

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:) Case No. 19-40883-659
) CHAPTER 11
PAYLESS HOLDINGS LLC, *et al.*,)
) Jointly Administered
Reorganized Debtors.)
) Re: Docket No. 2435

**ORDER PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 7023, 9014 AND 9019 (I) PRELIMINARILY APPROVING THE
SETTLEMENT AGREEMENT BETWEEN THE REORGANIZED DEBTORS, THE
LIQUIDATING TRUSTEE AND THE CALIFORNIA WAGE AND HOUR CLASS
REPRESENTATIVE, (II) CERTIFYING A CLASS OF WAGE AND HOUR EMPLOYEE
CLAIMANTS FOR SETTLEMENT PURPOSES ONLY, (III) APPOINTING CLASS
COUNSEL AND CLASS REPRESENTATIVE, (IV) APPROVING THE FORM AND
MANNER OF NOTICE TO CLASS MEMBERS OF THE CLASS CERTIFICATION
AND SETTLEMENT, (V) SCHEDULING A FAIRNESS HEARING TO CONSIDER
FINAL APPROVAL OF THE SETTLEMENT AGREEMENT,
(VI) GRANTING RELATED RELIEF**

Upon consideration of the joint motion (the “Joint Motion”) the above-captioned reorganized debtors (collectively, the “Reorganized Debtors” and, prior to the Effective Date, the “Debtors”), META Advisors LLC, as the Liquidating Trustee of the liquidating trust (the “Liquidating Trust”) established to facilitate the implementation of the Plan, and prospective class representative Yaquelin Garcia (the “Plaintiff” and, solely with respect to the Wage and Hour Claims, the “Class Representative”), on behalf of herself and similarly situated prospective class members (together with the Class Representative, and as defined in the Settlement Agreement (excluding Opt Outs), the “Class”, and each member within the Class, “Class Member(s)”, and together with the Class Representative, the Debtors, the Reorganized Debtors, the Liquidating Trust, and the Liquidating Trustee, the “Parties”), pursuant to Section 105 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), Federal Rules of Bankruptcy

Procedure (“Bankruptcy Rules”) 7023, 9014 and 9019 and Rule 23 of the Federal Rules of Civil Procedure (the “Civil Rules”) for the entry of an order (the “Order”) (a) approving the *Settlement Agreement and Release* dated as of February 28, 2023 (the “Settlement Agreement”)¹ among the Parties under Bankruptcy Rule 9019; (b) certifying the Class for settlement purposes only, appointing the Setareh Law Group, LLP as Class Counsel, appointing Yaquelin Garcia as Class Representative, and preliminarily approving the Settlement Agreement under Civil Rule 23 and Bankruptcy Rules 7023 and 9014; (c) approving the form and manner of notice to Class Members of the conditional class certification and settlement; (d) scheduling a fairness hearing (the “Fairness Hearing”) to consider final approval of the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rules 7023 and 9014; (e) after the Fairness Hearing, finally approving the Settlement Agreement pursuant to Civil Rule 23 and Bankruptcy Rules 7023 and 9014, and (f) granting related relief; and the Bankruptcy Court having reviewed and considered the Joint Motion, and upon the arguments of counsel made, and the evidence adduced, at the hearing held on March 22, 2023 (the “Preliminary Hearing”) where all interested persons had an opportunity to be heard; and upon the record of the Preliminary Hearing, and the Declarations of Shaun Setareh and Matthew Dundon (attached as **Exhibits 2** and **3**, respectively, to the Joint Motion), and these chapter 11 cases and proceedings, and after due deliberation thereon and good cause appearing therefore;

The Court finds that:

A. On March 1, 2023, notice of the Joint Motion (“Notice”) was served by first class mail on the parties listed on the proof of service of the Notice filed with the Court.

B. The Notice given constituted the best notice practicable under the circumstances, is adequate and no other notice need be given.

¹ All capitalized terms not otherwise defined in this order shall have the definitions set forth in the Settlement Agreement or the Joint Motion.

C. A full opportunity has been offered to the parties-in-interest to participate in the hearing on the Joint Motion.

D. For purposes of the Class settlement, Class Counsel has sufficient experience handling wage and hour employee class action litigation to adequately represent the Class, and the Class Representative does not have interests antagonistic to those of the Class.

E. For the purpose of the Class settlement only, and without prejudice to any other proceedings involving the Debtors or their successors: (i) the Class is so numerous that joinder of all Class Members is deemed impracticable; (ii) there are questions of law or fact deemed common to the Class; (iii) the claims of the Class Representative are deemed typical of the Class; (iv) the law firm of the Setareh Law Group, LLP has fairly and adequately protected the interests of the Class; (v) questions of law or fact common to the Class Members are deemed to predominate over any questions affecting on the individual Class Members; and (vi) the Class settlement mechanism is deemed superior to other available methods of resolving the alleged employee wage and hour claims and other claims released in the Settlement Agreement. Therefore, the Class should be certified for settlement purposes only, pursuant to Civil Rules 23(a) and (b)(3) and Bankruptcy Rule 7023 made applicable through Bankruptcy Rule 9014, with said Class consisting of all current and former nonexempt or hourly employees of Payless ShoeSource, Inc. within California at any time beginning on August 10, 2017 through July 31, 2019 on a preliminary basis (the “Preliminary Approval Date”) and who do not timely request to opt out of the Class.

