

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICTOR PEREZ, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

PLAINTIFF,

VS.

THE BIG COMPANY, INC. DBA CAPO FIRESIDE,
A CALIFORNIA CORPORATION, AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

Case No. CIVDS2009691

ASSIGNED FOR ALL PURPOSES TO:
HON. DAVID COHN, DEPT. S26

NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL FAIRNESS
HEARING

YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. YOUR ESTIMATED SETTLEMENT AMOUNT IS \$_____. PLEASE CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.

Notice is given that a proposed settlement (the “Settlement”) has been reached between plaintiff Victor Perez (“Plaintiff”) and Defendant The BIG Company Inc. dba CAPO Fireside (“Defendant”). The lawsuit is a class action and representative action lawsuit entitled *Victor Perez v. The BIG Company, Inc. dba CAPO Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691 (the “Litigation” or “Action”).

The Settlement will resolve all Released Claims, as that term is defined in the Settlement Agreement, made against Defendant and other Released Parties on behalf of the Class, *i.e.*, all current and former employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba CAPO Fireside within the state of California from May 29, 2016 to July 19, 2021 (the “Class Period”).

The Settlement will also resolve all PAGA Claims, as that term is defined in the Settlement Agreement, made against Defendant and other Released Parties on behalf of the Aggrieved Employees, *i.e.*, all Class Members who worked from March 26, 2019 to July 19, 2021 (the “PAGA Period”). Any Class Members who worked during the PAGA Period will be considered an Aggrieved Employee and, therefore, regardless of how they respond to this Notice, all Class Members who worked during the PAGA Period will (i) receive their portion of the PAGA Payment; and (ii) release all PAGA Claims against the Released Parties as set forth in the Settlement Agreement.

A. PURPOSE OF THIS NOTICE

The Court has ordered that this Class Notice be sent to you because Defendant’s records reflect that you are a potential member of the Class. The purpose of this Notice is to: (a) provide a brief description of the Litigation; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Litigation and the Settlement.

B. DESCRIPTION OF THE LITIGATION

The Action was filed by Plaintiff on behalf of all current and former employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba CAPO Fireside within the state of California during the Class Period (the “Class” or “Class Members”). As alleged in the Lawsuit, Plaintiff claims that Class Members were wrongfully denied wages and overtime compensation, meal and rest breaks, accurate wage statements, and other rights guaranteed under the Labor Code.

The Action alleges class and representative claims against Defendant for (1) failure to pay minimum and regular wages; (2) failure to pay overtime; (3) failure to provide meal periods and pay meal period premiums; (4) failure to authorize and permit rest periods and pay rest period premiums; (5) failure to timely pay wages; (6) failure to provide accurate itemized wage statements; (7) violation of California Business and Professions Code § 17200 *et seq.*; and (8) violation of Labor Code § 2698 *et seq.* Defendant denies each and all of the claims and contentions alleged by Plaintiff.

The Court has made no ruling on the merits of Plaintiff’s class claims or Defendant’s defenses. The Court will decide whether to give final approval to the Settlement at a hearing scheduled for February 15, 2022, at 10:00 a.m., in Department S26 of the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415.

Attorneys for the Class (“Class Counsel”) in the Litigation are:

CLASS COUNSEL

WILSHIRE LAW FIRM
Justin F. Marquez, Esq.
Nicol E. Hajjar, Esq.
Rachel J. Vinson, Esq.
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: 213-381-9988

Counsel For Defendant

RUTAN & TUCKER, LLP
Brandon L. Sylvia, Esq.
Kimberly A. Nayagam, Esq.
18575 Jamboree Road, 9th Floor
Irvine, California 92612
Telephone: (714) 641-5100

C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. OPTION 1: Do Nothing and Remain a Member of the Class and Participate in the Settlement.

