

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 22 2024

BY

JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ANGEL CARACOZA, JR., on behalf of
himself and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES,
INC., a Wisconsin Corporation d/b/a THE
ASHLEY COMPANIES; and DOES 1
through 10, Inclusive,

Defendants.

LEAD CASE NO. CIVDS2012912

[Assigned for all purposes to Hon. Jessica
Morgan, Dept. S-26]

**[PROPOSED] PRELIMINARY APPROVAL
ORDER**

Date: February 22, 2024

Time: 8:30 a.m.

Dept.: S-26

Complaint filed: June 1, 2020

Trial Date: Not set

DANIEL ORTIZ, individually and on
behalf of all other aggrieved employees,

Plaintiff,

v.

ASHLEY FURNITURE INDUSTRIES,
LLC, a Wisconsin Limited Liability
Company; ASHLEY FURNITURE
INDUSTRIES, INC., a Wisconsin
Corporation; and DOES 1 through 50,
Inclusive,

CASE NO. CIVDS2012912

PRELIMINARY APPROVAL ORDER

1	Defendants.	
2	ANGEL CARACOZA, JR., on behalf of	CASE NO. CIVSB2118827
3	himself and all others similarly situated,	
4		
5	Plaintiff,	
6	v.	
7	ASHLEY FURNITURE INDUSTRIES,	
8	INC., a Wisconsin Corporation d/b/a THE	
9	ASHLEY COMPANIES; and DOES 1	
10	through 10, Inclusive,	
11	Defendants.	

10	DANIEL ORTIZ, on behalf of himself	CASE NO. CIV SB2212619
11	and all others similarly situated	
12	Plaintiffs,	
13	vs.	
14	ASHLEY FURNITURE INDUSTRIES,	
15	LLC; ASHLEY FURNITURE	
16	INDUSTRIES, INC., a California	
17	Corporation, and DOES 1 through 50,	
18	inclusive,	
19	Defendants.	

20 This matter came before the Honorable Jessica Morgan of the Superior Court of the State
21 of California, in and for the County San Bernardino, on February 22, 2024 for hearing on the
22 unopposed motion by Plaintiffs Angel Caracoza and Daniel Ortiz (collectively, "Plaintiffs") for
23 preliminary approval of the Settlement with Defendants Ashley Furniture Industries, LLC and
24 Ashley Furniture Industries, Inc. (collectively "Defendants"). The Court, having considered the
25 briefs, argument of counsel and all matters presented to the Court and good cause appearing,
26 hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

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28 PRELIMINARY APPROVAL ORDER

1 **IT IS HEREBY ORDERED:**

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3 1. The Court preliminarily approves the Class Action and PAGA Settlement
4 Agreement (“Agreement” or “Settlement”) attached as Exhibit 1 to the Declaration of Haig B.
5 Kazandjian in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.
6 This is based on the Court’s determination that the Settlement set forth in the Agreement is within
7 the range of possible final approval, pursuant to the provisions of Section 382 of the California
8 Code of Civil Procedure and California Rules of Court, rule 3.769.

9 2. This Order incorporates by reference the definitions in the Agreement, and all
10 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

11 3. The Gross Settlement Amount that Defendants shall pay is Two Million Five
12 Hundred Thousand Dollars and Zero Cents (\$2,500,000.00). It appears to the Court on a
13 preliminary basis that the settlement amount and terms are fair, adequate and reasonable as to all
14 potential Class Members when balanced against the probable outcome of further litigation and the
15 significant risks relating to certification, liability and damages issues. It further appears that
16 investigation and research have been conducted such that counsel for the Parties are able to
17 reasonably evaluate their respective positions. It further appears to the Court that the Settlement
18 will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
19 would be presented by the further prosecution of the Action. It further appears that the Settlement
20 has been reached as the result of serious and non-collusive, arms-length negotiations.

21 4. The Court preliminarily finds that the Settlement appears to be within the range of
22 reasonableness of a settlement that could ultimately be given final approval by this Court. The
23 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
24 preliminarily finds that the monetary settlement awards made available to the Class is fair,
25 adequate, and reasonable when balanced against the probable outcome of further litigation and the
26 significant risks relating to certification, liability, and damages issues.

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PRELIMINARY APPROVAL ORDER

1 5. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
2 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000,
3 and a proposed Class Representative Service Payment to the two Plaintiffs in an amount not to
4 exceed \$10,000 each to Plaintiffs Ortiz and Caracoza, which is \$20,000 in total for the named
5 Plaintiffs. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
6 any service award, until the Final Approval Hearing. Plaintiffs will be required to present
7 evidence supporting these requests, prior to final approval.

8 6. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
9 representative treatment and certification of a class for settlement purposes only. This stipulation
10 will not be deemed admissible in this or any other proceeding should this Settlement not become
11 final. For settlement purposes only, the Court conditionally certifies the following Class: "all
12 persons who are or were employed by DEFENDANT in California and classified as hourly, non-
13 exempt employees during the Class Period of June 25, 2017, to May 12, 2023."

