

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff and the Class

**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]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Reservation ID: 411935024554

Complaint Filed: January 25, 2021

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff. I make this declaration on the basis of my
4 own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On January 25, 2021, Plaintiff, Celia Stewart, initiated this class and private attorney
8 general action. Upon the initiation of the Action, Plaintiff and Defendants met and conferred about the
9 alleged claims. On or about July 9, 2021, Plaintiff served initial written discovery. Defendants provided
10 Plaintiff with information about various defenses, including those based on a class action settlement in
11 *Ronald Acker v. Ritchie Bros Auctioneers America, Inc. et al.*, Superior Court of the State of California
12 for the County of Tulare Case No. VCU283076.

13 3. Class Counsel continued investigating the alleged claims and also analyzed any defenses
14 raised by Defendants. The Parties supplemented formal discovery by continuing to exchange
15 information and documentation pursuant to informal methods to assist them in exploring the possibility
16 of a mediated resolution. Defendants provided the relevant numbers of individuals and relevant pay
17 periods, among other things—enabling Plaintiff to assess the full value of Class Members’ claims and
18 further enabling negotiations to take place between the Parties. Defendants’ willingness to supplement
19 formal discovery with informal discovery enabled Plaintiff to evaluate the full scope of Defendant’s
20 potential liability. Ultimately, the Parties agreed to schedule a mediation.

21 4. On February 3, 2022, the Parties attended mediation with Steve Pearl, an experienced
22 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
23 issue. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to
24 negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA Settlement (the
25 “Agreement”), a true and correct copy of which is attached as **Exhibit 1**.

26 5. The Agreement requires Defendants to pay \$228,900.00—or approximately \$1,362.50,
27 on average, per Class Member. Plaintiff contended that underpaid sick pay wages and overtime resulted
28 in late paid wages and a \$100 penalty per pay period under Labor Code sections 204 and 210. Lab. Code

1 §§ 204, 210.¹ Plaintiff also contended that underpaid sick pay wages and overtime resulted in Section
2 203 penalties of up to 30 days wages. Lab. Code § 203. Under PAGA, Plaintiff contended that
3 Defendants also would be liable for an additional \$50 per pay period under Section 558.² With respect to
4 wage statement violations, Plaintiff contended that Defendants were liable for up to \$100 in penalties
5 per wage statement under Section 226(e) and up to \$250 in penalties per wage statement under Section
6 226.3.

7 6. Defendants contested the merits and denied they were liable at all. Moreover, even if
8 Plaintiff prevailed on the merits, Defendants contested the extent of liability. For example, with respect
9 to wage statement liability, Defendants contended that (i) PAGA penalties would enable up to \$100 (not
10 \$250) per violation, (ii) PAGA penalties in any event be subject to discretionary reductions, and (iii)
11 liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
12 resulting from knowing and intentional violations. Likewise, with respect to sick pay and overtime
13 liability, Defendants contended that they would not be subject to Section 203 penalties, based on a good
14 faith defense.

15 7. While the Parties disagree on the application of the law to the facts, each Party
16 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
17 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
18 reasonable. Ultimately, based on data available at mediation on February 3, 2022, Plaintiff argued that
19 the potential total recovery amounted to \$679,950—which included \$408,750 in penalties under Section
20 226.3, \$163,500 in penalties under Section 226(e), \$7,800 in penalties under Section 210, \$3,900 in
21 penalties under Section 558, and up to \$96,000 in penalties under Section 203. As litigation costs are not
22 expected to exceed \$12,500, it is expected that, on average, each Class Member would be allocated
23 \$644.94 (*after* all requested payments from the Gross Settlement Amount).³ Plaintiff contends that the
24
25

26 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

27 ² Actual underpayments of sick pay wages and overtime amount to comparatively smaller sums.

28 ³ The amount paid on average to each Class Member may increase, depending on how many Class
Members opt out of the class action settlement. The amount actually paid to any Class Member may
increase or decrease depending on his or her number of relevant pay periods during the Class Period.

1 Gross Settlement Amount of \$228,900—more than one third (or 33.7%) of the potential total recovery
2 of \$679,950—is an excellent result.

3 8. Although I am confident that litigation of the claims would result in a classwide judgment
4 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
5 certification could be denied, liability could not be established at trial, or the applicable law could
6 change. I recognize that the settlement resulting from extensive arm’s length negotiations between the
7 Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of
8 litigation, as well as the potential for appeals and the costs of pursuing litigation.

