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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 26 2023

BY 
JESSICA MORALES, DEPUTY

Attorneys for Plaintiff FABRICIO LOPEZ RIVERA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

FABRICIA LOPEZ RIVERA, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

VILLAGRANA LOGISTICS, INC., a California
corporation; AMAZON LOGISTICS, INC., a
Delaware corporation; and DOES 1 through 10,
inclusive.

Defendants

Case No.: CIVDS2022538

CLASS AND REPRESENTATIVE ACTION

[Hon. David Cohn, Dept. S26]

~~PROPOSED~~ **ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[Filed with Plaintiff's Notice of Motion and
Memorandum of Points and Authorities, and the
Declarations of Kane Moon and Plaintiff Rivera
in Support of Motion]*

PRELIMINARY APPROVAL HEARING

Date: July 26, 2023
Time: 10:00 a.m.
Dept.: S26

Complaint filed: October 13, 2020
Trial date: Not yet scheduled

1 The Court has before it Plaintiff Fabricio Lopez Rivera's ("Plaintiff") Motion for
2 Preliminary Approval of Class and PAGA Action Settlement. Having reviewed the Motion and
3 Memorandum of Points and Authorities, the supporting Declarations of Kane Moon (and exhibit
4 attachments, including the Class and Representative Action Settlement Agreement and Release
5 [referred to herein as the "Settlement Agreement"]) and Plaintiff, and good cause appearing, the
6 Court hereby finds and ORDERS as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable, and therefore meets the requirements for preliminary
9 approval. The Court grants preliminary approval of the Settlement and the Settlement Class
10 based upon the terms set forth in the Settlement Agreement attached to the Declaration of Kane
11 Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action
12 Settlement (the "Moon Declaration") as Exhibit A. The Court preliminarily finds that the terms
13 of the Settlement Agreement appear to be within the range of possible approval, pursuant to
14 California Code of Civil Procedure section 382 and applicable law.

15 2. The Settlement falls within the range of reasonableness of a settlement which
16 could ultimately be given final approval by this Court, and appears to be presumptively valid,
17 subject only to any objections that may be raised at the Final Approval Hearing and final
18 approval by this Court. The Court notes that Defendants Villagrana Logistics, Inc. and Amazon
19 Logistics, Inc. (collectively, "Defendants") (together with Plaintiff, the "Parties") agreed to
20 create a common gross fund of at least \$400,000.00 (the "Gross Settlement Amount"), unless
21 increased pursuant to the Escalator Provision, and in addition to the employer's portion of
22 payroll taxes associated with the portion of the Settlement payments allocated to wages, to cover
23 the following, in amounts as approved by the Court: (a) Individual Settlement Payments to
24 Participating Class Members; (b) the PAGA Payments; (c) the Class Representative
25 Enhancement Award of up to \$7,500.00 to Plaintiff; (d) Class Counsel's attorneys' fees in an
26 amount of up to thirty-three percent (33%) of the Gross Settlement Amount, not to exceed
27 \$132,000.00; (e) up to \$18,000.00 to reimburse Class Counsel's costs for actual litigation
28 expenses incurred; and (f) Settlement Administration Costs of up to \$20,000.00 to the

1 Settlement Administrator for its fees and expenses in administering this Settlement. None of the
2 Gross Settlement Amount will revert to Defendants. (Settlement Agreement, ¶¶ 1.18, III.7,
3 III.12–13, III.17.)

4 3. The Court finds on a preliminary basis that: (1) the settlement amount is fair and
5 reasonable to the Class Members when balanced against the probable outcome of further
6 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
7 significant informal discovery, investigation, research, and litigation have been conducted such
8 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
9 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
10 by the further prosecution of the litigation; and (4) the proposed Settlement has been reached as
11 the result of intensive, serious, and non-collusive negotiations between the Parties. Accordingly,
12 the Court preliminarily finds that the Settlement Agreement was entered into in good faith.

13 4. A final fairness hearing on the question of whether the proposed Settlement
14 Agreement, Class Counsel’s attorneys’ fees and costs, the PAGA Payments, the Settlement
15 Administrator Costs, and the Class Representative Enhancement Award should be finally
16 approved as fair, reasonable, and adequate as to the members of the Class is hereby set in
17 accordance with the Implementation Schedule set forth below.

