

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD ALLBAUGH, on behalf of himself and)
all others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
CALIFORNIA FIELD IRONWORKERS)
PENSION TRUST; BOARD OF TRUSTEES OF)
THE CALIFORNIA FIELD IRONWORKERS)
PENSION TRUST, PLAN ADMINISTRATOR)
OF THE CALIFORNIA FIELD IRONWORKERS)
PENSION TRUST,)
)
Defendants.)

CASE NO. 2:12-CV-00561-JAD-GWF

**ORDER
CONDITIONALLY CERTIFYING
CLASS 1, GRANTING
PRELIMINARY APPROVAL TO
CLASS ACTION SETTLEMENT,
DIRECTING NOTICE AND
SETTING DATE AND TIME OF
FAIRNESS HEARING**

ECF Nos. 221, 222

THIS MATTER COMING before this Court on Plaintiff’s Motion for Preliminary Approval of the Settlement Agreement (“Agreement”) and the Parties’ Joint Motion to conditionally certify Class 1 for Settlement purposes, and the Court having considered the motions, the Parties’ Settlement Agreement, and all exhibits thereto and having considered all the arguments and evidence at the hearing on Plaintiff’s Motion for Preliminary Approval of the Settlement Agreement,

1 IT IS HEREBY ORDERED that this Order incorporates by reference all
2 definitions in the Settlement Agreement and all terms used herein shall have the same
3 meanings as set forth in the Agreement.
4

5 IT IS FURTHER ORDERED that the Court conditionally certifies Class 1 for
6 settlement purposes pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure
7 consisting of:

8
9 Individuals identified by Defendants who are or were participants in the
10 California Ironworkers Pension Trust (the "Plan") (and their Eligible
11 Beneficiaries) who are vested under terms of the Plan and who: 1)
12 continued in employment past Normal Retirement Age; 2) did not receive
13 or are not scheduled to receive both an actuarial adjustment to their benefits
14 to compensate them for the delay in receipt of benefits after attainment of
15 Normal Retirement Age plus all of the retirement benefits each participant
accrued following attainment of Normal Retirement Age; and 3) were not
sent a notice of suspension of benefits describing the Plan's suspension of
benefits procedures as of the first month following attainment of Normal
Retirement Age.

16 IT IS FURTHER ORDERED:

17 1. The Court hereby preliminarily approves the Settlement described in the
18 Agreement as being fair, reasonable, and adequate for the members of Class 1 and Class
19

20 2.

21 2. The Court hereby approves, as to form and content, the Class Notice
22 **filed at Docket # ECF No. 226-1 (with the redlined changes attached hereto).**

23 3. The Court hereby approves the Change of Information Form
24 **filed at Docket # ECF No. 226-3.**

25
26 4. The Court finds that the mailing of the Notice constitutes the best notice
27 practicable under the circumstances and constitutes valid and sufficient notice to all
28 members of the Classes, complying fully with the requirements of Rule 23 of the Federal

1 Rules of Civil Procedure, the Constitution of the United States, and any other applicable
2 law.

3 5. A Fairness Hearing shall be held on 6/25, 2018, at 3 p.m.

4
5 before the Honorable Jennifer A. Dorsey, United States District Court Judge, at the
6 United States District Court for the District of Nevada, Lloyd D. George U.S.
7 Courthouse, 333 Las Vegas Blvd South, Las Vegas, Nevada 89101 for the purpose of
8 determining:

9
10 1. whether the proposed Settlement as set forth in the Agreement is fair,
11 reasonable and adequate, is in the best interests of the members of the Classes, and
12 should be approved by the Court;

13
14 2. whether an Order of Judgment should be entered, dismissing with
15 prejudice the claims of the Named Plaintiff and the Classes against Defendants, and that
16 provides for the following:

17 1. adjudging the Settlement to be fair, reasonable and adequate;

18
19 2. ordering that the Settlement is approved, directing consummation of the
20 terms and provisions of the Agreement, and requiring the Parties to take
21 the necessary steps to effectuate the terms of this Settlement;

22 3. entering the Final Judgment;

23
24 4. determining pursuant to Rule 23(c)(2) of the Federal Rules of Civil
25 Procedure that the Class Notice constitutes the best notice practicable
26 under the circumstances, and that due and sufficient notice of the
27 Fairness Hearing and the rights of all Class 1 and Class 2 members has
28 been provided;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. determining that Defendants complied with CAFA and their notice obligations by providing appropriate federal and state officials with information about the Settlement;
6. ordering that each member of the Classes who has not opted out shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally and forever settled, released, relinquished, waived and discharged from all Released Claims, and (ii) barred from suing Defendants or the Related Parties in any action or proceeding alleging any of the Released Claims;
7. dismissing with prejudice the Action and claims asserted in the Complaint, and the First Amended Complaint, whether asserted by Named Plaintiff on his own behalf or on behalf of the Classes, without additional cost to any of the Parties other than as provided for in the Agreement;
8. directing Defendants pay Settlement Awards consistent with the terms of the Agreement;
9. awarding attorneys' fees and costs for Class Counsel pursuant to the Fee Application consistent with the terms of the Agreement;
10. awarding the Case Contribution Award to Named Plaintiff consistent with the terms of the Agreement;
11. ordering the Parties' submission to, and the District Court's continuing retention of, exclusive jurisdiction over this matter for the purpose of effectuating and supervising the enforcement,

