

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

*Porfirio Rivera, et al. v. Talamo Food Service, Inc., et al.*  
(County of Santa Clara, California Superior Court Case No. 19CV355856)

**As a current or former non-exempt California employee for Talamo Food Service, Inc., either directly or through any subsidiary or affiliate, you are entitled to receive money from a class action settlement.**

**Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.**

You have received this Notice of Class Action Settlement because Talamo Food Service, Inc.'s ("Defendant") records show you are a "Class Member," and therefore entitled to a payment from this class action Settlement. Class Members are all persons currently or formerly employed by Talamo Food Service, Inc., either directly or through any subsidiary or affiliate as non-exempt, hourly-paid employees in the State of California any time from September 30, 2015 through October 24, 2020.

- The settlement resolves a class-action lawsuit, *Porfirio Rivera, et al. v. Talamo Food Service, Inc., et al.* (the "Lawsuit"), which alleges Defendant: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal and rest breaks under California law, (5) failed to provide Class Members with legally complaint wage statements, (5) failed to timely pay wages upon termination, (6) failed to indemnify Class Members for costs incurred in furtherance of their work duties, and (7) engaged in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiffs also seek penalties under the California Labor Code Private Attorney Generals Act ("PAGA") pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.
- On December 9, 2020, the Santa Clara County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Class Action Settlement Administrators, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for April 7, 2021 in the Department 3 of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113.

**Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773**

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 1:30 p.m. on April 7, 2021, in the Department 3 of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113. You are not required to attend the Hearing, but you are welcome to do so.

### **Why Am I Receiving This Notice?**

Defendant's records show that you currently work, or previously worked, for Defendant, either directly or through any subsidiary or affiliate, as a non-exempt hourly, hourly paid employee in the State of California any time from September 30, 2015 through October 24, 2020. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### **What Is This Case About?**

Porfirio Rivera and Andres Haro were non-exempt employees for Defendant in California. They are the "Plaintiffs" in this case and are suing on behalf of themselves and Class Members for Defendant's alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay wages upon termination, failure to indemnify employees for costs incurred in furtherance of their work duties, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiffs also seek to recover penalties under the California Labor Code Private Attorney Generals Act pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699.

Defendant denies all of the allegations made by Plaintiffs and deny that they violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

### **Summary of the Settlement Terms**

Plaintiffs and Defendant have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$450,000.00. The Gross Settlement includes: (1) Administration Costs up to \$6,750; (2) a service payment of up to \$7,500.00 to Plaintiff Porfirio Rivera and up to \$7,500 to Plaintiff Andres Haro, and for their time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) up to \$150,000.00 in attorneys' fees and actual litigation costs up to \$25,000 to Class Counsel; and (4) payment allocated to PAGA penalties in the amount of \$10,000.00, \$7,500 of which will be payable to the Labor and Workforce Development Agency and \$2,500 which will be payable to Class Members. After deducting these sums, a total of approximately \$245,750 will be available for distribution to Class Members ("Net Settlement Amount"). In addition to the Gross Settlement, Defendant will separately pay all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

### **Distribution to Class Members**

Class Members who do not opt out will receive a pro-rata payment based on the number of weeks worked by Class Members for Defendant during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual Class Member's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount.

Defendant's records indicate that you worked «Total\_Weeks» as a non-exempt employee in California between September 30, 2015 and October 24, 2020. Based on these records, your estimated payment as a Class Member would be «Est\_Set\_Amt». If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than March 6, 2021. Please include any documentation you have that you contend supports your dispute.

### **Tax Reporting**

10% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 90% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

### **Your Options Under the Settlement**

#### **Option 1 – Do Nothing and Receive Your Payment**

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Section 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendant to the Settlement Administrator.

“Released Claims” means all claims against the Released Parties asserted in the First Amended Complaint in the Class Action, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the First Amended Complaint, as follows. For the duration of the Class Period, the release includes: (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide compliant meal and rest periods and associated premium pay; (d) all claims for the failure to timely pay wages upon termination or separation of employment; (e) all claims for inaccurate wage statements; and (k) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended Complaint. For individuals employed during the PAGA Period, the release includes, for the duration of the PAGA Period, all claims released during the Class Period, as well as all asserted PAGA claims for penalties arising out of Labor Code Sections 226.3, 558, 1197.1 and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the Rivera PAGA Notice, Haro PAGA Notice and the First Amended Complaint filed in the Class Action, including, without limitation, failure to comply with Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 2802, and 2810.5.

“Class Period” means the period from September 30, 2015 through October 24, 2020.

“Released Parties” shall mean Defendant and each of its past, present, and future respective subsidiaries, dba's, affiliates, parents, insurers and reinsurers, and company-sponsored employee benefit plans of any nature and their successors and predecessors in interest, including all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

#### **Option 2 – Opt Out of the Settlement**

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, Social Security Number, and signature. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or facsimile to the address below.

**Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773**

**Phoenix Settlement Administrator  
P.O. Box 7208  
Orange, CA 92863**

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than March 6, 2021. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.

**Option 3 – *File an Objection to the Settlement***

If you wish to object to the Settlement you may file a written objection stating why you object to the Settlement. Your written objection must provide your full name, address, your reasons why you think the Court should not approve the Settlement, along with any legal authority, if any, you assert supports your objection, and your signature. Your written objection must be mailed or faxed to the Administrator no later than March 6, 2021. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

**Final Fairness Hearing**

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for 1:30 p.m. on April 7, 2021, in the Department 3 of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, and raise or discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. Class members who wish to appear at the final fairness hearing should contact class counsel to arrange a telephonic appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member will be paid by class counsel.

**Additional Information**

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit [www.phoenixclassaction.com/rivera-v-talamo](http://www.phoenixclassaction.com/rivera-v-talamo), call the Settlement Administrator at (800) 523-5773 or Class Counsel:

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You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,  
DEFENDANT, OR DEFENDANT’S ATTORNEYS WITH INQUIRIES.**

**Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773**