

The motion makes an adequate analysis as required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

The scope of the release for the class is appropriate. (Settlement Agt, Exh C.) The scope of the class release must be 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 court notes and approves of the plan to distribute the settlement funds with no claims process. (Settlement Agt para 81.)

Unclaimed funds are paid to Code Green Campaign, a first responder mental health organization. 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. (Sitkin Dec., para 87.)

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.)

The court will independently evaluate the motion for attorneys' fees and costs. "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.)

The court's independent review is required by law in every case and is not a reflection on counsel in this case. "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 \$27,424,615, which is 33% of the total fund for this settlement and the previous partial settlement. 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.)

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.

On the facts of this case, the court will consider that counsel prosecuted the case through trial and settled the case after the presentation of evidence and argument but before the court issued its final decision. When awarding fees in *In re Vitamin Cases* (2003) 110 Cal. App. 4th 1041, 1056, the Court noted that a large multiplier might not be justified where a case is "resolved without the risks of trial." (See also *In re Auction Houses Antitrust Litig.* (S.D.N.Y. 2000) 197 F.R.D. 71, 76.) The court similarly considers the additional risk of prosecution through trial.

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.) The overtime and PAGA claims in this case have fee-shifting provisions, which decreased the contingent risk.

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.

Plaintiffs must file the motion for fees and for service awards on or before 9/2/20.

Plaintiffs must file the motion for final approval of settlement on the schedule

Dated: 07/01/2020

Facsimile


Judge Winifred Y. Smith

SHORT TITLE:

Helmick VS Air Methods Corporation

CASE NUMBER:

RG13665373

ADDITIONAL ADDRESSEES

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


Case Number: RG13665373
Order After Hearing Re: of 07/01/2020

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 07/01/2020.

Chad Finke Executive Officer / Clerk of the Superior Court

By  Digital

Deputy Clerk