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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

FRANCISCO SCHILLER, on behalf of himself
and as representative for the State of California
on behalf of all other aggrieved employees,

Plaintiff,

v.

ASHLEY DISTRIBUTION SERVICES, LTD.,
a Wisconsin Limited Company; and DOES 1
through 10, Inclusive,

Defendants.

LEAD CASE NO. CIVDS2013264
Consolidated with Case No. CIVDS2014776
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jessica Morgan
Department S26

CONSOLIDATED ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: May 23, 2024
Time: 8:30 a.m.
Dept: 26
Judge: Hon. Jessica Morgan

Complaint filed: June 16, 2020
Trial Date: Not set

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I. INTRODUCTION

Plaintiff Francisco Schiller (“Plaintiff”) seeks final approval of a pre-certification \$350,000 non-reversionary wage and hour Class Action and Private Attorneys General Act (“PAGA”) settlement for all current and former, hourly, nonexempt employees who worked for Ashley Distribution Services, Ltd. (“ADS”) any time from August 23, 2018 to September 13, 2022 (“Class Period”) or any time from April 12, 2019 to September 13, 2022 (“PAGA Period”). Declaration of Michael D. Singer, (“Singer Decl.”), ¶ 15.

Support for the Settlement is strong. Not a single Class Member submitted an objection or a request for exclusion. Declaration of Chantal Soto-Najera on Behalf of CPT Group, Inc (“CPT Decl.”), ¶¶ 9, 11. With a 100% participation rate of the 501 Participating Class Members, the highest total Individual Class/ PAGA Payment is estimated to be \$1,709.56, and the average total payment is estimated to be \$359.70. CPT Decl., ¶¶ 16, 18.

II. PARTIES

A. Defendant ADS and Plaintiff Francisco Schiller

Defendant ADS, founded in 1974, is Ashley Furniture Industries, Inc.’s transportation fleet. ADS drivers transport furniture between warehouses and stores and to customers. Singer Decl., ¶ 16. Plaintiff Francisco Schiller was employed by ADS as a non-exempt Shuttle Driver, driving a shuttle between ADS facilities and picking up and delivering furniture to customers, from December 2017 through October 26, 2020. Singer Decl., ¶ 17; Declaration of Francisco Schiller filed on September 13, 2024 in Support of Preliminary Approval, (“Schiller Decl.”), ¶2.

B. The Class and Aggrieved Employees

The Class is defined as all individuals who are or previously were employed by Defendant in the State of California who were classified as hourly, non-exempt employees during the Class Period. Singer Decl., ¶ 18, Exh. 1 – Settlement Agreement (“SA”), ¶ 1.5. There are 501 total Participating Class Members who worked 42,575 weeks during the Class Period, from August 23, 2018 to September 13, 2022. CPT Decl., ¶ 16. A subgroup of the Class, Aggrieved Employees, were employed some time during the PAGA Period, from April 12, 2019 to September 13, 2022. SA, ¶ 1.4. There are 473 Aggrieved Employees who worked 36,981 pay periods during the PAGA Period. CPT Decl., ¶ 17.

1 **III. INVESTIGATION AND MEDIATION**

2 The Parties mediated with Todd Smith, Esq., a respected wage and hour class action mediator.
3 For mediation, ADS produced: Plaintiff's personnel file, time and payroll records, and wage statements;
4 corresponding time and payroll records for a randomized sample of Class Members, with about 40%
5 of the total Workweeks contained in the sample; all ADS's written policies pertinent to the claims
6 alleged—including as to meal and rest periods and pre-shift health screenings; and job descriptions for
7 Class Members. Plaintiff's consultant analyzed the data and created a damages model. Singer Decl., ¶
8 19. With significant investigation, research, informal discovery, and analysis of data by Plaintiff and
9 his damages consultant completed, the Parties mediated with Mr. Smith on August 17, 2022. After a
10 full day of arms'-length negotiations, the Parties were unable to reach a settlement. The Parties
11 thereafter engaged in on-going settlement negotiations, facilitated by Mr. Smith, and were eventually
12 able to reach a settlement. An MOU was fully executed on November 15, 2022 and the Agreement,
13 presented for preliminary approval, was fully executed on March 22, 2023. Singer Decl., ¶ 20.

