



JUL 24 2018

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CASE NO.: CGC 16-552307

CLASS ACTION

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
REPRESENTATIVE SERVICE AWARDS,
AND PAGA PAYMENT TO THE STATE OF
CALIFORNIA**

LORETTA GREENE, et al.,
Plaintiffs,
v.
SHIFT OPERATIONS LLC, et al.,
Defendants.

On February 23, 2018, the Court granted preliminary approval of the proposed Joint Stipulation of Amended Settlement ("Settlement") attached as Exhibit A to the December 22, 2017 Declaration of Rachel Terp, as modified by Exhibit A to the Notice of Amendment to Joint Stipulation of Amended Settlement filed on February 15, 2018.¹ Before the Court are Plaintiffs' (1) Unopposed Motion for Final Approval of Class Action Settlement and (2) Motion for Attorneys' Fees, Costs, and Representative Service Awards ("Motions"), which were heard on June 19, 2018.

The Court ordered Plaintiffs to make supplemental filings on seven subjects by July 11, 2018. Plaintiffs made a timely submission. That submission was supplemented on July 18, 2018.

Adequate notice was given to Defendants and the Class, and the Court considered the Settlement Agreement, the present Motion and the papers filed in connection with it as well as more generally the record in this case. The Court now by GRANTS final approval of the Settlement as follows.

¹ Due to a change in C.C.P. § 384, the parties now no longer wish to allocate residual funds as set forth in the amendment to the Joint Stipulation of Amended Settlement. The distribution of residual funds shall be accomplished as set forth in this order.

1 1. Except as otherwise specified, for the purposes of this Order and Judgment, the Court
2 adopts and incorporates by reference all defined terms set forth in the Settlement and Motion for
3 Preliminary Approval.

4 2. The Court has jurisdiction over the subject matter of this litigation, Plaintiffs, the
5 Settlement Class, and Defendants.

6 3. Notice in a form substantially approved by the Court was provided by First Class mail to
7 the last-known address of each of the 191 individuals identified as Class Members, after first processing
8 such addresses through the U.S. Postal Service National Change of Address database, as stated in the
9 declaration of the Claims Administrator. In addition, follow up efforts were made to send the Notice to
10 those individuals whose original notices were returned as undeliverable. The Notice given to the
11 Settlement Class met requirements of California law and due process. The notice to the class was
12 adequate.

13 4. Out of the identified Settlement Class Members, none has objected to any aspect of the
14 proposed Settlement, and none has opted out of the proposed Settlement. The reaction of the Settlement
15 Class to the proposed settlement supports the conclusion that the proposed Settlement is fair, reasonable,
16 and adequate.

17 5. For settlement purposes only, the following Settlement Class is certified: all individuals
18 who worked as Car Concierges, Car Enthusiasts, Inside Sales Representatives, Operations Specialists,
19 and in similar or related positions for Shift Operations LLC, and / or Shift Technologies, Inc. in the State
20 of California from May 31, 2012 through September 9, 2017 who were classified as exempt from
21 overtime and meal and rest break requirements, either as independent contractors or employees. The
22 term Class Members is limited to the 191 individuals identified in Exhibit A of the Parties' June 19,
23 2017 Memorandum of Understanding.

24 6. Loretta Greene and Will Ulitsky are confirmed as Class Representatives.

25 7. Bryan Schwartz and Rachel Terp of Bryan Schwartz Law are confirmed as Class
26 Counsel.

27 8. For settlement purposes only, the proposed Settlement Class meets the requirements for
28 certification under C.C.P. § 382. Specifically, for settlement purposes: (1) the proposed Settlement

1 Class is numerous and ascertainable; (2) there are predominant common questions of law or fact; (3) the
2 Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class;
3 (4) the Class Representatives have fairly and adequately protected the interests of the Settlement Class
4 Members; (5) Class Counsel is qualified to serve as counsel for the Class Representatives and the
5 Settlement Class; and (6) a class action is superior to other methods to efficiently adjudicate this
6 controversy through settlement.

7 9. The Settlement is approved. The terms of the Settlement are fair, reasonable, and
8 adequate. Plaintiffs have satisfied the requirements for final approval of this class action settlement.
9 The parties are directed to effectuate the Settlement according to its terms and this order.

10 10. Upon the Effective Date as defined in the Settlement, Plaintiffs and the Settlement Class
11 release all Released Claims against the Released Parties. The Released Claims are defined in the
12 Settlement as follows: "all claims alleged or that could have been alleged based upon the facts pled in
13 the Action with respect to the Settlement Class only arising during the Class Period, including (1)
14 Failure to Pay Overtime Wages under California Labor Code §§ 510, 558, 1194, 1198 and applicable
15 orders of the Industrial Welfare Commission; (2) Failure To Reimburse Business Expenses in Violation
16 of California Labor Code § 2802; (3) Failure To Provide or Authorize Meal and Rest Periods under
17 California Labor Code §§ 226.7, 512, 558 and applicable orders of the Industrial Welfare Commission;
18 (4) Failure to Provide Timely, Accurate Itemized Wage Statements under California Labor Code §§ 226,
19 226.3, 1174 and applicable orders of the Industrial Welfare Commission; (5) Failure to Pay Earned
20 Wages Upon Discharge in Violation of California Labor Code §§ 201-203; (6) Unlawful or Unfair
21 Business Practices in violation of California Business & Professions Code § 17200, et seq.; (7) Civil
22 Penalties under the California Labor Code Private Attorneys General Act ('PAGA'), Labor Code § 2698
23 et seq., including those for alleged willful misclassification of workers as independent contractors
24 pursuant to California Labor Code § 226.8; and all other claims for wages or penalties under the
25 California Labor Code or applicable orders of the Industrial Welfare Commission, and all penalties or
26 other remedies arising from the violations or facts alleged in the Complaint. Released Claims exclude all
27 other claims, including claims for unemployment insurance, disability, workers' compensation,
28 discrimination, wrongful termination, and claims outside of the Class Period."