9 9. I am one of the primary attorneys on this matter. My qualifications are as follows: After
10 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
11 2004 with concentrations in Management and Human Resources, I continued studying labor and
12 employment issues by enrolling in post-graduate education at the School of Labor and Employment
13 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
14 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
15 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
16 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

17 10. Upon graduating from law school in 2008, I practiced labor and employment law at
18 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
19 practice focused on wage and hour class, collective, and representative actions, with a particular
20 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
21 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
22 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
23 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
24 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
25 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.
26 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
27 also able to obtain experience litigating representative claims or wage and hour matters through trial and
28 appeal. *E.g., Velazquez v. Costco Wholesale Corporation*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015)

1 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
2 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014)
3 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
4 collective action with involving deductions from final paychecks). I also litigated class certification on
5 numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326
6 (denial of class certification on behalf of retail employees alleging off-the-clock work).

7 11. Based on my experience in wage and hour class, collective, and representative actions, I
8 have been interviewed and quoted in articles published in the Northern California Record about
9 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
10 hour class and representative action litigation, including for example articles on California kin care
11 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
12 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
13 laws in *California Transportation News*, a publication of the California Construction Trucking
14 Association.

15 12. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
16 which also focuses primarily on employment law. I have handled a number of wage and hour class and
17 representative actions and continue litigating such matters in numerous Superior Courts and District
18 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
19 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
20 obtained class certification and been appointed class counsel. No court has ever found me to be
21 inadequate class counsel.

22 13. My co-counsel and I will adequately represent the Class Members in this action.
23 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
24 conclusion.

25 14. Along with the filing of the motion for preliminary approval of the settlement in this
26 matter, I have directed my office staff to simultaneously upload a copy of the motion papers to the Labor
27 and Workforce Development Agency ("LWDA") in compliance with Section 2699(1)(2) and (4).
28 Similarly, upon approval of a settlement in this matter, my regular practice would be to direct my office

1 staff to upload a copy of the Court's judgment, papers, or other orders awarding civil penalties under
2 PAGA.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 31st day of August 2022, at Pasadena, California.

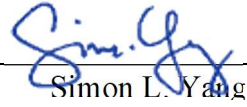
5
6 
Simon L. Yang

EXHIBIT 1

DIVERSITY LAW GROUP, P.C.
 Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
 Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
 515 South Figueroa Street, Suite 1250
 Los Angeles, California 90071
 Telephone: (213) 488-6555
 Facsimile: (213) 488-6554

POLARIS LAW GROUP
 William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
 501 San Benito Street, Suite 200
 Hollister, California 95023
 Telephone: (831) 531-4214
 Facsimile (831) 634-0333

Attorneys for Plaintiff and the Class

Jessica Linehan (SBN 223569)
linehan.jessica@dorsey.com
 DORSEY & WHITNEY LLP
 600 Anton Boulevard, Suite 2000
 Costa Mesa, CALIFORNIA 92626
 Telephone: (714) 800-1400
 Facsimile: (714) 800-1499

Attorneys for Defendants

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]

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff, Celia Stewart, on the one hand, and Defendants Ritchie Bros. Auctioneers (America) Inc. and Ritchie Bros. Auctioneers Inc., on the other hand.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” means the civil lawsuit originally entitled *Celia Stewart v. Ritchie Bros. Auctioneers*, filed on or about January 25, 2021, in the Superior Court of the State of California for the County of Alameda designated as Case No. RG21086650 and the notices of Labor Code violations dated December 20, 2020, and January 20, 2021, sent by Plaintiff to the Labor & Workforce Development Agency (“LWDA”).

1.2. Administrator. “Administrator” means the third-party settlement administrator approved by the Court to administer the settlement.

1.3. Agreement. “Agreement” means this Joint Stipulation of Class Action and PAGA Settlement.

1.4. Class Counsel. “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

1.5. Class Member. “Class Member” and “Aggrieved Employee” mean any Sick Pay Class Member, Overtime Class Member, or Wage Statement Class Member:

1.5.1. Sick Pay Class Member. “Sick Pay Class Member” means any current or former non-exempt employee of Defendants in the State of California who was paid sick pay wages in any workweek during the Class Period in which they also earned non-discretionary remuneration, including profit-sharing pay.

1.5.2. Overtime Class Member. “Overtime Class Member” means 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.

1 **1.5.3. Wage Statement Class Member.** “Wage Statement Class Member” means any
2 current or former non-exempt employee of Defendants in the State of California during the Class
3 Period.

4 **1.6. Class Notice.** “Class Notice” means the Notice of Class Action Settlement, substantially
5 in the form attached as Exhibit A.

6 **1.7. Class Period.** “Class Period” and “PAGA Period” means April 4, 2021, through
7 February 3, 2022.

8 **1.8. Court.** “Court” means the Superior Court of California for the County of Alameda, the
9 Honorable Evelio Grillo presiding.

10 **1.9. Defendants.** “Defendants” means Ritchie Bros. Auctioneers (America) Inc. and Ritchie
11 Bros. Auctioneers Inc.

12 **1.10. Defendants’ Counsel.** “Defendants’ Counsel” means Jessica Linehan and Michael
13 Droke of Dorsey & Whitney LLP.