F. Notice should be given to all of the Class Members by the agreed-upon third party Settlement Administrator, affording them the opportunity to opt-out of the Class or object to the proposed Settlement Agreement.

G. Based on the range of possible outcomes and the cost, delay, and uncertainty associated with further litigation, the Settlement Agreement is fair, reasonable, cost effective and in the best interest of the Debtors' estates, and preliminary approval of the Settlement Agreement is warranted.

H. The Settlement Agreement should be preliminarily approved.

I. Notice to all proposed Class Members by first class mail, postage prepaid, at their last known address as indicated in the records of the Reorganized Debtors (and as updated by the Settlement Administrators searches for current addresses to the extent contemplated under the Settlement Agreement) is reasonable and the best notice practicable under the circumstances and such mailing should be made by the Settlement Administrator within twenty (20) days following the entry of this Order.

J. The contents of the Class Notice form annexed to the Settlement Agreement as **Exhibits B** and **C** meet the requirements of Civil Rule 23(c)(2)(B) and 23(e)(1). The Class Notice states the nature of the action, and the issues and defenses relevant to the action. The Class Notice also states that the Settlement Agreement, if approved, will be binding on all Class Members (who do not opt out). The Class Notice summarizes the terms of the Settlement Agreement, the right of each Class Member to opt-out of the Class or object to the Settlement Agreement, the right of each Class Member to appear by counsel at the Fairness Hearing, and the fact that more information is available from Class Counsel upon request. Further, the Class Notice informs the Class Members that the Settlement Agreement provides for the release of their Released Claims (as that term is defined in the Settlement Agreement) and the payment of Class Professionals' fees and costs. *See* Fed. R. Civ. P. 23(h).

K. The Fairness Hearing should be held no sooner than is appropriate under 28 U.S.C. §1715, which will provide Class Members with sufficient time from the mailing of the Class Notice to secure further information regarding the relief sought by the Joint Motion, to opt out of the Class or object to the proposed Settlement Agreement (under the deadlines set in the Class Notice) should they choose to do so, and to engage counsel to appear at the Fairness Hearing.

L. Other good and sufficient cause exists for granting the relief requested in the Joint Motion.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Joint Motion is preliminarily **GRANTED**.
2. The Settlement Agreement is hereby preliminarily approved. The Class is comprised of all current and former nonexempt or hourly employees who worked for Payless ShoeSource, Inc. within California at any time beginning on August 10, 2017 through and including July 31, 2019 and who did not timely opt out of the Settlement Agreement. The Class is hereby certified for settlement purposes only, pursuant to Civil Rules 23(a) and (b)(3) and Bankruptcy Rule 9014 and 7023, solely with respect to the Wage and Hour Claims against the Debtors alleged in the Class Action and/or Garcia Proofs of Claim and/or all other claims seeking to be released under the Settlement Agreement. Civil Rule 23 is made applicable to this matter through Bankruptcy Rules 9014 and 7023. For the avoidance of doubt, this order does not certify any class, for settlement purposes or otherwise, with respect to the FCRA Claims alleged in the Class Action and/or Garcia Proofs of Claim.
3. Yaquelin Garcia is hereby appointed as Class Representative.
4. The law firm of the Setareh Law Group, LLP is hereby appointed as class counsel ("Class Counsel").

5. The form of the Class Notice and the service of the Class Notice by the Settlement Administrator by first class mail, postage prepaid, to each proposed Class Member at his or her last known address contained in the Reorganized Debtors' records (and as updated by the Settlement Administrators searches for current addresses to the extent contemplated under the Settlement Agreement) is hereby approved.

6. The Summary Class Notice shall be mailed by first class mail by the Settlement Administrator within twenty (20) days following the entry of this Order.

7. Simpluris, or another company or firm chosen by the Reorganized Debtors in their discretion (the "Settlement Administrator"), shall serve as the settlement administrator for purposes of implementation of the Settlement Agreement and related functions (as provided for under the Settlement Agreement) and shall be compensated for its services by the Reorganized Debtors up to a maximum amount of \$25,000. The Parties shall work in good faith to minimize the Settlement Administration Costs.