If you want to participate in the Class Settlement and receive a Participating Class Member Settlement Payment, DO NOT TAKE ANY ACTION. You will automatically be included in the Class Settlement and will receive the Participating Class Member Settlement Payment as detailed below. If you move, make sure you contact the Settlement Administrator at the following address or phone number:

THE BIG COMPANY, INC. SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, Telephone: (800) 523-5773

YOUR ESTIMATED PARTICIPATING CLASS MEMBER PAYMENT IS \$ _____. This amount is based on the number of workweeks during which you worked during the Class Period, based on the best information available, which is _____ workweeks. The settlement amount is just an estimate of your individual class settlement payment (“Participating Class Member Payment”). The exact Participating Class Member Payment allocated to you will not be determined until the class notice process is completed and the Court grants final approval of the Settlement.

If you believe the number of workweeks stated above is incorrect and you wish to challenge it, you must send the enclosed dispute form to the Settlement Administrator, stating what you believe is the correct number of workweeks, and providing any documents or other back-up you have for what you believe is the correct number. This form must be postmarked no later than December 20, 2021. You must also provide your name and telephone number. Defendants will have the right to respond to any challenge by a Class Member. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The Settlement Administrator’s determination will be subject to review by the Court at the time of the final approval hearing. If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

If you choose to participate in the Class Settlement, you will be bound by all the terms set forth in the Class Settlement, including a full release of claims for the matters being settled in the Action.

2. OPTION 2: Opt Out of the Class and Receive Nothing Under the Class Settlement

If you do not want to receive a payment from the Class Settlement, you can request exclusion from the Class (i.e., “opt out”). You can opt out of the Class by completing the Opt-Out Form included with this notice and sending it to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than December 20, 2021. This Opt-Out Form must be **signed** by you.

If you opt out of the Class, you will no longer be a member of the Class, you will be barred from participating in this Class Settlement, and you will not receive a Participating Class Member Payment. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendant, and you will be free to pursue them on an individual basis, if you choose to do so. Notwithstanding, all Aggrieved Employees will be issued payment of their PAGA Aggrieved Employee Payment regardless of whether they opt out of the Class Settlement, in which case you would still be bound by the PAGA portion of the Settlement.

3. OPTION 3: Object to the Settlement

If you are a Class Member who does not opt out of the Class Settlement, you may object to the Class Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator, Phoenix Settlement Administrators, at the address set forth above. All written objections must be signed and must contain your address, telephone number and a reference to the case name and number. All objections must be sent to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than December 20, 2021. Your written objection should clearly explain why you object to the Class Settlement and must state whether you (or someone on your behalf) intend to appear at the final fairness hearing on February 15, 2022. Your failure to timely submit your objection to the Settlement Administrator may preclude your objection from being heard at the final fairness hearing. If you object to the Class Settlement and if the Court approves the Class Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Class Settlement in the same way as a Class Member who does not object.

D. SUMMARY OF TERMS OF SETTLEMENT

The principal terms of the Settlement reached between Plaintiff and Defendant are summarized below.

1. Settlement Terms

The Settlement provides that (a) Defendant will pay \$575,000 (the “Gross Settlement Amount”) to resolve all claims asserted in the Action, an enhancement award, settlement administration costs, the PAGA Amount, and Class Counsel’s attorneys’ fees and costs, as described more fully below; and (b) Defendant will stipulate to the certification of the Class for settlement purposes only, conditioned upon the Court granting final approval of the Settlement.

- Attorneys’ Fees and Costs. Class Counsel will apply to the Court for an award of attorneys’ fees of no more than \$191,666.66, which is approximately 33⅓% of the Gross Settlement Amount. In addition, Class Counsel will seek reimbursement of actual costs of no more than \$25,000, as well as settlement administration costs of \$7,500. The attorneys’ fees and costs will be paid out of the Gross Settlement Amount.
- Class Representative Enhancement Award. Plaintiff will request an enhancement award of \$7,500. The enhancement award will be paid out of the Gross Settlement Amount.
- PAGA Payment. Plaintiff will request a payment pursuant to the Private Attorneys General Act (“PAGA”) of \$30,000, of which 75% (or \$22,500) will be paid to the Labor & Development Workforce Agency, and 25% (or \$7,500) will be paid to Aggrieved Employees, as defined by the Settlement Agreement. This PAGA payment will be paid out of the Gross Settlement Amount.
- Payments To Participating Class Members. After the deductions from the Gross Settlement Amount, the remaining amount of approximately \$313,333.34 will remain to be distributed to Participating Class Members on a *pro rata* basis based on each Class Member’s workweeks during which the Class Member worked during the Class Period.
- Payments To Aggrieved Employees. In addition to the *pro rata* portion of the approximately \$313,333.34 payable to Participating Class Members discussed above, Aggrieved Employees will receive a *pro rata* portion of \$7,500 (the “PAGA Payment”), based on the formula set forth above, limited to workweeks worked during the PAGA Period. The PAGA Payment represents penalties under the Labor Code Private Attorneys General Act. Class Members who opt out of the Settlement and are Aggrieved Employees will still receive their portion of the PAGA Payment.

