

Valdez, et al. v. Shamrock Foods Company, et al.
United States District Court, Case No. 5:22-cv-01719-SSS-SHKx

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

The United States District Court Central District of California authorized this Notice. Read it carefully!

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action and claims brought under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”) lawsuit (“Action”) against Shamrock Foods Company (“Shamrock” or “Defendant”) alleging wage and hour violations. The Action was filed by former Shamrock employees George Valdez and Raul Romero (“Plaintiffs”) and seek payments of (1) back wages and other relief for a class of current and former non-exempt employees (“Class Members”) who were employed by Shamrock as Delivery Drivers or any other similar non-exempt position in California during the Class Period (August 5, 2018 through December 21, 2023); and (2) penalties under the PAGA for all current and former non-exempt employees employed by Shamrock as drivers in California at any time during the PAGA Period (May 24, 2022, through December 21, 2023) (“PAGA Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Shamrock to fund Individual Class Payments, and (2) a PAGA Settlement requiring Shamrock to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<estAmount>> (less legally required withholdings) and Individual PAGA Payment is estimated to be <<PAGAestAmount>>**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for the Individual PAGA Payment that is because you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Shamrock’s records showing that **you were employed <<Workweeks>> workweeks** during the Class Period and **<<PAGAPayperiods>> pay periods** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Shamrock to make payments under the Settlement and requires Class Members and PAGA Employees to give up their rights to assert certain claims against Defendant.

If you worked for Shamrock during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue wage claims against Defendant, and, if you are an PAGA Employee, remain eligible for an Individual PAGA Payment. You cannot opt out of the PAGA portion of the proposed Settlement.

DEFENDANT WILL NOT RETALIATE AGAINST YOU FOR ANY ACTIONS YOU TAKE OR DO NOT TAKE WITH RESPECT TO THE SETTLEMENT.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>You Don't Have to Do Anything to Participate in the Settlement</p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims defined below).</p>
<p>You Can opt out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is <u>February 15, 2024</u></p>	<p>If you do not want to fully participate in the Settlement, you can opt out of the Class Settlement by filling out the attached Opt-Out Form and mailing it to the Administrator. Once you opt out, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the Settlement. See Section 6 of this Notice.</p> <p>You cannot opt out of the PAGA portion of the Settlement. Defendant must pay Individual PAGA Payments to all PAGA Employees and the PAGA Employees must give up their rights to pursue Released Claims (defined below).</p>
<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by <u>February 15, 2024</u></p>	<p>All Class Members who do not opt out (“Participating Class Members”) can object to any aspect of the proposed Settlement. An Objection Form is included with this Class Notice. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Actions on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.</p>
<p>You Can Participate in the <u>March 29, 2024</u> Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on <u>March 29, 2024</u>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p>You Can Challenge the Calculation of Your Workweeks/Pay Periods</p> <p>Written Challenges Must be Submitted by <u>February 15, 2024</u></p>	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Pay Periods you worked according to Shamrock’s records is stated on the first page of this Notice. If you disagree with either number, you must challenge it by <u>February 15, 2024</u>. See Section 4 of this Notice.</p>

1. WHAT IS THIS ACTION ABOUT?

Plaintiffs are former Shamrock employees who worked as Drivers. The Action alleges that Defendant failed to pay compensation for all hours worked, minimum wages, and overtime compensation, failed to furnish accurate, itemized wage statements, failed to provide meal and rest periods, failed to timely pay wages during employment, and failed to pay all wages due at termination. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under PAGA.

Defendant denies all liability and wrongdoing. Defendant maintains that it was in compliance with the California Labor Code and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the Action to avoid the cost and operational burden of continued litigation. The Court has not ruled on the merits of Plaintiffs' claims or Defendant's defenses.

The parties are represented as follows:

Class Counsel:

Michael H. Boyamian
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michael@boyamianlaw.com

Defendant's Counsel:

Andrew J. Sommer
Ariella M. Kupetz
FISHER & PHILLIPS LLP
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Los Angeles, California 90071
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akupetz@fisherphillips.com

2. WHAT DOES IT MEAN THAT THE ACTIONS HAVE SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiffs is correct on the merits.

In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Shamrock has agreed to pay a fair, reasonable and adequate amount considering the claims, risks, and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and PAGA Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE TERMS OF THE SETTLEMENT?

1. Shamrock Will Pay \$1,000,000 as the Gross Settlement Amount (Gross Settlement). Shamrock has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Shamrock will fund the Gross Settlement not more than 5 business days after the Judgment entered by the Court becomes final. The Judgment will be

final on the date the Court enters Judgment, or a later date if Participating Class Members object to the Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$333,333.33 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to a combined sum of \$17,500 to the Class Representatives for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. A flat rate of \$20,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$40,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the PAGA Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Participating Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Shamrock will separately pay the employer share of payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be transmitted to the California Controller's Office under your name.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you fill out and mail to the Administrator the attached Opt-Out Form, by February 15, 2024. Those class members who opt out (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt out of the PAGA portion of the Settlement. Class Members who opt out themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Shamrock will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide any Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Shamrock has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and related entities for wages based on circumstances during the Class Period and PAGA penalties based on circumstances during the PAGA Period, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Settlement Class Members, on behalf of himself or herself and his or her heirs and assigns, release Releasees from all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, including claims for (1) failure to provide meal and rest periods and pay premiums; (2) waiting time penalties; (3) failure to pay wages or compensation for all hours worked, including minimum wage and overtime violations, which includes failure to pay compensation for time under Defendant’s control, work off the clock, and reporting time pay; (4) failure to provide timely and/or accurate itemized wage statements; (5) unfair business practices and unfair competition in violation of Business and Professions Code §§ 17200, et seq.; (6) failure to reimburse for necessary business-related expenses, and (7) failure to maintain complete and accurate time and payroll records, including failure to maintain adequate records of all wages earned, hours worked, breaks taken, deductions made, hourly rates, and numbers of hours worked at each hourly rate. More specifically, these claims include violations of Labor Code sections 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194 to 1197.1, 1198, 1199 and 2802, and all claims under the applicable Industrial Welfare Commission Wage Orders.

10. PAGA Employees’ Release. After the Court’s judgment is final, and Shamrock has paid the Gross Settlement and separately paid the employer-side payroll taxes, all PAGA Employees will be barred from asserting PAGA claims against Defendant, whether or not they opt out themselves from the Settlement. This means that all PAGA Employees, including those who are Participating Class Members and those who opt out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the circumstances during the PAGA Period as alleged in the Action and resolved by this Settlement.

The PAGA Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All PAGA Employees are deemed to release, on behalf of themselves and their respective heirs and assigns, the Releasees Parties from all claims for civil penalties and any other available relief pursuant to PAGA, that were, or reasonably could have been, alleged, based on the facts contained, in Plaintiff Raul Romero's LWDA Notice and the Operative Complaint, including all PAGA claims premised upon (1) failure to provide meal and rest periods and pay premiums; (2) failure to reimburse for necessary business-related expenses; (3) failure to pay for all hours worked, including minimum wage and overtime violations, which includes failure to pay compensation for time under Defendant's control, work off the clock, and reporting time; (4) failure to provide complete or accurate itemized wage statements; (5) failure to pay on the regular pay day all wages owed; (6) failure to fully compensate employees in timely manner when their employment ended; and (7) waiting time penalties. More specifically, these PAGA claims are premised upon violations of Labor Code sections 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194 to 1197.1, 1198, 1199, 2802, and 2698 and the applicable Industrial Welfare Commission Wage Orders during the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing your total number of Workweeks by (b) the total number of Workweeks of all Participating Class Members, and (c) multiplying the result by the Net Settlement minus the PAGA Settlement Payments.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing your total number of PAGA Pay Periods by (b) the total number of Pay Periods of all PAGA Employees during the PAGA Period and (c) multiplying the result by the PAGA Settlement Payment of \$10,000.
3. Workweek/Pay Period Challenges. The number of your Class Workweeks during the Class Period and the number of your PAGA Pay Periods during the PAGA Period, as recorded in Shamrock's records, are stated in the first page of this Notice. You have until February 15, 2024 to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail or email. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Shamrock's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt out) including those who also qualify as PAGA Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. PAGA Employees. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to PAGA Employees including those who opt out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT OUT OF THE CLASS SETTLEMENT?

If you want to opt out from the Settlement, you must fill out the attached Opt-Out Form and mail it to the Administrator no later than February 15, 2024.

If you timely fill out and send the attached Opt-Out Form, then: (a) you will not be a member of the Settlement Class; (b) you will not receive an Individual Settlement Payment; and (c) if the Court approves the Settlement, the only payment you receive will be your individual share of the PAGA payment. By excluding yourself from the Settlement, you will retain whatever rights or claims you may have against Shamrock (with the exception of the release as to Plaintiff's PAGA claim, which shall remain binding), and you will be free to pursue them, at your own cost, if you choose to do so.

The Administrator must receive your Opt-Out Form by February 15, 2024, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendant are asking the Court to approve. At least 16 court days or **March 1, 2024**, before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Awards. You can view them on the Administrator's Website www.cptgroupcaseinfo.com/ShamrockFoodsSettlement or the Court's website www.cacd.uscourts.gov.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. You can ask the Court to deny approval of the Settlement by submitting a valid Objection Form. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. **The deadline for sending written objections to the Administrator is February 15, 2024.**

To object to the proposed Settlement, you must complete the attached Objection Form and postmark it to the Administrator no later than February 15, 2024. The Objection Form must be filled out in writing and signed. If you submit a written Objection Form within the required time, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. Objecting to the Settlement will not remove you from the Settlement Class. A Class Member who submits an Objection Form remains bound by the Settlement if it is approved by the Court. To opt out from the Settlement Class, you must submit the Opt-Out Form by following the instructions above. If you opt out of the Settlement, you may not object to the Settlement.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on March 29, 2024 at 2:00 p.m. in Courtroom 2 (2nd Floor) of the United States District Court, Central District of California, located at 3470 Twelfth Street, Riverside, California 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You may attend (or hire a lawyer to attend at your own cost) the Hearing. Check the Court's website for the most current information on whether virtual appearances are permitted.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website www.cptgroupcaseinfo.com/ShamrockFoodsSettlement beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to CPT Group's website at www.cptgroupcaseinfo.com/ShamrockFoodsSettlement.

IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, PLEASE CALL THE CLAIMS
ADMINISTRATOR AT 1-888-729-0985.

Valdez, et al. v. Shamrock Foods Company, et al. Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Email: ShamrockFoodsSettlement@cptgroup.com
Fax: 949-419-3446

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT
OR THE CLAIM PROCESS.

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.