14 **1.11. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
15 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the
16 day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if
17 any appeals of the Final Approval Order are filed, the day the appellate court renders a final judgment
18 affirming the Court’s approval without material modification and the applicable date for seeking further
19 appellate review has passed.

20 **1.12. Final Approval Order.** “Final Approval Order” means an order granting final approval
21 of a settlement pursuant to this Agreement.

22 **1.13. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
23 settlement amount—exclusive of any employer share of payroll taxes for any settlement funds
24 characterized as wages but inclusive of any Attorneys’ Fees and Costs Award, Class Representative
25 Award, Administration Costs, PAGA Penalty Fund, and allocations for Individual Settlement
26 Payments—that Defendants may be required to pay in connection with a Final Approval Order.

27 **1.13.1. Administration Costs.** “Administration Costs” means a Court approved
28 payment from the Gross Settlement Amount to the Administrator for administering the settlement,

1 which includes but is not limited to printing, distributing, or tracking Class Notices, processing any
2 required tax payments or reporting, providing any required tax forms, distributing payments pursuant to
3 a Final Approval Order, and providing necessary reports or declarations, as requested by the Court or
4 Class Counsel and Defendants' Counsel.

5 **1.13.2. Attorneys' Fees and Costs Award.** "Attorneys' Fees and Costs Award" means
6 a Court approved payment from the Gross Settlement Amount for Class Counsel's attorneys' fees and
7 costs associated with the litigation and resolution of the Action (excluding Administration Costs
8 separately addressed above).

9 **1.13.3. Class Representative Award.** "Class Representative Award" means a Court
10 approved payment from the Gross Settlement Amount to Plaintiff in recognition of her efforts and work
11 in prosecuting the Action on behalf of Class Members and in consideration of Plaintiff's additional
12 general release of claims inapplicable to Settlement Class Members.

13 **1.14. Individual Settlement Payment.** "Individual Settlement Payment" means a Class
14 Member's potential payment from the Net Settlement Amount, which may include an Individual Class
15 Payment and Individual PAGA Payment.

16 **1.14.1. Individual Class Payment.** "Individual Class Payment" means a Settlement
17 Class Member's potential payment from the Net Settlement Amount for the class action settlement.

18 **1.14.2. Individual PAGA Payment.** "Individual PAGA Payment" means an Aggrieved
19 Employee's potential payment from the Net Settlement Amount for the PAGA settlement.

20 **1.15. LWDA Payment.** "LWDA Payment" means a Court approved payment to the LWDA
21 of 75% of the PAGA Penalty Fund.

22 **1.16. Net Settlement Amount.** "Net Settlement Amount" means the remainder of the Gross
23 Settlement Amount after Court approved deductions for the Attorneys' Fees and Costs Award, Class
24 Representative Award, Administration Costs, and PAGA Penalty Fund.

25 **1.17. PAGA Penalty Fund.** "PAGA Penalty Fund" means the portion of the settlement
26 allocated to PAGA penalties.

27 **1.18. Parties.** "Parties" means Plaintiff and Defendants.

28 **1.19. Plaintiff.** "Plaintiff" means Celia Stewart.

1 **1.20. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
2 preliminary approval of a settlement pursuant to this Agreement.

3 **1.21. Released Party.** “Released Party” means Defendants and all of their affiliated agents,
4 employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders,
5 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships
6 (defined as a company/corporation and/or partnership that is, directly or indirectly, under common
7 control with Defendants or any of their parents and/or affiliates), divisions, assigns, predecessors,
8 successors, insurers, consultants, joint ventures, joint employers, affiliates, and alter-egos.

9 **1.22. Settlement Class Members.** “Settlement Class Members” means Class Members who
10 do not exclude themselves from the class action settlement by complying with the procedures set forth
11 in the Class Notice to opt out of the class action settlement.

12 **2. RECITALS**

13 **2.1. Initiation of Action.** On or about January 25, 2021, Plaintiff filed the original complaint
14 initiating the Action on behalf of a putative class consisting of current and former non-exempt
15 employees of Defendants in the State of California. On or about July 23, 2021, Plaintiff filed the
16 operative first amended complaint. The Action pursued class action and representative action claims
17 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Defendants’ alleged
18 underpayment of overtime and sick pay wages and alleged failure to furnish employees with complete
19 and accurate wage statements showing applicable wage rates, gross wages earned, net wages earned,
20 and name of the legal entity that is the employer.

