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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CELIA STEWART, as an individual and on behalf
of all others similarly situated, and as a private
attorney general;

Plaintiff,

vs.

RITCHIE BROS AUCTIONEERS (AMERICA)
INC., a Washington corporation; RITCHIE BROS
AUCTIONEERS INC., a Washington corporation
upon information and belief, and DOES 1 through
50, inclusive,

Defendants.

Case No. RG21086650

[Hon. Evelio Grillo, Department 21]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: September 27, 2022
Time: 10:00 a.m.
Department: 21

Reservation ID: 411935024554

Complaint Filed: January 25, 2021

Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on September 1, 2022, and a hearing was held before this Court on September 27, 2022. Simon L. Yang of Diversity Law Group, P.C. appeared on behalf of Plaintiff, Celia Stewart, and Marina M. Lyons of Dorsey & Whitney LLP appeared for Defendants Ritchie Bros. Auctioneers (America) Inc. and Ritchie Bros. Auctioneers Inc.

I. RECITALS

1. On January 25, 2021, Plaintiff initiated this class and Labor Code Private Attorneys General Act of 2004 ("PAGA") action. The lawsuit seeks to remedy alleged underpayments of sick pay and overtime and alleged failures to furnish lawful wage statements. The sick pay and overtime claims allege Defendants at times fail to properly calculate employees' regular rates of pay. The wage statement claim alleges Defendants' wage statements fail to accurately itemize and show the name of the legal entity that is the employer.

2. On February 3, 2022, the Parties attended mediation with Steve Pearl. With the mediator's assistance and based on a mediator's proposal, the Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA Settlement.

II. FINDINGS

3. The Court conditionally certifies the following Classes:

- a. any current or former non-exempt employee of Defendants in the State of California who was paid sick pay wages in any workweek from April 4, 2021, through February 3, 2022 ("Class Period") in which they also earned non-discretionary remuneration, including profit-sharing pay ("Sick Pay Class");
- a. any current or former non-exempt employee of Defendants in the State of California who was paid overtime wages in any workweek during the Class Period in which they also earned non-discretionary remuneration, including profit-sharing pay ("Overtime Class"); and
- b. any current or former non-exempt employee of Defendants in the State of California during the Class Period ("Wage Statement Class").

1 4. The Court hereby approves the terms and conditions provided for in the Agreement. The
2 Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a
3 settlement and appears to be presumptively valid, subject to any objections that may be raised at the
4 final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary
5 basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when
6 balanced against the uncertain outcome of further litigation relating to liability and damages issues. It
7 also appears that investigation, research, and proceedings have been conducted so that counsel for the
8 Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement
9 at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
10 would be presented by the further prosecution of the action. It also appears that settlement has been
11 reached as a result of intensive, serious, and non-collusive arms-length negotiations.

12 **III. ORDERS**

13 After considering the papers and evidence, arguments of counsel, and all other matters presented
14 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

15 5. The Court grants preliminary approval of the Joint Stipulation of Class Action and PAGA
16 Settlement (the “Agreement”) submitted by the Parties. The Agreement appears to be fair, adequate, and
17 reasonable to the Class.

18 6. The Court appoints and designates: (a) Plaintiff, Celia Stewart, as Class Representative,
19 and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L. Marder of
20 Polaris Law Group as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the
21 Class with respect to all acts or consents required by, or which may be given, pursuant to the
22 Agreement, and such other acts reasonably necessary to finalize the Agreement and its terms. Any Class
23 Member may enter an appearance through his or her own counsel at such Class Member’s own expense.
24 Any Class Member who does not enter an appearance or appear on his or her own behalf will be
25 represented by Class Counsel.

26 7. A final fairness hearing on the question of whether the proposed Agreement, the
27 allocation of payments to Class Members, attorneys’ fees and costs to Class Counsel, the payment to the
28 Labor Workforce & Development Agency, and the Class Representative Award should be finally

1 approved as fair, reasonable, and adequate as to the members of the Class is set for
2 _____, 2023, at _____ in this Court.

3 8. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
4 (“Class Notice”), which is attached as Exhibit A to the Agreement and this Order. The Court finds that
5 distribution of the Class Notice to Class Members substantially in the manner and form set forth in the
6 Agreement and this Order meets the requirements of due process and shall constitute due and sufficient
7 notice to all parties entitled thereto.

8 9. The Court appoints and designates Phoenix Settlement Administrators as the
9 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
10 Members using the procedures set forth in the Agreement.

11 10. Any Class Member may choose to opt out of and be excluded from the settlement as
12 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.
13 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
14 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
15 signed by each such Class Member opting out and must otherwise comply with the requirements
16 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
17 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
18 Judgment.

19 11. Any Class Member may object to the Agreement or express his or her views regarding
20 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
21 issues to be heard and determined by the Court as provided in the Class Notice.

22 12. A Motion for Final Approval shall be filed by the Class Representatives no later than
23 sixteen (16) court days before the final fairness hearing.

24 13. The Court reserves the right to adjourn or continue the date of the final fairness hearing
25 and all dates provided for in the Agreement without further notice to the Class. The Court retains
26 jurisdiction to consider all further applications arising out of or connected with the Agreement.
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1 14. Should for whatever reason final approval is not granted, the fact that the Parties were
2 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
3 of whether a class should be certified in a non-settlement context.

4 **IT IS SO ORDERED.**

5 DATED: _____, 2022

THE HONORABLE EVELIO GRILLO