

FILED
LOS ANGELES SUPERIOR COURT

OCT 31 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**


EFFIRAMA QUAYSON, on behalf of
herself and others similarly situated,

Plaintiff,

v.

DFS GROUP L.P., and DOES 1 through 25,
inclusive,

Defendants.

Case No.: 19STCV32729 

~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: October 31, 2022
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Effirama Quayson sues her former employer, Defendant DFS Group L.P. for alleged wage and hour violations. Defendant is a travel retailer of luxury products, operating duty-free stores around the world. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On September 13, 2019, Plaintiff filed an action alleging the following
2 violations: (1) failure to pay wages and overtime under Labor Code § 510; (2) meal
3 period liability under Labor Code § 226.7; (3) rest break liability under Labor Code §
4 226.7; (4) wage statement violations under Labor Code § 226(a); (5) waiting time
5 penalties pursuant to Labor Code § 203; (6) violation of Business & Professions Code
6 §§ 17200 et seq.; and (7) penalties pursuant to the Private Attorneys General Act
7 (“PAGA”) under Labor Code § 2699.

8 On October 20, 2020, the parties participated in a full day mediation before the
9 Hon. Carl J. West (Ret.), and subsequently settled the matter after accepting a
10 mediator’s proposal.

11 Plaintiff’s motion for preliminary approval of the settlement initially came for
12 hearing on May 21, 2021. The Court continued the hearing and issued a “checklist”
13 regarding deficiencies in Plaintiff’s motion and requested additional information
14 regarding a separate settlement proposed to be entered into between Plaintiff and
15 Defendant in Case No. 20STCV14394. In response, Counsel filed joint briefing
16 regarding the motion for preliminary approval of the settlement and a modified
17 Settlement Agreement.

18 The matter was continued on several occasions and heard March 29, 2022, at
19 which time the Court and counsel discussed the settlement of the individual action and
20 its potential impact on this action. Counsel thereafter filed a revised Settlement
21 Agreement, attached as Exhibit A to the Updated Declaration of Sean A. Andrade ISO
22 Prelim filed May 23, 2022.

23 The settlement was preliminarily approved on June 16, 2022. Notice was given
24 to the Class Members as ordered (see Declaration of Alejandra Zárate). Now before the
25 Court is Plaintiff’s motion for final approval of the Settlement Agreement, including for

1 payment of fees, costs, and a service award to the named plaintiff. For the reasons set
2 forth below, the Court grants final approval of the settlement.

3
4 **II. THE TERMS OF THE SETTLEMENT**

5
6 **A. SETTLEMENT CLASS DEFINITION**

7 “Class” or “Class Members” means all current and former non-exempt hourly
8 Team Lead, Sales and Team Lead, Sales (Counter Manager) employed by DFS in
9 California at any time from January 11, 2017 until the date of preliminary approval.

10 (§10)

11 “Class Period” means the period from January 11, 2017 through the date of
12 preliminary approval. (§11)

13 “Participating Class” or “Participating Class Members” means all Class
14 Members who do not submit a valid letter requesting to be excluded from the
15 Settlement (i.e., opt-out), consistent with the terms set forth in this Settlement
16 Agreement. (§26)

17 “PAGA Representative Action Members” means all current and former non-
18 exempt hourly Team Lead, Sales and Team Lead, Sales (Counter Manager) employed
19 by DFS in California at any time from September 13, 2018 until the date of preliminary
20 approval. (§24)

