

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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

Martin Ortiz v. Tara Materials, Inc.

Case No. 37-2021-00001473-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

TARA MATERIALS, INC. WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the San Diego County Superior Court has been reached by Tara Materials, Inc. (“Tara Materials”) and Martin Ortiz (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class Member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Tara Materials has agreed to settle a lawsuit brought on behalf of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the period from January 13, 2017 through March 15, 2022 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Tara Materials: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Tara Materials. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Tara Materials from liability for these claims.
- The Parties in the lawsuit disagree on whether Tara Materials is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you do not exclude yourself, you will receive a payment and will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Tara Materials about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion. Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys’ fees and costs.

Tara Materials denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Tara Materials contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Tara Materials further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Tara Materials. Plaintiff thinks he would have prevailed on his claims at a trial. Tara Materials does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff’s attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

Tara Materials will pay a total of One Hundred and Forty Thousand Dollars and Zero Cents (\$140,000.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$46,666.67), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$5,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$2,500.00. Any and all Employer Taxes which Tara Materials normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Tara Materials separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class Members.

2. Net Settlement Amount.

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency (“LWDA”), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Tara Materials during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not “opt out” (as defined on page 5 below) during the Settlement Period (“Workweek Point Value”).

An “Individual Settlement Payment” for each Class Member will then be determined by multiplying a Class Member’s workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

In addition, all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee (“PAGA Group Member”) during the period of January 19, 2020 to March 15, 2022 (“PAGA Period”) will be paid a pro-rata share of the \$1,250.00 allocated for the PAGA Group Members’ share of the PAGA penalties. If you are a PAGA Group Member and the Court approves the Settlement, then you will receive a payment for your pro-rata share of the PAGA settlement regardless of whether you choose to exclude yourself from the Settlement.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class Members reflecting the payments each Settlement Class Member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 20% as wages and 80% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

As of the Effective Date (as that term is defined in Section 1.19 of the Settlement Agreement), all members of the Settlement Class (excluding those who have timely submitted a valid Request for Exclusion), including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and the Named Plaintiff, release Tara Materials and each of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, shareholders, partners, members, managers, holding companies, insurers, and attorneys thereof (the “Released Parties”) from all claims asserted under any applicable laws and/or regulations relating to any and all facts and claims asserted in the Action or any other claims, with the exception of all claims under the PAGA, that could have been asserted in the Action based on the facts alleged, including without limitation claims related to minimum wages, overtime and double time wages (including, but not limited to, any claims for additional wages owed due to “rounding” or “off the clock” work); meal and rest breaks; failure to maintain accurate employment records; wage statement violations; separation pay violations; failure to reimburse business expenses; and unfair business practices arising during the Settlement Period.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on May 26, 2023, at 330 West Broadway, San Diego, California 92101, in Department C-67 of the San Diego County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff’s counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

• **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The amount of the Settlement Payment paid to each Settlement Class Member is based upon the number of workweeks you worked between January 13, 2017 through March 15, 2022.

The average potential recovery for each proposed Settlement Class Member is \$ _____.

The estimated amount of your Settlement Payment is \$ _____. The estimated number of workweeks you worked for Tara Materials during the Settlement Period is: _____. If you believe that the number of workweeks stated is incorrect, you must notify the Settlement Administrator by April 24, 2023 of the dispute and submit documentation to support such dispute. You can only dispute your number of workweeks if you do not exclude yourself from the Settlement Class. If you believe that the number of workweeks stated is correct, you do not have to do anything.

In addition, all persons who worked for Tara Materials in California as a PAGA Group Member during the PAGA Period will be paid a pro-rata share of the Weekly PAGA Amount. The estimated number of workweeks you worked for Tara Materials during the PAGA Period is: _____. Your Estimated Weekly PAGA Amount is \$ _____. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

• **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Tara Materials, subject to time limits called Statute of Limitations and other potential defenses that Tara Materials may assert, and to pursue your own claims in a separate suit.

In order to exclude yourself from the Settlement Class, you must submit a Request for Exclusion no later than April 24, 2023. A Request for Exclusion is a letter or written request to be excluded from the Settlement Class submitted by you to the Settlement Administrator, Phoenix Settlement Administrators P.O. Box 7208, Orange, CA 92863. In order to be valid, the Request for Exclusion must include the your name, address, telephone number, last four digits of the Social Security number, years of employment, and signature, and contain a statement to the effect of: “I wish to be excluded from the Settlement Class.”

Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.

• **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863 by April 24, 2023.

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

PLAINTIFF’S/CLASS COUNSEL

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CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

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

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class Action and PAGA Representative Claims” which is available for viewing online, along with other court records regarding this case, on the following website:

URL: <http://www.phoenixclassaction.com/ortiz-v-tara-materials/>

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

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the San Diego County Superior Court’s website, by going to the following webpage: <https://roa.sdcourt.ca.gov/roa/> and entering “37-2021-00001473-CU-OE-CTL” for the case number.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, Telephone: (800) 523-5773. Please refer to the *Martin Ortiz v. Tara Materials, Inc.* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS