

# **NOTICE OF PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

## **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

*Richard Senser v. Progressive Casualty Insurance Company*

Case No. 21CV390195

*A court authorized this notice. This is not a solicitation. This is not a lawsuit against you. You are not being sued. However, your legal rights are affected by whether you act or do not act.*

**TO: All current and former hourly or non-exempt employees of PROGRESSIVE CASUALTY INSURANCE COMPANY in California at any time during the period of September 12, 2020 through July 27, 2021 (for non-exempt employees who began working before August 18, 2019) or during the period of November 20, 2019 through July 27, 2021 (for non-exempt employees who began working on or after August 18, 2019)**

You have received this notice (the "Notice") because records of Progressive Casualty Insurance Company ("PCIC") indicate that you may be a Class Member eligible to participate in the settlement described in this Notice, and whose legal rights will be affected by this settlement.

By order of the Honorable Patricia M. Lucas in the matter of *Senser v. Progressive Casualty Insurance Company*, Superior Court of the State of California, County of Santa Clara, Case No.: 21-CV-390195 (the "Action") entered on **March 23, 2022**, you are hereby notified that the Court has preliminarily approved a settlement reached between the parties, subject to final approval by the Court in the Action.

The settlement covers any and all current and former hourly or non-exempt employees of PCIC in California for the period of September 12, 2020 through July 27, 2021 (for non-exempt employees who began working before August 18, 2019) and for the period of November 20, 2019 through July 27, 2021 (for non-exempt employees who began working on or after August 18, 2019) (the "Class Period"). Individuals covered by the settlement are referred to in this Notice as a "Class Member" and collectively as "Class Members."

Pursuant to the terms of the settlement, the parties estimate your individual share of the settlement award will be \$\_\_\_\_\_. The actual amount of your individual share of the settlement award could be more or less than this estimated amount, depending on a number of factors, including the award of attorneys' fees and other costs associated with the settlement. This Notice is to advise you of your rights, including how you can request to be excluded from or object to the settlement if you so choose.

### **I. BACKGROUND OF THE CASE**

Richard Senser ("Plaintiff") brought an employment wage and hour lawsuit against PCIC. On November 9, 2021, Plaintiff filed a Complaint ("Complaint") in the Action, alleging claims for: (a) reimbursement of business expenses; (b) unfair competition; and (c) penalties under the California Private Attorneys General Act ("PAGA"). Plaintiff seeks to bring the lawsuit as a class action and a representative action. PCIC denies Plaintiff's allegations, including the allegations in the Complaint, and further denies that Plaintiff is able to represent or certify a class of employees.

The parties engaged in informal discovery. During this process, PCIC provided information and documents to Plaintiff's counsel ("Class Counsel") relating to the issues in the lawsuit. Class Counsel thoroughly reviewed the discovery provided. The parties then participated in settlement discussions, including a full-day of mediation before Mediator Steve Rottman. Mr. Rottman is a highly respected neutral, third-party mediator. As a result of the mediation, the parties reached a settlement.

The parties have since entered into a Joint Stipulation and Settlement Agreement, and the Court has preliminarily approved the parties' settlement. As a Class Member, you have the opportunity to do nothing and receive a monetary award, object to the settlement, or opt out of (*i.e.* request exclusion from) only the class action portion (not the PAGA portion) of the settlement, as explained more fully below.

The settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by PCIC that the claims in the Action have merit or that PCIC is liable for any of the claims in the Action. Plaintiff and PCIC, and their respective counsel, have concluded that, in light of the risks and uncertainties to each side of continued litigation, the settlement is fair, reasonable and adequate, and is in the best interests of the Class Members.

The Court has thus far determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. The Court will make its final determination of those issues at the Final Approval Hearing.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. Settlement Formula**

The gross settlement amount consists of Three Hundred Sixty Four Thousand Dollars (\$364,000), which is inclusive of all settlement payments, service payments, litigation expenses, attorneys' fees and costs, and settlement administration costs (the "Gross Settlement Amount").

Subject to the Court's final approval, the Gross Settlement Amount will be used to make the following payments: (1) class action settlement payments to Class Members who do not request exclusion from the settlement ("Participating Class Members"); (2) PAGA settlement payments to all Class Members; (3) up to \$109,200.00 in attorneys' fees; (4) reasonable and actual litigation costs and expenses incurred by Class Counsel, up to \$15,000; (5) administration costs of the settlement administrator, Phoenix Settlement Administrators ("Settlement Administrator"), which is currently estimated to be \$12,000; (6) a service payment of up to \$5,000 to Plaintiff as class representative; and (7) payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of \$37,500. The Net Settlement amount to be distributed to employees is currently estimated to be \$185,500 (the "Net Settlement Amount"), which equals \$364,000 minus categories (3) through (7), listed above.

