

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

Maynor v. Western Refining Retail, LLC

Superior Court of California, County of San Bernardino

Case No. CIV SB 2209052

To: All individuals who performed work in any non-exempt, hourly position for Western Refining Retail, LLC (“Western”) in California at any time from July 27, 2017 to February 6, 2022 (the “Class” or “Class Members”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on April 17, 2023 to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Joint Stipulation of Class and Representative Action Settlement and Release (“Settlement Agreement”).

You have been identified as a Class Member in the above lawsuit. According to Western’s records, you worked **NUMBER** weeks in a non-exempt, hourly position for Western in California between July 27, 2017 and February 6, 2022 (the “Class Period”). Based on the number of weeks you worked, you are estimated to receive approximately **\$AMOUNT** as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VI FOR MORE DETAILS)	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims (described in Sections IV and VII). You are not required to submit a claim form in order to receive a settlement payment. You will automatically receive a payment if the Court approves the settlement.
EXCLUDE YOURSELF	You may “opt out” of the Class by submitting a Request for Exclusion by March 20, 2023 (see Section VI). If you validly and timely opt-out of the Class, you will <u>not</u> receive a settlement payment from the Net Settlement Amount and will preserve the right to assert the Released Claims described in Section IV separately from the same legal claims made in this lawsuit subject to applicable statutes of limitations.
OBJECT	Write to the Court and Settlement Administrator about why you do not like the Settlement by completing and submitting an Objection by March 20, 2023 (see Section VI).

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Maynor v. Western Refining Retail, LLC*, Superior Court of California, County of San Bernardino, Case No. CIV SB 2209052. Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Western’s records show that you performed work in California for Western in a non-exempt, hourly position at some point during the Class Period. The Court ordered this Notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you performed work for Western in a non-exempt, hourly position in California at any point during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

Beginning in 2018, plaintiffs Amia Dilworth, Alex Caballero, Alejandro Caballero, Nora Major, Elizabeth Hall, Shaniece Maynor, Delmar Schmidtberger, and Riaz Ahmed (“Plaintiffs”), through their respective attorneys (“Class Counsel”), filed several class and representative action complaints against Western for alleged wage and hour violations on behalf of all current and former non-exempt, hourly employees who were employed by Western in California at any time since July 17, 2017 including this action (the “Lawsuits”). The complaints alleged that Western violated various California Labor Code sections by allegedly failing to provide proper meal and rest breaks, failing to pay wages for all hours worked, failing to timely and fully pay final wages, failing to provide accurate wage statements, failing to reimburse for business expenses, and other related claims.

Western denies these allegations, contends that it has done nothing wrong and maintains that it has complied with all laws. Western denies that it owes any wages, expenses, restitution, penalties, or other damages to its employees. Accordingly, this class Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Western, by which all liability is expressly denied.

The Court has not ruled on the merits of Plaintiffs’ claims or whether the Lawsuit is suitable for treatment as a class action, and the Court has not ruled for or against Plaintiffs as to the merits of any of their individual or class or Labor Code Private Attorneys General Act (“PAGA”) claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Western and Plaintiffs have concluded that it is in their respective best interests and the interests of the Class to settle the Lawsuit on the terms summarized in this Notice. After extensive investigation and review of information provided by Western to Class Counsel, the Settlement was reached following an arm’s length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a good option to resolve the disputed claims.

Plaintiffs and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Western, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation. Western agreed to and supports this Settlement in order to avoid the cost and business disruption associated with lengthy litigation.

If you are still employed by Western, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Western will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the attorneys?

<u>Attorneys for Class Members:</u>	<u>Attorneys for Western:</u>
David G. Spivak The Spivak Law Firm 8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Tel: (213) 725-2485 david@spivaklaw.com	William C. Martucci Shook, Hardy & Bacon LLP 1800 K Street, N.W. Suite 1000 Washington, DC 20006 Tel: (202) 783-8400 wmartucci@shb.com
Todd M. Friedman Meghan E. George Law Offices of Todd M. Friedman, P.C. 21031 Ventura Blvd., Suite 340 Woodland Hills, CA 91364 Phone: 323-306-4234 Tfriedman@toddfllaw.com Mgeorge@toddfllaw.com	Matt Light Shook, Hardy & Bacon, LLP 2049 Century Park East Suite 3000 Los Angeles, CA 90067 Tel: 424.285.8330 mlight@shb.com
Matthew J. Matern Launa Adolph Matern Law Group, PC 1230 Rosecrans Ave., Suite 200 Manhattan Beach, CA 90266 Tel: 310-531-1900 ladolph@maternlawgroup.com	
Jessica L. Campbell Aegis Law Firm, PC9811 Irvine Center Drive, Suite 100 Irvine, CA 92618 Tel: 949-379-6250 jcampbell@aegislawfirm.com	

IV. What are the terms of the Settlement?

On January 4, 2023, the Court granted preliminary approval of the Settlement. Class Members who do not opt out of the Settlement (“Participating Class Members”), pursuant to the procedures set forth in this Notice, will be mailed a settlement check, and in exchange, will be bound by the terms of the Settlement and release of certain wage and penalty claims against Defendants.