1 11. Pursuant to C.C.P. § 384(a), the requested *cy pres* recipient, Legal Aid At Work, will use
2 the *cy pres* funds to further the purposes of the claims in this case. The *cy pres* recipient is approved.
3 Pursuant to § 384(b), the parties will report to the Court (as indicated below) the total amount that was
4 actually paid to the class members, and will provide a proposed amended judgement which directs
5 Defendants to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest
6 from the date of entry of the initial judgment, to Legal Aid at Work.

7 12. For contributions in acting as Class representatives: Plaintiff Greene is awarded \$4,000;
8 Plaintiff Ulitsky is awarded \$3,000.

9 13. In light of the small PAGA payment contemplated by the Settlement, no further incentive
10 payments are appropriate (i.e. to Holt and Sanders).

11 14. *Attorneys fees.* Class Counsel seeks \$483,333.33 in fees, approximately 32.22% of the
12 \$1.5 million common fund. This is within the range of reasonableness, although on the high end.

- 13 a. I cross check the request with a lodestar analysis. In their initial papers, Class
14 Counsel claimed an unmodified lodestar of \$425,875, and reasonable rates, with a
15 reasonable staffing model with the bulk of the hours billed by a senior associate.
- 16 b. Some time appears unnecessary or not to the benefit of the class. (1) 73.7 hours
17 unsuccessfully opposing a petition to compel arbitration; (2) 14.2 hours initiating
18 arbitration; (3) 66 hours preparing the initial preliminary approval motion papers and
19 79.6 hours preparing the second motion for preliminary approval; and (4) 44.8 hours
20 preparing the fee motion. The time under (2) may have befitted the class because
21 initiating arbitration on behalf of the two named plaintiffs who were compelled to
22 arbitrate their claims helped them serve as PAGA representatives and applied
23 pressure to the Defendant. Time under (1) and (4) likely did not assist the Class,
24 because the opposition to the petition to compel arbitration was unsuccessful and
25 because obtaining the fee award does not help the class. Under (3), the time spent
26 appears unreasonably high. A fair adjustment is to cut the hours represented in (1)
27 and (4) and reducing the hours represented in (3) by 40, all at the blended rate of
28 \$423.59 results in a reduced base lodestar of \$358,865.45.

1 c. Implementing these adjustments implies that multiplier of approximately 1.35 is
2 necessary to reach the requested fee award of \$483,333.33. For most cases involving
3 risk and contingency, a multiplier of about 1.1 or 1.2 is appropriate. But the higher
4 multiplier is appropriate here because the case was efficiently staffed with a low
5 blended rate of \$423.59; and Counsel was able to secure a favorable result for the
6 class, including monetary relief and a change in business practices, without
7 unnecessary litigation.

8 15. I conclude that Plaintiffs' application for Attorneys' fees in the amount of \$483,333.33,
9 reasonable litigation costs in the amount of \$15,000, and \$9,000 for administration costs to Analytics
10 LLC, are hereby granted.

11 16. Payment to the LWDA of 75% of \$15,000 (\$11,250) as its share of the settlement of civil
12 penalties under the Private Attorney General Act in this case is fair, reasonable, and appropriate, based
13 upon a review of the relief obtained by the settlement as a whole, including substantial monetary and
14 injunctive relief. The Court gives final approval to and orders that the payment of that amount be paid
15 out of the Settlement Fund.

16 17. On or before either December 6, 2018, if only one round of checks is distributed pursuant
17 to the terms of the Settlement, or March 14, 2019, if two rounds of checks are distributed pursuant to the
18 terms of the settlement, Plaintiffs shall file a Final Report stating the total amount actually paid to class
19 members, and the amount remaining for *cy pres*, after which time, if appropriate and on submissions of a
20 proposed order, the Court will enter an amended order to pay the residual funds to the *cy pres*
21 beneficiary.

22 18. By Rule of Court 3.769(h), the Court retains exclusive and continuing jurisdiction over
23 the litigation, the Plaintiffs, the Class Members and Defendants for the purposes of supervising the
24 implementation, enforcement, construction, administration and interpretation of the Settlement
25 Agreement.

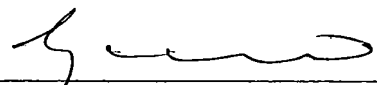
26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. Notice of final judgment must be provided to the Settlement Class by posting this Order and the final judgment on the settlement website for a period of not less than 60 days from the date judgment is entered.

Date: July 24, 2018


Curtis E.A. Karnow
Judge Of The Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

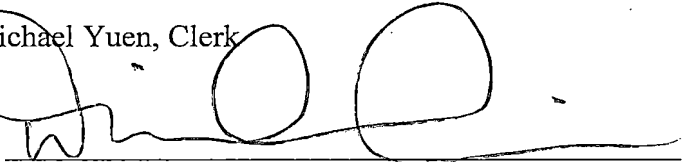
On **JUL 24 2018**, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated:

JUL 24 2018

T. Michael Yuen, Clerk

By:

A handwritten signature in black ink, appearing to read 'Danial Lemire', written over a horizontal line.

DANIAL LEMIRE, Deputy Clerk