21
22 **B. THE MONETARY TERMS OF SETTLEMENT**

23 The essential monetary terms are as follows:
24
25

- 1 • The Gross Settlement Amount (“GSA”) is **\$375,000** (¶19). This includes
2 payment of a PAGA penalty of **\$50,000** to be paid 75% to the LWDA (\$37,500)
3 and 25% to the Aggrieved Employees (\$12,500) (¶45).
- 4 • The Net Settlement Amount (“Net”) (**\$161,687.25**) is the GSA less:
 - 5 ○ Up to **\$125,000** (33 1/3%) for attorney fees (¶8);
 - 6 ○ Up to **\$10,000** for attorney costs (¶7);
 - 7 ○ Up to **\$10,000** for a service award to the proposed class representative
8 (¶12);
 - 9 ○ Estimated **\$6,500** for settlement administration costs (¶35); and
 - 10 ○ Estimated **\$11,812.75** in employer-side payroll taxes.
- 11 • Employer-side payroll taxes will be paid from the Gross Settlement Amount.
12 (¶42.b).
- 13 • Assuming the Court approves all maximum requested deductions, approximately
14 \$175,802.70 will be available for automatic distribution to participating class
15 members. Prior to the deduction of employee-side state and federal taxes, the
16 average settlement payment, including the PAGA, is estimated to be \$2,324.72
17 and the highest settlement payment is estimated to be \$6,963.75. The average
18 settlement share will be approximately \$2,170.40, including the PAGA payment.
19 (Zárate Dec. ¶15).
- 20 • There is no Claim Requirement (Notice pg. 1).
- 21 • The settlement is not reversionary (¶42).
- 22 • Individual Settlement Share Calculation: Each Class Member who does not
23 timely request to opt-out will receive a share of the remaining Net Settlement
24 Amount (“Individual Settlement Share”), less employee’s and employer’s
25 withholdings and taxes associated with the wage portion of the Individual

1 Settlement Shares, based on the number of Qualifying Workweeks a Class
2 Member was employed by, and worked for, Defendant as a non-exempt hourly
3 Team Lead, Sales and/or Team Lead, Sales (Counter Manager) in California at
4 any time from January 11, 2017 to the date of Preliminary Approval, excluding
5 weeks when the Class Member was on leave for the entire week. Specific
6 calculations of Individual Settlement Shares shall be made as follows: (§52.a)

- 7 ○ The Settlement Administrator shall calculate the total aggregate number
8 of Qualifying Workweeks that all Class Members were employed by, and
9 worked for, Defendant as a non-exempt hourly Team Lead, Sales and/or
10 Team Lead, Sales (Counter Manager) in California at any time from
11 January 11, 2017 to the date of Preliminary Approval, excluding weeks
12 when Class Members were on leave for the entire week (“Total
13 Workweeks”). (§52.a.i)
- 14 ○ The value of each individual Qualifying Workweek shall then be
15 determined by dividing the proceeds of the Net Settlement Amount by the
16 Total Workweeks, resulting in the “Workweek Value.” Each Individual
17 Settlement Share shall then be determined by multiplying the individual
18 Participating Class Member’s number of Qualifying Workweeks by the
19 Workweek Value. (§52.a.ii)
- 20 ○ If any Class Members submit timely and valid Requests for Exclusion,
21 the Settlement Administrator shall reallocate their Individual Settlement
22 Payment amounts to the Net Settlement Amount for distribution to
23 Participating Class Members pursuant to the terms of this Settlement
24 Agreement. (§52.a.iii)

1 ○ PAGA Settlement Share Calculations. Each PAGA Representative Class
2 Member, regardless of whether he or she timely requests to opt-cut of the
3 class portion of the settlement (i.e., the Released Class Claims), will
4 receive a portion of the PAGA Settlement Share allocated on a per capita
5 basis. Specific calculations of the PAGA Settlement Shares shall be made
6 by dividing 25 percent of the PACA Payment (\$12,500) by the total
7 number of PAGA Representative Class Members. (¶54)

- 8 • Tax Withholdings: 50% to wages, 50% to penalties and interest. (¶53)
- 9 • Funding of Settlement: Defendant shall transfer the Gross Settlement Amount to
10 a Qualified Settlement Fund (“QSF”) established by the Settlement
11 Administrator within ten (10) calendar days after the occurrence of the latest of:
12 (a) if an objection is filed, 60 days after the Court enters an order granting final
13 approval of the Settlement, (b) if an objection is filed and not withdrawn, and if
14 any timely appeals are filed, the resolution of any such appeals in a way that
15 does not materially alter the terms of the settlement; and (c) if no objection is
16 filed, or if an objection is filed but is withdrawn, the date on which the Court of
17 Appeal or Supreme Court renders a final judgment affirming final approval.
18 (¶42)
- 19 • Disbursement: Within thirty (30) calendar days of the Effective Date, the
20 Settlement Administrator shall issue payments to: (1) Participating Class
21 Members; (2) PAGA Representative Action Members; (3) the LWDA; (4)
22 Plaintiff; (5) Class Counsel; and (6) itself, for Court-approved services
23 performed in connection with the Settlement. (¶56)
- 24 • Uncashed Settlement Payment Checks: Any checks issued by the Settlement
25 Administrator to Participating Class Members and PAGA Representative Class

