

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

JORGE LEYVA, individually and on behalf of all
others similarly situated,
PLAINTIFF,

v.

FRESHPOINT CENTRAL CALIFORNIA, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

DEFENDANTS.

Case No. CV-20-002633

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: ALL PERSONS WHO ARE EMPLOYED OR HAVE BEEN EMPLOYED BY FRESHPOINT CENTRAL CALIFORNIA AS NON-EXEMPT EMPLOYEES WHO WORKED OVERTIME AND EARNED NON-DISCRETIONARY INCENTIVE PAY FROM MARCH 29, 2016, THROUGH FEBRUARY 15, 2023:

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO RECEIVE PAYMENT OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

IF YOU DO NOT WISH TO RECEIVE PAYMENT UNDER THE SETTLEMENT OR PARTICIPATE IN THE SETTLEMENT, YOU MUST REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS ON OR BEFORE **MAY 3, 2023.**

Pursuant to the Order Granting Preliminary Approval of Class Action and PAGA Settlement of the Superior Court of the State of California in and for Stanislaus County entered on February 15, 2023, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the Superior Court of the State of California for the County of Stanislaus on behalf of all persons who are employed or have been employed by FreshPoint Central California, Inc. (“Defendant”) in California as non-exempt employees who worked overtime and earned non-discretionary incentive pay from March 29, 2016 through February 15, 2023 (the “Settlement Class” or “Class Members”); the Settlement Class does not include persons who submit valid Requests for Exclusion (as explained below), or who previously settled, released or received awards for claims covered by the Settlement.

The “Released Parties” in the Action include: (i) Defendant; (ii) each of Defendant’s respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, or partnership; (iii) the past, present and future members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing, including, but not limited to, temporary agencies.

You have received this notice because records indicate you worked for Defendant in California as a non-exempt employee who worked overtime and earned non-discretionary incentive pay during the Class Period (defined below). This notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

I. BACKGROUND OF THE CASE

On June 12, 2020, Plaintiff Jorge Leyva a complaint against Defendant in the Stanislaus County Superior Court on behalf of himself and other non-exempt employees who worked for Defendant in California for unpaid wages and penalties for alleged wage and hour violations of the California Labor Code, penalties for wage and hour violations under the California Private Attorneys’ General Act (“PAGA”), and claims under the California Business and Professions Code section 17200, *et seq.* The term “Action” means this putative class and representative action pending in Stanislaus County Superior Court, Case No. CV-20-002633. The class period is from September March 29, 2016 to February 15, 2023 (the “Class Period”). The “PAGA Period” will be from March 29, 2019, through **February 15, 2023**.

Plaintiff’s Complaint alleges a failure to provide accurate itemized wage statements, failure to pay overtime wages, failure to timely pay final wages, unfair competition, and a PAGA cause of action, on behalf of all persons currently and formerly employed by Defendant as non-exempt employees in California from March 29, 2016, to the present. Plaintiff’s Complaint seeks recovery of compensatory damages, penalties, interest, and attorneys’ fees and costs. Defendant denies all claims and

denies that Plaintiff and the Class Members are entitled to any recovery.

The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in extensive private settlement negotiations. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions including the complete defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation, the Parties reached a class wide and PAGA Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendant continues to deny all allegations and claims.

The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendant, which has been preliminarily approved by the Court.

If you are part of the Settlement Class, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. All members of the Settlement Class who worked any hours for Defendant in California during the PAGA Period are aggrieved employees with respect to PAGA (“PAGA Members”) and will be paid their PAGA Share and release the Released PAGA Claims regardless of whether he/she submit a timely and valid Request for Exclusion from the Settlement

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Settlement, Defendant agrees to pay a Gross Settlement Amount of \$170,000 for all claims, attorneys’ fees and costs, enhancement award, penalties, and settlement administration expenses (“Maximum Settlement Amount”). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-three and one-third percent (33 1/3%) of the Maximum Settlement Amount which equals \$56,666.67, attorneys’ costs not to exceed \$30,000, an Enhancement Award to the Class Representative not to exceed \$7,500, the fees and expenses of the settlement administrator estimated not to exceed \$9,000, and \$7,500 payable to the California Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties, and \$2,500 to PAGA Members (“Net PAGA Settlement Amount”), which will result in a “Net Settlement Amount” for distribution to all Class Members. As explained further below, the amount of each Class Member’s Settlement Award will depend on the number of weeks in which they worked as non-exempt employees who worked overtime and earned non-discretionary incentive pay during the Class Period (“workweeks”).

This notice will list for each Class Member the number of qualifying workweeks each Class Member worked during the Class Period and his/her estimated Settlement Award.

B. Settlement Formula, and Settlement Awards

Defendant will pay Settlement Awards through a Settlement Administrator, as described below, to each Class Member who has not submitted a Request for Exclusion from the Settlement. All Settlement Awards will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action, that all Settlement Awards payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as follows: twenty-five percent (25%) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue and seventy-five percent (75%) will be allocated to alleged unpaid penalties and interest for which IRS Forms 1099-MISC will issue. Individual PAGA Shares for the PAGA Members will be paid from the Net PAGA Settlement Amount as alleged penalties for which IRS Form 1099-MISC will issue.

