

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ANGELA FLORES, individually and on behalf
of other similarly situated current and former
employees,

Plaintiff,

v.

DART CONTAINER CORPORATION, a
Nevada corporation; DART CONTAINER
CORPORATION OF CALIFORNIA, a
Michigan corporation; and DOES 1-100,
inclusive,

Defendants.

CASE NO. 2:19-cv-00083-WBS-EFB

**NOTICE OF PENDENCY OF CLASS ACTION,
PRELIMINARY APPROVAL OF SETTLEMENT,
AND HEARING FOR FINAL APPROVAL**

**IMPORTANT: THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.
YOU ARE NOT BEING SUED.**

TO: ALL CURRENT AND FORMER HOURLY, NON-EXEMPT CALIFORNIA EMPLOYEES OF DEFENDANTS WHO RECEIVED A WAGE STATEMENT BETWEEN JANUARY 11, 2018 AND NOVEMBER 30, 2020, AND 1) WORKED AT LEAST ONE SHIFT DURING WHICH HE/SHE BOTH WORKED OVERTIME AND EARNED A SHIFT DIFFERENTIAL AND 2) DID NOT PARTICIPATE IN THE CLASS ACTION SETTLEMENT IN *ALVARADO V. DART CONTAINER CORP.*, RIVERSIDE COUNTY SUPERIOR COURT CASE NO. RIC1211707, and ALL CURRENT AND FORMER NON-EXEMPT CALIFORNIA EMPLOYEES OF DEFENDANTS WHO WERE ELIGIBLE FOR AND USED PAID SICK LEAVE DURING A WORKWEEK WHEN HE/SHE ALSO EARNED SHIFT DIFFERENTIALS, NON-DISCRETIONARY BONUSES, COMMISSIONS, OR OTHER REMUNERATION BETWEEN JANUARY 11, 2015 AND NOVEMBER 30, 2020

RE: Notice of settlement of a class action lawsuit for alleged Labor Code violations and announcement of a court hearing that you may choose to attend. You are entitled to receive a payment under the terms of this class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will receive a payment under the terms of the Settlement.
EXCLUDE YOURSELF	If you wish to be excluded from the Settlement, you must submit a written election not to participate known as an “opt-out.” If you opt out, you will not be bound by the Settlement and will not receive a payment.
OBJECT	You may write to the Court, Class Counsel, and Defendants’ Counsel about why you do not like the Settlement. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement.
GO TO A HEARING	Write to the Court, Class Counsel, and Defendants’ Counsel and ask to speak to the Court about why you do not like the Settlement, or write to Class Counsel to obtain instructions about how to attend the remote final approval hearing.

YOUR OPTIONS ARE MORE FULLY EXPLAINED BELOW.

THE DEADLINE TO OPT-OUT OR OBJECT TO THE SETTLEMENT IS APRIL 12, 2021.

1. WHY DID I RECEIVE THIS NOTICE?

Plaintiff Angela Flores (“Plaintiff”) and Defendants Dart Container Corporation and Dart Container Corporation of California (“Defendants” or “Dart”, collectively with Plaintiff, the “Parties”) have proposed to settle this class action lawsuit. Your employment records indicate that you are a member of the Settlement Class. If the Court approves the Settlement, your legal rights may be affected. This court-approved Notice of Pendency of Class Action, Preliminary Approval of Settlement, and Hearing for Final Approval (“Notice”), is only a summary. A more detailed document, called the “Joint Stipulation Regarding Class Action and PAGA Settlement Agreement and Release” (the “Settlement”), containing the complete terms is on file with the Court as part of the motion for preliminary approval, and is available for your review on the Court’s website and on the website relating to this Class Action that is maintained by the Settlement Administrator.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit against Defendants on January 11, 2019, in the United States District Court, Eastern District of California. A First Amended Class Action Complaint was filed March 12, 2020. Through the operative complaint, Plaintiff alleges that, during her employment, Defendants had a policy, pattern, and practice of failing to properly calculate and pay redeemed sick leave to certain non-exempt employees, failing to pay all wages due at the time of separation, and failing to provide accurate, itemized wage statements that provide all of the information required by Labor Code section 226(a)(2). Plaintiff also had a separate lawsuit asserting individual claims for alleged violations of the California Fair Employment and Housing Act (Cal. Govt. Code §§ 12940, et al.) that was pending in the Superior Court of California, County of San Joaquin Case No. STK-CV-UOE-2019-0006564 (the “Individual FEHA Lawsuit”).

Defendants deny any liability or wrongdoing of any kind and maintain their practices were lawful. The Court has made no determination about the strengths and weaknesses of the claims or contentions of either Plaintiff or Defendants.

There is another ongoing case against Defendants captioned *Miguel Prado v. Dart Container Corporation of Cal., et al*, Santa Clara County Superior Court Case No. 18CV336217 (the “Prado Class Action”) where another plaintiff has alleged class claims against Defendants, some of which may overlap with the claims asserted in this Action and subject to the Settlement. To the extent claims in the Prado Class Action overlap with claims in this Action, they will be resolved along with the class claims in this Action upon the Court’s final approval of the Settlement.

3. WHO IS COVERED BY THE CLASS ACTION AND PROPOSED SETTLEMENT?

The Settlement covers the claims of a number of current and former employees of Defendants (referred to as the “Class Members” and collectively as the “Class”) and consists of three classes and sub-classes defined as follows:

i. The Sick Pay Class

All current and former non-exempt California employees of Defendants who were eligible for and used paid sick leave during a workweek when he/she also earned shift differentials, non-discretionary bonuses, commissions, or other remuneration between January 11, 2015 and November 30, 2020.

ii. The Former Employee Sub-Class.

All Sick Pay Class Members who separated from employment at any time between January 11, 2016 and November 30, 2020 **and** who did not participate in the class action settlement in *Alvarado v. Dart Container Corp.*, Riverside County Superior Court Case No. RIC1211707.

iii. The Non-Exempt Wage Statement Class.

All current and former hourly, non-exempt California employees of Defendants who received a wage statement between January 11, 2018 and November 30, 2020 and 1) worked at least one shift during which he/she both worked overtime and earned a shift differential and 2) did not participate in the class action settlement in *Alvarado v. Dart Container Corp.*, Riverside County Superior Court Case No. RIC1211707.

There are approximately 502 total Class Members, including approximately 502 Sick Pay/UCL Class Members; 131 Former Employee Sub-Class Members; and 423 Non-Exempt Wage Statement Class Members.

A. The Effect of Membership in the Settlement Class.

If you are a Class Member as defined above, you are automatically a “Participating Class Member” unless you opt-out (i.e., exclude yourself from the Settlement by following the procedures set forth in this Notice). Participating Class Members are entitled to a share of the “Net Settlement Amount” (or, “NSA”) and will be bound by the Settlement if it is approved by the Court. Individuals who opt-out will not be bound by the Settlement and will not be eligible to receive a payment.

4. WHAT ARE THE TERMS OF THE SETTLEMENT?

The proposed Settlement was agreed upon between Defendants and Class Counsel following extensive litigation including formal discovery, motion practice, informal information/data exchange, and months of negotiations. The Parties concluded, after taking into account the risks and costs attendant to further litigation and substantial benefits to be received pursuant to the Settlement, that the Settlement is fair, adequate, and in the best interest of the Class Members. The United States District Court, Eastern District of California, by and through the Honorable William B. Shubb, approved the Settlement on a preliminary basis on January 12, 2021.

A. Overall Summary of the Settlement Terms.

Defendants will pay \$411,000 to settle this case (referred to as the “Maximum Settlement Amount” or “MSA”). The MSA includes payments to Participating Class Members, the fees and costs of the Claims Administrator, a service payment to Plaintiff, and Class Counsel’s attorneys’ fees and costs, as well as a payment to the State of California.

B. Costs of Claims Administrator.

The Parties have agreed to employ Phoenix Class Action Administration Solutions to serve as Claims Administrator. The Claims Administrator’s fees and costs for administering the Settlement, estimated to be no more than \$8,850, if approved by the Court, will be paid out of the MSA.

C. Payment to the State.

The Parties have allocated \$15,000 of the MSA to any civil penalties that could be awarded pursuant to the California Labor Code Private Attorneys General Act (the “PAGA”). Of that amount, \$11,250 will be paid to the California Labor and Workforce Development Agency, and the remaining amount (\$3,750) will be included in the amounts paid to the Participating Class Members.

D. Service Payment to Class Representative.

Plaintiff has been approved by the Court to serve as “Class Representative.” As Class Representative, Plaintiff is entitled to a payment for her services to the Class. The Parties have agreed, and the Court has preliminarily approved a payment of \$2,500, or 0.608% of the MSA, for Plaintiff’s services to the Class.