14 **IV. SUMMARY OF PROPOSED SETTLEMENT**

15 **A. Settlement Terms**

16 ADS will pay a non-reversionary, maximum Gross Settlement Amount ("GSA") of \$350,000
17 which includes: (a) attorneys' fees¹ not to exceed \$116,666.67 (1/3 of GSA), to compensate Class
18 Counsel for work performed and remaining to secure final Court approval; (b) litigation costs of
19 \$20,000.00;² (c) Class Representative Service Payment of \$10,000.00 to Plaintiff Francisco Schiller,
20 for work as Class Representative, risks undertaken for costs if the case had not successfully concluded,
21 and benefits conferred on the Class; (d) PAGA Payment of \$17,500.00 [\$13,125.00 to LWDA
22 (75%)/\$4,375.00 to Aggrieved Employees (25%)]; and (e) Settlement Administration costs of \$10,000.
23 See Singer Decl., ¶ 21, SA, ¶ 3, CPT Decl., ¶¶ 13, 20. ADS will pay the employer's payroll taxes in
24 addition to the GSA. SA, ¶ 4.3.

25 _____
26 ¹ Plaintiff consented in writing to the 50%/50% division of attorneys' fees between Cohelan Khoury &
Singer and Sahag Majarian II.

27 ² Actual Class Counsel Litigation Expenses were \$20,258.46 (\$11,896.21, for Cohelan Khoury &
Singer, plus \$8,362.25, for Law Offices of Sahag Majarian II). But Class Counsel seeks only \$20,000
28 for this payment because this was the maximum specified in the Settlement Agreement and Class
Notice.

After approved deductions, the estimated \$175,833.33 Net Settlement Amount (“NSA”) will be distributed to Participating Class Members. Individual Class Payments will be calculated based on the number of Workweeks that each Participating Class Member worked. Aggrieved Employees will also receive Individual PAGA Payments in accordance with the number of pay periods they worked during the PAGA Period. Class Members will receive an estimated \$4.13 for each Workweek worked during the Class, and Aggrieved Employees will receive an estimated \$0.12 for each pay period worked during the PAGA Period, with an average Individual Class/PAGA Payment of \$359.70. CPT Decl., ¶¶ 13-17.

Settlement payments are characterized as 20% unpaid wages (W-2), 40% unpaid interest (Form 1099), and 40% as alleged statutory and civil penalties (Form 1099). SA, ¶ 3.2.4.1.

Funds representing Settlement Payment checks uncashed 180 days after issuance will be sent to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure § 384(b). SA, ¶¶ 4.4.1, 4.4.3.

B. Preliminary Approval, Notice to the Class, and Its Response

1. Preliminary Approval and Class Notice

The Settlement was preliminary approved on November 28, 2023. Singer Decl., ¶ 22. CPT received the Court-approved text for the content of the Class Notice from Class Counsel on November 28, 2023. CPT prepared a draft of the Class Notice for mailing to the Class Members. CPT Decl., ¶ 3.

On January 19, 2024, CPT received a data file from Defense Counsel containing Class Members’ (i) full name; (ii) last known mailing address; (iii) Social Security Number; and (iv) dates of employment, to determine the number of Weeks Worked during the Class Period and number of Pay Periods worked during the PAGA Period. The finalized mailing list contained five-hundred and one (501) individuals. CPT Decl., ¶ 4.

On March 6, 2024, CPT caused a National Change of Address (NCOA) database search to be performed in attempt to update the mailing list of addresses as accurately as possible. A search of this database provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of his or her change of address. CPT Decl., ¶ 5.

The Class Notice was enclosed in an envelope with the individual Class Member’s name and

1 known address printed on the envelope. On March 8, 2024, the five-hundred and one (501) Class
2 Notices were mailed via U.S. First-Class Mail to the identified Class Members. The Class Notice
3 indicated a deadline date of April 22, 2024, to dispute the information contained in the notice, to object
4 or request exclusion from the settlement. CPT Decl., ¶ 6.

5 Twenty-five (25) Class Notices were returned to CPT's office by the U.S. Post Office. CPT
6 performed a Skip Trace on all returned mail without a forwarding address using Accurant, one of the
7 most comprehensive address databases available. It utilizes hundreds of different databases supplied
8 by credit reporting agencies, public records and a variety of other national databases. CPT Decl., ¶ 7.
9 As a result of either forwarding address provided by the U.S. Post Office, Skip Trace effort, or re-mail
10 requests from Counsel or Class Members, a total of twenty-one (21) Class Notices have been re-mailed
11 to date. CPT reports a total of four (4) undeliverable Class Notices, as no better address was provided
12 from the Post Office or obtained through Skip Trace. CPT Decl., ¶ 8.

