

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

Case No. SA CV 13-0092-DOC (JPRx)

ORDER TO

- (1) CERTIFY SETTLEMENT CLASSES;**
- (2) APPOINT CLASS REPRESENTATIVES, CLASS COUNSEL;**
- (3) GRANT PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT;**
- (4) APPOINT SETTLEMENT ADMINISTRATOR AND DIRECT DISSEMINATION OF NOTICE; AND**
- (5) SET FAIRNESS HEARING AND RELATED DATES**

MELISSA LILLEHAGEN, *et al.*, on behalf of themselves and all those similarly situated,

Plaintiffs,

v.

ALORICA, INC.,

Defendant.

1 On May 27 2016, this Court held a hearing on the motion of Plaintiffs
2 Melissa Lillehagen, Sharon Shaw, Janna Carlile, Shanai Witmore, Ignacio
3 Pizana, Brenda Luper, Barbara Beckerley, Michael Irvin, Dianne Maddox,
4 Raymorn Edden, Cassandra Allen, Dawn Fulmore, Vanessa Gomez, Ancelle
5 Parker, Janelle Ayers, Cynthia Fuerte, Chelsea Ramirez, and Timothy King
6 (“Plaintiffs”), on behalf of themselves and all those similarly situated (“Class
7 Members”), for an order to (1) certify the proposed Settlement Classes,
8 comprised of collectives under the Fair Labor Standards Act, 29 U.S.C. §§
9 201–19 (“FLSA”), and opt-out classes under Federal Rule of Civil Procedure
10 23 (“Rule 23”); (2) appoint Plaintiffs as Class Representatives; (3) appoint
11 Plaintiffs’ attorneys as Class Counsel; (4) grant preliminary approval to the
12 parties’ Settlement Agreement; (5) approve mailing to the Class Members the
13 proposed Class Notice; (6) appoint Garden City Group as Claims
14 Administrator; and (7) schedule a hearing for final approval of the Settlement
15 and other, related dates.

16 Having considered the pleadings, supporting documentation and record,
17 and the arguments of counsel, the Court now enters this Preliminary Approval
18 Order and ORDERS as follows:

19 **I. NATURE OF ACTION**

20 Plaintiffs allege that Alorica violated wage and hour laws by failing to
21 pay class members for all hours worked, miscalculating the overtime rate, and,
22 with respect to the California class members, violating meal and rest period
23 laws. Alorica disputes and denies all of Plaintiffs’ claims and contends that it
24 has fully complied with all applicable laws at issue in this matter.
25
26
27
28

1 **II. CERTIFICATION OF SETTLEMENT CLASSES**

2 For settlement purposes only, the parties have proposed certification of
3 settlement class comprised of (1) a FLSA collective class defined as all
4 persons employed by Alorica as a Customer Service Representative (“CSR”)
5 at any time from August 9, 2010 to the date of preliminary approval of the
6 settlement; and (2) and a state law class under Rule 23 that includes individual
7 state classes under the laws of California, Colorado, Florida, Georgia, Iowa,
8 Kansas, North Carolina, Oklahoma, Pennsylvania, Texas, and Virginia.

9 The Court hereby finds and concludes that for purposes of the
10 Settlement only, the Settlement Classes satisfy all of the requirements for
11 certification under Rule 23(a) and (b)(3), which is a proper measure of
12 certification for both the FLSA collective and Rule 23 class.

13 1. Each class is sufficiently numerous that joinder is impracticable.

14 2. The members of each class share common issues of fact and law
15 regarding whether Alorica’s policies and practices result in the failure to pay
16 all hours Plaintiffs worked during: (i) short, mid-shift breaks, (ii) pre- and
17 post-shift work, and (iii) overtime.

18 3. The Class Representatives’ claims are typical of those of the
19 Class they propose to represent, because they arise out of the same policies
20 and practices and course of conduct complained of by all Class Members.

21 4. The Class Representatives are adequate representatives of the
22 class they propose to represent, because their interests are co-extensive with
23 those of the Class Members, and they have retained experienced counsel to
24 represent them and the Class Members.

25 5. Questions of law or fact common to each class predominate over
26 individualized issues, and a class action is superior to other available methods
27 for the fair and efficient adjudication of this controversy.
28

1 6. Because certification of each class is proposed in the context of a
2 settlement, the Court need not inquire whether the case, if tried as a class
3 action, would present intractable management problems.

