

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Acker v. Ritchie Bros. Auctioneers America Inc.

Tulare Superior Court, Case No. 283076

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current or former hourly-paid or non-exempt employees who were employed by Ritchie Bro Auctioneers America Inc. and Ritchie Bros. Auction in the State of California at any time from June 4, 2016 until February 2, 2021.

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by Ronald Acker (“Plaintiff”), a former employee of Ritchie Bros. Auctioneers America Inc. and Ritchie Bros. Auction (“Defendants”) on June 4, 2020. The case is currently pending in the Tulare County Superior Court, Case No. 283076.

The lawsuit claims that Defendants violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendants failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for time worked, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, failed to reimburse employees for necessary business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendants violated the California Labor Code and the California Business and Professions Code, entitling Settlement Class Members to, *inter alia*, damages, penalties and restitution. Defendants deny all alleged violations and deny that they owe Settlement Class Members any remedies. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative (in this case Ronald Acker, also known as “Plaintiff”), sue on behalf of people who appear to have similar claims (in this case all current or former hourly-paid or non-exempt employees who were employed by Ritchie Bros. Auctioneers America Inc. and Ritchie Bros. in the State of California at any time from June 4, 2016 until February 2, 2021. All these people are referred to here as Settlement Class Members. In a class action one court resolves the issues for all Settlement Class Members in one lawsuit, except for those who exclude themselves from the Settlement Class. The Tulare County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiff or Defendants. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”). On December 2, 2021, the Court granted preliminary approval of the Settlement, appointed Plaintiff Ronald Acker as the Class Representative, and appointed his attorneys at Lawyers for Justice and Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Settlement Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Settlement Class Member, if you were employed by Ritchie Bros. Auctioneers America Inc. and Ritchie Bros. as an hourly-paid or non-exempt employee in the State of California at any time from June 4, 2016 until February 2, 2021.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendants will pay a maximum of Nine Hundred Eighty Thousand Dollars (\$980,000.00) (“Maximum Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Maximum Settlement Amount that will be available for distribution to Settlement Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Maximum Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Maximum Settlement Amount or Three Hundred Forty-Three Thousand Dollars (\$343,000.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty Thousand Dollars (\$20,000.00);
- C. **Incentive Payment to the Class Representative** not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- D. **Settlement Administration Costs** which are currently estimated to be Ten Thousand Dollars (\$10,000.00); and
- E. **PAGA Payment** in the amount of Seventy-Five Thousand Dollars (\$75,000.00) for the settlement of claims arising under the Private Attorney’s General Act of 2004 (PAGA). Seventy-five percent (75%) of this amount (\$56,250.00) shall be paid to the Labor Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$18,750.00) will be distributed to PAGA Members (all current or former hourly-paid or non-exempt employees of Defendants in the State of California at any time from April 3, 2020 until April 3, 2021) for the release of their claims arising under PAGA.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of weeks (“Workweeks”) you worked in California as an hourly-paid or non-exempt employee of Defendants from June 4, 2016 to April 3, 2021 (“Class Period”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

Your Individual Settlement Payment will be apportioned as thirty-three and one third percent (33 1/3%) wages and sixty-six and two thirds percent (66 2/3%) penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Maximum Settlement Amount. The penalties and interest portions of each Settlement Class Member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the payments approved by the Court and other factors.

This Amount was determined based on Defendants' record of your employment between June 4, 2016 to April 3, 2021, and is presumed correct. If you dispute the accuracy of Defendants' records as to the number of weeks worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by **March 4, 2022**. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
Email: notice@phoenixclassaction.com

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the settlement?

Upon the funding of the Maximum Settlement Amount, in exchange for the consideration set forth by the Settlement, Plaintiff and all Settlement Class Members who do not submit a timely request for exclusion shall release the "Released Parties" from the "Settled Claims" for the Class Period.