13 **2. Class Response to the Notice**

14 The Class response to the Settlement was extremely favorable. CPT has not received any
15 objections to the settlement, disputes by class members to the information stated in the Class Notices,
16 nor requests for exclusion from the settlement. CPT Decl., ¶¶ 9-11. This Court has already recognized
17 that the first three *Dunk* factors were met at preliminary approval. Now, it is also clear that the fourth
18 *Dunk* factor, "the reaction of the class members to the proposed settlement," also favors granting final
19 approval. Singer Decl., ¶ 23; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

20 **C. Released Claims**

21 All Participating Class Members release Released Parties from all class claims pled or which
22 could have been pled based on the factual allegations contained in the Operative Class Complaint which
23 occurred at any time from August 23, 2018 to September 13, 2022 including, but not limited to claims
24 under California Labor Code sections 201, 202, 203, 204, 210, 218.6, 226, 226(a), 226.3, 226.7, 256,
25 510, 512, 515, 558(a), 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, 2804,
26 and 2810.5, and expressly excluding all other claims, including claims for vested benefits, wrongful
27 termination, unemployment insurance, disability, social security, workers' compensation, and class
28 claims outside of the Class Period. The time period of this release is August 23, 2018 to September 13,
2022. SA, ¶ 5.2.

1 All Class Members who are Aggrieved Employees are deemed to release all PAGA claims pled
2 or which could have been pled based on the factual allegations contained in the Operative PAGA
3 Complaint and PAGA letter sent by Plaintiff that occurred at any time from April 12, 2019 to September
4 13, 2022 that stated violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 226,
5 226(a), 226.3, 226.7, 256, 510, 512, 558(a), 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1,
6 1198, 1199, 2802, 2804, 2810.5, and 2698, *et seq*, as to the Aggrieved Employees and expressly
7 excluding all other claims, including claims for vested benefits, wrongful termination, unemployment
8 insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA
9 Period. The time period for this release is April 12, 2019 to September 13, 2022. SA, ¶ 5.3.

10 **V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

11 **A. Attorneys' Fees & Litigation Costs**

12 Class Counsel requests attorneys' fees of \$116,666.67, one-third of GSA, and litigation costs of
13 \$20,000.00. Counsel have expended 309.2 hours, a \$176,208.00 lodestar, and have incurred \$20,258.46
14 in costs. Singer Decl. ¶ 25, Exh. 2 –Summary of Time & Costs; Exh. 3(A-D) - Time Records; Exh. 4 –
15 Costs; Declaration of Sahag Majarian II, ("Majarian Decl."), ¶¶ 5, 10-11, Exh. 2 – Time Records; Exh.
16 3 – Costs.

17 The requested costs are reasonable because they reflect less than the actual costs expended, and
18 were incurred in litigating the case through a successful mediation. Singer Decl. ¶ 25, Exh. 4 – Costs.

19 The requested fees are reasonable for several reasons:

20 First, a percentage fee of one-third of the common fund is standard in California class action
21 cases, *see, e.g. Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506. Singer Decl. ¶¶ 26-28.

22 Second, an optional lodestar crosscheck, *see, e.g. Ketchum v. Moses* (2001) 24 Cal.4th 1122,
23 1138, reveals that Class Counsel earned more by their hours worked than what they request in fees,
24 with the \$116,666.67 requested constituting only 66% of their actual lodestar of \$176,208.00. Singer
25 Decl., ¶ 29.

26 Third, the rates requested by Class Counsel, between \$500 for a four-year attorney, and \$995 for
27 a forty-year attorney and managing partner, are supported by the Laffey Matrix. Singer Decl., ¶¶ 30,
28 35, Exh. 5 – Laffey Matrix; Majarian Decl., ¶¶ 5, Exh. 1 – Laffey Matrix.

1 Fourth, the extensive experience of Class Counsel in prosecuting, certifying, and settling class
2 actions, as well as their charitable and academic endeavors, support granting the requested fees, Singer
3 Decl. ¶¶ 1-13, 31; Majarian Decl., ¶¶ 1-6. Class Counsel believe, in light of all of their experience, that
4 this Settlement is fair, adequate, and reasonable for the Class and Aggrieved Employees. Singer Decl.,
5 ¶ 14; Majarian Decl., ¶ 7. Singer Decl., ¶ 30.

6 Fifth, the 309.2 hours expended by Class Counsel “would have been undertaken by a reasonable
7 and prudent lawyer to advance or protect his client’s interest.” *Moore v. Jas. H. Matthews & Co.*, 682
8 F.2d 830, 839 (9th Cir. 1982). Singer Decl. ¶ 32.

9 And sixth, an excellent result was achieved, with substantial relief being provided to the Class,
10 and no Class Members objecting to, or requesting exclusion from, the Settlement. *See, e.g. Lealao v.*
11 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 44. Singer Decl. ¶ 33.