1 Members shall remain valid and negotiable for one hundred eighty (180) days
2 from the date of their issuance. The total amount of any such uncashed checks
3 shall be donated to Legal Aid at Work, a Section 501(c)(3) corporation, as a cy
4 pres beneficiary within thirty (30) days of the last day any issued check remains
5 valid and negotiable, subject to Court approval. (¶57)

6
7 **C. TERMS OF RELEASES**

- 8 • Class members will release: Any and all claims, known or unknown, that: were
9 asserted in the Complaint in the Action; and/or any and all claims, known or
10 unknown, that could have been asserted based on any or all the factual
11 allegations in the Complaint in the Action. This includes but is not limited to
12 claims for or related to: overtime; pay for all hours worked/compensation due for
13 services; off-the-clock work; commissions; meal periods; rest periods; meal
14 and/or rest period premiums; wage statements; timeliness of wages; payment of
15 wages at termination; unfair competition related to any or all of the foregoing;
16 any unpaid wages or compensation related to any or all of the foregoing;
17 restitution related to any or all of the foregoing; and any penalties, including
18 statutory or civil penalties, related to any or all of the foregoing. This release
19 includes any and all claims pursuant to: California Labor Code sections 200,
20 201, 202, 203, 204, 226, 226.7, 510, and 512; the California Business &
21 Professions Code; and the California Industrial Welfare Commission Wage
22 Orders (“Released Class Claims”). (¶60.a)
 - 23 ○ The release shall run from January 11, 2017 (the beginning of the Class
24 Period) through the date of the Superior Court of the State of California,
25 County of Los Angeles, grants final approval of the settlement. (¶60.b)

- 1 • PAGA Release by PAGA Representative Action Members: Upon the Final
2 Approval by the Court of this Settlement Agreement and payment of amounts set
3 forth in the Settlement Agreement, and except as to such rights or claims as may
4 be created by the Settlement Agreement, each and every PAGA Representative
5 Action Member, on behalf of themselves and their heirs and assigns, and
6 irrespective of whether the PAGA Representative Action Member opted out of
7 the class action portion of this Settlement, hereby releases the Released Parties
8 from the following rights or claims (the “Released PAGA Claims”): (¶61)
- 9 ○ Any and all claims for civil penalties under California Labor Code section
10 2698 et seq. (“PAGA”), known or unknown, that are alleged in Plaintiff’s
11 letter(s) to the LWDA; and/or that could have been asserted in any
12 complaint filed in the Action based on or related to the facts and/or
13 allegations Plaintiff’s letter(s) to the LWDA. This release includes, but is
14 not limited to, claims for PAGA civil penalties premised on: California
15 Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, and 512;
16 failure to pay wages and overtime; failure to pay for all hours
17 worked/compensation due for services; off-the-clock work; failure to pay
18 or expropriation of commissions; failure to provide meal periods; failure
19 to authorize and permit rest periods; failure to pay meal or rest period
20 premiums; failure to provide accurate itemized wage statements; and
21 failure to timely pay wages at termination. This covers all claims under
22 PAGA for unpaid wages or compensation, premium payments, liquidated
23 damages, restitution (including for unfair competition), penalties,
24 attorneys’ fees or costs, and/or any other damages or amounts related to
25 any or all of the foregoing. (¶61.a)

1 o The release shall be from September 12, 2018 (one year before Plaintiff
2 submitted her PAGA notice to the LWDA) through the date the Superior
3 Court of the State of California, County of Los Angeles, grants final
4 approval of the settlement. (¶61.b)

- 5 • “Released Parties” are defined as: Defendant DFS Group L.P. including its
6 present, former, or future parent and/or subsidiary corporations; each of the
7 foregoing’s present, former, or future: owners, officers, directors, shareholders,
8 partners, employees, insurers, successors, predecessors, contractors, assigns, and
9 managing agents; and any and all agents, legal representatives, and/or attorneys
10 of all of the foregoing entities or individuals. (¶60)
- 11 • The named Plaintiff will also provide a general release and a waiver of the
12 protections of Cal. Civ. Code §1542. (¶62)
- 13 • The releases are effective upon the Final Approval by the Court of this
14 Settlement Agreement and payment of amounts set forth in the Settlement
15 Agreement. (¶60)

17 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

18 “Before final approval, the court must conduct an inquiry into the fairness of the
19 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
20 settlement agreement after the final approval hearing, the court must make and enter
21 judgment. The judgment must include a provision for the retention of the court's
22 jurisdiction over the parties to enforce the terms of the judgment. The court may not
23 enter an order dismissing the action at the same time as, or after, entry of judgment.”
24 Cal. Rules of Court, rule 3.769(h).

