



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

LUCIO BARRERA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DNJ INTERMODAL SERVICES, LLC,

Defendant.

Case No. 2015 CH 09701

Judge Anna M. Loftus

Calendar ~~59~~ 15
Courtroom ~~2801~~ 2410

PRELIMINARY APPROVAL ORDER

This matter having come before the Court for consideration of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (Motion), the Court having considered and reviewed Plaintiff's Motion, the Parties' Settlement Agreement, and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement,

IT IS HEREBY ORDERED:

1. Unless stated otherwise, all capitalized terms used in this Order shall be defined and interpreted in accordance with the definitions in the Parties' Settlement Agreement.
2. The Parties have applied to the Court for preliminary approval of the proposed Settlement, the terms of which are set forth in the Settlement Agreement, and have provided the Court with sufficient information to enable it to determine whether to certify the Settlement Class and order that notice be given to the Class Members.
3. Subject to further consideration by the Court at the time of final approval, the Court preliminarily approves the Parties' Settlement as falling within the range of possible final approval

and as meriting notice to the Class Members for their consideration.

4. For settlement purposes only, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, the Court hereby preliminarily certifies the Settlement Class defined as:

All persons (1) who entered into Independent Contractor agreements or similar contracts for services with DNJ Intermodal Services, LLC, individually or on behalf of another entity, and (2) personally provided drayage services as drivers pursuant to that agreement and/or contract in the State of Illinois at any time during the applicable statute of limitations.¹

The class includes all such persons who performed the described services from 10 years prior to the filing of the Complaint through the date the Settlement Agreement is executed.

5. On August 31, 2017, the Court (Judge Pantle) granted Plaintiff's motion to certify the Class, finding that the proposed Class satisfied all of the prerequisites to maintenance of a class action listed in Section 2-801.

6. The Court further finds, preliminarily and for settlement purposes only, that the Settlement was negotiated in good faith and the relief provided for the Class Members under the Settlement Agreement is fair, reasonable, and adequate. In particular, Plaintiff and Class Counsel have adequately and capably represented the Settlement Class; the Settlement Agreement was negotiated at arms-length between the Parties and only reached following an arms-length mediation before an experienced mediator, the Hon. James R. Epstein (Ret.) of JAMS Chicago; the monetary relief provided for the Settlement Class constitutes adequate compensation; and the Settlement Agreement treats Class Members equitably relative to each other.

7. The Court appoints Plaintiff Lucio Barrera as Class Representative of the

¹ For purposes of this Settlement, the Parties agree that the limitations period for the Class Members is the period beginning 10 years prior to the filing of the Litigation (i.e. beginning on June 22, 2005), 735 ILCS 5/13-206.

Settlement Class, and the following counsel are appointed as Class Counsel:

Caffarelli & Associates Ltd.
224 S. Michigan Avenue, Suite 300
Chicago, Illinois 60604

8. The Court finds that Plaintiff and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the members of the Settlement Class in accordance with Section 2-801(3).

9. The Court approves, in form and content, the plan for notifying the Settlement Class as set forth in the Settlement Agreement and its attendant Exhibits and finds that the Notice provides the best notice practicable under the circumstances of this Settlement. The Court further finds that the Parties' proposed Notice satisfies Due Process, such that the Settlement Agreement will be binding on all Settlement Class Members upon final approval. The Court finds that the proposed Notice is clearly designed to advise the Class Members of their rights.

10. No notice other than that specifically identified in the Settlement Agreement and its attendant Exhibits is necessary in this action. The Parties shall modify the Notices as discussed in open court on May 18, 2023 and, by agreement, may revise the Notices in ways that are not material, or in ways that are appropriate to update the documents for purposes of accuracy, readability, or formatting.

11. The Court approves the establishment of the Settlement's \$3,250,000.00 Settlement Fund, which shall be funded and administered as a Qualified Settlement Fund in accordance with Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 and the terms of the Settlement Agreement.

12. Analytics LLC is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully described in the Settlement Agreement. The Settlement Administrator shall proceed with the

distribution of class notice, as set forth in the Settlement Agreement and its attendant exhibits.

13. The Settlement Administrator shall effectuate Notice to the Settlement Class in accordance with the Settlement Agreement and its attendant Exhibits. The Settlement Administrator shall begin disseminating Notice within ten (10) calendar days after receiving the Class List, or as soon thereafter as practicable, provided, however, that the Parties may agree to issue Notice at a later date if needed for scheduling and logistical considerations.

14. Class Members will be included and bound by the Settlement unless they exclude themselves in accordance with the instructions provided in the Notices as described in the next paragraph. The Court hereby approves as to form and content the Notices attached to the Settlement Agreement.