E. Class Counsel’s Fees and Costs.

Class Counsel is entitled to attorney’s fees and costs for representing the Class Members. Class Counsel will request attorneys’ fees of one-third of the MSA, or \$137,000, and reimbursement of litigation costs of up to \$7,500. Defendants do not object to Class Counsel’s request. The Court has preliminarily approved payment to Class Counsel in the amounts set forth above.

F. Individual Settlement Payment to Plaintiff.

Separate and apart from the Class claims, Plaintiff also agreed to settle her Individual FEHA Claims for a separate, confidential amount. Plaintiff will provide Defendants with a complete release broader than that impacting the Settlement Class, including a section 1542 waiver, of her individual claims as well as all other claims, known or unknown which she may have against Defendants.

G. Allocation of the Net Settlement Amount (“NSA”)

The NSA shall be allocated as follows, subject to the Court’s approval of these amounts: \$25,000 shall be distributed to the Sick Pay Class, 50% of the NSA, less the \$25,000 allocated to the Sick Pay Class, or no less than \$109,450, shall be distributed to the Former Employee Sub-Class, and 50% of the NSA, less the \$25,000 allocated to the Sick Pay Class, or no less than \$109,450, shall be distributed to the Non-Exempt Wage Statement Class.

H. What Can I Expect to Receive?

The payments to Participating Class Members (those who do not opt out) will be calculated as follows:

i. For Sick Pay Class Members -

The Settlement Share for each Participating Sick Pay Class Member will be determined by dividing the number of pay periods worked by the Participating Sick Pay Class Member during the Sick Pay Class Period by the total pay periods worked by all Participating Sick Pay Class Members and multiplying the result by the portion of the Net Settlement allocated to the Sick Pay Class, i.e., \$25,000.

The Parties estimate that the *average* payment to each Participating Sick Pay Class Member will be approximately \$40.85.

ii. For Former Employee Sub-Class Members –

Each Participating Former Employee Sub-Class Member will receive an equal share of the portion of the Net Settlement Amount allocated to the Former Employee Sub-Class, i.e. 50% of the NSA, less the \$25,000 allocated to the Sick Pay Class, which is expected to equal \$109,450.

The Parties estimate that the payment to each Former Employee Sub-Class Member will be approximately \$835.50.

iii. For Non-Exempt Wage Statement Class Members -

The Settlement Share for each Participating Non-Exempt Wage Statement Class Member will be determined by dividing the number of pay periods worked by the Participating Non-Exempt Wage Statement Class Member during the Non-Exempt Wage Statement Class Period by the total pay periods worked by all Participating Non-Exempt Wage Statement Class Members and multiplying the result by the portion of the Net Settlement Amount allocated to the Non-Exempt Wage Statement Class,

The Parties estimate that the payment to each Participating Non-Exempt Wage Statement Class Member will be approximately \$178.84.

Defendants' records indicate that you are a member of the «Sick_Class» Class and/or the «Wage_Class» Class. The records also indicate that you worked: (a) «Sick_Pay_Weeks» workweeks during the Sick Pay Class Period; and/or (b) «Wage_Weeks» workweeks during the Non-Exempt Wage Statement Class Period. It is estimated that your payment will be «Est_Set_Amt». It will not be possible to know the exact amount of your payment until the response deadline has passed and the Settlement Administrator knows the number of Participating Class Members.

One-third of the payments to the Sick Pay Class Members will be treated as wages and reported on a W-2 Form, and the remaining two-thirds will be treated as penalties and interest and reported on a Form 1099. The payments to the Former Employee Sub-Class and the Non-Exempt Wage Statement Class will be treated 100% as penalties and will be reported on a Form 1099, with no tax withholding.

Any and all Employer-side Taxes that Defendants would normally be responsible for paying will be paid by Defendants in addition to the Maximum Settlement Amount. Participating Class Members are responsible for any other taxes owing on their settlement payment(s).

5. WHAT AM I GIVING UP IF I DO NOT OPT OUT OF THE SETTLEMENT?

Each Participating Class Member shall forever and completely release and discharge Defendants and Released Parties from the Released Claims,

“Released Parties” means Defendants, their respective parents, subsidiaries and related entities, and their respective officers, shareholders, directors, agents, employees, and insurers.

