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on behalf of himself and all others similarly situated

FILED
Superior Court of California
County of Los Angeles

12/09/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. He Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DAVID RODRIGUEZ, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

PACIFICA TRUCKS, LLC, a California
limited liability company; PEOPLEASE LLC,
a South Carolina limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV37576

[Assigned to the Hon. Stuart Rice, in Dept. 1]

CLASS ACTION

**~~[PROPOSED]~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY**

Action Filed: October 1, 2020

Trial Date: None Set

This Court, having considered the Motion of plaintiff David Rodriguez (“Plaintiff”) for Preliminary Approval of the Class Action Settlement and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations of David D. Bibiyan, Vedang J. Patel, Plaintiff, and Jodey Lawrence, the Stipulation for Class Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class Action Settlement (“Class Notice”), and the other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the settlement Agreement are incorporated by reference

1 into this Order; all terms defined therein shall have the same meaning in this Order.

2 2. The Court certifies the following settlement class for the purpose of settlement only:
3 all current and former non-exempt, hourly-paid employees who worked for defendant Pacifica
4 Trucks, LLC (“Defendant”) at any time during period between from October 29, 2016 through May
5 3, 2022. (“Class Period”) in California (“Class Members”).

6 3. The Court preliminarily appoints named plaintiff David Rodriguez as Class
7 Representative and David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C. as Class
8 Counsel.

9 4. The Court preliminarily approves the proposed class settlement upon the terms and
10 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
11 settlement appears to be within the range of reasonableness of settlement that could ultimately be
12 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
13 amount is fair, adequate and reasonable as to all potential settlement class members when balanced
14 against the probable outcome of further litigation relating to liability and damages issues. It further
15 appears that extensive and costly investigation and research has been conducted such that counsel
16 for the parties at this time are reasonably able to evaluate their respective positions. It further
17 appears to the Court that the settlement at this time will avoid substantial additional costs by all
18 parties, as well as the delay and risks that would be presented by the further prosecution of the
19 Action. It further appears that the settlement has been reached as the result of intensive, non-
20 collusive, arms-length negotiations utilizing an experienced third party neutral.

21 5. The Court, approves, as to form and content, the Class Notice that has been submitted
22 herewith.

23 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
24 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
25 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
26 requirements of law and appears to be the best notice practicable under the circumstances.

27 7. The Court hereby preliminarily approves the definition and disposition of the Gross
28 Settlement Amount of \$174,975.00, which is inclusive of: attorneys’ fees not to exceed thirty-five

1 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
2 Agreement, amounts to \$61,241.25, in addition to actual costs incurred not to exceed \$25,000.00;
3 an incentive award of \$7,500.00 to Plaintiff; costs of settlement administration of no more than
4 \$6,995.00; and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of
5 \$17,500.00, of which \$13,125.00 (75%) will be paid to the Labor and Workforce Development
6 Agency ("LWDA") and \$4,375.00 to "Aggrieved Employees", defined Class Members working for
7 Defendant during the period between July 24, 2019 through May 3, 2022 ("PAGA Period") as non-
8 exempt, hourly-paid employees.

9 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
10 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

11 9. Defendant shall pay the Gross Settlement Amount and Employer Taxes within sixty
12 (60) calendar days of the Court's final approval of this Settlement.

13 10. Class Member's "Workweeks" shall mean the number of weeks that a Settlement
14 Class Member was employed by and worked for the Defendant in a non-exempt, hourly position
15 during the Class Period in California, based on hire dates, re-hire dates (as applicable), and
16 termination dates (as applicable).

17 11. The Settlement is based on Defendant's representation that there are no more than
18 6,999 Workweeks worked during the Class Period from October 29, 2016 to May 3, 2022. In the
19 event the number of Workweeks worked by Class Members during the Class Period increases by
20 more than 10%, or 7,699 Workweeks, then the Gross Settlement Amount shall be increased
21 proportionally by the Workweeks in excess of 7,699 Workweeks (6,999 Workweeks + 700
22 Workweeks) multiplied by the Workweek Value. The Workweek Value shall be calculated by
23 dividing the originally agreed-upon Gross Settlement Amount (\$174,975.00) by 6,999, which
24 amounts to a Workweek Value of \$25.00. Thus, for example, should there be 8,000 Workweeks in
25 the Class Period, then the Gross Settlement Amount shall be increased by \$7,525.00 ((8,000
26 Workweeks – 7,699 Workweeks) x \$25.00 per Workweek.).

27 12. The Court deems Phoenix Settlement Administrators ("Phoenix") the Settlement
28 Administrator, and payment of administrative costs, not to exceed \$6,995.00 out of the Gross

1 Settlement Amount for services to be rendered by Phoenix on behalf of the class.

2 13. The Settlement Administrator shall prepare and submit to Class Counsel and
3 Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in
4 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for
5 and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all
6 opt-outs and objections received.

7 14. The Court directs Defendant to, within seven (7) calendar days of this Order, provide
8 the Settlement Administrator with the "Class List" for Class Members. The Class List will include
9 for each Settlement Class Member, his or her: (1) name; (2) last known address(es) currently in
10 Defendant's possession, custody, or control; (3) last known telephone number(s) currently in
11 Defendant's possession, custody, or control; (4) last known Social Security Number(s) in
12 Defendant's possession, custody, or control; and (5) the dates of employment (i.e., hire dates, and
13 if applicable, re-hire date(s) and/or separation date(s) and excluding any weeks not worked for each
14 Settlement Class Member ("Class List") which shall be made available to Class Counsel upon
15 request.