1 interpretation or implementation of the Settlement, and resolving any
2 disputes that may arise hereunder;

3 12. entering an injunction barring any Settlement Class member from
4 filing a separate action with respect to the Released Claims; and

5 13. entering an order stating that neither the Parties nor their counsel shall
6 be liable to any person for any determinations made by Class Counsel
7 on the Plan of Allocation or for any mistakes, incorrect or incomplete
8 data relied upon by Plaintiffs in preparing and producing the Plan of
9 Allocation.
10 Allocation.

11
12 3. The Parties are directed to add the date and time of the Fairness Hearing,
13 the deadline to object to the Settlement, Fee Award and Case Contribution Award and
14 other dates and information as applicable to the Class Notice and Change of Information
15 Form.
16 Form.

17 4. Defendants are directed to mail the Class Notice and Change of
18 Information Form to each Settlement Class Member at the last known address provided
19 by Defendants or identified through the United States Postal Service or commercial
20 address update service within 14 days following entry of this Preliminary Approval
21 Order.
22 Order.

23 5. Defendants shall pay all of the costs and expenses of implementation of the
24 Settlement including, but not limited to, Class Notice and attendant distribution expenses
25 such as postage, printing, search expenses, duplicating and mailing of the Class Notice
26 and Change of Information Forms. The cost of processing payments under the Agreement
27 shall be borne by Defendants. If the Settlement or this Agreement is terminated for any
28

1 reason, the Parties shall have no obligation to reimburse any other Party for any other
2 costs or expenses incurred under the Agreement.

3
4 6. No later than 28 days prior to date of Fairness Hearing Class Counsel shall
5 file the Fee Application and motion for a Case Contribution Award and the Parties may
6 separately or jointly file motions for final approval of the Settlement. The hearing on
7 Class Counsel's Fee Application and motion for Case Contribution Award shall be
8 consolidated with the Fairness Hearing.
9

10 7. Class members who wish to opt-out of the Action must pursuant to Fed. R.
11 Civ. P. 23(b)(3) may do so provided he or she submits to the Court, with copies to Class
12 Counsel and Defendants' Counsel, a written request setting forth the following: (1) the
13 Class Member's name; (2) the Class Member's mailing address and phone number; and
14 (3) the statement "I want to be excluded from the Field Ironworkers Pension Trust
15 Settlement." To be timely, a written request to be excluded from the Classes must be
16 postmarked on or before fourteen (14) days prior to the date set for the Fairness Hearing
17 and must be hand delivered or mailed, with sufficient postage prepaid and affixed. Any
18 Party who receives an opt-out notice shall immediately inform the other Party. Any Class
19 member (or his or her attorney) who fails to comply with the procedure for opting out set
20 forth in this paragraph shall waive any rights the Class member may have to opt out of
21 the Classes and shall be bound by all the terms of the Agreement and by all proceedings,
22 orders, and judgments in the Action.
23
24
25

26 8. Class members who wish to comment or object to the Agreement, the Plan
27 of Allocation or to the Fee Application or Case Contribution Award must do so no later
28

1 than fourteen (14) days prior to the Fairness Hearing in accordance with the instructions
2 set forth in the Class Notice.

3
4 9. The Parties may file any written replies to objections no later than five (5)
5 calendar days before the Fairness Hearing.

6 10. If the Settlement does not receive Final Approval, either Party shall have
7 the right to declare the Settlement null and void with no further force and effect within
8 five (5) days of an order denying approval or directing material modifications to the
9 Agreement and/or the Plan of Allocation, and the Action shall resume without prejudice
10 to the rights (including, but not limited to, appeal rights) of any Party, unless the Parties
11 successfully renegotiate the settlement and obtain final approval of the renegotiated
12 settlement. In the event a Party declares the Settlement null and void, the Action and any
13 orders entered in connection with the application for approval of the Settlement shall be
14 restored to the *status quo ante* as it existed on December 6, 2017. In such event, any
15 statements made by any Party in any documents, settlement documents, court appearance
16 or drafts in connection with this Agreement shall not be admissible in any proceeding or
17 otherwise used in connection with this Action.
18
19
20

21 11. The Court reserves the right to continue or adjourn the date of the Fairness
22 Hearing and any adjournment thereof without further notice to Settlement Class members
23 and retains exclusive jurisdiction to consider all further matters arising out of or
24 connected with the proposed settlement.
25

26 IT IS SO ORDERED.

27 
UNITED STATES DISTRICT COURT JUDGE

28 DATED: 4/13/18

connection with the Settlement Agreement. Capitalized terms in this Notice have the same meaning as those set forth in the Settlement Agreement, which has been filed with the Court. Please read it carefully.