18 5. The Court provisionally certifies, for settlement purposes only, the following
19 class (the “Class”): All individuals who are or previously were employed by Villagrana in
20 California as non-exempt employees at any time during the Class Settlement Period. The Class
21 Settlement Period is the period from June 10, 2018, through the Preliminary Approval Date,
22 subject to section III.7 (the “Escalator Provision”). Excluded from the Class are all Class
23 Members who submit a valid and timely Request for Exclusion pursuant to the instructions
24 provided in the Class Notice. (Settlement Agreement, ¶¶ 1.5–6, 1.30, 1.38.)

25 6. Release of Claims:

26 a. Release of Claims by Plaintiff. As of the Effective Date and payment by
27 Defendants of all funds due under the terms of this Settlement, Plaintiff releases the Released
28 Parties from all the Class Representative’s Released Claims. Plaintiff’s releases set forth herein

1 include a waiver of all rights under California Civil Code § 1542, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
3 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
4 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
5 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
6 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
7 HER SETTLEMENT WITH THE DEBTOR OR RELEASED
8 PARTY.

9 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
10 which Plaintiff now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and
11 forever settle and release any and all claims against the Released Parties, known or unknown,
12 suspected or unsuspected, which exist or may exist on behalf of or against the other at the time
13 of execution of this Agreement, including, but not limited to, any and all claims relating to or
14 arising from Plaintiff's employment with Villagrana and alleged employment with Amazon.
15 (Settlement Agreement, ¶ III.3.)

16 b. Release as to All Participating Class Members. Upon the Effective Date and
17 payment by Defendants of all funds due under the terms of this Settlement, Plaintiff and all
18 Participating Class Members, as well as their spouses, heirs, executors, administrators, trustees
19 and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever
20 released, settled, compromised, relinquished and discharged any and all of the Released Parties
21 of and from any and all Released Class Claims. These releases will take effect whether or not a
22 Participating Class Member receives his or her Individual Settlement Payment or cashes and
23 deposits any check for the Individual Settlement Payment. (Settlement Agreement, ¶ III.1.)

24 1) "Released Class Claims" shall mean any and all claims and/or causes of
25 action under any state, local or federal law or administrative order by Participating Class
26 Members against Released Parties that were or could have been pled based on the
27 allegations of the original and amended Complaints and the PAGA Notice Letter,
28 including but not limited to, any claim for: (1) unpaid wages, including claims for
minimum, overtime, and double-time wages, the alleged failure to pay for all time
worked, the alleged failure to pay for all hours worked at correct rates, including overtime
or double time at the correct regular rates; (2) meal period violations, including claims

1 for late, short, interrupted and/or missed meal periods and/or the failure to pay premium
2 wages, including premiums at the correct regular rates, and the alleged failure to properly
3 record meal breaks; (3) rest break violations, including claims for late, short, interrupted,
4 missed, on premises, or otherwise improperly controlled or constrained rest breaks and/or
5 the failure to pay premium wages, including premiums at the correct regular rates; (4)
6 improper or inaccurate itemized wage statements, including any alleged violations of
7 Labor Code sections 226(a)(1)-(9); (5) untimely payment of final wages under Labor
8 Code sections 201-203; (6) failure to maintain and produce required records in violation
9 of Labor Code section 1174, 1174.5, and the applicable IWC Wage Order; (7)
10 unreimbursed business expenses; (8) untimely wage payments to current employees
11 under Section 204; (9) Unlawful and Deceptive Business Practices in Violation of
12 Business & Professions Code §§ 17200, et seq. based on any of the facts and violations
13 alleged in the Action or the PAGA Notice Letters; and (10) any claims for statutory or
14 civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
15 and other costs, expenses, restitution, and equitable and declaratory relief based on the
16 same facts alleged in the Action or the PAGA Notice Letter. The period of the Released
17 Class Claims will be the Class Settlement Period. (Settlement Agreement, ¶ 1.35.)

18 c. Release as to All PAGA Members. Upon the Effective Date and payment by
19 Defendants of all funds due under the terms of this Settlement, as representatives of the State of
20 California and on behalf of the LWDA and the PAGA Members, fully and finally release the
21 Released Parties from the PAGA Released Claims for the PAGA Settlement Period. These
22 releases will take effect whether or not a PAGA Member receives his or her Individual PAGA
23 Payment or cashes and deposits any check for the Individual PAGA Payment. (Settlement
24 Agreement, ¶ III.2.)