1 As discussed more fully in the Order conditionally approving the settlement, “[i]n
2 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
3 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
4 action. The purpose of the requirement [of court review] is the protection of those class
5 members, including the named plaintiffs, whose rights may not have been given due
6 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
7 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
8 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
9 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
10 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
11 extent necessary to reach a reasoned judgment that the agreement is not the product of
12 fraud or overreaching by, or collusion between, the negotiating parties, and that the
13 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
14 quotation marks omitted].

15 “The burden is on the proponent of the settlement to show that it is fair and
16 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
17 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
18 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
19 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
20 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
21 1802. Notwithstanding an initial presumption of fairness, “the court should not give
22 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
23 116, 130. “Rather, to protect the interests of absent class members, the court must
24 independently and objectively analyze the evidence and circumstances before it in order
25 to determine whether the settlement is in the best interests of those whose claims will be

1 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
2 that determination, the court should consider factors such as “the strength of plaintiffs’
3 case, the risk, expense, complexity and likely duration of further litigation, the risk of
4 maintaining class action status through trial, the amount offered in settlement, the extent
5 of discovery completed and stage of the proceedings, the experience and views of
6 counsel, the presence of a governmental participant, and the reaction of the class
7 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
8 the court is free to engage in a balancing and weighing of factors depending on the
9 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

10 **A. A PRESUMPTION OF FAIRNESS EXISTS**

11 The Court preliminarily found in its Order of June 16, 2022, that the presumption
12 of fairness should be applied. No facts have come to the Court’s attention that would
13 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption
14 of fairness as set forth in the preliminary approval order.

15 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

16 The settlement was preliminarily found to be fair, adequate and reasonable.
17 Notice has now been given to the Class and the LWDA. The notice process resulted in
18 the following:

19 Number of class members: 81

20 Number of notices mailed: 81

21 Number of undeliverable notices: 1

22 Number of opt-outs: 0

23 Number of objections: 0

24 Number of participating class members: **81**

25 (Zárate Decl. ¶¶ 5-13.)

1 The Court finds that the notice was given as directed and conforms to due process
2 requirements. Given the reactions of the Class Members and the LWDA to the proposed
3 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
4 found to be fair, adequate, and reasonable.

5 **C. CLASS CERTIFICATION IS PROPER**

6 For the reasons set forth in the preliminary approval order, certification of the
7 Class for purposes of settlement is appropriate.

8 **D. ATTORNEY FEES AND COSTS**

9 Class Counsel requests **\$124,987.50** (33.33%) for attorney fees and **\$7,709.80** for
10 costs. (MFA at 1:14-15.)

11 Courts have an independent responsibility to review an attorney fee provision and
12 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
13 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
14 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
15 503.

16 In the instant case, fees are sought pursuant to the percentage method. (MFA at
17 pp. 10-12.) The \$124,987.50 fee request is 33.33% of the Gross Settlement Amount.

18 Counsel also requests a lodestar crosscheck. (MFA at pp. 12-14). Counsel
19 represents that their hourly rates of \$350-765 are commensurate with the rates of other
20 firms performing similar work for plaintiffs and defendants, and that their rates are set
21 according to prevailing market rates in Los Angeles. (Declaration of Sean A. Andrade
22 ISO Final ¶¶ 17-19.) However, no evidence is provided in support of these assertions,
23 nor has counsel shown that their proposed rates have been approved by other courts. The
24 Court declines to engage in a lodestar crosscheck calculation as counsel has not shown
25 that their rates are market tested.

1 Nonetheless, the **\$124,987.50** fee request represents a reasonable percentage of
2 the total funds paid by Defendant. Further, the notice expressly advised class members
3 of the fee request, and no one objected. (Zárate Decl. ¶11, Exhibit A thereto.)
4 Accordingly, the Court awards fees in the amount of **\$124,987.50**.