21 **2.2. Class Counsel’s Investigation.** Upon the initiation of the Action, Plaintiff and
22 Defendants met and conferred about the alleged claims. On or about July 9, 2021, Plaintiff served
23 initial written discovery. Defendants provided Plaintiff with information about various defenses,
24 including those based on a class action settlement in *Ronald Acker v. Ritchie Bros Auctioneers*
25 *America, Inc. et al.*, Superior Court of the State of California for the County of Tulare Case No.
26 VCU283076. Class Counsel continued investigating the alleged claims and also analyzed any defenses
27 raised by Defendants.
28

1 **2.3. Mediation and Settlement.** The Parties continued to exchange information and
2 documentation pursuant to informal methods to assist the Parties in exploring the possibility of a
3 mediated resolution. The Parties agreed to schedule a mediation. On February 3, 2022, the Parties
4 attended a mediation with Steve Pearl, an experienced mediator knowledgeable of both the wage and
5 hour laws and class and representative action claims at issue in the Action. With the mediator's
6 assistance and based upon the mediator's proposal, the Parties were able to agree to settlement terms,
7 which were negotiated in light of all known facts and circumstances—including the uncertainty
8 associated with litigation, the risks of significant delay, and numerous potential appellate issues—and
9 which was reached after extensive arm's-length negotiations both during and in the weeks leading up to
10 the mediation.

11 **2.4. No Admission of Liability.** Defendants denied and continue to deny all of the
12 allegations made by Plaintiff in the Action. Although Defendants denied and continue to deny all of the
13 allegations made by Plaintiff in the Action, Defendant—without admitting or conceding any liability or
14 wrongdoing whatsoever—have agreed to settle the Action on the terms and conditions set forth in this
15 Agreement for the sole purpose of avoiding the burden, expense, and uncertainty of continuing the
16 Action.

17 **2.5. Class Counsel's Evaluation.** Based on Class Counsel's ongoing investigation and
18 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair,
19 reasonable, adequate, and in the best interests of Class Members.

20 **2.6. Certification of Settlement Class.** This Agreement is contingent upon the approval and
21 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
22 all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a
23 Preliminary Approval Order and then Final Approval Order.

24 **3. NOTICE TO CLASS MEMBERS**

25 **3.1. Administrator.** Plaintiff and Class Counsel shall request that the Court appoint Phoenix
26 Settlement Administrators as the Administrator for purposes of sending notice of the settlement to
27 Class Members. The Parties agree that Administration Costs should not exceed \$6,750.00.

1 **3.2. Class Data for Administrator.** Within 7 calendar days of the Preliminary Approval
2 Order, Defendants shall provide to the Administrator each Class Member's last known mailing address,
3 phone numbers, SSNs, the number of pay periods worked during the Class Period for each Class
4 Member, the number of pay periods worked during the Class Period for each Class Member in which
5 they were paid either sick pay wages or overtime wages in any workweek in which they also earned
6 non-discretionary remuneration, including profit-sharing pay, and any additional information required
7 by the Administrator to perform all necessary responsibilities pursuant to this Agreement.

8 **3.3. Class Notice of Settlement.** The Administrator shall send Class Notice to Class
9 Members to provide notice of settlement within 14 calendar days of the Preliminary Approval Order,
10 pursuant to the procedures below. This shall be the sole means of notice to Class Members.

11 **3.4. Mailing of Notice.** The Administrator shall send Class Notice to each Class Member via
12 First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data
13 provided by Defendants. Any Class Notice returned to the Administrator as undeliverable shall be sent
14 promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address
15 is provided, the Administrator shall promptly attempt to determine the correct address using a single
16 skip-trace search and shall then promptly send a single re-mailing.

17 **3.5. Proof of Mailing.** The Administrator shall provide Class Counsel and Defendants'
18 Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.

19 **4. CLASS MEMBERS' RESPONSE OPTIONS**

20 **4.1. Consideration Period.** Class Members shall be provided 45 calendar days after the
21 postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the class action
22 settlement. Except as provided herein, no Class Member responses that are postmarked more than 45
23 calendar days after the initial mailing of Class Notice shall be considered. The Parties shall do nothing
24 to encourage or solicit Class Members to opt out of or object to the settlement.

25 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity
26 to object to the terms of the settlement. Settlement Class Members may object to the settlement by
27 mailing to the Administrator an objection within 45 calendar days after the postmark date of the initial
28 mailing of Class Notice, which describes the objection and states any intention to appear at the final

1 approval hearing. Alternatively, Settlement Class Members may appear at the final approval hearing to
2 object to the settlement. Any Settlement Class Member who does not comply with the objection
3 procedures in the Class Notice shall be deemed to have waived any objections and shall be foreclosed
4 from making any objection, whether by appeal or otherwise, to the settlement. Settlement Class
5 Members who object to the settlement pursuant to the terms of the Class Notice shall remain subject to
6 being bound by the release provisions in this Agreement pursuant to a Final Approval Order and shall
7 remain eligible to receive an Individual Class Payment.

