

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

VALERIA JARAMILLO, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

MAYAHUEL INVESTORS LP, a California Limited
Partnership; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2017-00207348

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL
OF SETTLEMENT**

ATTENTION: PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW. TO RECEIVE A SETTLEMENT AWARD, YOU MUST FILL OUT THE ENCLOSED CLAIM FORM AND MAIL IT TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE **JUNE 11, 2018.**

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement of the Sacramento County Superior Court (“Court”) entered on April 6, 2018, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On February 1, 2017, Plaintiff Valeria Jaramillo (“Plaintiff” or “Class Representative”) filed a complaint against MAYAHUEL INVESTORS, LP (referred to as “Defendant”) in the Sacramento County Superior Court on behalf of herself and all other similarly situated employees who worked for Defendant. On March 1, 2017, Plaintiff filed a First Amended Complaint alleging a Private Attorneys General Act of 2004 (“PAGA”) cause of action against Defendant. The term “Action” means this putative class action pending in the Sacramento County Superior Court, Case No. 34-2017-00207348. The term “Parties” refers collectively to Plaintiff and Defendant. In the Action, Plaintiff alleged that Defendant did not properly pay minimum wages and split-shift premiums, premiums for missed meal and rest periods, reimbursement expenses, and final wages; and failed to keep accurate time records; failed to provide accurate wage statements. Plaintiff contended these actions constituted unfair competition. Plaintiff also sought derivative statutory penalties, civil penalties under the PAGA, interest, and attorneys’ fees and costs based on these alleged violations. The Action has been actively litigated. Since approximately February 2017, there have been on-going investigations, and there has been an exchange of extensive documentation and information relating to the alleged claims. Furthermore, the Parties have participated in extensive private settlement negotiations, including three (3) separate mediation sessions over the span of four (4) months facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Class Action Settlement and Compromise Agreement (“Settlement” or “Agreement”), which has been preliminarily approved by the Court. Under the Agreement, certain current and former employees will be allocated monies from the Settlement funds. By settling, the Parties will avoid the risks associated with a lengthy litigation process.

Despite agreeing to the Settlement, Defendant denies any liability or wrongdoing of any kind whatsoever associated with the allegations and claims brought in this Action or that could have been brought based on the facts alleged. Defendant further denies that this Action is appropriate for class treatment or for any purpose other than settlement. The Court has not ruled on who should win. Rather, the Parties have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Settlement Agreement, in order to avoid the burden, expense, and uncertainty associated with litigating Plaintiff’s claims.

You have received this Class Notice because Defendant’s records indicate that you are a member of the putative class, which is defined to be any and all employees who worked or are working for Defendant from February 1, 2013, to April 6, 2018 as a non-exempt, hourly employee (a “Class Member”). If you are a Class Member, you have the opportunity to participate in the Settlement or to exclude yourself (“opt out”) from the Settlement, as explained below. This Class Notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

The Court granted preliminary approval of the Settlement on April 6, 2018, on behalf of all Class Members, as defined above, for the time periods specified above. At that time, the Court also preliminarily approved Plaintiff Valeria Jaramillo to serve as Class Representative, and preliminarily approved attorney Galen T. Shimoda and Erika R. C. Sembrano of Shimoda Law Corp. to serve as Class Counsel.

The Court also scheduled a Final Approval Hearing on the Settlement in Department 54 at 9:00 a.m. on July 30, 2018, at which time the Court will decide whether to grant final approval of the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay One Hundred Eighty-Seven Thousand Five Hundred Dollars and No Cents (\$187,500.00), which is inclusive of employers' tax obligations (*e.g.*, employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Class Members as wages under the Agreement ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for Class Counsel's attorneys' fees not to exceed thirty-three percent (33%) of the Gross Settlement Amount, which equals \$61,875.00, Class Counsel's attorneys' costs not to exceed \$10,000.00, an enhancement award to the Class Representative in an amount not to exceed \$10,000.00, the fees and expenses of the Settlement Administrator estimated not to exceed \$15,000.00, the employers' portion of payroll taxes, and \$5,000.00 for alleged penalties under the PAGA, \$3,750.00 of which is payable to the California Labor and Workforce Development Agency ("LWDA"), which will result in a "Net Settlement Amount" for distribution to all Participating Class Members.

The enclosed Claim Form lists the number of weeks you worked during the relevant period and your estimated share of the Net Settlement Amount ("Settlement Award"). As explained further below, the amount of each Class Member's Settlement Award will depend on the class and the number of weeks worked by Participating Class Members during the relevant time period for the class. The actual amount received may be more or less than the amount stated on the Claim Form depending on the actual number of weeks worked by Participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved by the Court.

B. Settlement Formula and Settlement Awards

Defendant will pay Settlement Awards through the Settlement Administrator, as described below, to each Class Member who does not opt out of the Settlement and submits a valid, timely Claim Form. All Settlement Awards will be subject in part to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to participating Class Members will be allocated from the Net Settlement Amount and paid as follows: 50% alleged unpaid penalties for which IRS Forms 1099-MISC will issue and 50% alleged unpaid wages, for which IRS Forms W-2 will issue.

Settlement Awards to Class Members will be based on the class and the number of weeks worked by individual Class Members in that class during the relevant claim period. The class and the number of workweeks for a class member will be determined by reference to Defendant's records. The Settlement Administrator, based on Defendant's records, will calculate the number of actual workweeks for each Class Member during the relevant claim periods. Each Class Member's Settlement Award shall be determined by taking his or her weeks worked during the relevant claim period for their class and dividing that by the weeks worked for all Class Members within the class, and multiplying that fraction by the Net Settlement Amount allocated to the class.

Payment to Class Members of their Settlement Award will require the submission of the enclosed Claim Form. Receipt of the Settlement Awards will not entitle any Class Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the period covered by the Settlement.

The portion of the Net Settlement Amount that is not claimed by Participating Class Members will remain the property of, and revert back to, Defendant. In no event, however, will Defendant pay less than 50% of the Net Settlement Amount. To the extent that less than 50% of the Net Settlement Amount is claimed by Participating Class Members, the amounts paid will be redistributed pro rata to Class Members who have filed valid and timely Claim Forms, in accordance with the calculations described in Part II(B) above, such that at least 50% of the Net Settlement Amount is distributed to Class Members.

However, for any Settlement checks distributed to Class Members that are not cashed within one hundred (100) days, those funds will revert back to Defendant.

In addition, the Settlement Awards will be paid to Participating Class Members once Defendant provides the full amount of monies necessary to pay all Participating Class Members in accordance with the Settlement Agreement. Specifically, per the terms of the Settlement Agreement, Defendant will make quarterly installment payments to the Administrator based on the following schedule assuming the Court grants Final Approval of the Settlement on July 30, 2018, at 9:00 a.m.:

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|--|---|
| 1. Quarterly Installment of \$16,250 on August 29, 2018; | 7. Quarterly Installment of \$15,000 on February 20, 2020; |
| 2. Quarterly Installment of \$16,250 on November 27, 2018; | 8. Quarterly Installment of \$15,000 on May 20, 2020; |
| 3. Quarterly Installment of \$16,250 on February 25, 2019; | 9. Quarterly Installment of \$15,000 on August 18, 2020; |
| 4. Quarterly Installment of \$16,250 on May 26, 2019; | 10. Quarterly Installment of \$15,000 on November 16, 2020; |
| 5. Quarterly Installment of \$16,250 on August 24, 2019; | 11. Quarterly Installment of \$15,000 on February 14, 2021; and |
| 6. Quarterly Installment of \$16,250 on November 22, 2019; | 12. Final Quarterly Installment of \$15,000 on May 15, 2021. |

Defendant will be making the above quarterly installment payments to the Administrator only until the full amount of monies necessary to pay all Participating Class Members has been funded. If the amount necessary to fund Participating Class Members claims is satisfied by the Tenth Quarterly Installment Payment, Defendant will not pay the Eleventh or the Twelfth Quarterly Installment Payments.

C. Class Placement and Workweek Calculations to Be Based on Defendant's Records

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records.

Defendant's records will be presumed correct, unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the placement within the class or the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member with the Claim Form, which must be postmarked on or before **June 11, 2018**. The dispute will be resolved by the Settlement Administrator as described in Section E below.

D. Release of Claims

"Releasees" shall mean Defendant, and its past, present and/or future parents, subsidiaries and affiliated corporations and entities, and all of its current and former officers, directors, members, managers, employees, consultants, operators, partners, shareholders, joint ventures, agents, successors, assigns, or legal representatives.

The Settlement contains a release which releases the Releasees from any and all claims, rights, demands, liabilities and causes of action of any nature or description arising from, or that reasonably could have been pleaded based on, the facts as pleaded in the First Amended Complaint filed by the Class Representative in this Action or the Class Representative's notice letter to the LWDA in this Action, of whatever kind and nature, character and description, whether in law or equity, whether sounding in tort, contract, statute, or other applicable law, whether known or unknown, and whether anticipated or unanticipated, including any such claims that were alleged in the First Amended Complaint or could reasonably have been litigated in the lawsuit against Defendant based on the facts alleged in the First Amended Complaint or Class Representative's notice letter to the LWDA. The claims released under this Settlement ("Released Claims") shall include, but not necessarily be limited to, claims for failure to pay minimum wages and split-shift premiums, failure to provide meal and rest periods, failure to provide reimbursement expenses, wage statement violations, waiting time penalties, failure to keep accurate time records, unfair competition, breach of contract and statutory penalties, claims for violation of Labor Code section 558, unlawful withholding of gratuities, and failure to keep accurate records of gratuities received, and PAGA claims based on the same facts asserted in the First Amended Complaint or in the Class Representative's notice letter to the LWDA. Class Members who choose to participate in this Settlement by not opting out will be deemed to have opted into the action for purposes of the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* as amended ("FLSA"), and their Released Claims will include a release of any FLSA claims that could be asserted based on the facts alleged in the Complaint or Class Representative's notice letter to the LWDA. The Released Claims shall extend to the date of Final Approval presuming no unreasonable delays.

E. Resolution of Workweek Disputes

If a Class Member disputes the accuracy of Defendant's records as to the number of actual workweeks worked, any documentation supporting such dispute must be submitted to the Settlement Administrator with the Claim Form, which must be postmarked on or before **June 11, 2018**. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final and binding.

F. Enhancement Award for the Class Representative

Subject to approval by the Court, the Class Representative will receive an Enhancement Award of up to \$10,000.00. This payment will be made for her service as Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendant's attorneys' fees and costs for an unsuccessful outcome in the Action. The Class Representative also signed a general release of all claims, which is broader than the release applicable to all other Class Members.

G. Attorneys' Fees and Costs

Defendant agrees to pay Class Counsel's attorneys' fees up to a maximum of thirty-three percent (33%) of the Maximum Settlement Amount, which equals \$61,875.00, and attorneys' costs not to exceed \$10,000.00. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

H. Reasonableness of Settlement

All attorneys for the Parties to the Action, identified below, believe the amounts payable to Class Members, to the LWDA, to the Class Representative, and for Class Counsel's attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

CLASS COUNSEL

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 200
Elk Grove, CA 95624

DEFENDANT'S COUNSEL

Lindsey N. Casillas, Esq.
Klinedinst P.C.
801 K Street, Suite 2100
Sacramento, CA 95814

This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving

the Settlement as fair, adequate, and in the best interests of the Class Members. The Class Representative and Defendant have also reserved limited rights to void the Settlement, as set forth in the Settlement agreement signed by the Parties.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. To Receive a Settlement Award

If you wish to participate in the Settlement, you **must** complete, sign, and timely submit a Claim Form in order to receive a Settlement Award. The Claim Form must be postmarked no later than **June 11, 2018**, to be considered timely. If you do not fully complete and timely submit a Claim Form, you will be ineligible to receive any Settlement Award although you will still be bound by the Settlement terms, including any and all waiver of claims. If wish to participate in the Settlement but believe your workweek information is inaccurate, then you may follow the procedures outlined in Paragraph 3 of the Claim Form or object to the Settlement as described in Section III.C below. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. To Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator (“Opt-Out Request”). Your Opt-Out Request must (1) identify this Settlement and state that you desire to be excluded from the Settlement, or words to that effect (*i.e.*, “I am requesting exclusion from the *Jaramillo v. Mayahuel Investors LP* settlement.”); (2) state your full name, address, date of birth, and the last four (4) digits of your Social Security Number; (3) be mailed to the Settlement Administrator at the address below; (4) be postmarked on or before **June 11, 2018**; and (5) be signed.

The Opt-Out Request must be mailed by First Class U.S. Mail or the equivalent to:

**c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781**

The Opt-Out Request must be postmarked no later than **June 11, 2018**. If you submit an Opt-Out Request that is not postmarked by **June 11, 2018**, your Opt-Out Request will be rejected and you will be bound by the release and all other Settlement terms. When mailing an Opt-Out Request, do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Opt-Out Request.

Any person who submits a complete and timely Opt-Out Request shall, upon receipt by the Settlement Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, shall receive no benefits from the Settlement, and shall not be deemed to have relinquished the Released Claims against the Releasees.

C. To Object to the Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement, and you will not receive any portion of the Settlement amount unless you have submitted a valid and timely Claim Form. To object, you must submit a timely written objection and a notice of intention to appear at the Final Approval hearing to the Settlement Administrator at the address set forth above in Section III(B).

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and the dates you were employed by Defendant. To be valid and effective, any objections to approval of the Settlement must be submitted to the Settlement Administrator and postmarked no later than **June 11, 2018**. **DO NOT TELEPHONE THE COURT.**

If you choose to object to the terms of this Settlement, you will continue as a Settlement Class Member either *in propria persona* (meaning you choose to represent yourself) or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney.

IF YOU INTEND TO OBJECT TO THE SETTLEMENT, BUT WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, YOU MUST TIMELY FILE YOUR CLAIM FORM AS STATED ABOVE. IF THE COURT APPROVES THE SETTLEMENT DESPITE ANY OBJECTIONS, AND YOU DO NOT HAVE A TIMELY CLAIM FORM ON FILE, YOU WILL NOT RECEIVE A SETTLEMENT AWARD.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If and when the Court grants Final Approval of this Settlement, each and every Class Member who has not timely opted out of the Settlement will release Defendant and the Releasees from the Released Claims as described above. In other words, if you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Claims. In addition, you will be barred from ever suing Defendant and the Releasees with respect to the Released Claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 54 of the Sacramento County Superior Court, located at **813 Sixth Street, Second Floor, Sacramento, California 95814**, on July 30, 2018, at 9:00 a.m. to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the PAGA payment to the LWDA, and the Enhancement Award to be paid to the Class Representative.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed "Class Action Settlement and Compromise Agreement" that is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Class Action Settlement and Compromise Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, at 720 Ninth Street, Sacramento, California 95814.

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel:

Galen T. Shimoda, Esq.
SHIMODA LAW CORP.
9401 East Stockton Boulevard, Suite 200
Elk Grove, CA 95624
(916) 525-0716 Telephone
(916) 760-3733 Facsimile
Email: attorney@shimodalaw.com

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

BY ORDER OF THE SUPERIOR COURT