

MEMORANDUM OF UNDERSTANDING
(DeSilva v. Independence Logistics, Alameda County
Superior Court, Case No. RG17855933)

1. Parties. This Memorandum of Understanding (“MOU”) is entered into by and between the parties to the civil action entitled DeSilva v. Independence Logistics, et al., Alameda County Superior Court, Case No. RG17855933 (The “Action”) Those parties include CLAUDE DE’SILVA, individually and as class representative (“Plaintiff”) and INDEPENDENCE LOGISTICS, a corporation (“Defendant”). Individual defendant ZAHOR KAREEM is a party to the Action, but is to be dismissed without prejudice upon Preliminary Approval of this MOU, as described in paragraph 2 below.
2. Court Approval Required. This MOU is contingent upon, and subject to, the approval of the court, pursuant to a Motion for Preliminary and Final Approval of its terms to be filed by the counsel for the Plaintiff in the Action, with the cooperation of the Defendant. The Motion for Preliminary Approval shall include a reasonable time for mailing of the class notice to class members, in a form approved by the court as a condition to preliminary approval. The Defendant will provide last known contact information to the class administrator, to facilitate the class notice.
3. Settlement Amount. Independence Logistics shall pay the total amount of \$300,000.00 ("Total Settlement Amount") on an "all-in," non-reversionary basis to settle the Plaintiffs’ and the putative class action members’ claims in the above-referenced matter. This amount is the sum of the Defendant’s payment to resolve the Action, and includes class member payments, class representative enhancements, contributions for PAGA penalties, attorneys’ fees, costs, and third-party administration costs. This amount will not, however, include the employer’s share of payroll taxes, if any, for that portion of the Total Settlement Amount for which the employer may have an obligation for the employer’s portion of payroll taxes. Such amount shall remain the responsibility of the paying Defendant(s). This Total Settlement Amount is designed to compensate Plaintiff and the approximately 135 putative class members, defined as “drivers who were, are, or will be employed by Defendants within four years prior to the date of the filing of the initial complaint (April 3, 2017) through the 31st day of December, 2017.
4. Allocation of Settlement Amount. The parties agree that the Total Settlement Amount is allocated to 100% to statutory penalties, attorneys fees, interest and costs. Class members will be responsible for paying any personal income taxes owed on the amounts they receive.
5. Timing of Settlement Payments. The Total Settlement Amount shall be paid into the Settlement Administrator’s trust account (“Trust Account”) as follows:
 - a. Within 15 days of the Final Order of Approval of the class action settlement, the Defendant shall deposit into the Trust Account, the amount of \$75,000.
 - b. On a quarterly basis thereafter, commencing 90 days after the Final Order of Approval, the Defendant shall pay \$25,000, until the Total Settlement Amount is fully funded.
 - c. In addition to the Total Settlement Amount, the Defendant will deposit into the Trust Account, the amount sufficient to cover the employer’s required payroll taxes, if any, for that portion of the Total Settlement Amount that is allocated to unpaid wages.
 - d. Payments shall be made to the Claims Administrator’s trust account to be administered in accordance with the terms of the court’s approved settlement.