8. Objections or other responses to final approval of the Settlement Agreement, Class Professionals' fees, costs and expenses, or the Class Representative service must be received by the Reorganized Debtors, the Liquidating Trustee, Class Counsel, and the Settlement Administrator postmarked no later than thirty (30) calendar days after the date of the mailing of the Class Notices. Objections or other responses must be in writing and must set forth the basis for any such objection or other response to the Settlement Agreement.

9. Class Members, on an individual basis, may elect to opt out of the Settlement Agreement by submitting a request to be excluded from the settlement (each an "Opt Out Election") in accordance with the instructions in the Class Notice no later than thirty (30) days after the date of the mailing of the Class Notice (the "Opt Out Period"). A Class Member will

not be entitled to opt-out of the settlement established by the Agreement unless he or she timely does the following: sends a signed letter (by U.S. Mail – address to be provided in the Settlement Notice) to the Settlement Administrator including (a) his/her full name; (b) an email address and/or telephone number; (c) a clear statement communicating that they elect to be excluded from the Proposed Class, do not wish to be a Class Member, and elect to be excluded from any Final Approval Order entered pursuant to the Settlement; and (d) the case name and case number. All Class Members who do not submit an Opt Out Election prior to the expiration of the Opt Out Period shall be deemed to have consented to, and shall be bound by, the terms and conditions of the Settlement Agreement, and shall become Class Members for purposes of the Settlement Agreement upon the expiration of the Opt Out Period, and shall also be bound by the Court's Final Approval Order enjoining all Class Members from pursuing, or seeking to reopen, any of the Released Claims against the Released Parties. For the avoidance of doubt, any Class Member who submits an Opt Out Election shall be subject in all respects to the Bar Date Order and nothing in this Order shall be deemed to authorize the filing of proofs of claim after the General Bar Date. The General Bar Date shall not be tolled or otherwise extended for any Class Member or any party who submits an Opt Out Election.

10. Prior to the Fairness Hearing, the Settlement Administrator shall file a declaration (which may be filed by the Reorganized Debtors on behalf of the Settlement Administrator) attesting to the service of notice of this Settlement Agreement to the appropriate federal and state officials pursuant to 28 U.S.C. §1715, setting forth its compliance with its obligations under this Settlement Agreement, and detailing the requests to opt out of the Settlement that it has received (including the number of valid and deficient forms) and

detailing any objections that it has received (including objections to Settlement and/or objections to Class Professionals' fees and expenses payment), and the number of persons submitting timely requests for exclusion, as required under Paragraph 3(c) of the Settlement Agreement. No final order approving the Settlement Agreement shall be entered until all applicable statutory notice periods have expired.

11. Class Members will have thirty (30) calendar days from the initial mailing of the Summary Class Notice by the Settlement Administrator to object to the settlement by filing written notice of such objection (a "Notice of Objection") with this Court. A Notice of Objection shall clearly specify the grounds for the objection, the name of the objector, and the case name and number. The objection must be filed with the Bankruptcy Court, or received or postmarked by the Settlement Administrator, before the end of this thirty-day Objection Period. Only Class Members who do not opt-out may submit objections. Only objecting Class Members who make objections in the manner described in Paragraph 10 of the Settlement Agreement will be considered Objectors and will therefore be permitted to be heard at the Fairness Hearing; Class Members who fail to make objections in the manner specified in Paragraph 10 of the Settlement Agreement are not considered Objectors, shall be deemed to have waived any objections, shall be foreclosed forever from seeking review or making any objection to the settlement or the terms of the Settlement Agreement, and shall not be permitted to be heard at the Fairness Hearing without court order.

12. Non-substantive amendments may be made to the Settlement Agreement or Class Notice upon written agreement of the Class Counsel and Reorganized Debtors' Counsel without court approval.

13. The Court shall conduct the Fairness Hearing on **June 23, 2023 at 10:00 a.m.**

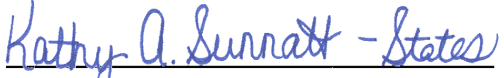
prevailing Central Time in Courtroom 7-North, a date at least 90 days after notice was provided pursuant to 28 U.S.C. §1715. The Court may adjourn the Fairness Hearing without further notice of any kind other than by notice filed on the docket of these cases or an announcement of such adjournment in open court at the Fairness Hearing or any adjournment thereof.

14. The Parties shall seek a postponement of proceedings and all pending deadlines related to the Class Action in the District Court until no earlier than the Settlement Effective Date.

15. Neither the Settlement Agreement, nor any act performed or document executed pursuant to the Settlement Agreement, may be deemed or used as an admission of wrongdoing in any civil, criminal or administrative proceeding.

16. The Parties are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Joint Motion.

No later than two (2) business days after the date of this Order, the Notice and Claims Agent appointed in the above captioned bankruptcy case shall serve a copy of this Order and shall file a certificate of service no later than 24 hours after service.


KATHY A. SURRATT-STATES
U.S. Bankruptcy Judge

DATED: March 22, 2023
St. Louis, Missouri
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