25 1) "Released PAGA Claims" shall mean all claims and causes of action for
26 PAGA penalties against the Released Parties that were alleged or that could have been
27 alleged based on the facts asserted in the Action as well as in any and all of the PAGA
28 Notice Letters for violations of Labor Code sections 201, 202, 203, 210, 226, 226.3.

1 226.7, 510, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 2698, and 2699 et seq. and
2 sections of the applicable wage order, including sections 3, 4, 11, and 12, as well as any
3 and all claims for attorneys' fees, litigation costs, and interest allocated to those claims.
4 The Released PAGA Claims include (1) claims for unpaid wages, including claims for
5 minimum, overtime, and double-time wages, the alleged failure to pay for all time
6 worked, the alleged failure to pay for all hours worked at correct rates, including overtime
7 or double time at the correct regular rates; (2) claims for meal period violations, including
8 claims for late, short, interrupted and/or missed meal periods and/or the failure to pay
9 premium wages, including premiums at the correct regular rates, and the alleged failure
10 to properly record meal breaks; (3) claims for rest break violations, including claims for
11 late, short, interrupted, missed, on premises, or otherwise improperly controlled or
12 constrained rest breaks and/or the failure to pay premium wages, including premiums at
13 the correct regular rates; (4) claims for improper or inaccurate itemized wage statements,
14 including any alleged violations of Labor Code sections 226(a)(1)-(9); (5) claims for
15 untimely payment of final wages under Labor Code sections 201-203; (6) claims
16 regarding the alleged failure to maintain and produce required records in violation of
17 Labor Code section 1174, 1174.5, and the applicable IWC Wage Order; (7) claims for
18 unreimbursed business expenses; (8) claims for untimely wage payments to current
19 employees under Section 204; and (9) any other claims and penalties under the wage and
20 hour laws alleged in the Action and in the PAGA Notice Letter. The period of the
21 Released PAGA Claims will be the PAGA Settlement Period. (Settlement Agreement, ¶
22 1.36.)

23 7. Additional Key Terms under the Settlement Agreement:

24 a. "Escalator Provision": Defendants shall pay a non-reversionary amount not
25 to exceed Four Hundred Thousand Dollars (\$400,000) as the Gross Settlement Amount to
26 resolve the Action on a class and representative basis. Villagrana identified approximately
27 37,568 workweeks in the Settlement Class Period as of the December 6, 2022 mediation. In the
28 event that the actual number of workweeks in the Class Settlement Period exceeds 37,568 by

1 more than 10% (i.e., more than 41,325), then at Defendants' option. either (a) the Gross
2 Settlement Amount shall increase by the same number of percentage points above 10% the actual
3 number of workweeks exceeds the 37,568 estimate (i.e.. if the workweeks during the Class
4 Settlement Period are 41,831, which is 11% greater than the estimate at mediation, then the Gross
5 Settlement Amount increases by 1% to \$404,000); or (b) the Class Settlement Period shall end
6 as of the date the workweeks during the Class Settlement Period reach 41.325 workweeks rather
7 than the Preliminary Approval Date. (Settlement Agreement, ¶ III.7.)

8 b. "Released Parties" means Defendants and any of their former, present and/or
9 future, direct and/or indirect, parents, companies, subsidiaries, affiliates, divisions, officers,
10 directors, managers, owners, members, heirs, employees, partners, shareholders, attorneys,
11 agents, fiduciaries, insurers, investors, predecessors, successors, assigns, executors,
12 administrators, beneficiaries, legal representatives, or trustees. (Settlement Agreement, ¶ I.37.)

13 c. "PAGA Members" means all individuals who are or previously were
14 employed by Villagrana in California as non-exempt employees at any time during the PAGA
15 Settlement Period. (Settlement Agreement, ¶ I.26.)

16 d. The "PAGA Settlement Period" means the period from October 9, 2019, through
17 the Preliminary Approval Date. (Settlement Agreement, ¶ I.29.)

18 e. The "Net Settlement Amount" means the Gross Settlement Amount, less Court-
19 approved amounts for: (i) Class Counsel Award for costs and attorneys' fees, (ii) Class
20 Representative's Enhancement Award, (iii) the PAGA Payments, and (iv) the Settlement
21 Administration Costs. The Net Settlement Amount is the total amount that will be paid to
22 Participating Class Members, in the form of Individual Settlement Payments. (Settlement
23 Agreement, ¶ I.23.)