12 **B. Settlement Administration Costs**

13 The Settlement allows CPT to recover up to a maximum of \$10,000.00 for Settlement
14 Administration Costs. This includes all costs incurred to date, as well as estimated costs involved to
15 complete the settlement following final approval pursuant to the terms of the settlement agreement, to
16 do such things as to issue and print checks, report taxes, mail settlement payment checks, issue all other
17 payments as awarded by the Court, answer Class Member questions, and forward all sums represented
18 by uncashed checks to the California Controller’s Unclaimed Property Fund. CPT Decl., ¶ 20. The
19 requested costs of \$10,000.00 are reasonable, and are supported by a detailed invoice provided by CPT.
20 *See* CPT Decl., ¶ 20, Exh. B – Invoice.

21 **C. Class Representative Service Payment**

22 Service payments “are fairly typical in class action[s]” and “compensate class representatives for
23 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
24 the action.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394.

25 “Modern society seems increasingly to expose men to . . . group injuries for which individually
26 they are in a poor position to seek legal redress, either because they do not know enough or because
27 such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can,
28 there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only

1 unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the
2 sanctions which underlie much contemporary law. The problem of fashioning an effective and inclusive
3 group remedy is thus a major one.” *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971).

4 Enforcement of laws protecting California employees would be “random and fragmentary,” or
5 non-existent, if no one came forward and spent time working on behalf of others, and perhaps most
6 importantly, took risks those others are not willing to bear.

7 Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those who
8 choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.”
9 *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court contended this risk was
10 balanced by potential reward. *See id.*

11 “While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on
12 the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the
13 potential recovery.” *Id.* Plaintiff’s recovery in a class action will always be less than an individual
14 action, take longer to obtain, and have no potential for early settlement.

15 So, if “[t]hose who choose to take the risks of litigation should be the ones who bear the cost
16 when they are unsuccessful,” how can that risk be offset? *Id.* An adequate Service Payment.

17 The risk of judgment for Defendants’ costs, alone, is sufficient to support Class Representative
18 Service Payment of \$10,000.00 to Plaintiff. It is impossible to know, or intervene, each time a class
19 action plaintiff loses an employment opportunity, making it essential to compensate them at final
20 approval, the only time the risk they took can be at least slightly offset and they can be adequately
21 compensated. Plaintiff more than satisfied his obligation to protect the interests of the Class and place
22 them above his own. Plaintiff accepted the risk of judgment for Defendants’ costs and potential loss of
23 future employment opportunities. Plaintiff had individual claims which he did not pursue, or
24 abandoned, to serve only as a representative of other employees, although, unlike those employees,
25 Plaintiff was required to give a general release of all claims of any kind, including a section 1542
26 waiver. SA, ¶ 5.1. Plaintiff Schiller further expended substantial time and effort in seeking legal counsel
27 and participating in this action through and beyond Settlement. Schiller Decl., ¶¶ 6-17.

28 The Class received notice of, and did not object to, Plaintiff’s request of up to \$10,000 “for filing

the Lawsuit, working with Class Counsel and representing the Class.” CPT Decl., ¶ 9, Exh. A. Finally, Plaintiff’s total estimated Individual Class/PAGA Payment of \$488.78 is not much more than the average Individual payment of \$359.70. See CPT Decl., ¶¶ 17-18.

D. PAGA Payment

The Agreement allocates \$17,500.00 to PAGA claims, \$13,125.00 (75%) paid directly to the LWDA, and the remaining \$4,375.00 (25%) to Aggrieved Employees. This allocation was the result of good-faith, mediated negotiations. Singer Decl., ¶ 34. Where PAGA penalties are negotiated in good faith, with “no indication [the] amount was the result of self-interest at the expense of other Class Members,” they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; *see, e.g., In re Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement allocating \$0 to PAGA claims).

This allocation of \$17,500.00, which represents five percent of the GSA, is higher than the amount approved in other settlements. *See, e.g. Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000, or 1.1% PAGA allocation), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA, \$1.25m settlement, or 0.8% PAGA allocation).

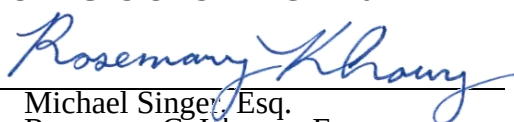
VI. CONCLUSION

This Settlement favorably resolves what would otherwise be uncertain and lengthy litigation. Class Counsel thus respectfully requests the Court grant final approval of the Settlement and grant all amounts requested herein.

Respectfully submitted,

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: April 29, 2024

By: 
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himself and as representative for the State of California
on behalf of all other aggrieved employees