

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

**DECLARATION OF FRANCISCO
SCHILLER IN SUPPORT OF MOTION FOR
AN 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 I, Francisco Schiller, declare as follows:

2 1. I am over 18 years of age and am the named plaintiff and class representative in
3 this lawsuit. I am thoroughly familiar with and have personal knowledge of the facts in this
4 declaration. I submit this declaration in support of the Motion for Preliminary Approval of Class
5 Action and PAGA Settlement in my case. If called as a witness, I would competently testify to
6 the below facts based on my personal knowledge.

7 2. I worked as a non-exempt Shuttle Driver for Ashley Distribution Services, Ltd.
8 (“ADS”) from December 2017 until October 26, 2020, transporting ADS products in trailers
9 and containers between Ashley Furniture warehouses in Redlands, Colton, and Bernardino.
10 After about a year, I also picked up products in Colton and delivered them to third parties. I
11 never delivered outside California. My regular shift at ADS was from 7:00 am to 3:30 pm.

12 3. **Covid-19 Screening Off-the-Clock:** From March 21, 2020 through the end of
13 my employment, in light of the COVID-19 pandemic, I underwent a mandatory temperature
14 check by an ADS employee before clocking in for work. If my temperature was over 100
15 degrees or I was sick, I was supposed to be sent home (though I never failed the test personally).
16 The screening itself took only about a minute, but I had to wait in line to undergo the screening,
17 which typically took anywhere from two to ten minutes. Only after going through this check
18 would I make my way to the clock-in machine to swipe my time card before proceeding to my
19 truck. It is my understanding that all non-exempt employees of ADS had to undergo this check.

20 4. **Meal and Rest Periods:** Time pressure and work demands prevented me from
21 taking meal and rest periods to which I believe I was entitled. ADS expected drivers to
22 complete deliveries by certain times. Further, drivers could not take meal and rest periods when
23 they were working at a warehouse or a customer location at the time they should have been
24 taking such breaks. ADS did not schedule times for these breaks either. I estimate I missed at
25 least one rest period three to four days per week. I was also sometimes unable to clock out for a
26 meal period, or had to take a late or short meal period. I was never able to take a second meal
27 period after ten hours as I recall. It is my understanding that ADS had all non-exempt
28 employees clock out for meal periods and maintained records of these clock out times so they

1 knew how many work hours to pay us for.

2 5. **Unreimbursed Cell Phone Use:** As a Shuttle Driver, I would typically receive
3 my load information the day before my shift either via automated phone call or text message.
4 Given the nature of my job, I used my cell phone for work all the time: to receive load
5 information via text message from ADS, to communicate with dispatch during his workday, to
6 call the ADS planner, to call customers, and to email ADS to give them trailer counts. My ADS
7 supervisor knew I was using my cell phone for work and never discouraged me; I was only
8 informed in writing that I should not use my cell phone while driving. Although I was provided
9 an on-board computer which tracked workflow and had a messaging function, the messaging
10 function was too slow to be useful, especially given I was under pressure to move from delivery
11 to delivery on time.

12 6. Before my employment ended with ADS, I looked for an employment lawyer to
13 understand my rights and the rights of my Ashley coworkers, which I felt ADS was violating. I
14 spoke with Mr. Majarian and decided to move forward with a class action and PAGA
15 representative lawsuit with Mr. Majarian and Cohelan Khoury & Singer.

16 7. My attorneys gathered all of the relevant information, explained what was going
17 on and explained their view of this case, and filed this PAGA lawsuit for me on June 16, 2020.
18 My attorneys also filed a class action lawsuit on my behalf on July 23, 2020. Both cases were
19 based on the same allegations, above. I understand that the two lawsuits have since been
20 combined.

21 8. Since my involvement, I have spoken at length with my attorneys about my
22 experience working with ADS, provided documents and records in my possession, and signed
23 documents so that my attorneys could request additional employment and payroll records.

24 9. I was informed that ADS had the right to take my deposition, and that the
25 preparation and deposition itself could take multiple days. Although my deposition was not
26 taken, I feel I would have been adequately prepared and comfortable to give testimony on my
27 experiences.

28 10. I had multiple telephone calls with my attorneys about the case from the

1 beginning all the way through to this settlement request. I responded to twenty-six (26) special
2 interrogatories which required several conversations with my attorneys.

3 11. I enjoyed working with my legal counsel and am satisfied that we were able to
4 come to a resolution so that a settlement will be paid out to my former coworkers at ADS.

5 12. When I decided to initiate this lawsuit, I was aware that I would be the named
6 Plaintiff and that this action is public record. I understood that the lawsuit could continue for
7 several years and would require my participation, attention, and determination the entire
8 time. Despite these risks, I decided to serve as a class representative because it was the right
9 thing to do and I wanted to help be part of the solution.

10 13. I spoke with my attorneys and their staff and provided questions to be asked of
11 ADS for documents and information related to this case. I made myself available during the
12 mediation, and throughout this lawsuit, and I regularly contacted my lawyers for updates and
13 answered all of their questions.

14 14. To prepare for mediation, I discussed the case in detail with my attorneys,
15 including its potential strengths and weaknesses. I believe that my thorough knowledge of
16 ADS's practices assisted them in evaluating the claims and assessing the potential damages for
17 use at mediation. I believe that my efforts helped obtain the results in this case.

18 15. After the case settled, I reviewed and signed the Memorandum of Understanding
19 and the Settlement Agreement, which included me giving a general release of all the claims I
20 had and might have against ADS arising from my employment.

21 16. I understand that I may be entitled to an additional payment for acting as a class
22 representative, and that this payment is subject to Court approval. Considering the time I
23 devoted to this case, the concerns I addressed above, the risks, and the results achieved through
24 the settlement, I believe the requested award of \$10,000 is reasonable.

25 17. It is hard to determine exactly how much time I spent on this case. Some weeks
26 required much more time than others (particularly during my pre-involvement investigation,
27 answering discovery, and the lead up to the mediation), but I estimate I spent a significant
28 number of hours working on my case and helping my lawyers, and even more time thinking

1 about the issues in the case and the possible outcome.

2 18. I believe I can adequately represent the class of employees and do not believe I
3 have any conflict with any of the employees in the class.

4 I declare under the penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and that this declaration is executed on 7/26/2023 in,
6 MORENO VALLEY, California.

7
8 

9 _____
10 Francisco Schiller
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28