

Bryan Scharzt Law
Attn: Schwartz, Bryan
1330 Broadway
Suite 1630
Oakland, CA 94612

Farbstein, Michael A.
411 Borel Ave., Ste. 425
San Mateo, CA 94402-3518

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

De'Silva <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS. Independence Logistics, a corporation	No. <u>RG17855933</u> Order Motion for Preliminary Approval of Class Settlement Granted
Defendant/Respondent(s) (Abbreviated Title)	

The Motion for Preliminary Approval of Class Settlement was set for hearing on 04/30/2021 at 10:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion of plaintiffs for preliminary approval of class action settlement is GRANTED.

The order of 4/2/21 identified certain concerns with what was at that time the proposed settlement. The parties have agreed to a revised settlement that addresses the court's concerns.

The complaint alleges claims on behalf of hourly employees and asserts claims for Labor Code. There are approximately 135 members of the class.

The defendant has gone out of business. This is a significant factor in the settlement.

The case preliminarily settled for a total of \$300,000. The settlement agreement states there will be attorneys' fees and cost of up to \$120,000 (40%), costs of up to \$4,490, a service award of \$10,000 for the class representative, a net PAGA payment of \$2,250, and settlement administration costs of up to \$22,800. After these expenses of approximately \$140,000, the class would get \$140,000. The average payout per class members would be \$1,000.

Defendant will fund the settlement over several months. The amended settlement agreement uses the following timeline:

(1) the first installment, which shall be distributed after one quarter (3 months) after Final Order of Approval, shall go to litigation costs (\$5,000), settlement administration costs (estimated at \$15,000), the LWDA (\$2,250), the named plaintiff (\$10,000), and the absent class members (\$67,750);

(2) a second installment, which shall be made after one more year following the first installment, goes to the absent class members (\$80,000), and class counsel (\$20,000); and

(3) the final installment, which shall be made after one more year after the second installment, shall go to class counsel (\$100,000).

(Goldsmith Supp. Decl., Ex. B at ¶ 15.) This is appropriate, as it prioritizes the interests of the members of the class.

The proposed class notice form and procedure are adequate.

The proposed class is appropriate for class certification.

The motion makes an adequate analysis as required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116. The defendant has gone out of business. This is a significant factor in the settlement.

The scope of the release for the class is appropriate. The scope of the class release is limited to the claims arising out of the claims in the complaint. The release of claims by the class is limited by the "factual predicate rule." (*Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590.) (See also *Hendricks v. Starkist Co* (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].)

The scope of the release for the absent class members cannot include a Civil Code 1542 release or an equivalent release. Only the named plaintiff can have a Civil Code 1542 general release.

The court notes and approves of the plan to distribute the settlement funds with no claims process.

Unclaimed funds are paid to the Impact Fund. Counsel for Plaintiff has provided a declaration in support of the motion that provides the information required by CCP 382.4 regarding the absence or presence of a relationship between counsel and the residual beneficiary.

The Court will not approve the amount of attorneys' fees and costs until final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451.)

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 227.)

"In any class action there is always the temptation for the attorney for the class to recommend settlement on terms less favorable to his clients because a large fee is part of the bargain. ... [T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms.' ... "The evil feared in some settlements-unscrupulous attorneys negotiating large attorney's fees at the expense of an inadequate settlement for the client-can best be met by a careful ... judge, sensitive to the problem, properly evaluating the adequacy of the settlement for the class and determining and setting a reasonable attorney's fee....'" (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555-556.)

The court notes that counsel seeks fees of \$120,000, which is 40% of the total fund. The court sets out its standard analysis below. Counsel may address that analysis in the fee application.

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11.) The Ninth Circuit's benchmark is 25%. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case." (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419.)

(See also Heritage Pacific Financial, LLC v. Monroy (2013) 215 Cal.App.4th 972, 1006-1007.)

On the specific facts of this case, the court will consider fees of up to \$120,000 (40%) because counsel for plaintiff structured the settlement so that the members of the class are paid first and counsel will be paid later.


The Court will not decide the amount of any service award until final approval hearing. Plaintiff must provide evidence regarding the nature of his participation in the action, including a description of his specific actions and the amount of time he committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) The court's standard service award is \$5,000.

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

The court will sign the proposed order. The court sets 9/10/21 for the final approval hearing. Plaintiff must reserve a hearing for the motion for final approval.

Dated: 04/30/2021

Facsimile


Judge Winifred Y. Smith