24 f. "Individual Settlement Payment" means the amount paid from the Net
25 Settlement Amount to a Participating Class Member. Any Class Member who timely submits a
26 Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class
27 Member and is not eligible to receive an Individual Settlement Payment. These amounts shall be
28 distributed on a *pro rata* basis to Participating Class Members based on the total number of Eligible

1 Workweeks worked by Participating Class Members during the Class Settlement Period, and
2 according to the distribution formula set forth in the Settlement Agreement. All Individual
3 Settlement Payments shall be allocated as follows: 33% wages and expenses and 67% penalties
4 and interest. (Settlement Agreement, ¶¶ I.20, III.10, III.14.)

5 g. "Eligible Workweek" means any workweek in which a Class Member worked
6 for any amount of time for Villagrana during the Class Settlement Period according to
7 Villagrana's records. (Settlement Agreement, ¶ I.14.)

8 h. "Participating Class Members" means those Class Members who do not file
9 a valid and timely Request for Exclusion. (Settlement Agreement, ¶ I.30.)

10 i. The "PAGA Payment" means a gross payment in the aggregate of \$40,000.00
11 that is comprised of the LWDA PAGA Payment and all of the Individual PAGA Payments to
12 PAGA Members in settlement of all claims for PAGA penalties as defined in this Agreement.
13 (Settlement Agreement, ¶¶ I.28, III.11.)

14 j. The "LWDA PAGA Payment" means the payment to be made to the California
15 Labor and Workforce Development Agency (the "LWDA") as its 75% share of the PAGA
16 Payment, namely \$30,000.00, as consideration for Settlement of claims for civil penalties under
17 PAGA. (Settlement Agreement, ¶¶ I.23–22.)

18 k. "Individual PAGA Payments" means the amounts paid from the PAGA
19 Payment to PAGA Members that shall, in the aggregate, comprise 25% of the PAGA Payment,
20 namely \$10,000.00, as consideration for Settlement of claims for civil penalties under PAGA.
21 These amounts shall be distributed on a *pro rata* basis to PAGA Members based on the total number
22 of Eligible Pay Periods worked by PAGA Members during the PAGA Settlement Period, and
23 according to the distribution formula set forth in the Settlement Agreement. All Individual PAGA
24 Payments shall be allocated as 100% penalties. (Settlement Agreement, ¶¶ I.19, III.11, III.14.)

25 l. "Eligible Pay Period" means any pay period in which a PAGA Member
26 worked for any amount of time for Villagrana during the PAGA Settlement Period according to
27 Villagrana's records. (Settlement Agreement, ¶ I.15.)

28 m. "Employer's Portion of Payroll Taxes" refers to the payroll taxes associated with

1 the portion of the Settlement payments allocated to wages, which Defendant Villagrana Logistics.
2 Inc. shall be responsible for, as calculated by the Settlement Administrator, and which shall not be
3 deducted from the Gross Settlement Amount but rather paid separate and apart from the Gross
4 Settlement Amount. (Settlement Agreement, ¶¶ I.18, III.8.)

5 n. Unclaimed Settlement Payment(s): After one hundred and eighty (180) days of
6 the mailing of the Individual Settlement Payment and Individual PAGA Payment checks, funds
7 attributable to unclaimed, undeliverable, or expired Individual Settlement Payment and/or
8 Individual PAGA Payment checks shall be deposited to the State of California Unclaimed
9 Property Fund in the name of each Participating Class Member and/or PAGA Member who did
10 not cash his or her Individual Settlement Payment or Individual PAGA Payment check. This
11 disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the
12 entire Net Settlement will be paid out to Participating Class Members, whether or not they all
13 cash their Individual Settlement Payments, and Defendants will not be required to pay any
14 interest on said amount. (Settlement Agreement, ¶ III.16.)

15 8. The Court finds, for settlement purposes only, that the Settlement Class meets the
16 requirements for certification under California Code of Civil Procedure section 382 in that: (1)
17 the Settlement Class is so numerous that joinder is impractical; (2) there are questions of law
18 and fact that are common, or of general interest, to all Settlement Class Members, which
19 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
20 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
21 the interests of the Settlement Class Members; and (5) a class action is superior to other
22 available methods for the fair and efficient adjudication of the controversy.

