

RIVAS V. KEMBER FLOORING, INC.
Los Angeles County Superior Court Case Number 21STCV19215

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NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you are or were a non-exempt hourly employee who works or worked for Defendant Kember Flooring, Inc. in California, a class action settlement may affect your rights.

*A court authorized this Notice in the matter of Rivas v. Kember Flooring, Inc., et al.
Los Angeles County Superior Court, Case No. 21STCV19215*

Your legal rights may be affected by this Settlement. Please read this Notice carefully.

Plaintiff Edgar Rivas (“Plaintiff”), on behalf of himself and other similarly situated employees, sued Defendant Kember Flooring, Inc. (“Defendant”) on a class basis for (i) failure to pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure to timely pay wages during employment; (vi) failure to provide complete and accurate wage statements; (vii) failure to timely pay all earned wages due at time of separation of employment; (viii) unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*; and (ix) civil penalties under Labor Code §2699 (“Action”). Defendant strongly denies any and all claims alleged in the Action and denies any and all wrongdoing and liability. The proposed Settlement is not a concession or admission by Defendant that the Action has any merit whatsoever. The Court has not ruled on the merits of Plaintiff’s claims.

The Court has preliminarily approved the Settlement in this Action and determined that there is sufficient evidence to suggest that the proposed Settlement is fair, adequate, and reasonable. If you qualify as a Class Member, you may receive money from the Settlement. A final determination will be made by the Court at a Final Approval/Settlement Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	You will be paid your Settlement Share in exchange for releasing the Released Class Claims against Defendant and Released Parties (see Section 11), subject to Court approval.
EXCLUDE YOURSELF	You will not be paid your Settlement Share, and you will retain any rights to sue for the Released Class Claims against Defendants. You will not be able to object to the Settlement. If you are a PAGA Group Member, you will receive your Individual PAGA Share regardless of whether you exclude yourself from the Settlement.
DISPUTE THE NUMBER OF WORKWEEKS OR INDIVIDUAL SETTLEMENT AMOUNT	If you dispute the listed number of workweeks that you worked as an hourly non-exempt employee of Defendant in California during the period from May 20, 2017 through April 20, 2022, you may contact the Settlement Administrator to provide additional information and resolve the dispute. You will be paid your Settlement Share, or an adjusted amount.
OBJECT	You will tell the Court why you don’t agree with the Settlement, following the procedures described more fully below in Section 13. The Court may or may not agree with your objection. However, if the Court does not agree with your objection, you may still be paid your Settlement Share in exchange for releasing the Released Class Claims against Defendant and Released Parties.
HOW MUCH CAN I GET?	The number of workweeks that you worked as a Class Member is «Total_Weeks». Your estimated Settlement Share, subject to mandatory withholdings and deductions, is «ESA_Before_Paga». You «English_1» a PAGA Group Member. «English_2» «PAGA_Amount».

1. Why Did I Get This Notice?

You are not being sued. Plaintiff sued Defendant in a class and representative action on behalf of all non-exempt hourly employees who work or worked for Defendant in California, during the period from May 20, 2017 through April 20, 2022 (“the Class Period”). You are receiving this notice because, based on Defendant’s records, you may have worked for Defendant as a non-exempt hourly employee in California during the Class Period.

You received this Notice because you have a right to know about a proposed Settlement and your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make all payments approved by the Court. This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to receive payment.

2. What Is This Action About?

Plaintiff is a former non-exempt hourly employee of Defendant who worked in California during the Class Period. On May 20, 2021, Plaintiff filed his original Class Action Complaint against Defendant. On December 20, 2021, Plaintiff filed a First Amended Complaint against Defendant adding a cause of action pursuant to the Private Attorneys General Act of 2004 (“PAGA”). The parties reached an agreement to resolve Plaintiff’s claims. The Court has preliminarily approved Plaintiff to represent the Class. However, the Court has not made any findings with respect to the merits of Plaintiff’s claims.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed Class Counsel (see Section 15). However, you may hire your own attorney at your own expense if you choose to do so.

4. What Is Defendant’s Position?

Defendant denies any wrongdoing or liability whatsoever and deny that wages, damages, or penalties are owed, or that they acted contrary to California law. Defendant believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual or legal allegations in the Action, or that the Action can proceed as a class or representative action. Defendant has agreed to settle the Action as a compromise with Plaintiff and Class Counsel.

