

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD

Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND JANUARY 1, 2022 (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<**Estimated Payment**>>, which includes your payment from the Class settlement in the estimated amount of <<**Estimated Individual Settlement Class Payment**>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<**Estimated Individual PAGA Settlement Payment**>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on **June 24, 2022, at 10:00 a.m.**, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: APRIL 19, 2022	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by APRIL 19, 2022 .
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: APRIL 19, 2022	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by APRIL 19, 2022 .

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through January 1, 2022.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through January 1, 2022.

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

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H. Scott Leviant
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Defendant’s Counsel

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What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<**Estimated Settlement Payment**>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<**Work Weeks**>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before **APRIL 19, 2022** (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is **APRIL 19, 2022**.

For tax reporting purposes, the payments to Class Members will be allocated 33.33% as wages and 66.67% as penalties and interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. 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 Class Member.

Class Counsel's Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order ("Released Claims");

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,

3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly submit a Request for Exclusion form. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before **APRIL 19, 2022** and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion form to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion form must be signed and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity.

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before **APRIL 19, 2022**. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on **JUNE 24, 2022 AT 10:00 A.M.**, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <http://www.phoenixclassaction.com/>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. Because of the Orange County Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.