

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA DEL CONSUELO MARTINEZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

K&S FOOD MANAGEMENT, INC., a California corporation; and DOES 1 through 100,

Defendants.

Case No. 19STCV26488

**NOTICE OF CLASS ACTION
SETTLEMENT**

To: All current and former non-exempt employees who performed work for Defendant K&S Food Management, Inc. (“K&S”) in California between July 30, 2015, and December 7, 2021 (the “Class Period”). Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Maria Del Consuelo Martinez v. K&S Food Management, Inc.*, Los Angeles County Superior Court, Case No. 19STCV26488 (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. K&S’s records show that you were employed by K&S as a non-exempt employee in California between July 30, 2015, and December 7, 2021 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the class portion of the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If the Court finally approves the Settlement and enters judgment, the judgment will be posted to the Settlement Administrator’s website, www.phoenixclassaction.com/ks-food-management/.

What is this case about?

Plaintiff Maria Del Consuelo Martinez (“Plaintiff”) brought this lawsuit against K&S, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleges that K&S: (1) failed to pay all overtime wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to maintain accurate records and issue accurate, itemized wage statements; (5) failed to timely pay all final wages at separation of employment; (6) engaged in unfair unlawful business practices; and (7) is liable for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

K&S denies that it has done anything wrong. K&S denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of K&S, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of all Settlement Class Members and K&S to settle the Lawsuit on the terms summarized in this Notice. After K&S provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to K&S, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by K&S, your decision about whether to participate in the Settlement will not affect your employment. California law and K&S’s policy strictly prohibit unlawful retaliation. K&S will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

<p>Attorneys for Plaintiff / Settlement Class Members:</p> <p>HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Sean M. Blakely (SBN 264384) sblakely@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com</p>	<p>Attorneys for K&S:</p> <p>SUH LAW GROUP, APC Edward W. Suh (SBN 265356) edward@suhlawgroup.com 3810 Wilshire Boulevard, Suite 1212 Los Angeles, CA 90010 Tel: (213) 385-7347 Fax: (213) 383-3323 suhlawgroup.com</p>
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What are the terms of the Settlement?

On September 29, 2022, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who worked for K&S in California during the Class Period.

K&S agreed to pay \$200,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,500.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount (currently estimated to be \$66,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 for verified costs incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for her service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$20,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$15,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$5,000.00) will be payable to certain Settlement Class Members as the “PAGA Amount,” as described below.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be distributed as follows:

- (i) Wage Statement: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by K&S at any time from July 30, 2018 to December 7, 2021 shall receive a portion of the Wage Statement Amount proportionate to the number of pay periods that he or she worked for K&S during the aforementioned time period.
- (ii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from K&S at any time between July 30, 2016 and December 7, 2021.
- (iii) The remaining 80% of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked for K&S during the Class Period.

Payment from PAGA Amount: In addition to the Net Settlement Amount, \$3,750.00 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class Members who worked for K&S in California at any time from July 31, 2019 to December 7, 2021 (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for K&S in California during that time period.

K&S's Deposit of the Gross Settlement Amount. K&S will deposit the Gross Settlement Amount with the Settlement Administrator in two equal installments. The first half (50%) of the Gross Settlement Amount was deposited on July 20, 2022, and the second half (50%) of the Gross Settlement Amount will be deposited within 45 days after the Settlement is approved by the Court and becomes final.

Settlement Awards to Settlement Class Members and Disposition of Uncashed Checks. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to Settlement Class Members. Each Settlement Class Member who receives a Settlement Award must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to Kind, Inc., a 501(c)(3) charitable organization dedicated to promoting the well-being of children.

Allocation and Taxes. For tax purposes, each Settlement Award will be allocated as follows: for amounts paid from the PAGA Amount, the Wage Statement Amount, and the Waiting Time Amount, 100% penalties; for the 80% remainder amounts paid from the Net Settlement Amount, one-third wages, one-third penalties, and one-third interest. The Settlement Administrator will issue IRS Forms W-2 for amounts designated as wages, and IRS Forms 1099 for amounts designated penalties and interest. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, K&S and its counsel, and Plaintiff and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who does not opt-out will release and discharge K&S from any and all claims that were pled in the operative Complaint in the Lawsuit, or which could have been pled in the Complaint based on the factual allegations in the Complaint, including but not limited to claims for (i) failure to pay overtime wages (Cal. Labor Code §§ 204, 510, 1194, 1198); (ii) meal period violations (Cal. Labor Code §§ 226.7, 512); (iii) rest period violations (Cal. Labor Code §§ 226.7, 516); (iv) wage statement violations (Cal. Labor Code § 226); (v) waiting time penalties (Cal. Labor Code §§ 201-203); and (vi) claims for unfair competition (Cal. Bus. & Prof. Code § 17200 et seq.) based on alleged violations of (i)-(v) above, that arose during the Class Period. In addition, all Settlement Class Members (whether or not they opt out) who worked for K&S in California at any point during the PAGA Period shall release K&S from any and all claims under the PAGA premised on the facts and/or theories alleged in Plaintiff's letter to the LWDA dated July 31, 2019, that arose during the PAGA Period (the "PAGA Release").

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Settlement Award which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Award. As noted above, your estimated Settlement Award is based on the proportionate number of workweeks or pay periods that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in K&S's records regarding this information, along with your estimated Settlement Award, is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than January 9, 2023. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class portion of the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed "Request for Exclusion," which is a letter or postcard including with your name, address, telephone number, last four digits of your social security number, and your signature, and a statement that you wish to be excluded from the class Settlement. Any Request for Exclusion must be postmarked no later than January 9, 2023.

Send the Request for Exclusion directly to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863. Any person who submits a valid and timely Request for Exclusion shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member with respect to the class portion of the Settlement, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the class portion of the Settlement. However, to the extent you are eligible to receive a portion of the PAGA Payment, you will still receive that amount whether or not you submit a Request for Exclusion. This is because, if the Court approves the PAGA Settlement, there is no right to be excluded from the PAGA Release that is part of this Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by all terms of the Settlement.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the class Settlement. However, if the Court rejects your objection, you will still be bound by all terms of the Settlement. If you wish to object to the class Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Any written objection must (i) include your name, address, phone number, and e-mail address, as well as contact information for any attorney representing you regarding your objection; (ii) include the case name and number; (iii) include each specific reason in support of your objection, and any legal or factual support for each objection together with any documents, declarations, or other evidence in support of your objection; and (iv) be postmarked by January 9, 2023. All objections or other correspondence must state the name and number of the case, which is *Maria Del Consuelo Martinez v. K&S Food Management, Inc.*, Los Angeles County Superior Court, Case No. 19STCV26488.

You may also object orally by appearing at the Final Approval Hearing scheduled for March 1, 2023, at 10:30 a.m., in Department 12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. If you hire an attorney to represent you in your objection, you must pay that attorney at your own expense.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on March 1, 2023, at 10:30 a.m., in Department 12 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing**, although any Settlement Class Member is welcome to do so.

If you intend to attend the Final Approval Hearing or otherwise visit the Court, please visit the Court's website, <https://www.lacourt.org>, for information regarding Court operations during COVID-19, as well as instructions on how to appear remotely if you so desire.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Los Angeles County Courthouse, located at 312 N. Spring Street, Los Angeles, California 90012, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, K&S, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is January 9, 2023.