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Attorneys for Plaintiff KASHU XOLA, Individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

KASHU XOLA, Individually, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

FULL PACKAGE DELIVERY, LLC, a
California Limited Liability Company;
AMAZON LOGISTICS, INC., a Delaware
Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00006720-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF (1) CLASS ACTION
SETTLEMENT; (2) ATTORNEYS' FEES
AND COSTS; and (3) CLASS
REPRESENTATIVE AWARD**

Date: September 8, 2023

Time: 9:00 a.m.

Dept.: C-60

Judge: Hon. Matthew C. Braner

1 I, Eric K. Yaeckel, declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff KASHU XOLA, Individually, and on behalf of other members of the
5 general public similarly situated, in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed Motion for Final Approval of (1)
7 Class Action Settlement; (2) Attorneys' Fees and Costs; and (3) Class Representative Award..
8 I am personally familiar with the facts set forth in this declaration, and if called to testify could
9 and would do so.

10 **Experience of Counsel**

- 11 3. Lead trial counsel, Mr. William Sullivan, has been a California-licensed attorney for 28 years.
12 He has approximately 27 years of experience in "class action" litigation, both as plaintiff and
13 defense counsel.
- 14 4. I have over 12 years of experience as an attorney as an attorney who is primarily engaged in
15 prosecuting class and representative actions. I have spent my entire practice engaged in
16 prosecuting class and representative actions. I became a partner in the firm in 2020.
- 17 5. Our office are the attorneys of record in a matter very recently (and favorably) decided before
18 the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
19 The *Donohue* matter is a certified class and PAGA action.
- 20 6. Our office is lead counsel on approximately 30 employment "wage and hour" claims with class
21 action, or representative action, allegations. These cases are set within the California Superior
22 Court and Federal District Courts in California. Our office is currently lead counsel on claims
23 that have been certified by both Court Order and by stipulation of the parties. In the last three
24 years, Sullivan & Yaeckel Law Group has settled at least 15 employment "wage and hour"
25 claims on behalf of a Certified Class.
- 26 7. In the last five years, Sullivan & Yaeckel Law Group has tried three "Wage and Hour"
27 Representative (PAGA). In a recent successful PAGA trial, tried before Judge Bacal of the San
28 Diego Superior Court, our office was awarded our full requested attorneys fees and was

1 approved at the requested hourly rates (which are similar to the fees/rates billed here). Please
2 See *Carrington v. Starbucks Corp.* San Diego Superior Court, Case No.
3 37-2014-00018637-CU-OE-CTL and published appellate opinion 30 Cal.App.5th 504.

4 8. Our firm has the requisite experience knowledge of California law and the Federal Rules of
5 Civil Procedure required to act on behalf of the Class. I consider the Settlement Agreement in
6 this matter to represent a fair, adequate and reasonable settlement that is well within the
7 accepted range of recoveries for similar wage and hour class actions. I also believe the
8 Agreement is in the best interests of the Settlement Class Members. I am also aware that
9 Defendants' counsel (both the firm, and individual attorneys working on this case) have
10 extensive experience defending similar wage and hour class actions.

11 9. Based on the above experience, it is this firm's opinion that this settlement represents a fair and
12 adequate payment to the class.

13 **Strengths of Plaintiff's Case and The Amount Offered in Settlement**

14 10. My office has met and conferred with Defendant's counsel, and we agree the amounts payable
15 to Plaintiff and each Class member are within the "ballpark range" of proportional liability as
16 set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499. A
17 detailed breakdown of the valuation of each claim was previously detailed this Court at the
18 preliminary approval stage.

19 11. As part of the mediation, Plaintiffs were able also to provide Defendants with a detailed "scope
20 of liability" calculations based on Defendants own verified records and policies. Throughout
21 the litigation Defendants presented potentially valid defenses to class certification, liability and
22 damages. Based on these considerations, and the risks involved in continuing litigation, I
23 submit the \$287,290.00 settlement represents a fair and more than reasonable settlement.

24 12. Additionally, I submit that the payment of \$18,750.00.00 to the LWDA for the PAGA claims
25 (75% Share of \$25,000 allocation), even though the LWDA declined to prosecute the claims
26
27
28

1 itself, is a fair, reasonable and adequate allocation.¹ The settlement is in the best interests of
2 the settlement class.