Settlement Payment To You: Section C of this Notice includes the estimated amount that you are entitled to receive under the Class Settlement. The individual settlement payments to Class Members will vary based on a number of factors, including the number of Class Members who participate. The Settlement Payment will be mailed to you within approximately 90 days of the Court’s Order granting final approval of the Class Settlement. If you change your address, please notify the Settlement Administrator.

Taxes: For purposes of this Settlement, Participating Class Member Payments shall be reported as follows: (i) 10% of the amount distributed to each Participating Class Member will be considered wages, and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 45% of the amount distributed to each Participating Class Member will be considered interest on the unpaid wages, and will be reported as such to each Participating Class Member on an IRS Form 1099; and (iii) 45% of the amount distributed to each Participating Class Member will be considered statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered penalties and will be reported on an IRS Form 1099. Prior to mailing your Individual Settlement Payment, the Settlement Administrator will calculate and deduct from your Individual Settlement Payment an amount necessary to pay the required withholdings and taxes, including all payroll taxes. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and W-2 Form. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

2. Release

The Settlement provides that each Class Member who does not opt out of the Settlement fully releases and discharges Defendants and the Released Parties (as defined in the Settlement Agreement) from any and all claims, known or unknown, contingent or accrued, against Defendants and the Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action based on such facts; or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter sent by Class Counsel to LWDA on or about March 23, 2020, asserting that Defendant violated various provisions of the Labor Code. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay the minimum wage; failure to pay regular wages; failure to pay overtime compensation and other premium wages; off-the-clock work; failure to provide and maintain complete and accurate itemized wage statements that included all information required by the California Labor Code; failure to provide meal periods and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191; related violations of the applicable California Wage Orders; violations of all related or corresponding federal laws; violation of California Business and Professions Code Section 17200 *et seq.*; and claims under California Labor Code Section 2698 *et seq.*

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Class Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator.

3. Conditions Of The Settlement

The Settlement is conditioned upon the Court entering an Order at or following the final fairness hearing approving the Settlement as fair, reasonable, and adequate and in the best interests of the Class.

4. No Admission Of Liability

Defendant does not admit any wrongdoing or liability, and specifically denies any liability or wrongdoing. The Settlement reflects a compromise of disputed claims and does not mean that Defendant violated any state wage requirements or is liable for any of the allegations made by Plaintiff.

E. FAIRNESS HEARING ON PROPOSED SETTLEMENT

You are not required to attend the final fairness hearing or file an objection, although you may do both. The final fairness hearing on the fairness and adequacy of the Settlement, the plan of distribution, costs of administration, the enhancement award to Plaintiff, and Class Counsel's request for attorneys' fees and costs will be held on February 15, 2022 at 10:00 a.m., in Department S26 of the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415. The final fairness hearing may be continued to another date without further notice. If you plan to attend the final fairness hearing, you may contact Class Counsel to confirm the date and time.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Named Plaintiff, or any other aspect of the Settlement. If the Settlement is not approved, the Action will continue to be prepared for class certification, trial, or other judicial resolution.

F. ADDITIONAL INFORMATION

This Notice only summarizes the Action and the Settlement. For the precise terms and conditions of the settlement, you may review the detailed "Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims" which is available for viewing online on the following website:

URL: <http://www.phoenixclassaction.com/>

The pleadings and other records in the lawsuit are also available on the website.

For more information, you may also inspect the Court files at the San Bernardino County Superior Court, located at San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415, from 8:00 a.m. to 4:00 p.m., Monday through Friday or you can view the case records online at the court's website: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Any questions regarding this Class Notice or the Action may be directed to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.