Each Participating Class Member's share of the class action settlement payment will be based on the ratio of the number of months worked during the Class Period by that Participating Class Member in comparison to the number of months worked by all Participating Class Members during the Class Period, multiplied by the Net Settlement Amount less \$12,500. Each Class Member's share of the PAGA settlement payment will be based on the ratio of the number of months worked during the Class Period by that Class Member in comparison to the number of months worked by all Class Members during the Class Period, multiplied by \$12,500. In no event will PCIC be obligated to pay more than the Gross Settlement Amount.

Any disputes regarding the number of months a Class Member worked during the Class Period, or the calculation of an individual Class Member's settlement payment, will be resolved and decided by the Settlement Administrator based on PCIC's timekeeping and/or payroll records. Class Members who wish to dispute the number of months worked attributed to them based on PCIC's records must mail a written dispute to the Settlement Administrator. Class Members must clearly state their dispute in a written letter. If Class Members are disputing the number of months worked attributed to them, they must timely submit information or evidence to support their claim that PCIC's records are in error and demonstrate the number of months worked that they contend should be credited to them. The dispute must: (a) state the Class Member's name, address, telephone number, and the Class Member's social security number or PCIC employee identification number; (b) clearly state the Class Member's dispute; (c) be signed by the Class Member or their lawful representative; and (d) be postmarked no later than sixty (60) calendar days after the Settlement Administrator mails the Notice to the Class. The Settlement Administrator's decision on all such disputes will be final and non-appealable.

Each Class Member's share of the settlement payment will be reduced by any required deductions as set forth in the parties' settlement agreement. Each Class Member's share of the settlement payment constitutes interest and penalties, for which each Participating Class Member will be issued an IRS Form 1099. Class Members will assume any tax obligations or consequences that may arise from this settlement, will hold PCIC and the Released Parties (as defined below) harmless, and will not seek any indemnification from the parties or Released Parties regarding any such tax obligations or consequences. In the event that any taxing body determines that additional taxes are due from any Class Member, each Class Member assumes all responsibility for the payment of such taxes.

You do not need to do anything to participate in the settlement and receive your individual share of the settlement payment, but you may choose to not participate in the settlement by timely submitting a request for exclusion, as described below.

### **B. Release of Claims**

As of the Effective Date of the settlement, as set forth in the parties' settlement agreement, Class Members, on behalf of themselves and all persons purporting to act on their behalf or purporting to assert a claim under or through each or any of them, including but not limited to, their dependents, spouses, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, representatives, agents, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the "Releasing Parties") are fully and forever irrevocably releasing, in exchange for the consideration provided for by this Settlement, any and all claims, obligations, demands, rights, causes of action, and liabilities (monetary or non-monetary) against Defendant or the Released Parties (as defined below) during the Class Period and the PAGA Period, under Labor Code Section 2802 and/or PAGA, which either have been asserted or which could have been asserted in the LWDA Letter or in the Forthcoming Action based on the facts, claims and/or allegations stated in such documents, including for failure to provide timely and/or complete reimbursement of business-related expenditures, for recovery of expenses and/or all penalties under California Labor Code Section 2802 and California's Wage Orders, under PAGA, under any other statute or common law, or for any recovery under California Business and Professions Code Section 17200 *et seq.* (the "Released Claims"). The "Released Parties" is defined to be PCIC and any of its current, former, and future parent, subsidiary, and affiliated companies, and its/their agents, officers, shareholders, directors, employees, including successors and assigns, related or affiliated companies' predecessors and successors; and, with respect to all such entities, all of its/their past and present employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs) and any other persons acting by, through, under or in concert with any such persons or entities. The Released Claims do not

include (i) those rights that as a matter of law cannot be released and/or waived, including, but not limited to, workers' compensation claims; (ii) rights or claims that may arise after the Class Period and/or the PAGA Period; and (iii) rights or claims regarding enforcement of this Settlement.

Class Members who exclude themselves from the settlement will not be bound by the settlement, except with respect to the release of PAGA claims, for which such Class Members will still be bound as to the release of PAGA claims.

**C. Reasonableness of Settlement**

The Class Representative and Class Counsel support this settlement. Among the reasons for their support are the defenses to liability potentially available to PCIC, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

**A. Settlement Participation**

If you are a Class Member and do not exclude yourself, you will be mailed your share of the settlement proceeds automatically, as detailed above, and you do not need to do anything further to participate in the settlement.

