

LOS ANGELES COUNTY SUPERIOR COURT
Lopez v. Diamond Mattress Company, Inc., et al.

Case No. BC720947

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To: ALL NON-EXEMPT EMPLOYEES CURRENTLY AND/OR FORMERLY EMPLOYED BY DEFENDANT IN THE STATE OF CALIFORNIA WHO WERE PAID “EARNED INCENTIVE” WAGES FROM SEPTEMBER 11, 2014 THROUGH SEPTEMBER 23, 2019

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Diamond Mattress Company, Inc.’s (“Defendant”) records reflect that you are or may be a class member in a pending class action in a case entitled *Lopez v. Diamond Mattress Company, Inc.*, Los Angeles Superior Court case number BC720947 (the “Action”), which may entitle you to money from the settlement of that Action.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Defendant on an hourly basis in California at any time between September 11, 2014 and September 23, 2019 (the “Class Period”), and were paid “Earned Incentive” wages, **you are automatically included in the Settlement and do not need to take any further action to receive a payment.**

This Notice is court approved and informs you of the terms of the agreement of Defendant and Plaintiff Eric Lopez (“Named Plaintiff”) (Named Plaintiff and Defendant are collectively referred to as the “Parties”) to settle the claims as set forth and embodied in a Class Action Settlement Agreement (“Settlement”). This Notice explains what steps you may take to participate in, object to, or exclude yourself from the Settlement.

2. WHAT IS THIS ACTION ABOUT?

On or about September 11, 2018, the Action was filed against Defendant. The Operative First Amended Complaint filed in the Action states causes of action for: (1) Failure to Pay Overtime and Double Time Wages (Labor Code §§ 510, 1194); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197); (3) Failure to Furnish Complete Itemized Wage Statements (Lab. Code § 226); (4) Unfair Business Practices in violation of Business and Professions Code § 17200, *et seq.*; (5) Waiting Time Penalties (Labor Code § 203); and (6) Civil Penalties (Labor Code § 2698, *et seq.*).

Defendant denies each and all of the claims and contentions alleged by Named Plaintiff. Defendant strongly believes that it has multiple valid defenses to the claims and that its employees have been properly paid and treated in accordance with the law. Absent the Settlement, Defendant would vigorously contest the lawsuit. By agreeing to this Settlement, Defendant is not admitting that it has any liability. Named Plaintiff believes he would prevail on the claims that are subject to the Settlement.

After engaging in informal discovery and an all-day mediation before an experienced mediator, the Parties agreed to the Settlement, which was preliminarily approved by the trial court in the Action (“Court”) on March 5, 2020. Named Plaintiff and his counsel (“Class Counsel”) support the Settlement.

The Court has not ruled on the merits of Named Plaintiff’s claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final hearing. Defendant reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations in the Action and whether this Action should proceed as a class action.

3. WHAT ARE MY OPTIONS?

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will give up any rights to sue Diamond Mattress Company, Inc. separately regarding certain claims related to your receipt of wages and penalties. Your estimated Settlement Award is \$<<estAmount>>.
ASK TO BE EXCLUDED (OPT OUT)	If you timely request in writing to be excluded from the proposed Settlement, you <u>WILL NOT</u> receive a share of the Settlement proceeds, but you will keep any rights you may have to sue Diamond Mattress Company, Inc. separately about the same legal claims in this lawsuit. Your written Request for Exclusion letter must be postmarked by May 25, 2020.
OBJECT	You may object to the Settlement if you did not ask to be excluded from the Settlement. If you timely submit in writing an objection to the Settlement and the Settlement is nonetheless granted final approval, you <u>WILL</u> (i) receive a share of the Settlement proceeds and (ii) release legal claims against Diamond Mattress Company, Inc. Your written notice of intent to object must be postmarked by May 25, 2020.

4. WHAT IS A CLASS ACTION OR PAGA ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Erick Lopez is the Class Representative or Named Plaintiff in the Action, and he asserts claims on behalf of himself and the class and other allegedly aggrieved employees. Diamond Mattress Company, Inc. is the Defendant. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action.

In an action under the Private Attorneys General Act, Cal. Lab. Code § 2698, *et seq.* (“PAGA”), a plaintiff seeks to collect civil penalties that would otherwise be collected by the State of California for Labor Code for violations allegedly suffered by employees.

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

Any and all non-exempt employees currently and/or formerly employed by Defendant in the State of California who were paid “Earned Incentive” wages at any time from September 11, 2014 to September 23, 2019 (referred to as the “Class Period”), other than those who opt out (as described in section 12). The group of all current and former non-exempt employees who were paid “Earned Incentive” wages during the Class Period individually and collectively will be referred to as “Class Members.” “Settlement Class Members” will refer to all Class Members other than those who opt out (as discussed in section 12).

6. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Defendant will establish a maximum “Gross Settlement Amount” in the amount of \$125,000.00 in exchange for: the release by Settlement Class Members of Settled Claims (defined in section 8) against it and Released Parties (defined in section 8); final judgment on the Action; and the other terms set forth in the Settlement. Subject to Court approval, the Gross Settlement Amount will be allocated at follows:

- **Settlement Payment:** \$48,833.34 shall be allocated to Settlement Class Members for resolution of all non-PAGA claims. Settlement Class Members who do not request to be excluded from the Settlement will receive a pro-rata share of the Settlement automatically, which will be referred to in this notice as the “Settlement Payment.” Your Settlement Payment will be based on the number of your workweeks worked within the Class Period, referred to in this Notice as “Workweeks Worked”, divided by the total Workweeks Worked by all Settlement Class Members during the Class Period as reflected in company records, and expressed as follows:

Workweeks Worked by individual Settlement Class Member

Workweeks Worked by all Settlement Class Members

= % of Class Settlement Payment Allocation Payable to Individual

Workweeks Worked shall be determined by the Settlement Administrator based on data to be provided by Defendant, as may be modified by the Settlement Administrator's or the Court's resolution of any challenges. Your estimated individual Settlement Payment is \$<estAmount> ("Individual Settlement Payment"). Your actual Settlement Payment will be calculated after the Court grants final approval of the settlement, and a check will be issued to you and may change from the number listed above. In exchange for the Settlement Payment, you will be deemed to have released the Settled Claims (discussed in section 8) against Defendant or any other Released Parties.

- PAGA Payment. \$1,875 shall be allocated to resolve any claims brought under the PAGA and paid on a pro-rata basis to any non-exempt employees currently and/or formerly employed by Defendant in the State of California who were paid "Earned Incentive" wages at any time from September 13, 2017 to September 23, 2019 ("PAGA Period") (such individuals will be referred to as "PAGA Members"). If you are a PAGA Member your payment for a release of PAGA claims will be based on the number of your Workweeks Worked during the PAGA Period divided by the total Workweeks Worked by all PAGA Members during the PAGA Period as reflected in company records, and expressed as follows:

$$\frac{\# \text{ Workweeks Worked by PAGA Member during PAGA Period}}{\# \text{ Workweeks Worked by all PAGA Member during PAGA Period}} = \% \text{ of } \$1,875 \text{ Allocation Payable to Individual PAGA Member}$$

- Timing of Settlement Payments to Class Members and PAGA Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Settlement Class Members who did not timely request to be excluded and to PAGA Members. Settlement Class Members and PAGA Members will have 180 days from the issuance of the last check to cash all of the checks. Upon receipt of your settlement check, it will be your responsibility to cash the check before the expiration date of the check. Checks not cashed within the required time period will be deposited in the State Controller's Office Unclaimed Property Fund.
- Allocation and Taxes. One-third (1/3) of each individual Settlement Payment will be designated for alleged unpaid wages, for which an IRS Form W-2 shall be issued. Two-thirds (2/3) of the each individual Settlement Payment will be designated for alleged interest and penalties, for which an IRS Form 1099 shall be issued, as appropriate. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments and PAGA Payments. Class Members and PAGA Members will be solely responsible for the payment of any taxes and penalties assessed on their Settlement Payment and PAGA Payments. Accordingly, Class Members and PAGA Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement. Payments awarded to you will not form the basis for additional contributions to or benefits under any benefit plans,

policies or bonus programs that may exist and/or be offered to you through, by or in conjunction with Defendant or any other Released Party.

- Enhancement Payment: Class Counsel will ask the Court to award Class Representative Erick Lopez a Service Payment in the amount of \$2,000 to compensate him for service and extra work performed on behalf of the Class Members and/or PAGA Members. The Class Representative also may receive a share of the Settlement as a Class Member and/or PAGA Member.
- Attorney's Fees and Expenses Payment: Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members and PAGA Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members and PAGA Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees not to exceed \$41,666.66 of the common fund Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$10,000 for the costs Class Counsel incurred in connection with the Action.
- Settlement Administration: The cost of settlement administration not to exceed \$15,000, which pays for tasks such as translating and mailing this Notice, mailing checks and tax forms, reporting to the parties and the Court, and tracking submitted requests for exclusions.
- PAGA Penalty Payment: \$5,625 will be submitted to California's Labor & Workforce Development Agency pursuant to the PAGA, and \$1,825 as a PAGA Payment to PAGA Members (as described in this section), or \$7,500 total allocated to resolution of the PAGA claims.

7. HOW MANY WORKWEEKS ARE ATTRIBUTED TO ME UNDER THE SETTLEMENT?

Your Workweeks Worked as a Class Member as determined by the company's records are <<Workweeks>>.

Your Workweeks Worked as a PAGA Member as determined by the company's records are <<PAGA_Workweeks>>.

If you dispute your Workweeks Worked, you may submit evidence to the Settlement Administrator on or before May 25, 2020, with documentation to establish the number of Workweeks Worked you claim to have actually worked for Defendant in California during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINSTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Settlement Administrator will evaluate the evidence submitted by you and discuss in

good faith how many Workweeks Worked should be credited to you. If the Parties are unable to agree, the Settlement Administrator and ultimately the Court will render a final decision.

8. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

Unless you timely exclude yourself from the class (as discussed in section 12), you on behalf of yourself and your respective heirs, executors, administrators, personal representatives, successors and assigns, irrevocably and unconditionally forever and fully release (and covenant not to sue or otherwise pursue claims, whether known or unknown, against) any and all Releasees from any and all Released Claims within the Release of Claims Period.

“Releasees” means the Defendant named in the Complaint, together with its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys.

“Released Claims” means all claims, demands, rights, liabilities, and causes of action that were pled in any of the Complaints in the Action or could have been pled based on the facts alleged in any of the Complaints in the Action, based on Defendant’s alleged (1) failure to pay overtime and double time wages; (2) failure to pay all minimum wages; (3) failure to furnish complete itemized wage statements; (4) waiting time penalties, and (5) a claim under the California Private Attorneys General Act of 2004; and (6) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

The “Release of Claims Period” is September 11, 2014 through September 23, 2019.

10. WHAT IF I HAVE QUESTIONS ABOUT THE SETTLEMENT AND WHO ARE THE LAWYERS IN THIS CASE?

If you have a question, you may contact Class Counsel. You do not need to hire your own lawyer, because Class Counsel is working on your behalf. However, if you want your own lawyer, including to make any objections to the proposed Settlement, you are free to hire one at your own expense. The below are Class Counsel and Diamond Mattress Company, Inc.’s Counsel in this case:

<u>Class Counsel:</u> MATTHEW B. HAYES KYE D. PAWLENKO HAYES PAWLENKO LLP mhayes@helpcounsel.com kpawlenko@helpcounsel.com 595 East Colorado Blvd., Suite 303 Pasadena, CA 91101 Telephone: (626) 808-4357 Fax: (626) 921-4932	<u>Defendant’s Counsel:</u> D. CHAD ANDERTON KIMBERLY M. SHAPPLEY LITTLER MENDELSON, P.C. 2050 Main Street Suite 900 Irvine, CA 92614
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If you want to update your address or contact information, please contact the Settlement Administrator as follows:

Lopez v. Diamond Mattress Company, Inc., et al. Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

11. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT OR PAGA PAYMENT?

To receive your Settlement Payment or PAGA Payment, you do not need to do anything. You must, however, notify the Settlement Administrator, whose address is included in section 10, of any change in your name, mailing address and/or telephone number. It is your responsibility to keep the Settlement Administrator informed of any such change, as your Settlement Payment will be mailed to the address on file.

12. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to exclude yourself from the Settlement as a Settlement Class Member, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written request for exclusion to the Settlement Administrator at the following address: Lopez v. Diamond Mattress Company, Inc., et al. Settlement Administrator c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606. Absent a good cause finding, to be valid, a written request for exclusion must (1) contain the name, address, and telephone number of the person requesting exclusion; (2) be signed by the Class Member; and (3) be postmarked or fax stamped by May 25, 2020 and returned to the Settlement Administrator, whose address is included in section 10. The request for exclusion should state something similar to:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LOPEZ v. DIAMOND MATTRESS COMPANY, INC. LAWSUIT."

Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement, and you will be barred from pursuing the Settled Claims. You cannot exclude yourself from being a PAGA Member because the PAGA claim belongs to the State of California.

If you timely request to be excluded from the Settlement, you will not be entitled to receive any payment under the Settlement, you will no longer be represented by Class Counsel, but you will keep any rights you may have to sue Diamond Mattress Company, Inc. separately about the same legal claims in this lawsuit.

13. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member (that is, Class Member who has not asked to be excluded from the Settlement) may object to the Settlement and appear at the hearing where the Court will make a final decision whether or not to approve the Settlement (“Final Approval Hearing”). The Final Approval Hearing is scheduled to take place on September 10, 2020, at 10:30 a.m. in Department 12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012. The hearing may be continued (moved to another date) without further notice to you.

If you wish to object, you may submit a written objection to the Settlement Administrator, whose address is included in section 10, no later than May 25, 2020. The Parties shall be permitted to file responses to the objection in addition to any motion for final approval documents.

Filing an objection will *not* exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still have the right to receive a Settlement Payment and will be barred from pursuing the Settled Claims. Do not file both an objection and request for exclusion. If you file both a request for exclusion and an objection, you will be excluded from the class and the objection will not be considered.

14. WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The Settlement, if finally approved by the Court, will bind all Settlement Class Members who do not request to be excluded from the Settlement whether or not they receive or timely cash their Settlement Payments. Final approval of the Settlement will bar any Settlement Class Member who does not request to be excluded from the Settlement from hereafter initiating a lawsuit or proceeding regarding any Settled Claims. Final approval of the Settlement will also bar any PAGA Members from hereafter initiating a lawsuit or proceeding regarding any Settled PAGA Claims. The Class Action Settlement Agreement and Stipulation on file with the Court contains additional details about the scope of the release.

15. FURTHER INFORMATION

This Notice is a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the proposed Settlement, you may review the detailed “Joint Stipulation of Class Action Settlement” on file with the Clerk of the Court as well as the pleadings and other records in this litigation may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, 312 N. Spring Street, Los Angeles, CA 90012. The Court’s final judgment will be posted on the Settlement Administrator’s website at www.cptrgroup.com/diamondmattress.

For further information, you may also call or email Class Counsel (listed in section 10) or the Settlement Administrator (listed in section 10). You may also ask Class Counsel to send you a copy of the Joint Stipulation of Class Action Settlement. Additional information is also available through the Court’s online system at:

<http://www.lacourt.org/casesummary/ui/casesummary.aspx?casetype=civil>

by searching using either the Parties’ names and/or case number (BC720947).