Without admitting any wrongdoing, Western has agreed to pay \$2,400,000 (the “Settlement Amount”) to fully resolve all claims in the Lawsuits, which includes payments to the Class Members, attorneys’ fees and costs, a payment to resolve all claims under PAGA (“PAGA Payment”), 75% of which will be paid to the California Labor Workforce Development Agency (“LWDA”) and 25% of which shall be paid to persons who worked for Western in California in non-exempt hourly positions from July 27, 2017 through February 6, 2022 (“PAGA Employees”), Settlement Administration Costs, and a service enhancement payment to each of the Plaintiffs.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration Solutions to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$45,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. \$50,000 of the Settlement Amount will be allocated in satisfaction of Plaintiffs’ claims on their own behalf and on behalf of all PAGA Employees to resolve claims under PAGA. Of this amount, \$37,500 will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining \$12,500 will be distributed to PAGA Employees on a pro rata basis based on their respective number of weeks worked between July 27, 2017 and February 6, 2022 regardless of whether they have requested exclusion from the Settlement.

Service Payments to Plaintiffs. Class Counsel will ask the Court to award each Plaintiff a Service Payment in the amount of \$15,000 to compensate them for their service and extra work provided on behalf of the Class Members. Plaintiffs also may receive a share of the Settlement as Class Members.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuits on behalf of the 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 Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees up to one third of the common fund Settlement Amount (\$800,000) as reasonable compensation for the work Class Counsel performed and will continue to perform in the Lawsuits through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$100,000 for the costs Class Counsel incurred in connection with the Lawsuits.

Calculation of Individual Settlement Amounts to Class Members. After deducting the amounts above, the balance will form the Net Settlement Amount for distribution to the Participating Class Members. The Net Settlement Amount will total approximately \$1,285,000. The settlement payments to the Participating Class Members will be calculated as follows: Compensable workweeks will be all weeks worked by all Class Members for Western in California during the Class Period. The dollars per compensable workweek will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per Workweek Value. The Workweek Value will be multiplied by the number of Weeks Worked by each Participating Class Member during the Class Period to determine the distribution for each Participating Class Member, prior to legal deductions. If any Class Member opts out of the Settlement, his/her Individual Settlement Amount will be distributed to the Participating Class Members.

In addition, all PAGA Employees shall receive a pro rata share of the portion of the PAGA Payment allocated to PAGA Employees based on their respective number of Weeks Worked during the time period from July 27, 2017 through February 6, 2022.

For each Class Member, the Weeks Worked for Western during the time period from July 27, 2017 through February 6, 2022 will be calculated from Western's records. The number of weeks you worked in a non-exempt position in California during the Class Period, according to Western's records, and your estimated settlement payment are listed on the first page of this Notice. If you disagree with the number of weeks stated in this Notice, you may submit to the Settlement Administrator on or before March 20, 2023 documentation establishing the number of weeks you claim to have worked in a non-exempt position for Western in California between July 17, 2017, to February 6, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Class Member and discuss in good faith how many workweeks should be credited to the Class Member. If the Parties are unable to agree, the Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members and PAGA Employees. Participating Class Members and PAGA Employees will have 180 days from issuance to cash the check. If any Participating Class Member's or PAGA Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office Unclaimed Property Fund in the name of the Class Member.

