dump truck drivers at any time between January 29, 2013 and July 31, 2015, during which they worked at least one workweek in which they (i) worked at least four days driving a truck of Defendants that was not registered to operate outside of Virginia, (ii) did not drive a truck of Defendants that was registered to operate outside of Virginia, and (iii) had not driven a truck of Defendants that was registered to operate outside of Virginia during the prior four months.

Final Certification of the FLSA Collective Action

5. The Court makes the following findings for settlement purposes only:

- a. The factual circumstances underlying the FLSA claims of Class Members are more similar than disparate;
- b. Individualized defenses do not predominate; and
- c. Collective treatment of the FLSA claims provides an efficient and cost-effective means of resolving common issues pertaining to Class Members.

6. Accordingly, for purposes of settlement only, pursuant to 29 U.S.C. § 216(b), the Court grants final certification of the FLSA Collective Action, defined as:

All persons employed by Defendants as non-exempt dump truck drivers at any time between January 29, 2013 and July 31, 2015, during which they worked at least one workweek in which they (i) worked at least four days driving a truck of Defendants that was not registered to operate outside of Virginia, (ii) did not drive a truck of Defendants that was registered to operate outside of Virginia, and (iii) had not driven a truck of Defendants that was registered to operate outside of Virginia during the prior four months.

Distribution of Class Notice

7. The Court also finds that due and adequate notice of the Settlement has been provided to the Class. The Court-approved Class Notice was distributed to Class Members. The Class Notice provided an accurate, objective, and clear explanation of the nature of the case and the claims alleged, the definition of the certified class, and the fact that Class Members were represented by Class Counsel but also had the right to hire their own attorney if they wished to do so. The Class Notice also clearly and accurately explained the terms of the Settlement Agreement, including the anticipated requests for attorneys' fees, settlement administration costs, and a service award, and the Settlement's binding effect. Further, the Class Notice provided a clear and accurate explanation of the process and deadline by which a Class Member could either seek exclusion or submit written objections to the Settlement.

8. The appointed Settlement Administrator, RG/2 Claims, distributed the Class Notice pursuant to the process approved by the Court in its Preliminary Approval Order (Dkt. No. 19, as modified by Dkt. No. 22.) The Settlement Administrator was provided Class Members' last known addresses, which it updated as necessary based upon the United States Postal Service's National Change of Address database. As provided in the Settlement and approved by the Court in its Preliminary Approval Order, follow-up efforts were made to send the Notice to those individuals whose original Notices were returned as undeliverable. The Court finds that the method by which Class Members were provided the Class Notice was valid, due, and sufficient.

9. No Class Member is recognized to have objected to the Settlement, and only one Class Member requested to be excluded from the Settlement. By his timely opt-out request, Danny Meadows is excluded from the Settlement Class and is thus not a Class Member and not bound by the terms of the Settlement.

Final Approval of Settlement Agreement

10. The Court finds that the Settlement Agreement is APPROVED as fair, reasonable, and adequate, pursuant to Federal Rule of Civil Procedure 23(e), and as meeting the applicable standards for settlement under the FLSA.

11. Specifically, the Court finds that:

- a. The Class Representative and Class Counsel have adequately represented the Class;
- b. The Settlement is the result of extensive, arm's-length, informed negotiations among the Parties after Class Counsel investigated the Class Claims and became familiar with the strengths and weaknesses of the Class Claims;
- c. The settlement process was non-collusive;

- d. The Settlement treats Class Members equitably relative to each other;
- e. The Settlement resolves a bona fide dispute over Fair Labor Standards Act provisions;
- f. Class Members strongly support the Settlement Agreement; indeed, only one individual opted out, and no Class Member is **recognized** to have objected to the Settlement;
- g. Class Counsel has significant experience in wage and hour class actions and strongly endorses the Settlement as an outstanding result for the Class; and
- h. Having thoroughly considered all terms and agreements between the Parties relating to the Settlement, as well as the significant costs, risks, and delay of trial and appeal had the case not settled, the Court finds that the Settlement provides substantial compensation for Class Members.

Distribution of Settlement Funds to Class Members

12. Defendants shall pay the Gross Settlement Amount plus the employer's share of payroll taxes within thirty (30) calendar days after the entry of this Order.

13. The Settlement Administrator shall calculate each Class Member's share of the settlement fund ("Net Settlement Amount Payment" or "NSA Payment") pursuant to the methodology set forth in the Settlement (Settlement ¶ 49) and shall mail all NSA Payments within ten (10) calendar days of the Effective Date (*infra* ¶ 24).

14. The back of each check will include the following printed statement: "I have received and read the Class Notice in *Love v. Virginia Land Improvement Corp.* By negotiating this check and accepting payment, I consent to be a party plaintiff in this collective action to collect unpaid overtime under the FLSA and agree that I have waived and released the Released Parties

from the Released Claims (including those under the FLSA) as defined in the Settlement Agreement and in the Notice in this lawsuit.”

15. By endorsing and negotiating the checks, Class Members will be deemed to have consented to join or “opted-in” to the FLSA settlement collective action (“Opt-in Class Members”).

16. Class Members will be provided six (6) months following distribution of the NSA Payments to negotiate their checks. Any Class Member who does not timely endorse and negotiate his or her check is considered a “Non-Opt-in Class Member.”