**B. Excluding Yourself from the Settlement**

If you do not wish to participate in the class action portion of the settlement and do not wish to receive your individual share of the class action settlement described in this Notice, you may exclude yourself by submitting a written request for exclusion. An Opt-Out Form has been included with this Notice to permit you to do so. The complete Opt-Out Form must be signed, dated, and returned postmarked on or before **June 22, 2022**, by first class U.S. mail, or the equivalent, to:

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

If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who does not return a timely, valid, and executed request for exclusion is included in the settlement, will receive a settlement payment, and be bound by all terms and conditions of the settlement if the court grants final approval of the settlement, regardless of whether he or she has objected to the settlement.

**C. Objection to Settlement**

If you do not exclude yourself from the settlement, you may choose to object to the terms of the settlement. However, if the court rejects your objection, you will still be bound by the terms of the settlement. An Objection Form has been included with this Notice to permit you to do so. The completed Objection Form must be signed, dated, and returned postmarked on or before **June 22, 2022**, by first class U.S. mail, or the equivalent, to:

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Orange, CA 92863  
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Class Members who validly and timely submitted an objection may, but are not required to, appear at the court's final approval hearing, either in person or through a lawyer retained at their own expense. If there is a question about the authenticity of a signed objection, the Settlement Administrator may demand additional proof of the Class Member's identity.

Written objections are not required. Any Class Member may appear and make an oral objection at the Final Approval Hearing whether or not a written objection has been filed.

Class Members may not both object to the settlement and request to exclude themselves from the settlement. If a Class Member submits an objection and a request for exclusion, the Settlement Administrator will contact the Class Member to determine which type of response he or she would like to submit and to re-submit such response in a timely manner.

#### **IV. EFFECT OF THE SETTLEMENT**

##### **A. Released Rights and Claims**

The settlement is intended to settle the Released Claims against the Released Parties. If you do not elect to exclude yourself from the settlement, you will be deemed to have entered into the release in the settlement and to have released the Released Claims. If the settlement is not approved by the Court or does not become final or effective for some other reason, you may not receive any settlement payment.

##### **B. Payments to Class Members**

Your individual settlement payment is expected to be paid within approximately forty-five (45) calendar days after the Effective Date of the Settlement, which will occur on a date on or after the final approval of the settlement, depending on whether any objections or appeals have been filed with regard to final approval of the settlement.

#### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Santa Clara County Court will hold a hearing in Department 3, located at 191 North First Street, San Jose, CA 95113 (Judge Patricia M. Lucas), on **November 23, 2022**, at 1:30 p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of litigation costs, the service payment to Plaintiff as the Class Representative, and the Settlement Administrator's request for payment of its fees and costs, as detailed above.

If you have submitted a timely objection to the settlement, it is not necessary for you to appear at the final approval hearing for your objection to be considered, although you may do so.

Class Members may appear at the Final Approval Hearing either in person in the courtroom or by telephone via CourtCall. Class Members who wish to appear by CourtCall should contact Class Counsel at least three days before the hearing if possible, to arrange a telephonic appearance. Any CourtCall fees for an appearance by an objecting Class Member will be paid by Class Counsel.

#### **VI. CLASS COUNSEL**

Class Counsel may be contacted at:

Craig Ackermann  
ACKERMANN & TILAJEF  
1180 South Beverly Drive, Suite 610  
Los Angeles, California 90035  
Tel: (310) 277-0614  
Fax: (310) 277-0635  
[cja@ackermanntilajef.com](mailto:cja@ackermanntilajef.com)

India Lin Bodien (to be admitted pro hac vice)  
India Lin Bodien Attorney At Law  
2522 North Proctor Street, #387  
Tacoma, Washington  
Tel: (253) 212-7913  
Fax: (310) 276-0081  
[india@indialinbodienlaw.com](mailto:india@indialinbodienlaw.com)

#### **VII. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the settlement. You may view this notice and the most important documents in this case at: <http://www.phoenixclassaction.com/>. For the precise terms and conditions of the settlement, you should review the detailed "Joint Stipulation and Settlement Agreement" which is on file with the Clerk of the Court, attached as Exhibit A to the Declaration of Craig Ackermann in Support of Preliminary Approval of Class Action Settlement, filed on December 16, 2021. The pleadings and other records in the Action may be examined at any time during regular business hours at the Clerk's Office of the Superior Court of California, County of Santa Clara, located at 191 North First Street, San Jose, CA 95113.

You may also view the Court's records online at <https://portal.scscourt.org/>

If you have questions about the settlement, you may contact the Settlement Administrator. The contact information for the Settlement Administrator is:

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Orange, CA 92863  
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**PLEASE DO NOT CALL THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION REGARDING THIS SETTLEMENT.**