

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Francisco Schiller, on behalf of himself

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: November 29, 2023

Time: 8:30 a.m.

Dept: 26

Judge: Hon. Jessica Morgan

Complaint filed: June 16, 2020

Trial Date: Not set

1 This matter came on for hearing on November 29, 2023 in Department S26 of the
2 above-captioned Court on Plaintiff's Motion for Order Granting Preliminary Approval of Class
3 Action and PAGA Settlement ("Motion"). Having fully reviewed the Motion, supporting
4 memorandum of Points and Authorities, Declarations of Class Counsel Michael D. Singer and
5 Sahag Majarian, II, the Class and Private Attorneys General Act ("PAGA") Settlement
6 Agreement ("Agreement") attached as Exhibit 1 to the Singer Declaration, and the proposed
7 Notice of Class Action Settlement attached as Exhibit 6 to the Singer Declaration ("Class
8 Notice"), having carefully analyzed the Agreement and the Class Notice, and in recognition of
9 the Court's duty to make a preliminary determination as to the reasonableness of any proposed
10 class action settlement, and if preliminarily determined reasonable, to ensure proper notice is
11 provided to Class Members in accordance with due process requirements, and to set a Final
12 Approval Hearing to consider the good faith, fairness, adequacy and reasonableness of the
13 proposed Settlement, THE COURT MAKES THE FOLLOWING DETERMINATIONS AND
14 ORDERS:

15 1. The Court conditionally finds, for purposes of approving the settlement only, the
16 proposed Class meets the requirements for certification under section 382 of the California
17 Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous joinder of all
18 Class members is impracticable; (b) there are questions of law or fact common to the proposed
19 Class, and a well-defined community of interest among members of the proposed Class with
20 respect to the subject matter of the class action; (c) the claims of the Class Representative are
21 typical of the claims of the members of the proposed Class; (d) the Class Representative has
22 and will fairly and adequately protect the interests of the Members of the Class; (e) a class
23 action is superior to other available methods for efficient adjudication of this controversy for
24 settlement; and (f) counsel of record for the Class Representative are qualified to serve as
25 counsel for her in their representative capacity and for the Class.

26 2. The Court finds on a preliminary basis the Agreement appears to be within the
27 range of reasonableness of a settlement which could ultimately be given final approval by this
28 Court.

3. It appears to the Court on a preliminary basis: (a) the non-reversionary maximum Gross Settlement Amount is fair and reasonable to Class Members when balanced against the probable outcome of further litigation relating to class certification, liability and damages issues, and potential appeals; (b) significant investigation, research, and informal discovery, have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions; (c) settlement at this time will avoid substantial costs, delay, and risks presented by further prosecution of the litigation; and (d) the proposed Settlement was reached through intensive, serious, non-collusive negotiations facilitated by an experienced mediator.

4. Good cause appearing, the Motion is GRANTED, and the Court incorporates the Agreement.

5. For purposes of this Settlement, Class Members are 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 at any time from August 23, 2018 to September 13, 2022.”

6. The Court finds the proposed Class Notice, attached to this Order as Exhibit A, fairly and adequately advises Class Members of (a) the nature of the Class and PAGA Action; (b) the Settlement’s principal terms; (c) the Class and Aggrieved Employees definitions; (d) number of Class Period workweeks and PAGA Period pay periods credited; (e) each Class Member’s estimated Individual Class Payment; (f) each Aggrieved Employee’s estimated Individual PAGA Payment; (g) the dates of the Class and PAGA Periods; (h) how to submit Requests for Exclusion, Disputes, or Objections; (i) deadlines for Class Members to postmark Requests for Exclusion, Disputes, or submit Objections to the Settlement; (j) the claims released in the Agreement; and (k) the date, time and place of the Final Approval Hearing.

7. The Court finds the proposed Class Notice provides the best practicable notice to the Class and comports with all constitutional requirements, including those of due process. Accordingly, good cause appearing, the Court APPROVES the Class Notice.

///

1 8. The Court further finds that mailing of the Class Notice to the last known
2 address of all Class Members after updating addresses through the National Change of Address
3 database as specifically described within the Agreement, is an effective method of notifying
4 Class Members of their rights in the class action and the Settlement. Accordingly, it is
5 ORDERED:

6 A. CPT Group, Inc. be appointed the Settlement Administrator to
7 administer the Settlement of this matter as more specifically stated in the Agreement;

8 B. Michael D. Singer and Rosemary C. Khoury of Cohelan Khoury &
9 Singer, and Sahag Majarian II of Law Offices of Sahag Majarian II, be appointed Class
10 Counsel;

11 C. Plaintiff Francisco Schiller be appointed Class Representative;

12 D. No later than fifteen (15) calendar days after the date the Court grants
13 preliminary approval of the Settlement, Defendant will deliver the Class Data to the Settlement
14 Administrator, in the form of a Microsoft Excel spreadsheet.

15 E. No later than fourteen (14) calendar days after receiving the Class Data,
16 the Settlement Administrator will mail the Class Notice to all Class Members and Aggrieved
17 Employees identified in the Class Data, via first class United States Postal Service mail.

18 F. Class Members who wish to exclude themselves from (opt out of) the
19 Class Settlement must send the Settlement Administrator, by fax, email, or mail, a signed
20 written Request for Exclusion not later than forty-five (45) days after the Settlement
21 Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members
22 whose Class Notice is re-mailed).

23 G. Only Participating Class Members may object to the class action
24 components of the Agreement by sending a written objection to the Administrator, by fax,
25 email, or in the mail, and must do so no later than forty-five (45) days after the Settlement
26 Administrator's mailing of the Class Notice (plus an additional 7 calendar days for Class
27 Members whose Class Notice is re-mailed).

28 H. Each Class Member or Aggrieved Employee shall have forty-five (45)

1 days after the Settlement Administrator mails Class Notice (plus an additional 7 calendar days
2 for Class Members whose Class Notice is re-mailed) to challenge the number of Class
3 Workweeks and/or PAGA Pay Periods (if any) allocated to them in the Class Notice.

4 9. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held
5 before the undersigned at _____ on _____ in Department S26 of the
6 Superior Court of California, County of San Bernardino located at 247 West Third Street, San
7 Bernardino, CA 92415-0210, to consider the fairness, adequacy, and reasonableness of the
8 proposed Settlement preliminarily approved by this Order of Preliminary Approval, and to
9 consider the application for Class Representative Service Payment, Settlement Administrator
10 expenses, and Class Counsel's attorneys' fees and litigation expenses.

11 10. All materials in support of an Order Granting Final Approval, Service Payment
12 to the Class Representative, Settlement Administrator expenses, and Class Counsel's attorneys'
13 fees and litigation expenses incurred shall be filed pursuant to Code of Civil Procedure section
14 1005(b), sixteen (16) Court days before the hearing.

15 11. IT IS FURTHER ORDERED that if for any reason the Court does not enter an
16 Order Granting Final Approval, or if the Effective Date, as defined in the Agreement, does not
17 occur, the Agreement shall have no effect, and the Parties shall be restored without prejudice to
18 the status quo ante as stated in the Agreement.

19 12. IT IS FURTHER ORDERED that pending further order of this Court, all
20 proceedings in this matter, except those contemplated by this Order and the Agreement are
21 stayed.

22 13. The Court expressly reserves the right to adjourn or continue the Final Approval
23 Hearing from time to time without further notice to Class Members. However, if written
24 objections are submitted, Class Counsel shall notify objecting Class Members of the new date
25 and time set for the Final Approval Hearing.

26 IT IS SO ORDERED.

27 Dated: _____

The Honorable Jessica Morgan
Judge of the Superior Court