

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Claude De'Silva Plaintiff/Petitioner(s) VS. Independence Logistics, a corporation et al Defendant/Respondent(s)	No. RG17855933 Date: 10/29/2021 Time: 10:00 AM Dept: 21 Judge: Evelio Grillo
ORDER re: Hearing on Motion - Other Motion for Final Approval of Class Settlement	

The Motion for Final Approval of Class Settlement Filed for Plaintiff filed by Claude De'Silva on 08/20/2021 is Granted.

The motion of plaintiffs for final approval of class action settlement is GRANTED.

APPROVAL OF THE SETTLEMENT

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

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(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. There were no opt out and no objections.

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.

APPROVAL OF FEES, COSTS, AND SERVICE AWARD

"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*

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(2009) 175 Cal.App.4th 545, 555-556.)

The court awards fees of \$120,000, which is 40% of the total fund.

The Ninth Circuit's benchmark is 25%. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

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.)

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 award fees of \$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 approves a PAGA payment of \$3000 with a net payment to the LWDA of \$2250.

The court approves costs of \$4902.18.

The court approves settlement administration costs of \$22,800.

The court approves a service award of \$7,500 to the named plaintiff. Plaintiff provided evidence regarding the nature of participation in the action, including a description of specific actions and the amount of time committed to the prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

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

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Court will at that time release any hold-back of attorney fees.

The court will sign the proposed order and judgment, which are modified by this order.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 10/29/2021



Evelio Grillo / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 11/05/2021
PLAINTIFF/PETITIONER: Claude De'Silva	Chad Finke, Executive Officer / Clerk of the Court By: <u>C. Wright</u> Deputy
DEFENDANT/RESPONDENT: Independence Logistics, a corporation et al	C. Wright
CERTIFICATE OF MAILING	CASE NUMBER: RG17855933

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the General Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 11/05/2021

By:

Chad Finke, Executive Officer / Clerk of the Court

C. Wright

C. Wright, Deputy Clerk

CERTIFICATE OF MAILING