5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. After a thorough investigation into the facts of this Action, the parties agreed to the Settlement following a mediation session with a neutral third-party mediator. The Action settled because Class Counsel and Plaintiff believe that the amount of the Settlement is fair, adequate, and reasonable in light of the strengths and weaknesses of the claims and other factors present and potential in this Action.

6. What Does the Settlement Provide?

Class Members who do not timely send a valid request for exclusion to the Settlement Administrator will receive Settlement Shares from the Net Settlement Amount. The Net Settlement Amount is the portion of the Gross Settlement Amount available for distribution to Class Members, after deductions ordered by the Court in its final approval, as discussed below.

The Gross Settlement Amount is \$1,150,000. From the Gross Settlement Amount, Class Counsel will ask the Court to award attorneys' fees in the amount of \$383,333.33, which represents 1/3 of the Gross Settlement Amount, and actual litigation costs of up to \$25,000. Class Counsel will also ask the Court to authorize a Service Payment to be paid to Plaintiff from the Gross Settlement Amount in the amount of \$10,000, to compensate him for the risks, time, and expense of his involvement in the Action. These payments are in addition to any Settlement Share that Plaintiff is otherwise entitled to as Class Members. The Settlement Administrator will also be paid for the expense of notifying the Class Members of the Settlement, processing forms and requests for exclusions, distributing all payments, and completed all tasks related to the administration of this Settlement. Settlement Administration Costs are currently estimated to be \$13,000, to be paid from the Gross Settlement Amount. Finally, Class Counsel will ask the Court to approve an allocation in the amount of \$50,000, for claims released under the California Private Attorneys General Act of 2004 ("PAGA"), with 75% of the allocation (\$37,500), to be awarded to the California Labor and Workforce Development Agency, and 25% of the allocation (\$12,500), to be awarded to all individual employed by Defendant during the PAGA Period as non-exempt hourly employees ("PAGA Group Members").

7. What Can I Get From the Settlement?

Class Members (who do not request to be excluded) will be paid from the Net Settlement Amount; one-third of each Settlement Share will be designated for alleged unpaid wages, for which an IRS Form W-2 shall be issued; two-thirds will be designated for penalties and interest, for which an IRS Form 1099 shall be issued, as appropriate. Settlement Shares from the Net Settlement Amount are subject to any applicable tax withholdings. The amount of tax withholding from your Settlement Share may or may not be sufficient to cover your applicable tax obligations to the Internal Revenue Service. Please consult your tax adviser, as needed. Neither the named parties nor any counsel in this Action make any representations as to the tax treatment of Settlement Shares provided by the Settlement.

8. How Was My Individual Payment Amount Calculated?

Based on its records, Defendant will calculate the total number of weeks worked by each Class Member ("workweeks") and the total number of workweeks worked by all Class Members during the Class Period. In addition, each Class Member who separated employment during the Class Period shall receive an additional five (5) workweeks credit in determining that Class Member's Settlement Share; provided that any such employee who both separated employment and who was subsequently rehired during the Class Period shall not receive the credit of five (5) additional workweeks. To determine each Class Member's Settlement Share, the Settlement Administrator will use the following formula:

Settlement Share = (Net Settlement Amount ÷ total workweeks of Class Members) x individual Class Members workweeks.

Each Settlement Share will be reduced by any legally mandated deductions (e.g., payroll taxes, garnishments or withholdings, or support orders, etc.).

Class Members who submit valid and timely requests for exclusion will not be entitled to receive Settlement Shares. The estimated Settlement Shares allocated to those individuals will be redistributed to other Class Members, as calculated by the Settlement Administrator to reflect proportionally increases to the payments for Class Member who do not request exclusion such that the aggregate of settlement payout to Class Members equals 100% of the Gross Settlement Amount.

If you are also a PAGA Group Member, you will receive part of the PAGA Group Amount (your "Individual PAGA Payment"). The PAGA Group Amount is the 25% share of the PAGA Payment allocated to all individuals employed by Defendant during the period from May 20, 2020 to April 20, 2022 as non-exempt hourly employees. Individual PAGA Payment will be calculated based on the number of pay periods each PAGA Group Member worked in comparison to the total number of pay periods all of the PAGA Group Members worked during the PAGA Period.

9. How Can I Get Payment?

You do not need to take any action to qualify for payment. However, if you dispute the number workweeks, you may contact the Settlement Administrator with the details of your dispute, including any supporting information or documentation, no later than May 17, 2023. If you do nothing, you will receive your Settlement Share calculated based on the workweeks as identified in this Notice and be bound by the terms of the Settlement (including the Released Class Claims described in Section 11).