4 Accordingly, the Court hereby certifies the Settlement Class under Rule
5 23(a) and (b)(3).

6
7 **III. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS**
8 **COUNSEL**

9 **A. Class Representatives**

10 The Court finds and concludes that the Class Representatives have
11 claims typical of the Class Members they propose to represent, and that they
12 are adequate representatives of the class. The Court hereby appoints Plaintiffs
13 to serve as Class Representatives of the classes they propose to represent.

14 **B. Class Counsel**

15 The Court finds and concludes that Outten & Golden LLP, Baron &
16 Budd, P.C., and Hunt, Hassler & Lorenz LLP have, separately and
17 collectively, extensive experience and expertise in prosecuting wage-and-hour
18 class actions and collective actions. The Court hereby appoints these firms as
19 Class Counsel.

20 **IV. PRELIMINARY APPROVAL OF SETTLEMENT**

21 The Court has reviewed the terms of the Settlement, including the plan
22 of allocation and the release of claims. The Court has also read and
23 considered the declarations of Jahan C. Sagafi and Allen Vaught in support of
24 preliminary approval. Based on review of those papers, and the Court's
25 familiarity with this case, the Court finds and concludes that the Settlement is
26 the result of arms-length negotiations between the parties conducted after
27 Class Counsel had adequately investigated Plaintiffs' claims and become
28

1 familiar with their strengths and weaknesses. The assistance of an
2 experienced mediator in the settlement process further supports the conclusion
3 that the Settlement Agreement is non-collusive. Based on all of these factors,
4 the Court concludes that the proposed Settlement Agreement meets the criteria
5 for preliminary settlement approval. The Settlement has no obvious defects
6 and falls within the range of possible approval as fair, adequate, and
7 reasonable, such that notice to the Class Members is appropriate.
8 Accordingly, the Settlement is hereby preliminarily approved.

9 **V. APPROVAL OF THE NOTICE PLAN**

10 The Parties have also submitted for this Court's approval a proposed
11 class notice. After carefully reviewing the notice, the Court finds and
12 concludes as follows:

13 **A. Best Notice Practicable**

14 The Class Notice is the best notice practicable under the circumstances
15 and allows Class Members a full and fair opportunity to consider the
16 Settlement. The Class Notice fairly, plainly, accurately, and reasonably
17 informs Class Members of: (1) appropriate information about the nature of this
18 action, the definition of the Classes, the identify of Class Counsel, and the
19 essential terms of the Settlement, including the plan of allocation; (2)
20 appropriate information about Plaintiffs' forthcoming application forthcoming
21 application for the Class Representative Payments and the Class Counsel
22 Attorneys' Fees and Costs Award; (3) appropriate information about how
23 Class Members' settlement shares will be calculated; (4) appropriate
24 information about this Court's procedures for final approval of the Settlement
25 Agreement, and about Class members' right to appear if they desire; (5)
26 appropriate information about how to comment on or opt out of the Settlement
27 Agreement, if a Class Member wishes to do so; and (6) appropriate
28

1 instructions as to how to obtain additional information regarding this action
2 and the Settlement Agreement.

3 The proposed plan for distributing the Class Notice likewise is a
4 reasonable method calculated to reach all individuals who would be bound by
5 the Settlement. Under this plan, the Settlement Administrator will distribute
6 the Class Notice to all Class Members by first-class mail to their last known
7 addresses. There is no additional method of distribution that is cost-effective
8 and would be reasonably likely to notify Class Members who may not receive
9 notice pursuant to the proposed distribution plan.

10 **B. Approval**

11 Accordingly, the Court finds and concludes that the proposed plan for
12 distributing the Class Notice will provide the best notice practicable, satisfies
13 the notice requirements of Rule 23(e), and satisfies all other legal and due
14 process requirements. Accordingly, the Court hereby ORDERS as follows:

- 15 1. The Class Notice is approved.
- 16 2. The manner of distributing the Class Notice to the Class
17 Members is approved.
- 18 3. Promptly following the entry of this order, the Settlement
19 Administrator will prepare final versions of the Class Notice, incorporating
20 into them the relevant dates and deadlines set forth in this order.
- 21 4. By June 7, 2016, the Settlement Administrator will put up a
22 publicly available website to provide information about the settlement process.
23 The contents of the publicly-accessible website shall be determined by the
24 Settlement Administrator, but shall exclude the settlement amount and shall be
25 limited to only information appropriate for Class Members to understand the
26 settlement, properly obtain notice of the settlement, opt out of or object to the
27 settlement, or submit information.