23 9. The Court appoints, for settlement purposes only, Plaintiff Fabricio Lopez Rivera
24 as the Class Representative. The Court approves, on a preliminary basis, payment of a Class
25 Representative Enhancement Award of up to \$7,500.00 to Plaintiff for his contributions and
26 participation in the litigation, and for the risks assumed therefore, and for his general release of
27 claims, both known and unknown, and waiver of Section 1542 rights. To the extent the final
28 amount awarded is less than \$7,500.00, the Settlement Administrator will retain the remainder

1 in the Net Settlement Amount. (Settlement Agreement. ¶¶ 1.7–8, III.3, III.12.)

2 10. The Court appoints, for settlement purposes only, Moon & Yang, APC as Class
3 Counsel. The Court approves, on a preliminary basis, Class Counsel's ability to request
4 attorneys' fees in an amount of up to thirty-three percent (33%) of the Gross Settlement Amount,
5 not to exceed \$132,000.00, and reimbursement for actual litigation costs not to exceed
6 \$18,000.00. To the extent the final amounts are less than the foregoing, the Settlement
7 Administrator will retain the remainder in the Net Settlement Amount. (Settlement Agreement,
8 ¶ III.13.)

9 11. The Court appoints Phoenix Settlement Administrators as the Settlement
10 Administrator with payment for reasonable administration costs not to exceed \$20,000.00,
11 except upon a showing of good cause and as approved by the Court. To the extent actual
12 administration expenses are less or the final amount awarded is less than \$20,000.00, the
13 Settlement Administrator will retain the remainder in the Net Settlement Amount. The
14 Settlement Administrator shall perform services and duties as provided for in the Settlement
15 Agreement, including, but not limited to, mailing the Class Notice via first-class U.S. Mail and
16 mailing reminder postcards for uncashed settlement checks. Settlement Class Members and/or
17 PAGA Members shall not be required to submit a claim form to receive Individual Settlement
18 Payments and/or Individual PAGA Payments. (Settlement Agreement. ¶¶ 1.41–42, III.16–17.)

19 12. The Court approves, as to form and content, the Class Notice, attached as Exhibit
20 2 to the Settlement Agreement. The Court finds, on a preliminary basis, that the plan for
21 distribution of the Notice to Class Members satisfies due process, provides the best notice
22 practicable under the circumstances, and constitutes due and sufficient notice to all persons
23 entitled thereto.

24 13. The Parties and Settlement Administrator are ordered to carry out the Settlement
25 according to the terms of the Settlement Agreement.

26 14. The Court orders the following Implementation Schedule:
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Villagrana to provide Class Members' Data to the Settlement Administrator	Within 21 calendar days after the Preliminary Approval Order
Settlement Administrator to mail the Class Notice	Within 14 calendar days after receipt of the Class Data
Response Deadline	Within 45 calendar days after mailing
Deadline to file Motion for Final Approval	At least 16 court days before Final Approval Hearing:
Final Approval Hearing	12/11/23 9:00a.m.

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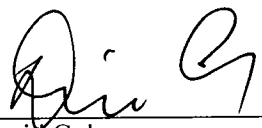
15. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Class Members.

16. The Court further orders that, pending further order of this Court, all proceedings in this litigation, except those contemplated herein and in the Settlement Agreement, are stayed.

17. The Settlement Agreement is preliminarily approved but is not an admission by Defendants of the validity of any claims in this class action, or of any wrongdoing by Defendants or of any violation of law. Neither the Settlement Agreement nor any related document shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding other than as may be necessary to consummate or enforce the Settlement Agreement. The obligations set forth in the Settlement Agreement are deemed part of this Order.

IT IS SO ORDERED.

DATE: 7/20/23



 Hon. David Cohn
 Judge of the San Bernardino County Superior Court

PROOF OF SERVICE

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF LOS ANGELES)

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
5 a party to the within action; my business address is 1055 West Seventh Street. Suite 1880. Los
6 Angeles. California 90017. On June 30, 2023, I served the foregoing document described as:

**[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY
7 APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT**

8 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed
9 as follows:

10 Tim L. Johnson, CA Bar No. 265794
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17 *Attorneys for Defendant Villagrana Logistics, Inc.*

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24 *Attorneys for Defendant AMAZON LOGISTICS, INC.*

25 [] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
26 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with
27 the firm's practice of collection and processing correspondence for mailing. Under
28 that practice it would be deposited with U.S. postal service on that same day with
postage thereon fully prepaid at Los Angeles, California in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid

1 if postal cancellation date or postage meter date is more than one day after date of
2 deposit for mailing in affidavit..

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct.

5 Executed this June 30, 2023 at Los Angeles, California.

6 Janelle Jickain

7 Name



8 Signature