6. Attorneys' Fees and Costs: Defendant will not oppose Class Counsel's request for fees not to exceed one-third of the Total Settlement Amount. Plaintiffs' actual out-of-pocket litigation costs and settlement administration costs will also be paid out of the Total Settlement Amount, separate from the fees requested. The Parties expressly agree that the Court's approval or denial of any requests for attorneys' fees and out-of-pocket litigation costs are not material conditions to this MOU, and are to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application by Class Counsel of an award for fees and costs shall not operate to terminate or cancel this agreement, provided that, in no event, shall the Defendant be subject to any additional amount, whether for attorneys fees or otherwise, above and beyond the Total Settlement Amount, except as provided in Paragraph 17 below. If Class Counsel appeal any denial of fees or costs, the un-awarded fees/costs that are subject to the appeal will remain in trust until such time as the appeal is resolved, and the unchallenged remainder of the settlement (including all fees-costs actually awarded) will be distributed based upon the Court's approval. To the extent the Court awards (and, if an appeal is filed, an appeal affirms) less than the amount of attorneys' fees and costs requested by Class Counsel, the remaining amount will be redistributed among class members who participate on a pro rata basis.
7. Class Representative Enhancement and Release: Defendant will not oppose Class Counsel's request for an enhancement payment to Lead Plaintiff Claude DeSilva, not to exceed \$10,000 (to be paid out of the Total Settlement Amount). In exchange for receiving an enhancement, the Plaintiff will provide a full, general release of all claims (including known and unknown) against Defendant to its current and former agents, co-employers, Federal Express and its related entities, as well as Zahoor Kareem, his spouse, owners, board members, alter egos, predecessors, successors and assigns, under California Civil Code section 1542, including his individual claims. The Parties expressly agree that the Court's approval or denial of any request for an enhancement payment is not a material condition to this agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application by Class Counsel of the class representative enhancement shall not operate to terminate or cancel this agreement. If Class Counsel appeal any denial of this enhancement the un-awarded enhancement that is subject to the appeal will remain in trust until such time as the appeal is resolved, and the unchallenged remainder of the settlement (including the enhancement actually awarded) will be distributed based upon the Court's approval. To the extent the Court awards (and, if an appeal is filed, an appeal affirms) less than the amount of the requested enhancement, the remaining amount will be redistributed amongst class members who participate on a pro rata basis.
8. Release by Class Members: Class members other than the Plaintiff (who, as described above, will provide a full, general release), will generally release all claims, including a Section 1542 waiver, for all claims alleged in the operative complaint in the Action, and any additional wage-and-hour claims that could have been brought based on the facts alleged therein, through the date of Preliminary Approval ("Released Matters"). The

Release of Released Matters shall extend to the Defendant, to its and his current and former agents, co-employers, Federal Express and its related entities, Zahoor Kareem and his spouse, owners, board members, alter egos, predecessors, successors and assigns.

9. Class Liability Period.: This settlement and the Released Matters shall be on behalf of drivers within the class definition, for the period from April 3, 2013 (four years prior to the Complaint filing) through the 31st day of December, 2017. The current list of putative class members is attached as Exhibit 1. If the number of class members increases by more than five (5) individuals, then a *pro rata* increase in the Settlement Amount will be required.
10. Settlement Allocation: The settlement allocation among class members will be determined at the discretion of Class Counsel, subject to the Court's approval, and will be based upon the workweeks during the applicable class periods of each class member. The notice of settlement to class members will advise them of their minimum settlement allocations and opportunity to opt-out of the settlement. The allocations of any California class members who opt out will be allocated pro rata to the participating class members at the time of settlement disbursement, and second and third settlement payments will only go to class members who cash the first settlement checks. Any checks that remain uncashed after 90 days of the final distribution will be voided and the amount will be allocated to Legal Aid at Work, a suitable cy pres recipient following California's standards.
11. PAGA Allocation: One percent of the gross settlement amount shall be allocated to PAGA, with 75% paid to the California Labor Workforce Development Agency, and 25% paid to the class.
12. Blow-Up Provision: If more than 10% of the putative class members affirmatively, effectively opt-out of the settlement, Defendant may, at its sole discretion, void the Settlement, by notifying Class Counsel and the Settlement Administrator within ten calendar days of being told by email and US Mail that 10% of the putative class members have opted out. If Defendant voids the Settlement under this paragraph, with ten days thereafter, the Settlement Administrator will return to Defendant all amounts paid into the Settlement Administrator's Trust.
13. Cooperation During Settlement Administration and Maximizing Participation: The parties agree to cooperate throughout the finalization of the settlement and administration of the settlement to expedite final resolution of the claims and to maximize participation from the class members in the settlement. The parties agree that the class will have 60 days to opt out of the settlement, or as otherwise designated by the Court, and will receive notice by first-class mail and email (where email addresses are available from Defendant's electronic employment records). If their notices are undelivered, they will receive a re-mailed notice to a new address (if their original address is no longer valid) based upon a National Change of Address database search and other available information. Participating class members will receive a reminder postcard if they have not cashed their settlement check 30 days after issuance. Defendant will participate in a dispute procedure, with Class Counsel, to resolve any disputes raised by class members based upon the workweeks used for their respective settlement allocations. Class Counsel will set up a website to provide all settlement documents and other case-related documents online for class members' review.