8 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
9 the class action settlement. Class Members may opt out of the class action settlement by mailing to the
10 Administrator a Request for Exclusion, which expresses their desire to be excluded from the class
11 action settlement. Any Request for Exclusion that does not comply with the procedures in the Class
12 Notice shall be deemed void and ineffective. Class Members who opt out of the settlement pursuant to
13 the terms of the Class Notice shall not receive any Individual Class Payments, shall not be bound by the
14 class action release provisions in this Agreement pursuant to a Final Approval Order, and shall not be
15 permitted to object to the settlement or appeal. If a Class Member submits both a Request for Exclusion
16 and an objection, the Administrator shall attempt to determine whether the Class Member would like to
17 withdraw either the Request for Exclusion or the objection. If the Class Member does not withdraw a
18 Request for Exclusion, or if the Administrator cannot contact the Class Member who submits both a
19 Request for Exclusion and an objection, the Request for Exclusion shall be deemed valid and shall be
20 deemed to invalidate the objection.

21 **4.4. Right of Revocation.** In the event that more than 10% of Class Members opt out of the
22 settlement, Defendants shall have the right to void the settlement. The Administrator will promptly
23 notify the Parties if the total number of opt outs exceeds 10%. Defendants shall have 7 calendar days
24 thereafter to notify the Administrator and Class Counsel of their election to void the settlement, after
25 which the election shall be waived.

26 **4.5. Objection Response.** The Administrator must provide a copy of any objection received
27 to Class Counsel and Defendants' Counsel upon receipt. Either of the Parties may file a response to any
28 written objection no later than five court days before the final approval hearing.

1 **4.6. Proof of Class Members' Responses.** As soon as practicable after the end of the
2 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
3 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
4 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
5 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
6 requested by the Parties or by the Court.

7 **5. SETTLEMENT PROCEEDS**

8 **5.1. Gross Settlement Amount.** Defendants agrees to pay a non-reversionary Gross
9 Settlement Amount of \$228,900.00. The Gross Settlement Amount was negotiated based on
10 Defendants' representation that Class Members worked approximately 1,635 pay periods (or within
11 10%) during the Class Period. If the actual number of pay periods worked by Class Members during the
12 Class Period exceeds 1,635 by more than 10%, the Gross Settlement Amount shall increase on a pro
13 rata basis equal to the percentage increase exceeding 10% (e.g., if the actual number of relevant pay
14 periods were 12.5% greater than 1,635, then the Gross Settlement Amount would be increased by
15 2.5%). Defendants' updated count of pay periods during the Class Period is approximately 1,773. There
16 are approximately 168 Class Members.

17 **5.1.1. Administration Costs.** Class Counsel intends to request—and Defendants
18 agrees not to oppose—that the Court approve Administration Costs of up to \$6,750.00. The Parties
19 agree to cooperate in the settlement administration process and to make all reasonable efforts to control
20 and minimize Administration Costs.

21 **5.1.2. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendants
22 agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)
23 33 $\frac{1}{3}$ % of the Gross Settlement Amount (or \$76,300.00) and (b) litigation costs.

24 **5.1.3. Class Representative Award.** Class Counsel intends to request—and
25 Defendants agrees not to oppose—that the Court approve a Class Representative Award of \$10,000.00.
26 Any Class Representative Award is supplemental to Plaintiff's Individual Settlement Payment as a
27 Class Member.

1 **5.1.4. PAGA Penalty Fund and LWDA Payment.** The Parties agree \$20,000.00 shall
2 be allocated to a PAGA Penalty Fund, which shall be distributed pursuant to statute with 75% of the
3 PAGA Penalty Fund payable as an LWDA Payment. The remaining 25% of the PAGA Penalty Fund
4 shall be payable to Aggrieved Employees in equal shares.

5 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
6 approve the requested amounts for the Attorneys' Fees and Costs Award, Class Representative Award,
7 or Administration Costs, any requested but unapproved amounts shall be allocated to the Net
8 Settlement Amount. If the Court does not approve the requested amount for the PAGA Penalty Fund,
9 any difference in the requested and approved amount shall either be allocated to the Net Settlement
10 Amount or from the Gross Settlement Amount. Except as otherwise stated, payments shall be classified
11 for tax reporting purposes as non-wage payments.

12 **5.2. Net Settlement Amount.** The amount remaining after deducting any Court approved
13 Administration Costs, Attorneys' Fees and Costs Award, Class Representative Award, and PAGA
14 Penalty Fund from the Gross Settlement Amount shall be allocated to Settlement Class Members,
15 without the need to submit a claim form, based on the number of relevant pay periods worked as
16 reflected in Defendants' records. 50% of the Net Settlement Amount shall be designated for payments
17 to Wage Statement Class Members, and 50% of the Net Settlement Amount shall be designated for
18 payments to Sick Pay Class Members or Overtime Class Members.

19 **5.2.1. Individual Settlement Payments for Wage Statement Pay Periods.** The
20 Administrator shall calculate the total number of pay periods during the Class Period for all Settlement
21 Class Members. The portion of the Net Settlement Amount designated for payments to Wage Statement
22 Class Members shall be distributed to Settlement Class Members as Individual Class Payments and
23 proportionally allocated among Settlement Class Members based on the number of pay periods worked
24 by each Settlement Class Member during the Class Period. These allocations shall be classified for tax
25 reporting purposes as penalties.