- **You do not need to take any action at this time unless one of the following applies:**
 - **you have a new address or need to provide notification of the death of a Class Member;**
 - **you wish to be excluded from the Settlement by opting out of the lawsuit; or**
 - **you wish to object to the Settlement or payment of Class Counsel's attorneys' fees and costs or the Case Contribution Award to Donald Allbaugh for the services he provided to the Classes that helped result in this Settlement.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive the Individual Settlement Award approved by the Court
EXCLUDE YOURSELF	Receive no Individual Settlement Award or rights under this Settlement. This is the only option that allows you to bring your own lawsuit about the claims in this case
OBJECT	Write to the Court about why you don't like the Settlement and speak in Court if you have filed a written objection

- These rights and options -- **and the deadlines to exercise them** -- are explained in this Notice.
- The Court in charge of this case will decide whether to approve the Settlement. Settlement Awards will be paid only if the Court approves the Settlement and any appeal is resolved without affecting the Settlement. Please be patient.

WHY DID YOU RECEIVE THIS NOTICE?

This Notice was sent to you because you have been identified as a Class 1 or Class 2 Member in the lawsuit titled *Allbaugh v. Cal. Field Ironworkers Pension Trust*, No. 2:12-cv-00561-JAD-GWF, which is currently pending in the United States District Court for the

1 prior to retirement and who as of the date of death did not have a surviving
2 spouse eligible to receive benefits under the Plan will receive an Individual
3 Settlement Award of \$1,000.

4 C. Settlement Statistics

- 5 • There are a total of 286 Members of the Classes. Of this amount,
6 approximately 75 are Members of Class 1 only, 55 are Members of Class 2
7 only, and 156 are Members of both Class1 and Class 2.
8
9 • The highest Individual Settlement Award being paid to a Class 1 Member
10 who is in Class 1 only is \$ 4,948.33; the lowest amount is \$1,000.
11
12 • The highest Individual Settlement Award being paid to a Class 2 Member is
13 \$ 376,311.77; the lowest amount is \$1,000.

14 Your estimated Individual Settlement Award is based on data unique to you and is
15 listed on the first page of this Notice. These amounts are calculated based on Court approval
16 of the Fee Application and the requested Case Contribution Award. However, your actual
17 Individual Settlement Award may be higher or lower depending on whether new or
18 corrected data is provided or discovered and the Court's rulings on the Fee Application and
19 Case Contribution Award.
20
21

22 **WHAT MUST YOU DO TO RECEIVE INDIVIDUAL SETTLEMENT BENEFITS?**

23 If you are a Class 1 or Class 2 Member and you received an individualized Notice
24 addressed to you with an Individual Settlement Award estimate, you do not need to do
25 anything to receive your Individual Settlement Award.
26

27 It is important that Defendants have current information for you. If your mailing
28 address is *incorrect* on this Notice, you should complete the enclosed Change of

1 pocket expenses for expert actuaries, depositions and other costs that have not been
2 reimbursed. It has done so with the understanding that, if it obtained a recovery for the
3 Classes, its expenses would be reimbursed and Class Counsel would receive fees from the
4 common fund established through their efforts.

5 **WHAT IS THE CASE CONTRIBUTION AWARD?**

6
7 Named Plaintiff has requested a Case Contribution Award of \$50,000. The Case
8 Contribution award is designed to compensate the Named Plaintiff for his significant time
9 and effort that contributed to making the Settlement possible. The Named Plaintiff brought
10 this lawsuit, made numerous efforts to obtain important documents, engaged in an extensive
11 investigation, answered extensive interrogatories and requests for production, provided
12 declarations that were filed with the Court, prepared for, traveled to and participated in
13 depositions, traveled to and attended Court in order to participate in the Settlement
14 Conference and consulted with Class Counsel throughout the lawsuit and mediation efforts.
15

16 **WHAT IS THE PROCEDURE FOR APPROVING THE SETTLEMENT OR** 17 **OBJECTING TO THE SETTLEMENT OR THE REQUEST FOR ATTORNEYS'** 18 **FEES AND COSTS OR CASE CONTRIBUTION AWARD?**

19 The Court will hold a hearing on June 25, 2018, at 3:00 p.m. at the United States
20 District Court for the District of Nevada, 333 Las Vegas Blvd. South, Las Vegas, NV 81901
21 to decide whether to approve the Settlement. This time and date may be changed without
22 further notice. If you are planning to attend in person, you should check with Class Counsel
23 at the email address or phone number listed on the last page of this Notice to verify the date
24 and time. At the hearing, the Court will consider whether the Settlement is fair, reasonable
25 and adequate. If there are written objections, the Court will consider them. The Court will
26 also consider the motion for attorneys' fees and costs and for a Case Contribution Award.
27
28