1 5. By June 7, 2016, counsel for Defendant shall transmit to the
2 Settlement Administrator, in a readable, ready to use electronic Excel
3 spreadsheet format, a list containing the following information for each Class
4 Member: (1) full name; (2) last known home address (street, city, state, and
5 zip code); (3) social security number; (4) dates of employment as a CSR
6 during all Class Periods; and (5) the total eligible Workweeks during the Class
7 Period, by state (“Class List”). If any question arises as to the accuracy of any
8 of the data contained in the Class List, Defendant shall make available to the
9 Settlement Administrator records sufficient to confirm the accuracy of the data
10 in question upon reasonable request.

11 6. Promptly upon receipt of the Class List from Defendant, the
12 Settlement Administrator shall obtain updated forwarding addresses from the
13 U.S. Postal Service through a National Change of Address search, and
14 thereafter, where necessary, perform individual computer searches and other
15 searches to obtain a Class Member’s most recent address should anything be
16 returned to the Settlement Administrator as undeliverable.

17 7. No later than fifteen (15) business days after the Settlement
18 Administrator receives the Class List from Defendant, the Settlement
19 Administrator shall send the Class Notice to each Class Member by first class
20 mail.

21 8. The addresses to which the Class Notice are to be mailed shall be
22 determined by the Settlement Administrator from the Class List, subsequent
23 searches the Settlement Administrator performs, and by such other means as
24 the Settlement Administrator customarily uses to locate Class Members in
25 administration of class action settlements.

26 9. If a Class Notice is returned because of an incorrect address, with
27 a forwarding address affixed thereto, the Settlement Administrator will
28

1 immediately re-mail the Class Notice to that Class Member. If a Class Notice
2 is returned as undeliverable, the Settlement Administrator will immediately
3 perform a search for a more current address for the Class Member and re-mail
4 the Class Notice to that updated address. The Settlement Administrator will
5 note for its own records the date of each such re-mailing and will, upon
6 request, provide Class Counsel and Defendant's counsel the date of each such
7 re mailing.

8 10. The Settlement Administrator will take all other actions in
9 furtherance of settlement administration as are specified in the Settlement
10 Agreement.

11
12 **VI. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT.**

13 **A. Final Approval Hearing**

14 The Court hereby schedules a hearing to determine whether to grant
15 final approval of the Settlement Agreement for **October 17, 2016, at 8:30**
16 **a.m.** The date of the hearing may be changed without further notice to the
17 Class.

18 **B. Procedures to Opt Out of the Settlement**

19 In order for a Class Member to exclude himself or herself from the
20 Class and the settlement, the Class Member must send a letter to the
21 Settlement Administrator that (1) states that he or she requests to be excluded
22 from the Class and this settlement, (2) is signed, and (3) is postmarked or
23 received by the Settlement Administrator within sixty (60) days of the date the
24 Settlement Administrator mailed the Class Notice. The date the signed request
25 for exclusion was postmarked or faxed shall be conclusively determined
26 according to the records of the Settlement Administrator. Any Class Member
27 who timely and validly opts out of the Class and this settlement will not be
28

1 entitled to any recovery from the settlement fund, will not be bound by the
2 terms and conditions of this Agreement, and will not have any right to object,
3 appeal or comment thereon. The Settlement Administrator shall provide Class
4 Counsel and Defendant's counsel with a complete list of all Class Members
5 who requested exclusion (i.e., opted out).

6 **C. Filing Objections to Settlement**

7 In order to object to the Settlement Agreement, or any term of it, the
8 person making the objection must be a Class Member, must not opt out, and
9 must send to the Settlement Administrator a written statement that (1)
10 describes the grounds of the objection, (2) is signed by the objecting Class
11 Member, and (3) is postmarked or received by the Settlement Administrator
12 within sixty (60) days of the date the Settlement Administrator mailed the
13 Class Notice.

14 **D. Unclaimed Settlement Fund and Uncashed Settlement Checks**

15 After the expiration of the 180-day period during which checks are
16 valid, any uncashed checks will be voided. The Settlement Administrator will
17 give written notice to Class Counsel and counsel for Defendant of the total
18 amount of funds represented by the unclaimed funds and uncashed checks (the
19 "First Residue") within five (5) business days after the expiration of the 180
20 day period.