10. When Would I Get My Payment?

The Court will hold the Final Approval/Settlement Fairness Hearing on August 29, 2023, at 10:00 a.m., in Department 9 of the California Superior Court for the County of Los Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012, to decide whether to grant final approval of the Settlement and enter final judgment. This hearing date is subject to continuance without further notice. If the Court grants final approval of the Settlement, your Settlement Share will be mailed approximately 90 days after entry of Final judgment, unless there are objections, appeals, or other challenges to the Settlement, the Final Judgment or otherwise.

11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you submit a timely and valid request for exclusion from the Settlement, you will remain a Class Member, and you will be bound by the terms of the Settlement, including releasing the Released Claims against Defendant and the Released Parties. It also means that all of the Court's orders will apply to you and legally bind you. If you are a PAGA Group Member, you will also release the Released PAGA Claims regardless of whether you request exclusion from the Settlement or not.

As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee's payroll taxes, Defendant and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the Class Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the First Amended Complaint, including all claims for restitution and other equitable relief, claims for unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, meal and rest period premiums, waiting time penalties, unfair business practices, and failure to provide accurate wage statements ("Released Class Claims"), and all claims for civil or statutory penalties arising out of the Participating Class Members' Released Claims. The Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims arising outside of the Class Period.

As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee's payroll taxes, Defendant and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the PAGA Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the notice to the LWDA on May 24, 2021 ("Released PAGA Claims").

"Released Parties" means Defendant, together with all of Defendant's current and former parents, subsidiaries, predecessors, successors, affiliates, and related entities, and its and their respective shareholders, officers, principals, directors, employees, trustees, agents, and benefit plans. The persons so released shall include Kember Kreative Interiors and Kember Hardwood Flooring, inc., and their officers, shareholders, principals, directors, employees, agents, trustees and benefit plans.

12. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself by completing and submitting the attached Request for Exclusion Form. The Request for Exclusion signed and must be postmarked no later than May 17, 2023, and returned to the Settlement Administrator and received by the Settlement Administrator at the address listed below.

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

If you submit a valid and timely Request for Exclusion form, you shall be barred from participating in the Settlement. You may not object and will not receive a Settlement Share. You will retain all rights you may have against Defendant.

If you opt out or exclude yourself from the Settlement, you will not receive a Settlement Share but will still receive an Individual PAGA Share if you are a PAGA Group Member.

13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

- A. You can submit a valid and timely completed Objection Form to the Settlement Administrator listed in Section 12, no later than May 17, 2023. The Objection Form must be signed by the Class Member and contain all information necessary including the specific reason including any legal grounds for the class members objection. The postmark date will be deemed the exclusive means for determining that. If you send an Objection, you do not have to come to Court to talk about it.
- B. You may appear at the Final Approval and Fairness Hearing (see section 14 below) and object orally to the terms of the Settlement.
- C. You may also appear at the Final Approval Hearing remotely through LACourtConnect. LACourtConnect is part of the Court's Here For You | Safe For You initiative and provides a convenient, safe option for appearing in court without having to come to court. The site is for use by those with an active role in a hearing: litigants, attorneys, and witnesses. The fee to appear remotely is \$15 for audio and \$23 for video. All remote appearance fees must be paid through the LACourtConnect scheduling system. Remote appearances are free for participants whose Fee Waiver Application or other order has been granted by the Court. To schedule a remote appearance using LACourtConnect, please visit the website here: <https://www.lacourt.org/lacc/>.

14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval/Settlement Fairness Hearing in Department 9 of the California Superior Court for the County of Los Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012, on August 29, 2023, at 10:00 a.m., to determine whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, Plaintiff's Service Payment, Settlement Administration Costs, and the PAGA Payment.

The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may do so at your own expense. Notice of the final judgment will be on file with the Clerk of the Court and posted on <https://www.phoenixclassaction.com/rivas-et-al-v-kember-flooring/>

15. How Do I Get Additional Information?

This Notice provides a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Class Action Settlement Agreement, which is on file with the Clerk of the Court. Additionally, the pleadings and other records in this Action may be examined at any time during regular business hours at the Office of the Clerk. If you have any questions, you may contact the Settlement Administrator or Class Counsel.

Settlement Administrator

Phoenix Settlement Administrators
P.O. Box 7208
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PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE COURT.