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Filed SEP 15 2022
BRANDON E. RILEY, CLERK
By [Signature] DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

EDWARD ORDEZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

SCHUFF STEEL COMPANY, a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-0009361
Assigned to: Hon. Erin Guy Castillo
ELC
**[AMENDED PROPOSED] ORDER
GRANTING PLAINTIFF'S MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004**

Courtroom: Dept. 10B
Judge: Hon. Erin Guy Castillo

Action Filed: October 23, 2020
Trial Date: Not Set

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff EDWARD ORDEZ ("Plaintiff") and Defendant SCHUFF STEEL COMPANY
3 ("Defendant") (Plaintiff and Defendant are the "Parties") have reached terms of settlement of this action
4 alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor
5 Code § 2698, *et seq.* ("PAGA").

6 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
7 settlement of the claims against Defendant in this action. Specifically, Plaintiff moves for an order:

- 8 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
9 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
10 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
11 allocated to attorney's fees and costs; the amount requested for an enhancement award; and, the
12 amount allocated to the settlement administrator; and,
13 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
14 Agreement.

15 Thereafter, Plaintiff submitted supplemental materials to correct typographical errors in certain
16 amounts stated in the Motion. Plaintiff's Motion subsequently came on for hearing. The PRIVATE
17 ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (referred to as the
18 "Agreement," or "Settlement," and attached to the Declaration of H. Scott Leviant as Exhibit 1) is
19 conditioned upon the Court's approval. Capitalized terms in this Order have the same meaning as in the
20 Settlement unless indicated otherwise. A summary of the terms of the Settlement is as follows:

- 21 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
22 "PAGA Members") are: "(1) all persons employed by Defendant in a non-exempt
23 position in the State of California at any time during the PAGA Period that were
24 not subject to a Collective Bargaining Agreement and (2) all persons employed
25 by Defendant in a non-exempt position in the State of California subject to a
26 Collective Bargaining Agreement at any time between November 5, 2019 and
27 July 1, 2020." The PAGA Period is the period from November 5, 2019 through
28 the date of entry of a PAGA settlement approval order. It is estimated that there

- are about 28,000 pay periods in the Settlement. (Agreement, at 1-2, and ¶ 9.)
- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 6.)
- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$413,400.00** [corrected amount] (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel attorney’s fees and costs, a general release payment to Plaintiff, and the settlement administrator’s fees and costs. (Agreement, ¶ 5.)
- (d) Net Settlement Amount (PAGA Fund): At least **\$236,685.75** [corrected amount] will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$177,514.31** [corrected amount] under the Agreement, and Aggrieved Employees will receive at least **\$59,171.44** [corrected amount]. (Agreement, ¶ 6.d.)
- (e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the amount of **\$144,690.00**, which is 35% of the GSA. (Agreement, ¶ 6.a.)
- (f) Litigation Costs: Plaintiff’s Counsel seek reimbursement of actual litigation costs, to a maximum amount of \$16,000. Those actual costs are expected to be \$15,534.25, which is less than the capped amount. Therefore, **\$15,534.25** is requested, by Plaintiff. (Agreement, ¶¶ 6.a, 12.b; Leviant Decl., ¶ 38 and Exh. 2.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator Phoenix Settlement Administrators, which has agreed to perform Administrator duties for a flat fee not to exceed **\$8,990.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 6.b; Leviant Decl., ¶ 39 and Exh. 3.)
- (h) – General Release Payment to Plaintiff: Plaintiff requests approval of an allocation of **\$7,500.00** to Plaintiff from the GSA for his general releases of all potential claims against Defendant and for his effort in bringing and prosecuting this Action. (Agreement, ¶ 6.c.)

- 1 (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a
2 re-mailing, and funds represented by checks remaining un-cashed for more than
3 180 days after issuance, will be tendered to the Unclaimed Property Fund or like
4 fund. (Agreement, ¶ 12.c.)
- 5 (j) Release: In exchange for the above settlement consideration, Defendant shall be
6 entitled to a *limited* release from the LWDA and each and every Aggrieved
7 Employee, including Plaintiff.¹ (Agreement, ¶ 2; Leviant Decl., Exh. 1.)
- 8 (k) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was
9 provided to the LWDA and attaches the confirmatory submission documents.
10 (Leviant Decl., ¶ 43 and Exh. 1.)

11 After reviewing the Settlement and other related documents, and the filings, including the
12 supplemental filings, submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

13 1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and
14 conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are
15 reasonable. In granting approval of the settlement the Court has considered the factors identified in
16 *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016),
17 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794
18 (1996), and other authority providing a coherent framework for evaluating this Settlement.

19 2. The Court hereby identifies the Aggrieved Employees as:

20 (1) all persons employed by Defendant in a non-exempt position in the State of
21 California at any time during the PAGA Period that were not subject to a Collective
22 Bargaining Agreement and (2) all persons employed by Defendant in a non-exempt
23 position in the State of California subject to a Collective Bargaining Agreement at any
24 time between November 5, 2019 and July 1, 2020. The PAGA Period is the period
25 from November 5, 2019 through the date of entry of a PAGA settlement approval order.
(Agreement, at 1-2, and ¶ 9.)

26 3. The Court hereby finds the Settlement was the product of informed, non-collusive
27 negotiations conducted at arms' length by the Parties. In making these findings, the Court considered
28

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds
2 among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'
3 respective positions rather than the result of a finding of liability at trial. The Court further finds that the
4 terms of the Settlement have no obvious deficiencies. The Court finds that risks of further prosecution
5 are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of
6 the circumstances, or (2) no penalties would be awarded for some or all of the alleged violations.