21 If the amount of the First Residue is greater than four (4) times the
22 number of Participating Class Members, then the Settlement Administrator
23 shall issue a new round of checks to each Participating Class Member who
24 previously cashed a check, for his or her pro rata share of the First Residue
25 minus reasonable costs of administration, based on each Participating Class
26 Member's share of the Net Settlement Amount, except that Participating Class
27 Members whose pro rata share is less than two dollars (\$2.00) shall not be
28

1 included in the distribution. The expiration date for this distribution shall be
2 sixty (60) days after issuance or as close to that number as is feasible.

3 The “Final Residue” shall be either (a) the First Residue, if it is too
4 small to result in a redistribution under the formula in the preceding
5 paragraph, or (b) the remaining uncashed funds after the 60-day period
6 following the redistribution above. The Final Residue shall be allocated to the
7 following cy pres beneficiaries in equal amounts: (1) Legal Aid Society –
8 Employment Law Center and (2) Public Justice.

9 **E. Alorica’s Right to Cancel**

10 If either (i) ten percent (10%) or more of the Class Members or (ii) a
11 number of Class Members whose combined share of the Net Settlement
12 Amount is ten percent (10%) or more opt out of the settlement, or both (i) and
13 (ii) occur, Alorica shall have the right to withdraw from and cancel the
14 Settlement Agreement according to and as set forth in detail in the terms of the
15 Settlement Agreement.

16 **VII. PLAINTIFFS’ AND CLASS MEMBERS’ RELEASE**

17 If, at the Final Approval Hearing, this Court grants final approval to the
18 Settlement, Plaintiffs and every Class Member who does not opt out will,
19 pursuant to the Settlement, be adjudicated to have granted the release of
20 Covered Claims as set forth in the Settlement. For purposes of releasing the
21 FLSA claims in the lawsuit, Plaintiffs and Participating Class Members will be
22 deemed to have opted in to the FLSA portion of the settlement and consented
23 to the release of the FLSA claims by cashing, depositing, or otherwise
24 negotiating the Settlement Payment checks.

25 The Settlement Administrator will submit a declaration after the
26 settlement checks expire that will include: (1) an exhibit listing all Class
27 Members who cashed their settlement checks; (2) a sample of the settlement
28

1 check showing the FLSA release language; and (3) and an affirmation that all
2 settlement checks were formatted in the same way.

3 If the Court grants Plaintiff's motion for final settlement approval, each
4 California FLSA Settlement check shall include language indicating that
5 endorsing/cashing the check will constitute an affirmative opt in for FLSA
6 purposes.

7 **VIII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

8 Garden City Group is hereby appointed Settlement Administrator to
9 carry out the duties set forth in this Preliminary Approval Order and the
10 Settlement.

11 **IX. SCHEDULING ORDER**

12 The following schedule sets forth the sequence for the relevant dates
13 and deadlines.

14

Event	Date
Preliminary Approval Hearing; Preliminary Approval Order ("PAO")	Friday, May 27, 2016; Tuesday, May 31, 2016
Settlement Administrator ("SA") activates website	Tuesday, June 7, 2016
Alorica sends class list to SA	Monday, June 20, 2016
SA sends Class Notice ("Mailing")	Monday, July 12, 2016
Class Counsel files final approval & fee motions	Monday, August 29, 2016
Deadline to submit Claim Form, request exclusion, object, and/or challenge data	Monday, September 12, 2016
SA submits list of exclusion requests and objections	Friday, September 16, 2016
Class Counsel file reply briefs	Monday, October 3, 2016


15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Event	Date
SA provides Court with Declaration of Due Diligence	Monday, October 3, 2016
Alorica decides and provides notice as to whether to rescind the settlement (if applicable)	Monday, October 7, 2016
Fairness Hearing, Final Approval Order (“FAO”)	Friday, October 17, 2016, at 8:30 a.m.
Effective Date	Wednesday, November 16, 2016
Alorica funds Settlement	Monday, November 21, 2016
SA distributes checks to Class Members	Tuesday, December 6, 2016

IT IS SO ORDERED.

Dated: May 31, 2016



The Honorable David O. Carter
United States District Court Judge