26 **5.2.2. Individual Settlement Payments for Sick Pay and Overtime Pay Periods.**
27 The Administrator shall calculate the total number of pay periods during the Class Period in which all
28 Settlement Class Members were paid either sick pay wages or overtime wages in any workweek in

1 which they also earned non-discretionary remuneration, including profit-sharing pay. The portion of the
2 Net Settlement Amount designated for payments to Sick Pay Class Members and Overtime Class
3 Members shall be distributed to Settlement Class Members as Individual Class Payments and
4 proportionally allocated among Settlement Class Members based on the number of pay periods worked
5 by each Settlement Class Member during the Class Period in which they were paid either sick pay
6 wages or overtime wages in any workweek in which they also earned non-discretionary remuneration,
7 including profit-sharing pay. 20% of these allocations shall be classified for tax reporting purposes as
8 wages.

9 **5.3. Funding and Distribution.** By 14 calendar days after the Final Approval Order,
10 Defendants shall deposit the Gross Settlement Amount with the Administrator. By seven calendar days
11 after the Effective Date, the Administrator shall distribute all amounts to be paid pursuant to the Final
12 Approval Order. Upon completion of administration of the settlement, the Administrator shall provide
13 written certification of such completion to Class Counsel and Defendants' Counsel.

14 **5.4. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
15 will expire six months after the postmarked date of their initial mailing. After six months, the sum
16 value of all expired checks will be tallied by the Administrator. The Administrator shall direct the
17 principal for any expired checks in accordance with the Final Approval Order. The Parties shall request
18 that the Court order that the principal for any expired checks escheat to the State of California's
19 Unclaimed Property Fund in the name of the payee.

20 **5.5. No Tax Advice or Liability.** The Administrator shall issue an IRS Form 1099 to
21 Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and Costs
22 Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs.
23 The Administrator shall issue an IRS Form 1099 or W-2 to Class Members as required by law. The
24 Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving any
25 tax advice in connection with the settlement or any payments to be made pursuant to the Agreement.
26 The Parties do not intend anything contained in this Agreement to constitute legal advice regarding the
27 taxability of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such.
28 By participating in the settlement, each Class Member shall agree to be solely and legally responsible

for paying any applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

6. RELEASES

6.1. Releases by Settlement Class Members. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, all Settlement Class Members fully release Defendants and each Released Party from any and all claims during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, including, but not limited to, claims under any state, federal, or local law for failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements, as well as any penalties, attorneys' fees, or costs premised on such claims.

6.2. Releases by Aggrieved Employees. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, all Aggrieved Employees and the LWDA fully release Defendants and each Released Party from any and all claims for civil penalties during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, including for failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements.

6.3. Additional Release by Plaintiff. In addition to the above releases applicable to Plaintiff as a Settlement Class Member and Aggrieved Employee, Plaintiff also generally releases all claims, known or unknown, in favor of each Released Party, including a waiver of Civil Code section 1542. Plaintiff expressly waives all rights provided by Civil Code section 1542 that Plaintiff may have against each Released Party. Civil Code section 1542 states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff acknowledges that she has read the entirety of the Agreement, including the above language from the Civil Code, and that she fully understands both the Agreement and Civil Code section 1542. By executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

7. COURT APPROVAL

7.1. Preliminary Approval. Plaintiff shall submit a motion seeking a Preliminary Approval Order, which would, among other things: (i) preliminarily approve the proposed settlement according to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice to be sent to Class Members as specified herein.

7.2. Final Approval. Not later than 16 court days before the date set by the Court for a final approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's orders.

7.3. Effect of Failure to Obtain Final Approval. In the event the Court effects a material change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final Approval Order is vacated, then this entire Agreement shall be void and unenforceable, subject to the Parties' agreement to the contrary, and the costs of administration shall be split equally between the Parties. The Action shall proceed as if no settlement has been attempted, subject to the Parties' agreement to the contrary, and this Agreement and any documents in furtherance of this Agreement shall be admissible in any future proceedings in this Action or any other action.

7.4. Compliance with PAGA Procedures. Class Counsel shall comply with all requirements and reportings to the LWDA for a PAGA settlement. Class Counsel shall submit this Agreement to both the Court and LWDA, in compliance with Labor Code section 2699(1)(2).

8. MISCELLANEOUS

8.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous

1 negotiations and understandings between the Parties shall be deemed merged into this Agreement. The
2 signatories represent that they are fully authorized to enter into this Agreement and are fully authorized
3 to bind the Parties to all terms stated herein.

