

03/14/2024

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUAN ENRIQUEZ ROMERO, *et al.*,

Plaintiffs,

vs.

BOARDRIDERS WHOLESALE, LLC, a
California corporation, *et al.*,

Defendants.

Case No.: 20STCV31088

[Hon. William F. Highberger, Dept. SSC-10]

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004**

Date: March 14, 2024
Time: 10:30 a.m.
Courtroom: Dept. 10
Judge: Hon. William F. Highberger

Action Filed: August 14, 2020
Trial Date: Not Set

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

2 Plaintiffs JUAN ENRIQUEZ ROMERO, ADRIANA DIAZ, and LORENA GALEANO
3 (“Plaintiffs”) and Defendants BOARDRIDERS WHOLESALE, LLC, BOARDRIDERS, INC, AND
4 FRANCIS ROY (“Defendants”) (Plaintiff and Defendant are the “Parties”) have reached terms of
5 settlement of this action alleging a claim for relief pursuant to the Labor Code Private Attorneys General
6 Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”).

7 Pursuant to PAGA, Plaintiffs, on behalf of the Parties, has filed a motion for approval of the
8 settlement of the claims against Defendants in this action. Specifically, Plaintiffs move for an order:

9 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
12 allocated to attorney’s fees and costs; and, the amount allocated to the settlement administrator;
13 and,

14 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
15 Agreement.

16 On March 14, 2024, Plaintiffs Motion came on for hearing. The PAGA SETTLEMENT
17 AGREEMENT (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of H.
18 Scott Leviant as **Exhibit 1**) is conditioned upon the Court’s approval. Capitalized terms in this Order
19 have the same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the
20 Settlement is as follows:

21 (a) Aggrieved Employees: All current and former non-exempt, hourly employees of
22 Boardriders Wholesale, LLC – including those who were staffed to work for
23 Boardriders Wholesale, LLC by Adecco USA, Inc. and/or Adecco Employment
24 Services, Inc. or any of their affiliates, as defined by California Corporations
25 Code § 150 (collectively, “Adecco”) – who have worked for Boardriders
26 Wholesale, LLC in California the PAGA Period. It is estimated that there are
27 approximately 44,000 pay periods covered by the Settlement. (Agreement, ¶¶ 1.4
28 1.20).

- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendants agree to pay the maximum sum of **\$485,000.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiffs Counsel’s attorney’s fees and costs, and the settlement administrator’s fees and costs. (Agreement, ¶ 3.1, 3.2.)
- (d) Net Settlement Amount: At least **\$279,144.58** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$209,358.44** under the Agreement, and Aggrieved Employees will receive at least **\$69,786.15**. (Agreement, ¶¶ 1.16, 3.2).
- (e) Attorney’s Fees: Plaintiffs Counsel request an award of attorney’s fees in the amount of **\$161,666.67**, which is one-third of the GSA. (Agreement, ¶ 3.2.1.)
- (f) Litigation Costs: Plaintiffs Counsel seek reimbursement of actual litigation costs, to a maximum amount of \$40,000. Those actual costs are expected to be **\$33,188.75**, which is less than the capped amount. Therefore, **\$33,188.75** is requested. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 39 and Exh. 2; Bibiyan Decl., ¶ 17.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator Phoenix Settlement Administrators, which has agreed to perform Administrator duties for a flat fee not to exceed **\$11,000.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 40 and Declaration of Michael Moore.)
- (h) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund (Agreement, ¶¶ 4.4.2, 4.4.3.)
- (i) Release: In exchange for the above settlement consideration, Defendants shall be

entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiffs.¹ (Agreement, ¶ 5; Leviant Decl., Exh. 1.)

- (j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Leviant Decl., ¶ 43 and Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiffs, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All current and former non-exempt, hourly employees of Boardriders Wholesale, LLC – including those who were staffed to work for Boardriders Wholesale, LLC by Adecco USA, Inc. and/or Adecco Employment Services, Inc. or any of their affiliates, as defined by California Corporations Code § 150 (collectively, “Adecco”) – who have worked for Boardriders Wholesale, LLC in California during the PAGA Period (“PAGA Period” means any time between August 12, 2019 and either (i) November 23, 2023, or (ii) the latest date when there are no more than 44,000 pay periods collectively worked by the PAGA Members, whichever of these two dates occurs later.).

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms’ length by the Parties. In making these findings, the Court considered Defendants potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties’ respective positions rather than the result of a finding of liability at trial. The Court further finds that the

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....”).

1 terms of the Settlement have no obvious deficiencies. The Court finds that risks of further prosecution
2 are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of
3 the circumstances, or (2) no penalties would be awarded for some or all of the alleged violations.

4 4. The Court hereby approves Phoenix Settlement Administrators to serve as the
5 Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution,
6 in the requested amount of **\$11,000.00** out of the Gross Settlement Amount to effectuate Administration.

7 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
8 **\$485,000.00**, less administration costs, attorney's fees, and costs awarded to Plaintiffs counsel. After
9 awards, the amount remaining to distribute as penalties is **\$279,144.58**. The LWDA shall receive 75%
10 of the penalties allocated, which is **\$209,358.44**. Aggrieved Employees shall receive 25% of the
11 penalties allocated, which is **\$69,786.15**.

12 6. The Court hereby awards Counsel attorneys' fees in the amount of **\$161,666.67**. The
13 Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in similar
14 settlements and as guided by the California Supreme Court's decision concerning the awarding of fees
15 from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).
16 Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were
17 necessarily precluded from pursuing other potential sources of fees because of work in connection with
18 this Action. The Court observed that this is not a class action. It is more akin to contingent
19 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
20 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
21 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
22 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
23 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
24 these considerations, including the lodestar cross-check, a fee award of one third is reasonable.

25 7. The Court hereby awards Counsel litigation costs in the total amount of **\$33,188.75**. Of
26 that amount, **\$30,217.06** is awarded to Moon Law Group, PC, and **\$2,971.69** is awarded to Bibiyan Law
27 Group, P.C.

28 8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on

the provisions and timelines set forth in the Agreement.

9. Pursuant to the terms of the Settlement, the released persons and entities include:

Defendants and Adecco and their past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (referred to in the Settlement as the "Released Parties").

10. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

All Aggrieved Employees and the LWDA are deemed to release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under PAGA as asserted in the Operative Complaint in this Action, the pleadings in the action known as *Lorena Galeano v. Boardriders, Inc. and Francis Roy*, Orange County case no. 30-2021-01214509-CU OE-CXC (the "*Galeano Action*"), or the PAGA Notices, and any and all claims, demands, rights, liabilities and causes of action under PAGA that could have been alleged based on the facts that have been alleged in the pleadings in the Action, Galeano Action, or the PAGA notices, that arose during the PAGA Period.

11. The action is DISMISSED WITH PREJUDICE.

12. The Court will enter Final Judgment in accordance with this Order.

13. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: 03/14/2024



Hon. William F. Highberger
LOS ANGELES SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Michael S. Kun
Kevin D. Sullivan
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067
mkun@ebglaw.com
ksullivan@ebglaw.com

Attorneys for Defendants

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **January 3, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature