

Esteban Arteaga, Jr. v. Del Mar Food Products Corp.
Santa Cruz County Superior Court Case No. 21CV03094



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly employee of Del Mar Food Products Corp. at any time between December 29, 2017, and January 16, 2023, you may be able entitled to receive money from a Class Action Settlement.

A court approved this notice. This is not a solicitation from a lawyer. You are not being sued.

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion, you will not receive a settlement payment. PAGA Group Members (defined below) cannot opt-out of the PAGA portion of the proposed Settlement, and will receive their PAGA Payments even if they opt out of the class settlement.
OBJECT	If you wish to object to the Settlement, you may submit a written objection and supporting papers to the Settlement Administrator. Any written objections will be provided to the Court. You may also offer your oral comments at the Final Approval Hearing. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Esteban Arteaga, Jr. v. Del Mar Food Products Corp.* Santa Cruz County Superior Court Case No. 21CV03094 (the "Action" or "Lawsuit"). The Defendant in the Action is Del Mar Food Products Corp. (referred in this Notice as "Defendant.")

The Court has granted preliminary approval of a “Settlement Class” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Del Mar Food Products Corp. at any time between December 29, 2017, and January 16, 2023.

The Court has also granted preliminary approval of a “PAGA Group” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Defendant at any time between December 29, 2020, and January 16, 2023.

Defendant’s employment records indicate that you meet one or both of these definitions, which makes you a member of the Settlement Class (referred to in this Notice as a “Class Member”) and possibly a member of the PAGA Group (referred to in this Notice as a “PAGA Group Member”). The Court directed that this Notice be sent to all Class Members and PAGA Group Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Member who have not opted out of the Settlement and all PAGA Group Members.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On December 29, 2021, Plaintiff Esteban Arteaga, Jr. filed the operative class action complaint against the Defendant alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of himself and on behalf of all current and former non-exempt, hourly employees. By Plaintiff’s Complaint, Plaintiff alleges that the Defendant: (1) failed to pay at least the minimum wage for all hours worked; (2) failed to pay overtime wages; (3) failed to provide compliant meal periods; (4) failed to provide compliant rest periods; (5) failed to provide accurate wage statements; (6) failed to timely pay wages at separation; (7) failed to indemnify necessary business expenses; and (8) violated California’s Unfair Competition Law. On March 29, 2022, Plaintiff amended his Complaint to add a cause of action alleging Defendant owes civil penalties under California’s Private Attorneys General Act of 2004, California Labor Code §§ 2698-2699.5 (“PAGA”).

Defendant vigorously denies all the claims and contentions made in the Lawsuit and maintains it has fully complied with the law. However, Defendant has agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendant. Plaintiff and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members.

4. What are the terms of the Settlement?

Defendant will pay Nine Hundred and Sixty-Five Thousand Dollars and Zero Cents (\$965,000.00) to settle the Action (the “Maximum Settlement Amount”). The Maximum Settlement Amount includes: (a) all Settlement

Payments to Participating Class Members; (b) the Service Award to the Class Representative; (c) the Class Counsel's attorneys' fees and costs; (d) a payment to the California Labor and Workforce Development Agency for civil penalties brought under PAGA; (e) all PAGA Payments to the PAGA Group Members; and (f) the reasonable fees and costs of the Settlement Administrator. Defendant will pay their portion of all payroll taxes resulting from the Settlement in addition to the Maximum Settlement Amount.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount. Class Counsel will request that the Court award Class Counsel (1/3) of the Maximum Settlement Amount (currently estimated to be Three Hundred and Twenty-One Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$321,666.67)) in attorneys' fees and up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in out-of-pocket litigation costs, up to Eighteen Thousand Dollars and Zero Cents (\$18,000.00) for Settlement Administration Costs for the third-party Settlement Administrator, and up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for the Service Award for the Class Representative in recognition of his time and service to the Class in pursuing the Action and in fulfilling their obligations as the Class Representative. Additionally, the Settlement provides for a payment of Eighty Thousand Dollars and Zero Cents (\$80,000.00) (the "LWDA Payment") to resolve PAGA Group Members' claims under PAGA, of which Twenty Thousand Dollars and Zero Cents (\$20,000.00) will be distributed to the PAGA Group Members and Sixty Thousand Dollars and Zero Cents (\$60,000.00) will be paid to the California Labor and Workforce Development Agency ("LWDA"). This allocation of the LWDA Payment is required by California law. The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the "Net Settlement Amount"—will be distributed to those Class Members who have not opted out of the Settlement (the "Participating Class Members"). No portion of the Maximum Settlement Amount will be returned to Defendant.

5. How much can I expect to receive?

Each Participating Class Member will receive a *pro rata* share of the Net Settlement Amount based on the number of workweeks the person worked for Defendant as a non-exempt, hourly employee during the Class Period, defined as the period of time from December 29, 2017, and January 16, 2023. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member's Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the "Workweek Value." Each Participating Class Member's Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member's total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: (a) 10% as wages that will be subject to deductions and withholdings for the employee's share of state and federal payroll taxes; and (b) 90% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to \$600.00. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee's required withholdings and payroll taxes from the "wage" portion of the Settlement payment. Defendant will separately pay the employer's share of payroll

taxes with respect to the “wage” portion of each Settlement payment.

Please note that each Participating Class Members will be responsible for his/her share of taxes attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Each PAGA Group Member will receive a *pro rata* share of the PAGA Payment based on the number of pay periods the person worked for Defendant as a non-exempt, hourly employee during the PAGA Period, defined as the period of time from December 29, 2020, and January 16, 2023. Any pay period in which a PAGA Group Member worked at least one day shall be counted as a pay period.

To calculate a PAGA Group Member’s Individual PAGA Payment, the PAGA Payment will be divided by the aggregate total number of pay periods of all PAGA Group Members, resulting in the “Pay Period Value.” Each PAGA Group Member’s Individual Settlement Payment will be calculated by multiplying each individual PAGA Group Member’s total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Estimated Individual PAGA Payment is: \$<<Est.PAGAPaymentAmt>>

All settlement payments are subject to taxation. Each Individual PAGA Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Group Member will receive an IRS Form-1099 for his or her Individual PAGA Payment, unless said payment is less than or equal to \$600.00.

The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

6. What if I disagree with the number of workweeks and/or pay periods credited to me in this Notice?

The information concerning the number of workweeks and/or pay periods you worked as an hourly, non-exempt employee during the Class Period and/or PAGA Period is based on Defendant’s records. To dispute this number of workweeks and/or pay periods credited to you, you must send written notice to the Settlement Administrator. To be valid, your written dispute of weeks worked must: (1) include your full name and address and (2) be accompanied by satisfactory evidence of the actual weeks and/or pay periods worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation (e.g., copies of your pay stubs). To be timely, your written dispute of workweeks and/or pay periods worked must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator *at the address provided below*, and be postmarked on or before _____, 2023.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member. The Settlement Administrator will make the final decision as to how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member and report the outcome to the Class Member and/or PAGA Group Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment and/or Individual PAGA Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. PAGA Group Members will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq.* in the names of those Participating Class Members and/or PAGA Group Members who did not cash their checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (800) ###-####, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Released Parties from the Released Claims for the Class Period, which is defined as the period of time between December 29, 2017, and January 16, 2023.

The Released Claims are defined as all causes of action and claims that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (vii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and attorneys' fees and expenses; and (x) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders. The Participating Class Members who cash their Settlement checks further acknowledge that they are releasing any claims they have against Defendant under the Fair Labor Standards Act ("FLSA") (collectively, the "Released Claims"). Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period are not encompassed within the definition of "Released Claims."

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all PAGA Group Members shall release the Released Parties from the PAGA Released Claims for the PAGA Period, which is defined as the period of time between December 29, 2020, and January 16, 2023.

The PAGA Released Claims are defined as all claims for civil penalties pursuant to PAGA based upon all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Action, and/or the LWDA Exhaustion Letter including all of the following claims for relief: i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code § 226); (vi) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (vii) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (viii) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, *et seq.*); (ix) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action; (x) any claim for costs and attorneys' fees and expenses; and (xi) any claim arising from the claims described above under applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders (collectively, the "PAGA Released Claims"). PAGA Released Claims for PAGA Group Members who worked for Defendant in California during the PAGA Period shall have their claims released during the PAGA Period.

The Released Parties include Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment.** If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court. If applicable, you will receive your Individual PAGA Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement by mailing a written Request for Exclusion to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion must include: (i) include your full name and address; (ii) a clear statement that you wish to opt out of, or be excluded from, the Settlement in *Arteaga v. Del Mar Food Products Corp.*, Santa Cruz County Superior Court Case No. 21CV03094; (iii) a clear statement that you understand that by opting out, you will not receive any monies from the settlement; and (iv) your signature. To be timely, a Request for Exclusion must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator at the address provided below and be postmarked on or before [REDACTED], 2023.

If you are also a member of the PAGA Group, you may not exclude yourself from the PAGA Group and will be

bound by the PAGA Released Claims even if you exclude yourself from the Settlement Class.

c. **Object to the Settlement.** If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. If the Court rejects your objection and finally approves the Settlement, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object, you may submit a written objection stating why you object to the Settlement, or you may simply appear at the Final Approval Hearing set for [REDACTED], 2023 at [REDACTED] a.m. in the Santa Cruz County Superior Court and discuss your objection with the Court and the Parties at your own expense. Written objections must include: (i) your full name and address; (ii) the approximate dates of your employment at Defendant; (iii) the case name and number (*Arteaga v. Del Mar Food Products Corp.*, Santa Cruz County Superior Court Case No. 21CV03094); (iv) a written statement of all grounds for the objection accompanied by any legal support for such objection; (v) copies of any papers, briefs, or other documents on which the objection is based, if any; (vi) your signature; and (vii) a statement of whether you intend to appear at the Final Approval Hearing, either in person or by counsel. To be timely, a written objection must be mailed by first-class U.S. Mail to the Settlement Administrator at the address provided below and be postmarked on or before [REDACTED], 2023.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion.

10. Who are the attorneys representing the Plaintiff, the Settlement Class, and the PAGA Group?

The Court has appointed the following lawyers as "Class Counsel" to represent all Class Members:

Kane Moon
H. Scott Leviant
Mariam Ghazaryan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

You will not be charged for these lawyers.

11. How will the attorneys for the Settlement Class and the PAGA Group be paid?

All payments for Class Counsel's attorneys' fees and costs will be made from the Maximum Settlement Amount. Class Counsel intends to request an award of attorneys' fees up to one-third ((1/3) of the Maximum Settlement Amount (currently estimated to be Three Hundred and Twenty-One Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$321,666.67)), plus reimbursement of reasonable, actual out-of-pocket costs incurred in the litigation, up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00). Class Counsel has been prosecuting this Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs. The Court will decide the amount of fees and expenses to award at the Final Approval Hearing.

12. When and where will the Court decide to approve the Settlement?

The Court has preliminarily approved the settlement and will hold a hearing, called a Final Approval Hearing, to

decide whether to give final approval to the Settlement. The Court will hold the Final Approval Hearing on [REDACTED], 2023, at [REDACTED] a.m., in Department 5 of the Santa Cruz County Superior Court located at 701 Ocean Street, Santa Cruz, CA 95060, before the Honorable Timothy Volkmann. At the Final Approval Hearing, the Court will rule on Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Service Award, and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

13. Will I be subject to discipline if I participate in the Settlement?

No. Defendant approve the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Defendant or Defendant's treatment of you as a former employee.

14. What is the Settlement Administrator's address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended for the Settlement Administrator must be mailed to the Settlement Administrator at the following address:

Arteaga v. Del Mar Food Products Corp.

c/o [REDACTED]
[REDACTED]
[REDACTED]

Telephone: [REDACTED]

15. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at [REDACTED].

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.