4 **8.1.1. Counterparts and Signatures.** This Agreement may be executed in
5 counterparts, and when all signatories have signed and delivered at least one such counterpart, each
6 counterpart shall be deemed an original, and when taken together with other signed counterparts, shall
7 constitute one signed Agreement, which shall be binding upon and effective as to all Parties. Any party
8 may sign and deliver this Agreement by signing on the designated signature block and transmitting that
9 signature page via e-mail to counsel for the other party. Any signature transmitted via e-mail shall be
10 deemed an original signature and shall be binding upon the party who transmits the signature page.

11 **8.1.2. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification, or
12 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
13 approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
14 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
15 to any required Court approval. Any failure by any party to insist upon the strict performance by the
16 other party of any of the provisions of this Agreement shall not be deemed a waiver of future
17 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
18 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
19 any and all of the provisions of this Agreement.

20 **8.1.3. Construction.** The determination of the terms and conditions of this Agreement
21 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
22 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
23 construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement
24 have been inserted for convenience of reference only and shall have no effect upon the construction or
25 interpretation of any part of this Agreement.

26 **8.1.4. Invalidity of Any Provision.** Before declaring any provision of this Agreement
27 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as
28 to render all provisions of this Agreement valid and enforceable.

1 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
2 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
3 upon the request of another, agrees to perform such further acts and to execute and deliver such other
4 documents as are reasonably necessary to carry out the provisions of this Agreement.

5 **8.3. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
6 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
7 Agreement and of the settlement contemplated thereby.

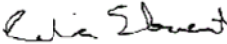
8 **8.4. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
9 they agree to engage mediator Steve Pearl to mediate any such dispute. The Parties will split the costs
10 of the mediator, and the Parties will bear their own fees and costs.

11 **8.5. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
12 governed by and interpreted according to the laws of the State of California. If any party institutes any
13 legal action or other proceeding against another party or parties to enforce the terms of this Agreement,
14 or to declare rights or obligations under this Agreement, the prevailing party shall be entitled to recover
15 reasonable attorneys' fees and costs, including expert witness fees incurred, from the non-prevailing
16 party.

17 **[SIGNATURES ON FOLLOWING PAGE]**
18
19
20
21
22
23
24
25
26
27
28

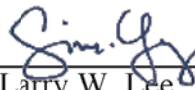
PLAINTIFF

Dated: June ^{C.S}24, 2022

DocuSigned by:

525DB17D8A414F8...

COUNSEL FOR PLAINTIFF AND CLASS

Dated: June 27, 2022


Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

DEFENDANTS

Dated: June __, 2022

Darren Watt, General Counsel
on behalf of RITCHIE BROS. AUCTIONEERS
(AMERICA) INC. and RITCHIE BROS
AUCTIONEERS INC.

COUNSEL FOR DEFENDANTS

Dated: June 29, 2022


Jessica Linehan
DORSEY & WHITNEY LLP

1 **PLAINTIFF**

2
3 Dated: June ___, 2022

Celia Stewart

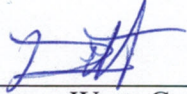
4 **COUNSEL FOR PLAINTIFF AND CLASS**

5
6 Dated: June ___, 2022

Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

9
10 **DEFENDANTS**

11
12 Dated: June ²⁵ ___, 2022



Darren Watt, General Counsel
on behalf of RITCHIE BROS. AUCTIONEERS
(AMERICA) INC. and RITCHIE BROS
AUCTIONEERS INC.

13 **COUNSEL FOR DEFENDANTS**

14
15
16
17 Dated: June ___, 2022

Jessica Linehan
DORSEY & WHITNEY LLP

EXHIBIT A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Celia Stewart v. Ritchie Bros. Auctioneers (America), Inc. et al,
Superior Court of the State of California for the County of Alameda Case No. RG21086650

If you were an hourly, non-exempt employee for Ritchie Bros. Auctioneers (America) Inc. and Ritchie Bros. Auctioneers Inc. in the State of California from April 4, 2021, through February 3, 2022 (“Class Period”), you could receive a payment from a class action settlement (hereinafter, “Settlement”).

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Alameda (the “Court”) has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action filed by Plaintiff, Celia Stewart, against Defendants Ritchie Bros. Auctioneers (America) Inc. and Ritchie Bros. Auctioneers Inc., which has been designated Case No. 20CV369854 (the “Action”).

- The Action alleges Defendants underpaid sick pay wages and overtime and also failed to provide lawful wage statements to employees. Specifically, 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. On these and related bases, the Action pursues class action and PAGA claims.
- Defendants deny Plaintiff’s allegations and maintain they have fully complied with the law. By agreeing to the Settlement, Defendants in no way admit any violation of law or any liability whatsoever to Plaintiff or others and expressly deny all such liability. Both Plaintiff and Defendants have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- If the Court grants final approval of the settlement, it would provide cash payments to Class Members, based on the number of relevant pay periods that they worked during the Class Period.
- Based on Defendants’ records, you worked **XXX** relevant sick pay and overtime pay periods and **XXX** relevant wage statement pay periods. An *estimate* of the amount that could be allocated to you is \$**XXX**. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you opt out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.
OBJECT	You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.