“Released Claims” means, 1) for Participating Non-Exempt Wage Statement Class Members, any and all claims for failure to furnish accurate itemized wage statements in violation of Labor Code section 226(e), which arose at any point between January 11, 2018 and November 30, 2020 that are or could have been pled based on the facts asserted in the FAC on behalf of the Non-Exempt Wage Statement Class, 2) for Participating Sick Pay Class Members any and all claims for failure to pay sick pay under Labor Code section 218.5 and all claims for restitution and other equitable relief, liquidated damages, or penalties for unfair business practices in violation of Business and Professions Code section 17200 et. seq., which arose at any point between January 11, 2015 and November 30, 2020 that are or could have been pled based on the facts asserted in the FAC on behalf of the Sick Pay Class, and 3) for Participating Former Employee Sub-Class Members, any and all claims for failure to timely pay all wages due and owing at the end of their employment in violation of Labor Code section 201-203 which arose at any point between January 11, 2016 and November 30, 2020 that are or could have been pled based on the facts asserted in the FAC on behalf of the Former Employee Sub-Class.

“Released PAGA Claims” means any and all PAGA Claims based upon Defendant’s alleged violation of Labor Code sections 201 – 203, 226, and 226.3, between January 11, 2018 and November 30, 2020.

If you do NOT exclude yourself by following the procedures set forth in this Notice and the Court approves the proposed Settlement, you will be deemed to have released these claims.

6. HOW DO I RECEIVE A PAYMENT?

All Class Members will receive a payment under this Settlement unless they opt-out. If you are a Class Member and you move or change your address, and you want to receive your settlement benefits at your new address, you must send a notice of your change of address to the Settlement Administrator, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863.

7. WHAT ARE THE REASONS FOR THE SETTLEMENT?

Class Counsel and Plaintiff agreed to enter into the proposed Settlement after weighing the risks and benefits of the Settlement when compared with those of continuing the litigation. The factors that Class Counsel and Plaintiff considered included the strength of the Class Members' claims, the uncertainty and delay associated with continued litigation, a trial, and appeals, and the uncertainty of particular legal issues yet to be determined, including whether the Class would be certified. Class Counsel and Plaintiff balanced these and other substantial risks in determining that the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interest of Class Members.

Although Defendants deny any liability or wrongdoing of any kind, they have agreed to the Settlement in order to avoid risks, costs, and disruption of business associated with protracted litigation.

8. WHAT ARE MY RIGHTS AND OPTIONS?

If you are a Class Member as defined above, you have the following rights and options under the proposed Settlement:

A. Participate in the Settlement, be represented by Class Counsel, and take no action.

If you take no further action, you will be a Participating Class Member, will be represented by Class Counsel, and will have the right to a share of the NSA. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth above, will be deemed to have released your claims against Defendants and the other Released Parties. As a Participating Class Member, you will not be charged for the services of Class Counsel.

B. Participate in the Settlement, but elect to hire your own attorney.

If you do not wish to be represented by Class Counsel, you may hire your own attorney. Your attorney must send a Notice of Appearance to the Claims Administrator at the address listed below, so that it is received no later than April 12, 2021, and must also file same with the Court. You will be responsible for any attorneys' fees and costs charged by your attorney.

C. Exclude yourself from the Settlement by opting out.

If you are a Class Member but **do not** want to participate in the settlement, you may exclude yourself by opting out. If you choose to opt-out, you will lose any right to participate in the Settlement and you will not be eligible to claim a share of the Settlement. You will be free to pursue any claims you may have against Defendants on your own behalf, but Class Counsel will not represent you.

In order to opt-out, you must notify the Claims Administrator in writing, at the address listed below. In order to be effective, your opt-out must be postmarked or delivered to the Claims Administrator no later than April 12, 2021, and must be signed, contain your full name, current home (or mailing) address, the last four digits of your Social Security number, and written affirmation of your desire to opt-out containing the following or substantially similar language:

“I elect to opt-out of the *Flores v. Dart Container Corporation, et al.*, class action settlement. I understand that by doing so, I will not be able to participate in the settlement and will not receive a share of the settlement proceeds.”

If you do not comply with these procedures, you will lose any opportunity to exclude yourself from the Settlement, will be a Participating Class Member, will be represented by Class Counsel, and will receive a share of the NSA. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement and, as set forth above, will be deemed to have released your claims against Defendants and the other Released Parties.