17. Six months after the distribution of the NSA Payments, the Settlement Administrator shall provide Class Counsel and Defense Counsel with scanned copies of the endorsed side of all NSA checks that were negotiated and a declaration as to their authenticity. Class Counsel shall file these documents with the Court to memorialize the Opt-in Class Members.

Attorneys’ Fees and Settlement Administration Costs

18. The Court finds that the requested award of Forty-Eight Thousand Dollars (\$48,000) to cover Class Counsel’s attorneys’ fees is fair and reasonable and grants the award.

19. Specifically, the Court finds that:

- a. Class Counsel obtained an outstanding result, achieving a substantial recovery for the Class, especially considering the substantial risks associated with continued litigation;
- b. Class Counsel’s requested fee award of approximately 38% of the total Settlement fund is within the ordinary range of percentages approved by courts, especially considering that Class Counsel is not separately seeking any recovery for expenses incurred in this case;

- c. Class Counsel has dedicated considerable time and effort investigating, prosecuting, and settling this case and obtaining Court-approval of the Settlement over nearly five (5) years, as Class Counsel's lodestar reflects. Class Counsel has invested over \$450,000 worth of time in obtaining a fair and reasonable settlement for the Class. The requested attorneys' fees amount to 11% of Class Counsel's lodestar; and
- d. Class Counsel is highly skilled and experienced in wage and hour class actions, and the requested fee award falls well within the norm for attorneys with Class Counsel's skills and depth of experience; and
- e. Class Counsel incurred significant risks in prosecuting this class action entirely on a contingency basis, as Class Counsel risked that it would never be compensated for the substantial time expended.

20. The Court further finds that the requested payment of \$7,000 for the fees and costs of RG/2 Claims, the appointed Settlement Administrator, is reasonable and necessary to administering the Settlement. The Court therefore awards this requested payment in full.

Service Award

21. The Court finds that the requested service award of \$5,000 for Class Representative Love is reasonable and well-justified in light of the substantial time and effort that he, the sole Named Plaintiff and Class Representative, has expended on behalf of the Class over the last five (5) years; the outstanding recovery achieved for the Class as a result of the Class Representative's indispensable service; the risks that the Class Representative faced by bringing this Lawsuit; and Class Members' overwhelming support for the terms of the Settlement, including its provision for a service award of \$5,000.

22. Accordingly, it is hereby ordered that Class Representative Paul Love will receive a service award of \$5,000.00.

Cy Pres Beneficiary Award

23. The Court finds that the distribution of residual monies to The Employee Rights Advocacy Institute for Law and Policy, a charitable public interest organization that advocates for employees' rights, is an appropriate *cy pres* remedy. Therefore, the Court approves of the *cy pres* distribution provided for in the Settlement and finds that it is fair and reasonable.

JUDGMENT

24. IT IS HEREBY ORDERED that if there is no appeal of this Order, the Effective Date of this Settlement will be forty (40) calendar days after the entry of the Order. If there is an appeal of this Order, the Effective Date of this Settlement will be fourteen (14) business days after the appeal is finally withdrawn, dismissed, or denied with prejudice.

25. IT IS HEREBY ORDERED that upon the Effective Date of this Settlement, Class Members will fully release and discharge the Released Parties¹ from the Released Claims, as provided below:

- a. Opt-in Class Members release the Released Parties from any and all claims arising at any point on or before July 31, 2015, which arise out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims which were pled or which could have been pled based on the factual allegations contained in the

¹ Per the Settlement Agreement, the "Released Parties" are Defendants, and their present and former parent companies (including GDC Contractors, Inc.), subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, owners, members, managers, co-joint ventures, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, successors and assigns. (Settlement ¶ 105.)

Complaint, including without limitation, any claims that on or before July 31, 2015, Opt-in Class Members were not paid for all work performed during weeks in which they worked over forty hours for Defendants, in violation of the FLSA and state and common law, including the law on quantum meruit and unjust enrichment, as well as all derivative claims for pre-judgment and post-judgment interest, penalties, punitive damages, and attorneys' fees and costs.

- a. Non-Opt-in Class Members release the Released Parties from any and all state and common law claims arising at any point on or before July 31, 2015, which arise out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims which were pled or which could have been pled based on the factual allegations contained in the Complaint, including without limitation, any quantum meruit or unjust enrichment claims based on allegations that on or before July 31, 2015, Non-Opt-in Class Members were not paid for all work performed during weeks in which they worked over forty hours for Defendants, as well as all derivative claims for pre-judgment and post-judgment interest, penalties, punitive damages, and attorneys' fees and costs.

26. IT IS HEREBY ORDERED that the Court enters final judgment on the Class Claims in accordance with the terms of the Settlement and this Order, and the entire Lawsuit is dismissed with prejudice, and without costs to any Party. By virtue of this Order, all Class Members, including Plaintiff, are bound by the Settlement Agreement and permanently barred

from prosecuting Released Claims against any of the Released Parties, as those terms are defined in the Settlement and this Order.

27. IT IS HEREBY ORDERED that the Court shall retain jurisdiction over the interpretation and implementation of the Settlement Agreement as well as any and all matters arising out of, or related to, the interpretation, implementation, or enforcement of this Settlement.

IT IS SO ORDERED.

DATED: 9/11/19



/s/
Theresa Carroll Buchanan
United States Magistrate Judge
HONORABLE THERESA C. BUCHANAN
UNITED STATES MAGISTRATE JUDGE