7 4. The Court hereby approves ILYM Group, Inc. to serve as the Administrator. The
8 Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested
9 amount of \$8,990.00 out of the Gross Settlement Amount to effectuate Administration.

10 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
11 \$413,400.00, less administration costs, the Plaintiff's general release payment, attorney's fees, and costs
12 awarded to Plaintiff's counsel. After awards, the amount remaining to distribute as penalties is
13 \$236,685.75. The LWDA shall receive 75% of the penalties allocated, which is \$177,514.31.
14 Aggrieved Employees shall receive 25% of the penalties allocated, which is \$59,171.44.

15 6. The Court hereby awards Counsel attorneys' fees in the amount of \$144,690.00. The
16 Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar
17 settlements and as guided by the California Supreme Court's decision concerning the awarding of fees
18 from monetary funds for class members. *Laffille v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
19 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
20 necessarily precluded from pursuing other potential sources of fees because of work in connection with
21 this Action. The Court observed that this is not a class action. It is more akin to contingent
22 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
23 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
24 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. See *Van*
25 *Vranken v. Atlantic Richfield Company*, 901 E. Supp. 294 (N.D. Cal. 1995) (stating that most cases
26 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
27 these considerations, including the lodestar cross-check, a fee award of 35% is reasonable.

28 7. The Court hereby awards Counsel litigation costs in the total amount of \$15,534.25. The

costs identified by Counsel are reasonable.

8. The Court hereby approves payment to Plaintiff EDWARD ORDEZ in the amount of \$7,500.00 for his general release of all claims, which release is substantially broader than the limited release of PAGA claims applicable to all other Aggrieved Employees.

9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Agreement.

10. Pursuant to the terms of the Settlement, the released persons and entities include:

Defendant as well as all its current or former agents, officers, directors, managers, – shareholders, members, owners, subsidiaries, parent companies, related companies, insurers, employees, representatives, attorneys, and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns, and /or any individual or entity which could be jointly liable with Defendant for the claims alleged (collectively, the “Released Parties”)

11. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against the “Released Parties” (defined above). It is expressly understood and agreed that this settlement only includes a full release of the Representative PAGA Claims.² As a result of this release, the Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under, the California Private Attorneys General Act, California Labor Code § 2698 *et seq.*, for any violations of the Representative PAGA Claims that took place during the PAGA Period. In addition, Plaintiff shall execute a general release of all claims as part of the terms of the Agreement. With the exception of Plaintiff, this settlement shall not impact Aggrieved Employees’ ability to assert claims other than PAGA claims arising from the

² The Lawsuit asserts representative claims for civil penalties payable to himself, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to timely pay final wages at termination; and (6) failed to furnish accurate itemized wage statements. Specifically, the Representative PAGA Claims are PAGA claims asserted or which could have been asserted in the Lawsuit and both or either of Plaintiff’s Complaints and/or PAGA Notice filed with the LWDA, including all PAGA claims stated expressly or by implication in the Notice filed with the LWDA or that could have been alleged based on the facts and circumstances set forth therein. The applicable PAGA Notice related to the Lawsuit is attached [to the Settlement] as Exhibit A (all of the foregoing is collectively referred to as Plaintiff’s “Representative PAGA Claims”).

1 alleged foregoing violations of the Labor Code.³

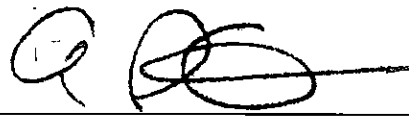
2 12. The action is DISMISSED WITH PREJUDICE.

3 13. The Court will enter Final Judgment in accordance with this Order.

4 14. The Court shall retain jurisdiction with respect to all matters related to the administration
5 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the
6 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the
7 determination of all controversies relating thereto.

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9 **IT IS SO ORDERED.**

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11 Dated: SEP 15 2022

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14 Hon. Erin Guy Castillo
15 SAN JOAQUIN SUPERIOR COURT JUDGE
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23 ³ The effective date ("Effective Date") of the Agreement shall mean the following: (a) the date of
24 entry of the order of the court approving this Agreement and the PAGA Settlement if no objections are
25 filed to this settlement or if all objections are withdrawn prior to the Court ruling on them and if no
26 individual attempts to intervene in the Lawsuit; or (b) sixty-five (65) days after the date of entry of the
27 settlement approval order if objections are filed and overruled and no appeal is taken from the order
28 approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final
resolution of that appeal if the appeal is unsuccessful, the settlement is upheld, and the settlement
approval order is no longer subject to further judicial review. If there is an intervenor, but no appeal is
filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the
Settlement is Final. If there is no intervenor in the action, the date the Court enters an order approving
this Settlement shall be the date the Settlement is Final.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[AMENDED PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☒ as stated on the attached service list:

Daniel Quinn
Michael C. Kronlund
QUINN & KRONLUND LLP
509 West Weber Avenue, Suite 400
Stockton, CA 95203
Telephone: 209.943.3950
Facsimile: 209.943.3505
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Christy D. Joseph
Erin D. Leach
Anne Dwyer
SNELL & WILMER L.L.P.
600 Anton Blvd, Suite 1400
Costa Mesa, California 92626-7689
Telephone: 714.427.7000
Facsimile: 714.427.7799
eleach@swlaw.com

Counsel for Defendant

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☒ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **August 22, 2022** at Los Angeles, California.

Jessica Flores
Type or Print Name


Signature