16 15. Because Social Security Numbers are included in the Class List, the Settlement
17 Administrator shall maintain the Class List in confidence and shall only access and use the list to
18 administer the settlement in conformity with the Court's orders.

19 16. Upon receipt of the Class List, the Settlement Administrator shall perform an address
20 search using the United States Postal Service National Change of Address (the "NCOA") database
21 and update the addresses contained on the Class List with the newly found addresses, if any. To the
22 extent that this process yields an updated address, that updated address shall replace the last known
23 address and be treated as the new last known address for purposes of this Settlement, and for
24 subsequent mailings.

25 17. Within seven (7) calendar days of receiving the Class List from Defendant, the
26 Settlement Administrator shall mail the Class Notice, in English and Spanish, to the Settlement
27 Class Members, via first-class regular U.S. Mail, using the most current mailing address information
28 available.

1 18. The deadline by which Class Members may dispute the number of Workweeks
2 worked, and the deadline by which Class Members may opt out or object, shall be forty-five (45)
3 days from the date of the mailing of the Class Notice, unless the Class Member had their Class
4 Notice re-mailed. Class Members who are re-mailed a Class Notice shall have fifteen (15) calendar
5 days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is
6 later, in which to postmark a Request for Exclusion, objection, or to dispute the information
7 provided in the Class Notice. This shall be known as the “Response Deadline.”

8 19. The Class Notice shall instruct Settlement Class Members on how to exclude
9 themselves from the Settlement Class. Any Settlement Class Member may request exclusion from
10 (i.e., “opt out” of) the Settlement by mailing a written request to be excluded from the Settlement
11 (the “Request for Exclusion”) to the Settlement Administrator, postmarked on or before the
12 Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member’s
13 name; (2) the Class Member’s Social Security Number; (3) the Class Member’s signature; and (4)
14 the following statement: “Please exclude me from the Settlement Class in the *Rodriguez v. Pacifica*
15 *Trucking, LLC* matter” or a statement of similar meaning standing for the proposition that the Class
16 member does not wish to participate in the Settlement. The Settlement Administrator shall
17 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel
18 and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be
19 provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests
20 exclusion using this procedure will not be entitled to receive any payment from the Settlement and
21 will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment
22 on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by
23 submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement,
24 including those pertaining to the Released Claims, as well as any Judgment that may be entered by
25 the Court if Final Approval of the Settlement is granted.

26 20. Any Class Member who does not submit a timely and valid Request for Exclusion
27 shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement,
28 including the releases provide therein.

1 21. Settlement Class Members will have an opportunity to dispute the information
2 provided in their Class Notice (the “Workweek Dispute”). Any such disputes must be mailed to the
3 Settlement Administrator by the Settlement Class Member, postmarked on or before the Response
4 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class
5 Counsel and counsel for Defendant and shall immediately attempt to resolve all such disputes
6 directly with relevant Settlement Class Member(s) with the assistance of Defendant and Class
7 Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

8 22. Only Settlement Class Members who do not opt out of the Settlement (*i.e.*,
9 Participating Class Members) may object to the Settlement. In order for any Settlement Class
10 Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a
11 written objection to the Settlement Administrator at the address or phone number provided on the
12 Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy
13 of the Objection forthwith to Class Counsel and Defendant’s counsel and attach copies of all
14 Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support
15 of Plaintiff’s Motion for Final Approval. The Objection should set forth in writing: (1) the
16 Objector’s name; (2) the Objector’s address; (3) the last four digits of the Objector’s Social Security
17 Number; (4) the Objector’s signature; (5) a statement of whether the Objector plans to appear at the
18 Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority,
19 if any, the Objector asserts in support of the Objection. If a Settlement Class Member objects to the
20 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if the
21 Court approves this Agreement, the Settlement Class Member will be bound by the terms of the
22 Settlement in the same way and to the same extent as a Settlement Class Member who does not
23 object. The date of mailing of the Class Notice to the objecting Settlement Class Member shall be
24 conclusively determined according to the records of the Settlement Administrator. Settlement Class
25 Members need not object in writing to be heard at the Final Approval Hearing; they may object or
26 comment in person at the hearing at their own expense. Class Counsel and Defendant’s Counsel
27 may respond to any objection lodged with the Court up to five (5) court days before the Final
28 Approval Hearing.

23. Participating Class Members may (though are not required to) appear at the Final Approval hearing, either in person or through the objector's own counsel. The failure to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval hearing.

24. If a Settlement Class Members submits both an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be void.

25. All papers filed in support of final approval, including supporting documents for attorneys' fees and costs, shall be filed by 04/14/2022.

26. A Final Approval Hearing shall be held with the Court on Tue 4/19/2022 at 10:00 a.m. in Department "1" of the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of incentive award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

27. No more than seven (7) calendar days after payment by Defendant of the Gross Settlement Amount, as well as payment by Defendant of the Employer Taxes, the Settlement Administrator shall distribute all payments due under the Settlement, including Individual Settlement Payments to Participating Class Members, Individual PAGA Payments to Aggrieved Employees, Court-approved payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel, approved settlement administration costs to the Settlement Administrator, and the LWDA Payment to the LWDA.

28. Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite

1 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County. The
2 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code
3 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel
4 along with a proposed amended judgment that is consistent with the provisions of Code of Civil
5 Procedure section 384.

6 29. In the event the settlement does not become effective in accordance with the terms
7 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
8 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
9 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

10
11 **IT IS SO ORDERED.**

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13 Dated: Ö^&^ à^!Á, 2022



A handwritten signature in black ink, appearing to read "Stuart M. Rice".

Stuart M. Rice / Judge
Judge of the Superior Court