D. Object to the terms of the Settlement.

If you are dissatisfied with the terms of the Settlement, you may, but are not required to, object to the Settlement. All objections and supporting papers must be written and shall (a) clearly identify the case name and number (*Flores v. Dart Container Corporation, et al.*, United States District Court, Eastern District of California, Case No. 2:19-cv-00083-WBS-EFB); (b) include your full name, address, telephone number, and the last four digits of your Social Security Number; (c) concisely state each objection and the grounds therefore; (d) state whether you would like to appear at the Final Approval Hearing; (e) be mailed to the Claims Administrator, (f) be served in person or through the mail upon Class Counsel and Defendants’ Counsel identified below, and (g) filed with the Court, together with proofs of service of all such documents. To be timely, your objection must be postmarked and filed with the Court on or before April 12, 2021.

If you have filed a timely and proper objection, you also may, but are not required to, appear and present argument at the Final Approval Hearing. Objections not timely postmarked or delivered to the Claims Administrator by April 12, 2021 will not be considered by the Court. If you file an objection that is not timely, or that does not include the information specified above, you will have no right to appear and present any argument at the final approval hearing.

You may be represented by an attorney at the final approval hearing. Any attorney who will represent an individual Class Member must file a notice of appearance with the Court and serve counsel for all parties on or before April 12, 2021. All objections or other correspondence must state the name and number of the case – *Flores v. Dart Container Corporation, et al.*, United States District Court, Eastern District of California, Case No. 2:19-cv-00083-WBS-EFB.

9. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?

The Court will hold the Final Approval Hearing in the Robert T. Matsui Federal Courthouse, 501 I Street, Sacramento, California 95814 on May 17, 2021, at 1:30 p.m. in Courtroom 5 (14th Floor), **with all participants appearing via Zoom**, to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve the fees and costs of the Claims Administrator, the payment to the State of California, the service payment to the Class Representative, and the fees and costs of Class Counsel. **It is not necessary for you to appear at this hearing to participate in the Settlement.** If you want to be heard orally in support of opposition to the Settlement, either personally or through counsel, you must comply with the procedures set forth above. All appearances at the final approval hearing will be by Zoom. If you wish to attend the final appearance hearing and comment upon the Settlement (other than objecting subject to the procedures above), you must notify the Claims Administrator on or before April 12, 2021, and must contact Class Counsel no later than May 12, 2021 to obtain instructions regarding the remote appearance procedure.

10. HOW CAN I GET MORE INFORMATION?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the Joint Stipulation Regarding Class Action and PAGA Settlement and Release. The Settlement, as well as the pleadings and other records in this litigation, including Motion for Preliminary Approval, Motion for Final Approval, and Motion for Attorneys’ Fees, Costs and Service Payment, are available by accessing the Court docket in this case through the Court’s Public Access to Electronic Records (Pacer) system at <https://ecf.caed.uscourts.gov>, or by visiting the Clerk Court at any time between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Clerk’s Office located at 501 I Street, Room 4-200, Sacramento, California 95814. You may also view the Court’s Order of Preliminary Approval and, once they are filed, the Motion for Attorneys’ Fees, Costs and Service Payment, Motion for Final Approval, and Order Granting Final Approval, online at www.phoenixclassaction.com/flores-v-dart. The Motion for Attorneys’ Fees, Costs and Service Payment and the Motion for Final Approval will be filed on or before April 19, 2021, will be available on the Court’s website at that time, and will appear online on the settlement website within 24 hours.

If you have questions about the Settlement, you may contact Class Counsel, the Claims Administrator, or Defendants’ Counsel as follows:

Class Counsel	Claims Administrator	Defendants’ Counsel
Jenny D. Baysinger, Esq. Robert J. Wasserman, Esq. Mayall Hurley P.C. 2453 Grand Canal Blvd. Stockton, CA 95242 Telephone: (209) 477-3833	Flores v. Dart Container Corporation, et al. c/o Phoenix Settlement Administrators P.O. Box 7208 Orange, CA 92863 Telephone: (800) 523-5773	Yesenia Gallegos, Esq. Laurie Baddon, Esq. McDermott Will & Emory, LLP 2049 Century Park East, Suite 3200 Los Angeles, CA 90067 Telephone: (310) 788-4199

PLEASE DO NOT WRITE OR TELEPHONE THE COURT, DEFENDANTS, OR DEFENDANTS’ ATTORNEYS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

THE COURT HAS APPROVED THIS NOTICE.