

10/06/2022

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Superior Court of California,
County of Tulare
09/13/2022
By: April Mathews, Deputy Clerk

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF TULARE**

15
16 RONALD ACKER, individually, and on
17 behalf of other members of the general
18 public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

19 Plaintiff,

20 vs.

21 RITCHIE BROS AUCTIONEERS
22 AMERICA INC., an unknown business
entity; RITCHIE BROS AUCTION, an
23 unknown business entity; and DOES 1
through 100, inclusive,

24 Defendants.

Case No.: VCU283076

*Assigned for All Purposes to: Hon. David C.
Mathias, Dept. 1*

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

Hearing Date: October 6, 2022
Hearing Time: 8:30 a.m.
Dept: 1

Complaint Filed: June 4, 2020
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The above-referenced Class Action (“Action”) having come before the Court on October
3 6, 2022, for a hearing and Final Order Approving Class Action Settlement and Judgment (“Final
4 Order”), consistent with the Court’s December 2, 2021 Preliminary Approval Order and May 27,
5 2022 Amendment to the Court’s December 2, 2021 Preliminary Approval of Class Action
6 Settlement (collectively “Preliminary Approval Order”), and as set forth in the Joint Stipulation
7 of Class Action and PAGA Settlement and Joint Stipulation re Amendment of Order Granting
8 Plaintiff’s Motion for Preliminary Approval and Increasing Maximum Settlement Amount
9 (hereinafter “Settlement Agreement” or “Settlement”), and due and adequate notice having been
10 given to all Class Members as required in the Preliminary Approval Order, and the Court having
11 considered all papers filed and proceedings had herein and otherwise being fully informed and
12 good cause appearing therefore, it is hereby **ORDERED, ADJUDGED AND DECREED AS**
13 **FOLLOWS:**

14 1. All terms used herein shall have the same meaning as defined in the Settlement
15 Agreement.

16 2. Consistent with the definitions provided in the Settlement Agreement, the term
17 “Class” and “Class Members” shall mean the following: “all current or former hourly paid or non-
18 exempt employees who were employed by Ritchie Bros. Auctioneers America Inc. and Ritchie
19 Bros. Auction in the State of California at any time from June 4, 2016 until February 2, 2021”.

20 3. This Court has jurisdiction over the subject matter of this Action and over all
21 Parties to this Action, including all Class Members.

22 4. Distribution of the Class Notice directed to the Class Members as set forth in the
23 Settlement Agreement and the other matters set forth therein has been completed in conformity
24 with the Preliminary Approval Order, including individual notice to all Class Members who could
25 be identified through reasonable effort, and the best notice practicable under the circumstances.
26 The Class Notice provided due and adequate notice of the proceedings and of the matters set forth
27 therein, including the proposed Settlement set forth in the Settlement Agreement, to all persons
28 entitled to such Class Notice, and the Class Notice fully satisfied the requirements of due process.

1 All Class Members and all Released Claims are covered by and included within the Settlement
2 and this Final Order.

3 5. The Court hereby finds the Settlement Agreement was entered into in good faith
4 pursuant to and within the meaning of California Code of Civil Procedure section 877.6. The
5 Court further finds that the Settlement is fair, adequate, and reasonable and that Plaintiff has
6 satisfied the standards and applicable requirements for final approval of this class action
7 settlement under California law, including the provisions of California Code of Civil Procedure
8 section 382 and Federal Rule of Civil Procedure 23, approved for use by the California state
9 courts in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971).

10 6. The Court hereby approves the Settlement set forth in the Settlement Agreement
11 and finds that the Settlement is, in all respects, fair, adequate and reasonable, and directs the
12 Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement
13 has been reached as a result of intensive, serious and non-collusive arms-length negotiations. The
14 Court further finds that the Parties have conducted extensive investigation and research, and
15 counsel for the Parties are able to reasonably evaluate their respective positions. The Court also
16 finds that Settlement at this time will avoid additional substantial costs, as well as avoid the delay
17 and risks that would be presented by the further prosecution of the Action. The Court has
18 reviewed the benefits that are being granted as part of the Settlement and recognizes the
19 significant value to the Class Members. The Court also finds that the Class is properly certified
20 as a class for settlement purposes only.