14 7. The Court concludes that, for settlement purposes only, the Class meets the
15 requirements for certification under section 382 of the California Code of Civil Procedure in that:
16 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
17 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
18 community of interest amongst the members of the Class with respect to the subject matter of the
19 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
20 the Plaintiffs will fairly and adequately protect the interests of the members of the Class; (e) a
21 class action is superior to other available methods for the efficient adjudication of this controversy;
22 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
23 adequate representatives of the Class.

24 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
25 Court provisionally appoints Cohelan Khoury and Singer and Haig B. Kazandjian Lawyers, APC
26 as Class Counsel for the Class.
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1 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
2 Amount of \$100,000.00, which shall be allocated \$75,000 to the Labor & Workforce
3 Development Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties
4 paid under this Agreement pursuant to the PAGA and \$25,000. "Aggrieved Employees" are all
5 individuals who are or were previously employed by DEFENDANT in the State of California who
6 were classified as hourly, non-exempt employees during the period of March 29, 2019, to May 12,
7 2023 (the "PAGA Period")."

8 10. Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA has be
9 provided notice of the Agreement and these settlement terms. The Court finds the PAGA
10 Penalties to be reasonable.

11 11. The Court hereby approves, as to form and content, the Class Notice attached to the
12 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
13 inform the Class of all material elements of the proposed Settlement, of the Class Members' right
14 to be excluded from the Class by submitting a written opt-out request, and of each member's right
15 and opportunity to object to the Settlement. The Court further finds that the distribution of the
16 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
17 the requirements of due process, is the best notice practicable under the circumstances, and shall
18 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
19 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
20 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
21 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
22 address for the Class Member no later than three (3) business days after the receipt of the
23 undelivered Class Notice.

24 12. The Court hereby appoints Simpluris, Inc. as the Administrator. No later than
25 fifteen (15) days after this Order, Defendants will provide to the Administrator an electronic
26 database containing the Class Data. The Administrator will perform address updates and
27 verifications as necessary prior to the first mailing. Using best efforts to mail it as soon as
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PRELIMINARY APPROVAL ORDER

1 possible, and in no event later than fourteen (14) days after receiving the Class Data, the
2 Administrator will mail the Class Notice Packet to all Class Members via first-class regular U.S.
3 Mail to their last known address.

4 13. The Court hereby preliminarily approves the proposed procedure for exclusion
5 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
6 from the Class as provided in the Class Notice by following the instructions for requesting
7 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
8 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
9 Class Notice ("Response Deadline"). If a Class Notice Packet is re-mailed, the Response Deadline
10 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
11 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
12 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
13 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
14 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
15 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
16 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
17 group, class, or subclass of individuals is not permitted and will be deemed invalid.

18 14. Any Class Member who has not opted out may appear at the final approval hearing
19 and may object or express the Member's views regarding the Settlement, and may present
20 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
21 and determined by the Court as provided in the Notice. Class Members will have until the
22 Response Deadline to submit their written objections to the Administrator. Written objections
23 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
24 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
25 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
26 Hearing to make an oral objection.

1 15. A final approval hearing shall be held before this Court on August 20, 2024 at 8:30
2 a.m.; OR _____ at _____ in Department S-26 at the San
3 Bernardino County Superior Court to hear the motion for final approval and the motion for
4 attorneys' fees and costs, and to determine all necessary matters concerning the Settlement,
5 including: whether the proposed settlement of the Action on the terms and conditions provided for
6 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
7 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
8 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
9 Class Members; and to finally approve attorneys' fees and costs, service awards, and the fees and
10 expenses of the Administrator. All papers in support of the motion for final approval and for
11 attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no
12 later than sixteen (16) court days before the final approval hearing.

13 16. Neither the Settlement nor any exhibit, document, or instrument delivered
14 thereunder shall be construed as a concession or admission by Defendants in any way that the
15 claims asserted have any merit or that this Action was properly brought as a class or representative
16 action, and shall not be used as evidence of, or used against Defendants as, an admission or
17 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
18 omission by Defendants or with respect to the truth of any allegation asserted by any person.
19 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
20 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
21 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
22 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
23 evidence of a presumption, concession, indication or admission by Defendants of any liability,
24 fault, wrongdoing, omission, concession or damage.

25 17. In the event the Settlement does not become effective in accordance with the terms
26 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
27 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
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PRELIMINARY APPROVAL ORDER

1 and the Parties shall revert to their respective positions as of before entering into the Agreement,
2 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
3 including all available defenses and affirmative defenses, and arguments that any claim in the
4 Action could not be certified as a class action and/or managed as a representative action . In such
5 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
6 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
7 the Agreement with respect to the effect of the Agreement if it is not approved.

8 18. The Court reserves the right to adjourn or continue the date of the final approval
9 hearing and all dates provided for in the Agreement without further notice to Class Members, and
10 retains jurisdiction to consider all further applications arising out of or connected with the
11 proposed Settlement.

12 **IT IS SO ORDERED.**

13 Dated: 2/22/24

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15 HON. JESSICA MORGAN
16 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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PRELIMINARY APPROVAL ORDER