Allocation and Taxes. One-fourth (25%) of the settlement payments to Participating Class Members will be considered and reported as "wages" (W-2 reporting). The remaining three-fourths (75%) of the settlement payments will be distributed to Participating Class Member as penalties and other non-wage income with 1099 reporting. The Settlement Administrator shall take all usual and customary deductions from the settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. The Settlement Administrator will issue to each Participating Class Member an IRS Form W-2 and comparable state forms with respect to wage allocation and a Form 1099 with respect to the penalty and other non-wage income allocation. There will be no deduction taken from the penalty and other non-wage income distribution; however, it will be reported on IRS Form 1099 as income. Class Members are responsible for the proper income tax treatment of the settlement payments. The Settlement Administrator, Western and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the settlement payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Amounts. Accordingly, 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, the Court will enter Judgment, and the Settlement Agreement will bind all of the Participating Class Members, and will bar them from bringing certain claims against Western, as described below. Specifically, upon the Settlement becoming final (the "Effective Date"), all Participating Class Members will fully release and discharge Western and each of its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, its company-sponsored employee benefit plans, and its successors and predecessors, subsidiaries, affiliates, parents and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities ("Released Parties"), from all claims for relief, whether suspected or unsuspected, which any Participating Class Member has had, now has or may discover in the future, against the Released Parties or any of them for the Class Period that are alleged in the Lawsuits, or which could have been alleged in the Lawsuits based on the allegations, facts, matters, transactions or occurrences alleged therein, specifically including without limiting the generality thereof: all causes of action asserted in the Lawsuits for violations of, or remedies or penalties allowed under, Labor Code Sections 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 206, 210, 218.5, 218.6, 225, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2800, and 2802, including claims for unpaid overtime, minimum wages and straight time wages, failure to provide meal and/or rest breaks and/or premiums, failure to maintain records, failure to pay split shift premiums, failure to pay reporting time pay, failure to reimburse reasonable business expenses, failure to timely pay final wages, waiting time penalties, failure to provide accurate itemized wage statements, and violation of Business & Professions Code section 17200, *et seq.* premised on any claims for violations referenced above. The release of the foregoing claims extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, whether under California law, federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, California's Business and Professions Code section 17200), and includes all types of relief available for the above referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief,

declaratory relief, or liquidated damages. In addition, upon the Effective Date, all PAGA Employees will release the Released Parties from any and all claims and/or causes of action under PAGA based on the allegations, facts, matters, transactions or occurrences alleged in the Lawsuits including premised on any claims for violations referenced above. The release of the foregoing claims extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, and includes all types of relief available for the above-referenced claims, including, without limitation, penalties, attorneys' fees, and costs. These released claims and damages are hereinafter referred to as "Released Claims." The time period governing these Released Claims is from July 17, 2017, through February 6, 2022 ("Release Period").

Waiver of Labor Code Section 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for unpaid wages, untimely payment of wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Amounts constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Sections 2804 and 206.5 are not applicable to the Individual Settlement Amounts. Section 206.5 provides in pertinent part as follows:

"An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This 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 Class Members, and the entry of Judgment.

V. How do I receive a payment?

Any Class Member who wishes to receive a payment under this Settlement does not need to do anything. You will automatically be included as a Class Member and will receive a settlement payment, unless you opt out of the Class and Settlement, as explained below. You do not need to take any further action to receive a payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What are my options?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a settlement payment unless you exclude yourself from the Settlement by following the exclusion procedure set forth below. If you disagree with the number of weeks worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion from the Class Action Settlement" letter/card postmarked no later than March 20, 2023, with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MAYNOR v. WESTERN REFINING RETAIL LAWSUIT. I UNDERSTAND THAT BY ASKING TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE A SETTLEMENT PAYMENT AS A CLASS MEMBER."

Send the Request for Exclusion directly to the Settlement Administrator, P.O. Box 7208, Orange, CA 92863, **postmarked no later than March 20, 2023.** Any person who files a timely Request for Exclusion from the Class Action Settlement in compliance with these requirements: (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any payments under this Settlement, except for a portion of the PAGA penalties; and (3) will not be bound by this Settlement, or the Judgment. Class Members do not have the right to object, opt out or otherwise exclude themselves from the PAGA portion of the Settlement.

C. **Object to Settlement.** If you do not request exclusion from the Settlement, you may object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must submit a written objection stating your full name, address, telephone number, dates of employment with Western, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. If you wish to speak at the Final Approval Hearing, your written submission should include a request to be heard. Objections must be in writing and must be mailed to the Settlement Administrator, P.O. Box 7208, Orange, CA 92863, **by no later than March 20, 2023**, for your objection to be considered. You need not object to the Settlement if you only dispute the number of weeks worked.

If you object to the Settlement, you may also appear at the Final Approval Hearing scheduled for April 17, 2023, at 1:30 p.m. in Department S-17 of the San Bernardino Justice Center located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either in person or through your own attorney at this hearing. The Court will determine if you or your lawyer will have the right to speak at the hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before March 20, 2023. All objections or other correspondence must state the name and number of the case.

If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object.

VII. When is the next court hearing and what is it for?

The Court will hold a Final Approval Hearing on April 17, 2023 at 1:30 p.m. in Department S-17 of the San Bernardino Justice Center located at 247 West Third Street, San Bernardino, California 92415. The hearing will be for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's application for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs' request for service awards. This hearing may be continued or rescheduled by the Court without further notice to the Class. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

IX. Where can I get more information?

This Notice provides a summary of the Settlement. More details are in the Settlement Agreement. You can obtain a copy of the Settlement Agreement from Class Counsel or by visiting <https://www.phoenixclassaction.com/maynor-v-western-refining-retail/>. If you need additional information, you may call the Settlement Administrator at 1-(800) 523-5773.