The "Released Parties" include Defendants Ritchie Bros. Auctioneers America Inc. and Ritchie Bros. Auction and any of their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

The "Settled Claims" means any and all claims that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative complaint in the Action including the following claims: (i) unpaid wages, failure to pay minimum wage, failure to pay overtime, and any other claim for failure to pay wages under the Labor Code or Wage Order, and any claim for failure to pay wages or overtime wages at the correct regular rate of pay, including claims under Labor Code §§ 510, 1198, 1194, 1197, and 1197.1; (ii) failure to provide meal period premiums or failure to provide meal periods under the Labor Code or Wage Order; (iii) failure to pay rest period premiums or failure to authorize and permit rest periods under the Labor Code or Wage Order; (iv) failure to timely pay wages and/or waiting time penalties pursuant to Labor Code §§ 201 to 203; (v) failure to timely pay wages during employment and/or waiting time penalties pursuant to Labor Code § 204; (vi) failure to issue or provide adequate wage statements, whether for any penalty or wage; pursuant to Labor Code § 226; (vii) failure to maintain records under the Labor Code or Wage Order, including under Labor Code § 1174; (viii) penalties under the California Private Attorneys General Act based on the aforementioned Labor Code violations; (ix) unreimbursed business expenses under Labor Code §§ 2800 and 2802; (x) unfair business practices under Business and Professions Code § 17200 based on the aforementioned alleged Labor Code violations; and (xi) any other claims arising, or which could have arisen, from the operative facts alleged in Plaintiff's Complaint filed on June 4, 2020.

This release of these claims pertains to the Class Period from June 4, 2016 to April 3, 2021.

All PAGA Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Settled Claims arising under PAGA with respect to all of the Released Parties irrespective of whether a Settlement Class Member submits a request for exclusion.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendants with respect to the Settled Claims (other than those which arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the settlement?

To exclude yourself from the release of Settled Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: I wish to exclude myself from the class action settlement reached in the matter of *Acker v. Ritchie Bros. Auctioneers America Inc.* I understand that by excluding myself I will not receive money from the class portion of the settlement.”

The written request for exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by **March 4, 2022**. You cannot exclude yourself by phone.

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Settled Claims (except for Settled Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

You may be able to sue Defendants and/or the Released Parties or continue any suit you have pending against Defendants and/or the Released Parties, regarding the Settled Claims (except for Settled Claims that arise under the Private Attorneys General Act (California Labor Code sections 2698 *et seq.*)).

9. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendants and the Released Parties for the Settled Claims. If you have a pending lawsuit involving the Settled Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No, except if you worked between April 3, 2020 until April 3, 2021, in which case you will still receive the portion of your Individual Settlement Payment for Settled Claims that arise under PAGA. But if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against the Defendants and/or Released Parties for Settled Claims (except for Settled Claims that arise under PAGA).

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Lawyers *for* Justice, PC and Protection Law Group LLP as Class Counsel. The firms' contact information is:

Lawyers *for* Justice, PC
Edwin Aiwazian, Esq.
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021

PROTECTION LAW GROUP LLP
Heather Davis, Esq.
Amir Nayebdadash, Esq.
237 California Street
El Segundo, California 90245
Telephone: (424) 290-3095
Facsimile: (866) 264-7880

Class Counsel will ask the Court for attorneys' fees of up to \$343,000.00 and reimbursement of litigation cost/expenses of up to \$20,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

12. How do I tell the Court if I don't like the settlement?

If you are a Settlement Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than **March 4, 2022**. Your objection must be signed and must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on April 21, 2022 and make an objection at that time, regardless of whether you submitted a written objection.

13. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing at 8:30 a.m. on April 21, 2022, at the Tulare County Superior Court, located at 221 S. Mooney Blvd., Visalia, CA 93291.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

15. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see <http://www.tularesuperiorcourt.ca.gov/index.php?section=request-remote-hearings> for information on how to schedule remote appearances.

16. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at <http://www.phoenixclassaction.com/>.

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Settled Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants and/or the Released Parties about the Settled Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund. You may then claim these funds from there.

GETTING MORE INFORMATION

18. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the settlement located on the Settlement Administrator's website at <http://www.phoenixclassaction.com/> or by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY INFORMATION CHANGES?

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE