

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EDGAR RODRIGUEZ-FONSECA, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

HERBERT MALARKEY ROOFING COMPANY., an Oregon Corporation; and DOES 1 through 100,

Defendants.

Case No. 19STCV01237
Assigned to: The Hon. Kenneth R. Freeman
Dept. 14, Spring Street Courthouse

STIPULATION AND SETTLEMENT OF CLASS ACTION AND REPRESENTATIVE CLAIMS

Complaint Filed: January 17, 2019
Trial Date: None set

DATE: NOVEMBER 19, 2021

ATTN: «EmployeeName»

To: All current and former non-exempt employees of Defendant who worked in the State of California at any time from January 17, 2015, through October 12, 2021.

PLEASE READ THIS NOTICE CAREFULLY: IT MAY AFFECT YOUR LEGAL RIGHTS.

YOU MAY BE ENTITLED TO COMPENSATION FROM THIS SETTLEMENT

I. INTRODUCTION

You received this Notice because the records of Herbert Malarkey Roofing Company. (“Malarkey” or “Defendant”) shows that you are or were a non-exempt employee within the State of California for Malarkey at some point from January 17, 2015 to the date of the Preliminary Approval Order (the “Class Period”). All individuals who fall within that description are considered “Class Members.”

We provide this Notice to make you aware that a proposed class action settlement (the “Settlement”) of the above-noted lawsuit (the “Action”) has been reached by the parties and has been granted preliminary approval by the Court.

Malarkey’s records indicate that you are entitled to compensation under the Settlement. The Settlement affects your legal rights unless you “opt-out” of the Settlement. The purpose of this Notice is to: (1) describe the Action; (2) inform you of the terms of the Settlement; and (3) inform you of your options in connection with the Settlement. Malarkey will not retaliate against any employee because he or she chooses to participate (or not participate) in this Settlement, or because he or she objects to the Settlement.

II. SUMMARY OF THE ACTION

Named Plaintiff Edgar Rodriguez-Fonseca alleges that Malarkey failed to pay overtime wages, failed to pay minimum wages, failed to provide meal and rest breaks, failed to pay waiting time penalties, failed to provide compliant wage statements, committed unfair business practices, and violated the Private Attorneys General Act (“PAGA”). Named Plaintiff seeks allegedly unpaid wages and civil penalties related to these claims. Named Plaintiff also seeks to bring these claims as a class and representative action on behalf of others.

Malarkey denies wrongdoing of any kind in connection with the claims and contends that Class Members were treated lawfully at all times. Malarkey does not believe that Named Plaintiff or Class Members are entitled to any recovery.

The Court granted preliminary approval of the Settlement on October 12, 2021 on behalf of a Settlement class defined as:

All current and former hourly or non-exempt employees of Defendant who worked in the State of California at any time from January 17, 2015, through the date of the Court’s order approving Plaintiff’s Motion for Preliminary Approval.

At that time, the Court also preliminarily approved Named Plaintiff to serve as Class Representative, and Christopher Adams of Adams Employment Counsel and Vache A. Thomassian and Caspar Jivalagian of KJT Law Group to serve as Class Counsel.

The Court also scheduled a Final Approval Hearing on the Settlement at 10:00 a.m. on April 26, 2022, in Department 14 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012, at which time the Court will decide whether to grant final approval of the Settlement. The Hearing may be continued without further notice. Also, as a result of the need for social distancing, you may be required to appear telephonically for the Final Approval Hearing using the Court’s LACourtConnect service. This service is found at the Court’s website at lacourt.org/lacc/, clicking the “Civil” button, and following the directions to create an account. If you require further assistance, you may contact the LACourtConnect Service Desk at 213-830-0400 during normal Court business hours (Monday-Friday (except holidays) between 7:30 a.m. and 5:30 p.m. You are not required to attend the Final Approval Hearing, although you are welcome to do so. The Claims Administrator shall give notice of the Final Judgment by posting the Final Judgment on its website.

III. SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Malarkey has agreed to pay a maximum amount not to exceed \$300,000 (the “Gross Settlement Amount”) to fully resolve this Action and obtain a release of claims as described below. The Court has tentatively approved payments to be made from the Gross Settlement Amount as follows:

- **Claims Administration.** Payment to the Claims Administrator of no more than \$10,000 for the expense of notifying the Class Members of the Settlement, processing

claims and opt-outs submitted by Class Members, and distributing settlement payments.

- Attorneys' Fees and Expenses. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third of the Gross Settlement Fund (\$100,000) and costs not to exceed \$15,000, as reasonable compensation for the work Class Counsel performed in this Action. The fee split between Class Counsel is as follows: sixty-six and two-thirds percent (66.67%) to KJT Law Group LLP and thirty-three and one-third percent (33.33%) to Adams Employment Counsel.
- Service Award to Named Plaintiff. A Service Award not to exceed \$5,000 to Named Plaintiff to compensate him for services on behalf of the Class in prosecuting the Action and in return for executing a General Release of all Claims. This payment is in addition to whatever payment the Named Plaintiff is otherwise entitled to as a Participating Settlement Class Member.
- PAGA Payment. 75%, or \$7,500 of the amount attributable to settlement of the PAGA Claim (\$10,000) to the Labor and Workforce Development Agency pursuant to Labor Code §2699(i).

Calculation of Individual Settlement Payments to Participating Class Members. Each Class Member who *does not* submit a Request for Exclusion (“Participating Settlement Class Member”) will be eligible to receive a share of the Net Class Settlement Fund. The share distributed to each Participating Settlement Class Member is referred to as the “Individual Settlement Payment” and is calculated as follows:

The Net Settlement Amount shall be divided among all Participating Class Members, based on the total number of Qualifying Workweeks of the Participating Class Members divided by the total Qualified Workweeks for all Class Members, resulting in the Payment Ratio for each Participating Class Member.

Each Participating Class Member’s Payment Ratio will then be multiplied by the Net Class Settlement Fund to calculate each Participating Class Member’s share of the Net Settlement Amount.

Any checks issued to Settlement Recipients shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) days, all funds represented by uncashed checks shall be allocated pursuant to California Code of Civil Procedure section 384, as amended.

Tax Withholding. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: (a) 1/3 as wages; and (b) 1/3 as penalties and (c) 1/3 as interest. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest. Aside from any payroll taxes for which Malarkey is responsible, any and all tax obligations arising from any

payments to Participating Settlement Class Members will be the sole responsibility of the individual receiving such payment(s).

None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Participating Settlement Class Member.

Releases. Released Claims includes all causes of action and factual or legal theories that were alleged in the operative complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint, including all of the following claims for relief: (a) failure to pay all overtime wages; (b) minimum wage violations; (c) failure to provide, authorize or permit compliant meal periods or provide proper meal period premiums; (d) failure to provide, authorize or permit compliant rest breaks or provide proper rest premiums; (e) waiting time penalties; (f) wage statement violations; (g) unfair competition/unfair business practices; (h) civil penalties recoverable under the Private Attorneys General Act (“PAGA”); (i) any other claims or penalties under the wage and hour laws pleading in the Action; (j) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the complaint; and (k) the California Unfair Competition Law (collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Covered Period. The res judicata effect of the Judgment will be the same as that of the Release. The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or Settlement Recipients may discover new facts, legal theories, or legal arguments not alleged in the operative complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims. This release excludes the release of claims not permitted by law. Class Members who worked during the applicable PAGA Period (i.e., January 17, 2018 to October 12, 2021 (“PAGA Employees”)) shall release any claim under PAGA regardless of whether the PAGA Employee has timely and validly opted-out of the Settlement. As a result, PAGA Employees will receive a portion of the PAGA Payment as described in the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an Order finally approving the Settlement at or following the Final Approval Hearing. Notice of Final Judgment will be posted on the Settlement Administrator’s website.

IV. RIGHT TO COMPENSATION FROM THE SETTLEMENT

YOUR ESTIMATED SHARE OF THE SETTLEMENT IS **«TotalAmount»**. This amount is based on the number of weeks you worked during the Class Period, or **«Workweeks»** Qualifying Workweeks. If you believe the number of weeks is incorrect, you can dispute that information by submitting the following no later than January 3, 2022: (i) a written, signed statement describing your challenge to the weeks identified; and (ii) providing documentation to support your challenge to the Claims Administrator.

Unless you inform the Claims Administrator of an updated address, your settlement check will be mailed to the address this Notice was mailed to. The Claims Administrator may be contacted at:

Fonseca v. Malarkey Roofing Claims Administration
 c/o CPT Group, Inc.
 50 Corporate Park, Irvine CA 92606
 1-888-464-0329
www.cptgroupcaseinfo.com/herbertmalarkeyroofing

V. RIGHT TO OPT-OUT

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt-out.” **If you opt-out, you will receive no compensation from the Settlement, and you will not be bound by its terms.** To opt-out, you must submit a signed, written request to the Claims Administrator for exclusion from the Settlement post marked no later than January 3, 2022. The request for exclusion must: (a) state your full name, address, telephone number, and last four digits of your Social Security number; and (b) be signed by you.

VI. RIGHT TO OBJECT

If you are a Class Member who has not opted out and believe that the Settlement should not be finally approved by the Court for any reason, you may object to the proposed Settlement by submitting a written statement of objection (“Notice of Objection”) or by appearing at the Final Approval hearing. The Notice of Objection must contain a statement of the your objections, a statement advising if you plan to address the Court at the Final Approval Hearing, and any legal briefs, papers or memoranda you propose to submit to the Court. Regardless of whether Class Members submit written objections or notices of intention to appear, they may appear at the Final Approval Hearing to have their objections heard by the Court. **You cannot object to the Settlement if you request exclusion from the Settlement.**

To be considered timely, the Notice of Objection must be filed with the Court and post-marked no later than January 3, 2022. If you wish to appear and be heard at the Final Approval Hearing, you may do so at your own expense.

Any attorney who intends to represent an individual objecting to the Settlement must submit a notice of appearance with the Court and serve counsel for all parties, at the below addresses, at least five calendar days before the Final Approval Hearing.

<u>Class Counsel</u>	<u>Counsel for Malarkey</u>
<p>KJT LAW GROUP Vache Thomassian (SBN 289053) vache@kjtlawgroup.com Caspar Jivalagian (SBN 282818) caspar@kjtlawgroup.com 230 North Maryland Avenue, Suite 306 Glendale, CA 91206 Tel: 818-507-8525</p> <p>ADAMS EMPLOYMENT COUNSEL Christopher A. Adams (SBN 266440) ca@AdmasEmploymentCounsel.com 230 North Maryland Avenue, Suite 306 Glendale, CA 91206 Tel: 818-425-1437</p>	<p>OGLETREE, DEAKINS, NASH, SMOAK & STEWART P.C. VINCE M. VERDE, Cal. Bar No. 202472 Vince.Verde@ogletree.com Robert.Vorhees@ogletree.com 695 Town Center Drive, Ste. 1500 Costa Mesa, CA 92626 Telephone: 714.800.7988 Facsimile: 714.754.1298</p>

If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not timely object — whether in writing or in person at the Final Approval Hearing — in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

VII. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. The pleadings and other records in the lawsuit may can be reviewed online at the Los Angeles County Superior Court’s website at www.lacourt.org. Click on the “Online Services” tab, then click on the “Access Now” button next to “Case Access – Civil.” Next, enter Case Number “19STCV01237.” Class Members can also contact the Claims Administrator or Class Counsel at the addresses and telephone numbers listed above, with any questions regarding the Settlement.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT
OR THE JUDGE WITH QUESTIONS.**