21 7. According to the terms of the Settlement Agreement, all Participating Class
22 Members shall fully release and discharge Defendants Ritchie Bros. Auctioneers America Inc.
23 and Ritchie Bros. Auction (collectively “Defendants”) as named by Plaintiff in the operative
24 complaint, and their past, present and/or future, direct and/or indirect, officers, directors,
25 members, managers, employees, agents, representatives, attorneys, insurers, partners, investors,
26 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
27 successors, assigns, and joint venturers (the “Released Parties”) from any and all claims that are
28 alleged, or reasonably could have been alleged based on the facts and claims asserted in the

1 operative complaint in the Action including the following claims: (i) unpaid wages, failure to pay
2 minimum wage, failure to pay overtime, and any other claim for failure to pay wages under the
3 Labor Code or Wage Order, and any claim for failure to pay wages or overtime wages at the
4 correct regular rate of pay, including claims under Labor Code §§ 510, 1198, 1194, 1197, and
5 1197.1; (ii) failure to provide meal period premiums or failure to provide meal periods under the
6 Labor Code or Wage Order; (iii) failure to pay rest period premiums or failure to authorize and
7 permit rest periods under the Labor Code or Wage Order; (iv) failure to timely pay wages and/or
8 waiting time penalties pursuant to Labor Code §§ 201 to 203; (v) failure to timely pay wages
9 during employment and/or waiting time penalties pursuant to Labor Code § 204; (vi) failure to
10 issue or provide adequate wage statements, whether for any penalty or wage; pursuant to Labor
11 Code § 226; (vii) failure to maintain records under the Labor Code or Wage Order, including
12 under Labor Code § 1174; (viii) penalties under the California Private Attorneys General Act
13 based on the aforementioned Labor Code violations; (ix) unreimbursed business expenses under
14 Labor Code §§ 2800 and 2802; (x) unfair business practices under Business and Professions Code
15 § 17200 based on the aforementioned alleged Labor Code violations; and (xi) any other claims
16 arising, or which could have arisen, from the operative facts alleged in Plaintiff's Complaint filed
17 on June 4, 2020 (collectively the "Settled Claims" or "Released Claims"). The release of the
18 Released Claims shall be applicable for the period between June 4, 2016 until April 3, 2020 (the
19 "Class Period").

20 8. Named Plaintiff Ronald Acker, for himself only, also fully releases the Released
21 Parties from any and all Released Claims and also generally releases and discharges the Released
22 Parties from all claims related to his employment or alleged employment with Defendants
23 including all claims alleged in the Action, and all claims known and unknown, without exception,
24 except as may be prohibited by law. Specifically, Plaintiff waives all rights and benefits afforded
25 by California Civil Code Section. Specifically, Plaintiff Ronald Acker waives all rights and
26 benefits afforded by California Civil Code Section 1542, which provides:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 9. No Class Member objected to the terms of the Settlement.

6 10. No Class Member requested to be excluded from the terms of the Settlement.

7 Accordingly, 658 Class Members are bound by this Judgment.

8 11. The Court finds the settlement payments provided for under the Settlement
9 Agreement to be fair and reasonable in light of all of the circumstances. Pursuant to the terms of
10 the Settlement Agreement, the Court orders Defendants to fund the Maximum Settlement Amount
11 of \$1,278,998.00 within ten (10) business days after the Effective Date as set forth in the
12 Settlement Agreement to provide payments for Settlement Checks to all Participating Class
13 Members and all PAGA Members, the PAGA Penalties to the to the California Labor and
14 Workforce Development Agency pursuant to Labor Code Section 2698, *et seq.*, the Class
15 Representative Incentive Payment to Plaintiff, Class Counsel's Fees and Costs, and the Settlement
16 Administrator's Costs. The calculations and the payments shall be made administered in
17 accordance with the terms of the Settlement Agreement.

