

COHELAN KHOURY & SINGER  
Attn: Hill, J. Jason  
605 C Street  
Suite 200  
San Diego, CA 92101\_\_\_\_\_

MORGAN, LEWIS & BOCKIUS,  
LLP  
Attn: Battenfeld, John S.  
300 South Grand Avenue, 22nd Floor  
Los Angeles, CA 90071-3132

---

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

---

Miller	No. <u>RG17856888</u>
Plaintiff/Petitioner(s)	Order
VS.	Motion for Preliminary Approval of Class Settlement
Amazon.Com, LLC	Granted
Defendant/Respondent(s)	
(Abbreviated Title)	

The Motion for Preliminary Approval of Class Settlement was set for hearing on 06/10/2021 at 03:30 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

**IT IS HEREBY ORDERED THAT:**

The tentative ruling is affirmed as follows: Plaintiff Jasmine Miller moves for preliminary approval of a proposed class settlement with Defendant Amazon.Com, LLC. This action was originally brought only under the Labor Code Private Attorneys General Act of 29004 ("PAGA") (Lab. Code §§ 2698 et seq.). As part of the settlement, Plaintiff also seeks leave to file a Third Amended Complaint in this action, stating her claims for individual and classwide relief.

**LEAVE TO AMEND**

This Court can allow amendments to the pleadings at any time during proceedings, including during trial, as long as the amendment is "in the furtherance of justice, and upon such terms as may be proper." (Code of Civil Procedure ["CCP"] § 576; see also CCP § 473(a)(1) [allowing amendments to pleadings after notice to adverse party].) This Court should be "liberal in allowing the amendment of pleadings at any stage of the proceedings where the amendment does not cause prejudice to the rights of other parties." (McGuan v. Endovascular Technologies, Inc. (2010) 182 Cal.App.4th 974, 987.)

The parties stipulate to leave, there is no trial date set, and no one has appeared to argue that amendment would prejudice their interests. Leave is appropriate in light of California's liberal policy in favor of amendment.

**CONDITIONAL CLASS CERTIFICATION**

When no class has been certified, as is the case here, the Court must determine whether the case meets requirements for certification. (See *Anchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 625-627.) The concerns of manageability and due process for absent class members, which counsel against class certification in a trial context, are eliminated or mitigated in the context of settlement. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Class certification in California courts is governed by Code of Civil Procedure section 382. This Court has discretion to certify a class if it meets three criteria: "[1] the existence of an ascertainable and sufficiently numerous class, [2] a well-defined community of interest, and [3] substantial benefits from certification that render proceeding as a class

superior to the alternatives." (*Alberts v. Aurora Behavioral Care* (2015) 241 Cal. App. 4th 388, 397, quoting *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.) The "community of interest" element requires consideration of three subfactors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Ibid.*)

The Court finds that the proposed class of 3035 is sufficiently numerous and its members are readily ascertainable from Defendant's records. The Court finds that the class has sufficient common questions of law and fact to support a community of interest, given their allegations of common employment policies and practices and the lessened manageability concerns in the settlement context. The named plaintiff's claims are sufficiently typical of those of the class, given the lessened manageability concerns settlement context, because named plaintiff and absent class members have suffered similar injuries. The named plaintiff and her counsel will be adequate representatives of the class. The Court further finds that class treatment for settlement purposes will provide substantial benefits that render it a superior alternative to individual litigations.

## PRELIMINARY APPROVAL

To protect the interests of absent class members, class action settlements must be reviewed and approved by the Court. (*See Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95 ["The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement."].) California follows a two-stage procedure for court approval: first, the Court reviews the form of the terms of the settlement and form of settlement notice to the class and provides or denies preliminary approval; later, the Court considers objections by class members and grants or denies final approval. (R. Ct. 3.769.)

The settlement was mediated with the assistance of an experienced mediator, Tripper S. Ortman. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 504.)

The Court APPROVES the employment of CPT Group, Inc. as Settlement Administrator.

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The form of the class notice is adequate.

## PAGA SETTLEMENT NOT YET APPROVED

Claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA") (Lab. Code § 2698 et seq.) are not class claims subject to the two-step approval process in Rule of Court 3.769, and the Court's preliminary approval of the class action settlement agreement does not constitute an approval of the settlement of PAGA claims under this same agreement. The Court intends to issue an order granting or denying approval of the PAGA portion of the settlement as part of its order on the motion for final approval. This order does not constitute "approval" for purposes of Labor Code section 2699, subdivision (1)(2).

## ATTORNEY FEES AND CLASS REPRESENTATIVE INCENTIVE AWARDS NOT DETERMINED

The Court will not approve the amount of attorneys' fees until the final approval hearing. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451.) Plaintiff may move for an award of attorney's fees and costs as part of their motion for final approval. Briefing shall be filed under the schedule established by Code of Civil Procedure section 1005(b), unless and until the Court orders otherwise.

Plaintiff must provide evidence regarding the nature of her participation in the action at the final

approval hearing, including a description of her specific actions and an accounting of the time she committed to the prosecution of the case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

## ORDER

The motion is GRANTED.

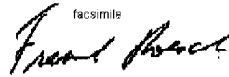
The request for leave to amend is GRANTED. Plaintiff may file her proposed third amended complaint within 10 court days of entry of this Order.

The Court therefore CONDITIONALLY CERTIFIES the following class for settlement purposes: "all persons who are employed or have been employed as W-2 hourly non-exempt employees by AIX or Greenwich Logistics who provided services as Delivery Drivers pursuant to a contract between AIX or Amazon and/or Greenwich Logistics and Amazon to deliver packages to Amazon customers in the State of California during the Class Period." The "Class Period" shall be April 19, 2015 to July 31, 2020, inclusive.

The form of the Settlement Agreement is therefore PRELIMINARILY APPROVED.

A hearing for final approval is hereby SET for Thursday, January 6, 2022 at 3:30PM in Department 17, Civil Law & Motion, Administration Building (Third Floor), 1221 Oak Street, Oakland.

Dated: 06/10/2021

facsimile  


Judge Frank Roesch