14. Claims Administrator: At the time of the signing of this agreement, the parties will jointly select a suitable, experienced claims administrator, after soliciting bids from multiple claims administrators (Rust, JND, RG2). The Claims Administrator will issue to class member-claimants forms 1099 for all amounts paid under this settlement, making all applicable deductions and withholdings required by law. Any Incentive Awards approved by the Court will result in the issuance of Form 1099s to the class representative, who shall assume full responsibility and liability for the payment of their own taxes due on such awards.
15. Distributions. The Claims Administrator will proceed with two pro rata distributions to the settlement class members, attorneys, class representative: (1) within 30 days of the settlement fund reaching \$100,000; and, (2) within 30 days of \$200,000 total having been paid to the settlement fund; and (3) within 30 days of the last periodic payment and payment of the additional settlement proceeds.
16. Deadlines for Documents: Plaintiffs will make an effort to file preliminary approval papers within two weeks of finalizing this MOU, with the intention of seeking Final Approval not later than 120 days thereafter, subject to the Court's calendar. Class Counsel will prepare the preliminary and final approval papers.
17. This MOU and documents filed in connection with it shall not constitute an admission on behalf of Defendant, or any of party, of any form of liability or the accuracy of any allegation made by plaintiffs or their counsel.
18. In the event that the defendants have failed to make a quarterly payment within the time specified under this agreement, the Claims Administrator shall notify counsel for record for all the parties, in addition to notifying Zahoor Kareem by email to zkareem@gmail.com, with a copy to Michael Farbstein, maf@farbstein.com. Defendant shall have 10 calendar days from the date of email to the Defendant via Zahoor Kareem and to counsel to cure any such breach. In the event of a failure to cure, the entire amount of the Total Settlement Amount shall be accelerated as due and owing, in addition to additional payment of 66% of the unpaid portion of the Total Settlement Amount (.66 x unpaid portion), to reflect an amount closer to the full relief Plaintiff claims in his suit ("acceleration boost"). The combined amount of the unpaid portion of the Total Settlement Amount and the acceleration boost may be enforced filing Exhibit 2, a stipulated judgment pursuant to California Code of Civil Procedure, Section 664.6, which shall not be filed except in the event of default under this paragraph. Zahoor Kareem shall hereby does personally guarantee the payment of the Total Settlement Amount, as calculated under this paragraph, and agrees and stipulates to his restoration as a party to the Action, and to the motion proceedings under Section 664.6 and to the form of judgment attached as Exhibit 2.
19. The court shall retain jurisdiction for this purpose of enforcement. The nonbreaching party shall be entitled to reasonable attorneys' fees and costs for the enforcement of the obligation under this paragraph.

SO AGREED:

Dated: Dec 3, 2020

Class Representative




Claude de Silva (Dec 3, 2020 23:02 PST)

Claude DeSilva


Dated: Dec. 4, 2020

Independence Logistics, Inc.,

By 

Zahoor Kareem
President

Dated: Dec. 4, 2020




Zahoor Kareem, individually

Approved as to Form

Dated: Dec 4, 2020

Bryan Schwartz Law



bryan schwartz (Dec 4, 2020 07:13 PST)
Bryan J. Schwartz
Attorneys for Plaintiff and Proposed Class

Approved as to Form

Dated: Dec. 4, 2020

Farbstein & Blackman, A Professional Corporation

By Michael Farbstein

Michael A. Farbstein









12.3.2020_DeSilva v Independence Logistics (MOU)

Final Audit Report

2020-12-04

Created:	2020-12-03
By:	Natalie Rudin (natalie@bryanschwarzlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXHKYC9Tu50_X43mVvYsq-Xpe8Xb0zkAt

"12.3.2020_DeSilva v Independence Logistics (MOU)" History

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2020-12-03 - 10:48:04 PM GMT - IP address: 76.126.213.50
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2020-12-03 - 10:48:52 PM GMT
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2020-12-03 - 11:04:28 PM GMT - IP address: 69.147.91.62
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Signature Date: 2020-12-04 - 7:02:07 AM GMT - Time Source: server- IP address: 172.58.94.153
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2020-12-04 - 7:02:09 AM GMT
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2020-12-04 - 3:13:41 PM GMT - IP address: 64.233.172.45
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Signature Date: 2020-12-04 - 3:13:58 PM GMT - Time Source: server- IP address: 69.181.131.81
-  Agreement completed.
2020-12-04 - 3:13:58 PM GMT