3 **The Risk, Expense, Complexity and Likely Duration of Further Litigation**

4 13. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
5 and costs and expert witnesses fees would be incurred. Given the numerous claims being
6 litigated, the parties may be required to hire multiple experts each (as many as three per side).
7 This would result in not only the production of six expert reports, but six depositions as well.
8 And, based on previous discussions between counsel regarding the remaining claims (including
9 the PAGA claims), the parties anticipated (at the very least) that there would be least two
10 dueling motions for summary judgment / adjudication (one from each side).

11 **The Presence of a Governmental Actor**

12 14. The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties
13 believe this is a fair, reasonable, and adequate allocation. The LWDA was also served with
14 copies of the preliminary approval papers and proposed settlement and has not objected or
15 responded to date.

16 **The Contingent Nature of the Fee Agreement, and Inherent Risk Therein, Supports Awarding**
17 **a Percentage of the Recovery**

18 15. My office was retained by Plaintiff on a contingency basis. A percentage fee of 35 % (thirty-
19 five percent) of any total recovery, was freely negotiated. As part of the agreement, Plaintiff's
20 Counsel was required to continue the prosecution of the matter regardless of the outcome of
21 the preliminary motions (*i.e.*, class certification, etc.). Here, Plaintiff's Counsel has agreed to
22 a 33 and 1/3 % share of the recovery in order to maximize the recovery on behalf of the class.

23 **The Continuing Obligation to Devote Time and Effort to the Litigation**

24 16. Since the tentative agreement, my office has had to devote considerable time to maintain the
25 litigation, achieve Court approval for the proposed settlement, and assist the proposed Class

27 ¹ The LWDA was also served with copies of the Settlement Agreement and Preliminary
28 Approval Motion and has not objected or responded to date.

Members with questions about the Class Notice, Potential Release and all available options. As is detailed in paragraph 19(d) below, and based on my experience acting as class counsel, I also estimate at least another 5 hours by my office will be devoted to this case.

The Extent to which the Litigation Precluded Other Employment

17. I, along with the other attorneys who assisted in the matter, was precluded from accepting other employment due to the necessity of maintaining the prosecution of the instant matter. In addition, Mr. Sullivan is the individual primarily responsible for bringing clients to the firm, and was precluded from doing so to the extent previously possible, due to the instant litigation.

The Amount Involved and the Results Obtained on Behalf of the Class

18. This is not a “coupon” class action case. As is detailed in the Settlement Administrator’s declaration, the Class is set to receive significant monetary benefits. They would not have received these amounts if Class Counsel did not act.

The Lodestar Analysis

19. Plaintiff seeks attorneys fees in the amount of one third of the total settlement amount, which is **\$95,763.33**. For purposes of a lodestar cross-check the firms’ attorneys’ fees incurred (to date) are estimated to amount to approximately **\$98,652.00**. The Attorney’s fees are broken down as follows:

a. Mr. William Sullivan served as lead investigator and trial counsel, per the specific request of Plaintiffs. (Yaeckel decl. ¶ 19(a).) The billing rate for Mr. William Sullivan is **\$720.00** per hour. (Yaeckel decl. ¶ 19(a).) Over the course of the investigation (including pre-filing), Mr. William Sullivan has currently expended approximately **61.1** hours in the service of this action. **61.1** hours times **\$720.00** equals **\$43,992.00**. The work includes nearly all preliminary investigation, some client and Class interaction/meetings, and some pre-settlement work, including the preparation of Plaintiff’s Mediation Brief and damages analysis. This time also includes traveling to at least 4 interviews with proposed Class Members. The preliminary investigation included the review and analysis of several documents. During this time, Mr. Sullivan also investigated Defendant, its business practices, and any variations in Class

Members' job duties and rates of pay.