If the Court approves the PAGA settlement, you will receive an Individual PAGA Payment and will be bound by the PAGA release provisions of the Settlement, regardless of whether you opt out of the class action settlement.

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT
AS TO THE MERITS OF THE CLAIMS.**

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Defendants’ records show that you were a Wage Statement Class Member because you were employed as a non-exempt employee by Defendants in the State of California from April 4, 2021, through February 3, 2022 (the “Class Period”). You may also be an Overtime Class Member or Sick Pay Class Member if you earned sick pay wages or overtime wages in any workweek during the Class Period in which you also earned non-discretionary remuneration, including profit-sharing pay. All Class Members are also “Aggrieved Employees” under PAGA and may be entitled to share in the funds to be made available for the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On January 25, 2021, Plaintiff filed a complaint in Court that alleged Defendants fail to consider all compensation when calculating employees’ regular rates of pay for purposes of paying sick pay wages and overtime. Specifically, Plaintiff alleged Defendants do not consider certain non-discretionary remuneration, including profit-sharing pay, when calculating sick pay and overtime rates of pay. The initial complaint also alleged both derivative and standalone wage statement violations. In addition to the derivative failure to accurately show the gross and net wages earned resulting from miscalculated and underpaid sick pay wages and overtime wages, Plaintiff alleged Defendants’ wage statements fail to show the name of the legal entity that was the employer.

Defendants deny and continue to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendants have agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendants agree to pay a Gross Settlement Amount of \$228,900.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award, PAGA Penalty Fund, and Individual Class Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (e.g., printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys’ Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) a Class Representative Award to Plaintiff both for her efforts in prosecuting the Action for Class Members and for Plaintiff’s additional general release of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund.

PAGA Penalty Fund: The Settlement requests that the Court approve a PAGA Penalty Fund of \$20,000.00. Pursuant to Labor Code requirements, 75% of the PAGA Penalty Fund will be allocated to the LWDA as an LWDA Payment. The remainder of the PAGA Penalty Fund will be allocated and entirely payable to Aggrieved Employees in equal shares as Individual PAGA Payments. These payments shall be classified for tax reporting purposes as penalties.

Individual Class Payments: Individual Class Payments shall be distributed to Settlement Class Members, without the need to submit a claim form. 50% of the Net Settlement Amount shall be designated for payments to Wage Statement Class Members, and 50% of the Net Settlement Amount shall be designated for payments to Sick Pay Class Members or Overtime Class Members.

The portion designated for payments to Wage Statement Class Members shall be distributed to Settlement Class Members as Individual Class Payments and proportionally allocated among Settlement Class Members based on the number of pay periods worked by each Settlement Class Member during the Class Period. These allocations shall be classified for tax reporting purposes as penalties.

The portion designated for payments to Sick Pay Class Members and Overtime Class Members shall be distributed to Settlement Class Members as Individual Class Payments and proportionally allocated among Settlement Class Members based on the number of pay periods worked by each Settlement Class Member during the Class Period in which they were paid either sick pay wages or overtime wages in any workweek in which they also earned non-discretionary remuneration, including profit-sharing pay. 20% of these allocations shall be classified for tax reporting purposes as wages.

Through this settlement, each Class Member shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Settlement Class Member or Aggrieved Employee.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$76,300.00) and (b) litigation costs of up to \$12,500.00.

Class Representative Award: Any Class Representative Award is to be determined by the Court and would be supplemental to Plaintiff's Individual Settlement Payments. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 for Plaintiff's efforts in prosecuting the Action for Class Members and for Plaintiff's additional general release of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$6,750.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendants and all of their affiliated agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with Defendants or any of their parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, joint employers, affiliates, and alter-egos (a "Released Party") from any and all claims during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, including, but not limited to, claims under any state, federal, or local law for failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements, as well as any penalties, attorneys' fees, or costs premised on such claims.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Upon approval, all Aggrieved Employees and the LWDA fully release Defendants and each Released Party from any and all claims for civil penalties during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, including for failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements.

5. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Class Payment and Individual PAGA Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

If you want to object to the class action settlement, you may appear at the final approval hearing to object to the class action settlement. Alternatively, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by [45 calendar days after the initial mailing of Notice].

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

6. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you MUST express your desire to be excluded from the class action settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Exclusion," include your name, current address, current telephone number, and last four digits of your social security number. Any such Request for Exclusion must be postmarked by [45 calendar days after the initial mailing of Notice].

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, you may contact the Administrator. Contact information for the Administrator and Class Counsel are as follows:

Administrator: xxx xxx xxx, California xxx Telephone: (xxx) xxx-xxxx	Class Counsel: DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	POLARIS LAW GROUP William L. Marder (bill@polarislawgroup.com) 501 San Benito Street, Suite 200 Hollister, California 95023 Telephone: (831) 531-4214
---	--	--

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.