18 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence
19 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees
20 in the amount of thirty-five percent (35%) from the Maximum Settlement Amount (\$447,649.30)
21 and attorneys' costs in the amount of \$15,697.47 from the Maximum Settlement Amount as final
22 payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or
23 owed to Class Counsel and any other person or entity related to the Action. The Court further
24 orders that the award of attorneys' fees and costs set forth in this Paragraph shall be administered
25 pursuant to the terms of the Settlement Agreement.

26 13. The Court hereby approves and orders a Class Representative Incentive Payment
27 of \$7,500.00 to named Plaintiff Ronald Acker from the Maximum Settlement Amount in
28 accordance with the terms of the Settlement Agreement.

1 14. The Court also hereby approves and orders payment from the Maximum
2 Settlement Amount for actual settlement administration expenses incurred by the Settlement
3 Administrator, Phoenix Settlement Administrators in the amount of \$10,000.00.

4 15. The Court hereby approves and orders payment of individual settlement payments
5 from the Net Settlement Amount to the Participating Class Members on a *pro rata* basis as set
6 forth in the Settlement Agreement.

7 16. The Court also hereby approves and orders that any checks distributed from the
8 Gross Settlement Amount yet remaining un-cashed after one hundred and eighty (180) calendar
9 days after being issued will be transferred to the California State Controller’s Office pursuant to
10 California Civil Code § 1500 and held in trust for such Settlement Class Members. As such, no
11 “unpaid residue” under California Code of Civil Procedure section 384 will result from the
12 Settlement.

13 17. Provided the Settlement becomes effective under the terms of the Settlement
14 Agreement, the Court also hereby orders that the deadline for mailing the Court-approved
15 individual settlement payments, attorneys’ fees and costs, and Class Representative Incentive
16 Payment to Plaintiff is as set forth in the Settlement Agreement.

17 18. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
18 is an admission by Defendants, or any of the other Released Parties, nor is this Final Order a
19 finding of the validity of any claims in the Action or of any wrongdoing by Defendants, or any of
20 the other Released Parties. In entering into the Settlement Agreement, Defendants do not admit,
21 and specifically deny they have violated any federal, state, or local law; violated any regulations
22 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or
23 legal requirements; breached any contract; violated or breached any duty; engaged in any
24 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
25 employees. Neither the Settlement or the Settlement Agreement, nor any of its terms or
26 provisions, nor any of the negotiations connected with it, shall be construed as an admission or
27 concession by Defendants of any such violations or failure to comply with any applicable law.
28 Except as necessary in a proceeding to enforce the terms of the Settlement Agreement, the

1 Settlement Agreement and its terms and provisions shall not be offered or received as evidence
2 in any action or proceeding to establish any liability or admission on the part of Defendants or to
3 establish the existence of any condition constituting a violation of, or a non-compliance with,
4 federal, state, local or other applicable law.

5 19. Without affecting the finality of this Judgment, the Court shall retain continuing
6 jurisdiction over this Action and the Parties, including all Class Members, and over all matters
7 pertaining to the implementation and enforcement of the terms of the Settlement Agreement
8 pursuant to California Rule of Court 3.769(h) and California Code of Civil Procedure section
9 664.6. Except as provided to the contrary herein, any disputes or controversies arising with or
10 with respect to the interpretation, enforcement, or implementation of the Settlement Agreement
11 shall be presented to the Court for resolution.


12 20. The Court sets a compliance hearing for 10/14/2022 at
13 11:00 a.m./~~p.m.~~ in this department. Plaintiff shall file the Settlement Administrator's report
14 at least five (5) court days before the compliance hearing.

15 21. Plaintiff shall file and serve formal Notice of Entry of Judgment including Notice
16 to the California Labor and Workforce Development Agency (LWDA).

17 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

18 ~~UPON THE COURT'S ORDER, THE COURT HAS ORDERED THAT THE JUDGMENT BE ENTERED ACCORDINGLY.~~

19 DATED: 10/06/2022

20 
21 HON. DAVID MATHIAS
22 JUDGE OF THE SUPERIOR COURT
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