- b. I was the partner primarily assigned to oversee the “day to day” activity of the primary associates assigned to this case. My billing rate is **\$600.00** per hour. I have expended approximately **56.8** hours in the service of this action. **56.8** hours times **\$600.00** equals **\$34,080.00**. Aside from supervising the primary associates, this work included attending hearings and most of the day to day communication with opposing counsel. I spent substantial time preparing for the mediation, including preparing a detailed mediation brief and damage analysis. I also handled numerous exchanges between the mediator and Defense counsel to negotiate and finalize the settlement. I also undertook the review and drafting of settlement documents and the preliminary and final approval motions.
- c. Mr. Ryan Kuhn, Katherine Dishongh and Ms. Karoline Kitlowski (briefly) also served as Associate Attorneys assigned to the case. The associates' billing rate on this matter is **\$420.00** per hour. The associates expended approximately **44.0** hours in the service of this action. **44.0** hours times **\$420.00** equals **\$18,480.00**. The work performed by the associates consisted of, for the most part, analysis of Defendants' documents and records, in preparation for mediation and a class certification motion. The associates were also assigned to discovery creation/review, the preparation of "meet and confer" letters and other contact with defense counsel. The associates also provided an analysis of employment records to determine "commonality" and damages.
- d. Based on past experience, counsel estimates the associate attorneys will incur an additional **5.0** hours in assisting Class Members on questions and issues regarding the settlement, meeting with Class Members (including those who file "late" submissions), and preparing for and attending the Final Approval hearing in this matter. **5.0** times **\$420.00** equals **\$2100.00**.

20. Class Counsel's total costs expended in this matter will be \$7,222.58. These costs are broken down as follows:

- a. Filing and appearance fees (including the Complaint and all other pleadings, all

e-file charges, LWDA filing fees and attorney messenger (service and delivery) fees totaled \$2,167.21.

b. Mediation fees totaled \$3,650.00

f. I approximate my office has expended approximately \$950.00 in legal research fees in connection with this case.

g. I approximate my office has expended \$248.95 in copies and postage fees in this matter.

h. My office has expended approximately \$108.65 in travel fees including meals while traveling, mileage, lodging and parking fees in connection with this case.

21. The parties' Agreement permits Plaintiffs (without Opposition) to seek up to \$12,000.00 in costs. Plaintiffs submits their request for the specific \$7,222.58 amount as set forth above.

The Lodestar Multiplier

22. Based upon my experience, I submit that the multiplier requested is within the range of what California and federal courts often apply in class action cases. Moreover, the results obtained here, versus the risk of a zero recovery, given the numerous asserted defenses, support this modest multiplier request.

23. Given fees incurred here, in the amount of \$98,652.00, a lodestar multiplier is not necessary.

24. Here, the multiplier requested is within the range (and actually lower) than what California and federal courts often apply in class action cases. Moreover, the results obtained here, including the average net recovery per Class Member exceed those normally observed in "wage and hour" class action settlements.

Class Representative Enhancement

25. Plaintiff contributed extensive time and resources in the prosecution of this case, as is detailed further in his declaration. Plaintiff was able to provide information instrumental to the prosecution of this matter including identifying numerous witnesses that could corroborate the claims. Plaintiff also assisted with reviewing and providing insight on Defendant's documents produced. Plaintiff brought to our attention numerous Labor Code violations that formed the basis of the litigation.

1 26. I know (from experience) that any company who does a detailed background check, will be
2 able to determine that Plaintiff is serving as class representative in a lawsuit against his former
3 employer.

4 27. An entire industry exists that allows employers to run extensive background searches on
5 potential employees. Companies who provide these services specifically highlight the fact that
6 their services allows employers to weed out litigious employment candidates. One such service
7 outlines ways that employers can "get a sense of whether a prospective employee is likely to
8 sue" the employer, through background checks and other means, to screen out these employees.
9 www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees. Onicra
10 Credit Rating Agency of India states: "Background screening has become a necessity in today's
11 litigious society." Back Track Screening also represents: "In today's litigious culture, employers
12 simply cannot afford to hire employees who will put their company at risk."
13 <http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf>.

14 28. Finally, any employer may simply check the various Superior Court of California websites and
15 conduct a party name search to uncover whether an applicant has previously filed litigation
16 against their employer.

17 29. Plaintiff also risked personally owing a large cost award, which I estimate would be well into
18 the tens of thousands of dollars, had the claims been unsuccessful.

19 30. Despite all the risks, Plaintiff at all times remained committed to securing a monetary recovery
20 on behalf of the entire class.

21
22 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
23 and correct. Executed this 16th day of August, 2023, at San Diego, California.

24 
25 _____

26
27 Eric K. Yaeckel
28