15. Any person who would otherwise be a Settlement Class Member may request to be excluded (or "opt-out") from the Settlement Class. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator, providing his or her name and address, email address, telephone number, signature, the name and number of this case, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion submitted via U.S. mail must be personally signed by the person requesting exclusion. Such exclusion requests must be sent to the Settlement Administrator at the address specified in the Notice, by first class mail, postage prepaid, and postmarked no later than the Opt-Out & Objection Deadline under the Settlement Agreement (45 days after dissemination of Notice), and received by the Settlement Administrator within five (5) business days after the Opt-Out & Objection Deadline.

16. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from

the Settlement Class on behalf of another.

17. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as provided herein and in the Settlement Agreement. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against DNJ or the Releasees relating to the claims released under the terms of the Settlement Agreement.

18. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any final approval order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

19. Class Counsel may file a motion seeking an award of reasonable attorneys' fees of up to 1/3 of the Settlement Fund plus reimbursable costs and litigation expenses, as well as Incentive Award for the Class Representative, no later than September 7, 2023 (21 days prior to the final approval and fairness hearing).

20. Any Class Member who has not requested and secured exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including to the payment of Incentive Awards for the Class Representative or to the amount of the attorneys' fees, costs, and litigation expenses that Class Counsel may seek, may do so, either personally or through an attorney, by filing a written objection with the Court, together with the supporting information set forth below in paragraph 21 of this Order, and serving such objection upon Class

Counsel, DNJ's Counsel, and the Settlement Administrator no later than the Opt-Out & Objection Deadline under the Settlement Agreement (45 days after dissemination of Notice). Addresses for service are as follows:

Class Counsel

Alejandro Caffarelli
Caffarelli & Associates Ltd.
224 S. Michigan Avenue, Suite 300
Chicago, Illinois 60604

Settlement Administrator

See Settlement Website

Clerk of Court

Clerk of the Circuit Court of Cook County
Chancery Division
50 W. Washington Street, #802
Chicago, IL 60602

Defendants' Counsel

Andrew J. Butcher
SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, P.C.
30 W. Monroe Street, Suite 1600
Chicago, IL 60603

21. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, with specificity and in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) his or her full name, address, email address, and telephone number; (ii) the case name and number of this Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) proof of standing; (v) the identification of any other objections he or she has filed, or has had filed on his or her behalf, in any other class action cases in the last five years (including, for each case, the name of the case, the case number, the court in which the objection was filed, and the outcome of the objection); and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the

Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to an award of attorneys' fees, costs, and litigation expenses, to the payment of any Incentive Award, and to the entry of a final approval order and the right to appeal the same.

22. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with this Order may appear at the final approval hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's requested attorneys' fee award and/or the request for Incentive Awards to the Class Representative are required to indicate in their written objection their intention to appear at the final approval hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his or her intention to appear at the final approval hearing on their own behalf or through counsel, such Settlement Class Member must also include in his or her written objection the identity of any witnesses he or she may call to testify, and all exhibits he or she intends to introduce into evidence at the final approval hearing, which shall be attached.

23. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection and any right to challenge the Settlement by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained

therein, and all aspects of the Final Approval Order.

24. All papers in support of final approval of the Settlement shall be filed no later than fourteen (14) days before the final approval hearing.

25. Pending final approval of the proposed Settlement, no Settlement Class Member may prosecute, initiate, commence, or continue any lawsuit (individual or class action) with respect to the released claims against DNJ or any of the other releasees.

26. The final approval hearing shall be held before the Court on September 28, 2023 at 10:30 am in Courtroom 2410 of the Chancery Division of the Circuit Court of Cook County, Illinois, via Zoom at Meeting ID: 955 3557 3920, (no password required), <https://circuitcourtofcookcounty.zoom.us/j/95535573920> or via telephone at (312) 626-6799 ID# 95535573920 for the following purposes:

- a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;
- b) to finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- d) to consider any motion for an award of attorneys' fees, costs, and litigation expenses by Class Counsel;
- e) to consider the request for Incentive Award to the Class Representative;
- f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

g) to rule upon such other matters as the Court may deem appropriate.

27. The final approval hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. At or following the final approval hearing, the Court may enter a judgment approving the Settlement Agreement and a final approval order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

28. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

29. All discovery and other proceedings in the Litigation as between Plaintiff and DNJ are stayed and suspended until further order of Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

30. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

Notice to be issued by:	<u>July 3, 2023</u> (10 after Settlement Admin. receives class list)
Opt-Out & Objection Deadline:	<u>August 17, 2023</u> (45 days from issuance of Notice)
Class Counsel's Fee Motion:	<u>September 7, 2023</u> (21 days prior to the final approval hearing)
Final Approval Submissions Due:	<u>September 7, 2023</u> (21 days prior to the final approval hearing)
Final Approval Hearing:	<u>September 28, 2023 at 10:30 am</u>

ENTERED:
Judge Anna M. Loftus
MAY 18 2023
Circuit Court
Judge Anna M. Loftus, No. 2102
Anna M. Loftus