5 Class Counsel requests **\$7,709.80** in costs. (Andrade Decl. ISO Final ¶18.) This
6 is less than the \$10,000 cap provided in the settlement agreement (¶7). The amount was
7 disclosed to Class Members in the Notice, and no objections were received. (Zárate
8 Decl. ¶11, Exhibit A thereto.) Costs include: Mediator’s Fees (\$3,225),
9 Messenger/Filing (\$2,933.60), and Court Reporting Services (\$971). (Andrade Decl.
10 ISO Final, Exhibit B.)

11 The costs appear to be reasonable and necessary to the litigation, are reasonable
12 in amount, and were not objected to by the class.

13 For all of the foregoing reasons, costs of **\$7,709.80** are approved.

14 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

15 A service (or incentive) fee award to a named class representative must be
16 supported by evidence that quantifies the time and effort expended by the individual and
17 a reasoned explanation of financial or other risks undertaken by the class representative.
18 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
19 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
20 [“Criteria courts may consider in determining whether to make an incentive award
21 include: (1) the risk to the class representative in commencing suit, both financial and
22 otherwise; (2) the notoriety and personal difficulties encountered by the class
23 representative; (3) the amount of time and effort spent by the class representative; (4) the
24 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
25 class representative as a result of the litigation. (Citations.)”].

1 Here, the Class Representative, Effirama Quayson, requests an enhancement
2 award of **\$10,000**. (MFA at 16:3-4.) She represents that her contributions to the action
3 include: searching for and providing documents and information related to Defendant's
4 discovery requests, staying in contact with her attorneys, reviewing drafts of court
5 filings, attending the full day Zoom mediation on October 20, 2020, and reviewing the
6 settlement. (Supp. Declaration of Effirama Quayson ISO Prelim ¶¶ 6-9, attached as
7 Exhibit A to Supp. Declaration of Andre Y. Bates filed March 7, 2022.) She does not
8 provide an estimate of her total time spent on the case. She asserts that she is aware of
9 the potential stigma of being a Class Representative in a class action dispute, though she
10 has not shown that it has affected any employment opportunities. (*Id.* at ¶4.)

11 In light of the above-described contributions to this action, and in
12 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award
13 is reasonable and approved.

14 **F. SETTLEMENT ADMINISTRATION COSTS**

15 The Settlement Administrator, CPT Group, Inc., requests **\$6,500** in compensation
16 for its work in administering this case. (Zárate Decl. ¶16.) At the time of preliminary
17 approval, costs of settlement administration were estimated at \$6,500 (¶35). Class
18 Members were provided with notice of this amount and did not object. (Zárate Decl.
19 ¶11, Exhibit A thereto.)

20 Accordingly, settlement administration costs are approved in the amount of
21 **\$6,500**.

22 **IV. CONCLUSION AND ORDER**

23 The Court hereby:

- 24 (1) Grants class certification for purposes of settlement;
25 (2) Grants final approval of the settlement as fair, adequate, and reasonable;

- 1 (3) Awards **\$124,987.50** in attorney fees to Class Counsel, Andrade Gonzalez LLP;
2 (4) Awards **\$7,709.80** in litigation costs to Class Counsel;
3 (5) Approves payment of **\$37,500** (75% of \$50,000 PAGA penalty) to the LWDA;
4 (6) Awards **\$5,000** as a Class Representative Service Award to Effirama Quayson;
5 (7) Awards **\$6,500** in settlement administration costs CPT Group, Inc.;
- 6 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
7 and containing the class definition, full release language, and a statement that no
8 class members opted out by 11/4, 2022;
- 9 (9) Orders class counsel to provide notice to the class members pursuant to
10 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
11 Code §2699 (1)(3); and
- 12 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of
13 Settlement Funds for
14 8/23/2023, at 8:30 am
15 Final Report is to be filed by
16 8/16/2023. If there is unpaid residue
17 or unclaimed or abandoned class member funds and/or interest thereon to be
18 distributed to Legal Aid at Work, Plaintiffs' counsel shall also submit an
19 Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 and give notice of
20 the Judicial Council of California upon entry of the Amended Judgment, when
21 entered, pursuant to Cal. Code of Civ. Pro. §384.5.

22
23 Dated: 10/3/2022

Maren E Nelson

24 MAREN E. NELSON

25 Judge of the Superior Court