Settlement Awards to Class Members will be based on the number of qualifying workweeks worked by individual Class Members during the Class Period. Defendant will calculate the number of qualifying workweeks by Class Members during the Class Period, and the amount to be paid to Class Members per workweek based on Defendant’s information. The amount to be paid per workweek to eligible Class Members will be confirmed by the Settlement Administrator by dividing the Net Class Settlement Amount by the total number of qualifying workweeks for all Class Members.

PAGA Shares to PAGA Members will be calculated by the Claims Administrator based on the number of workweeks worked by the PAGA Members during the PAGA Period based on information to be provided by Defendant. The workweeks will be calculated by Defendant. Partial workweeks will not be counted; however, if a PAGA Member worked only one day as a PAGA Member, such PAGA Member will be credited with having worked one workweek for purposes of the Settlement.

Receipt of the Settlement Awards and PAGA Shares will not entitle any Class Member or PAGA Member to additional compensation or benefits under any company compensation or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records

For each Class Member and PAGA Member, the amounts payable will be calculated by Defendant and confirmed by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or PAGA Member. If a Class Member or PAGA Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member or PAGA Member. The dispute will be resolved by the Settlement Administrator as described in Section E below.

D. Release of Claims

The Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiff and Defendant contains a release which releases Defendant and the Released Parties from all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201-204, 218.5, 226, 226.3, 510, 558, 1194, 1197.1, 2698 et seq., California Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040, et seq., and Business and Professions Code sections 17200, et seq., California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, overtime or double time wages, regular rate of pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, or fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action (collectively "Released Class Claims"), from March 29, 2016 through February 15, 2023 collectively "Released Class Claims"). Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

The claims to be released by the PAGA Members include all claims arising during the PAGA Period seeking civil penalties under the PAGA, that Plaintiff in his capacity as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of himself and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Action and/or the LWDA letter, including but not limited to all such claims arising under the California Labor Code (including, but not limited to, sections 201-204, 218.5, 226, 226.3, 510, 558, 1194, 1197.1, 2698 et seq., as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based the facts alleged in the Action (collectively "Released PAGA Claims").

E. Resolution of Workweek Disputes

If a Class Member or PAGA Member disputes the accuracy of Defendant's records as to the number of workweeks worked, any documentation supporting such dispute must be submitted to the Settlement Administrator. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final and binding.

F. Enhancement Award for the Class Representative

Subject to approval by the Court, the Class Representative will receive an Enhancement Award up to \$7,500. This payment will be made for his service as a Class Representative, including active participation in prosecution of the Action, as well as willingness to accept the risk of incurring Class Counsel's costs or paying Defendant's attorneys' fees and costs for an unsuccessful outcome in the Action. The Class Representative also signed a general release of all claims, which is broader than the release applicable to all other Class Members, to be eligible for the Enhancement Award.

G. Attorneys' Fees and Costs

As consideration for the Settlement and in exchange for the release by the Settlement Class, Defendant agrees to pay Class Counsel's attorneys' fees and costs to be set by the Court, up to a maximum of thirty-three and one-third percent (33 1/3%) of the Maximum Settlement Amount which equals \$56,666.67, and attorneys' costs not to exceed \$30,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator stating you have received notice of the Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement, or words to that effect (“Request for Exclusion”). Your Request for Exclusion must also state your full name, address, date of birth, and dates you were employed by Defendant as a non-exempt employee in California. The Request for Exclusion must be signed, dated, and mailed by First-Class U.S. Mail, or the equivalent, to:

Leyva v. Freshpoint Settlement
c/o ILYM GROUP, INC.
P.O. Box 2031, Tustin, CA 92781
Telephone: (888) 250-6810

The Request for Exclusion must be postmarked no later than **May 3, 2023**. If you submit a Request for Exclusion which is not postmarked by **May 3, 2023**, your Request for Exclusion will be rejected, and you will be bound by the Release and all other Settlement terms. If the Request for Exclusion is sent from within the United States, it must be sent through the United States Postal Service by First-Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Request for Exclusion. Please note you may only exclude yourself from the class action settlement and not from the PAGA Settlement.

Any person who submits a complete and timely Request for Exclusion shall, upon receipt by the Claims Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement relating to the class claims, shall not be entitled to object to the Settlement, shall not receive his or her portion of the Net Settlement Amount, shall not be deemed to have relinquished the Released Class Claims against the Released Parties, and, at his or her own expense, may pursue any claims he or she may have against the Released Parties.

B. Objection to Settlement

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before Final Approval. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you may file a written objection and a notice of intention to appear at the Final Approval hearing currently set for 8:30 a.m. on June 30, 2023, Department 21 of the Stanislaus County Superior Court. You must file the written objection and notice of intention to appear at the Final Approval Hearing with the Office of the Clerk of the Stanislaus County Superior Court, 801 10th Street, 4th Floor, Modesto, California 95354, and send copies to the Claims Administrator, and Counsel as follows:

CLASS COUNSEL

William L. Marder, Esq.
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023

Dennis S. Hyun, Esq.
HYUN LEGAL, APC
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071

DEFENDANT’S COUNSEL

Cary G. Palmer, Esq.
Evan D. Beecher, Esq.
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814

Any written objection must state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, date of birth, and dates you were employed as a non-exempt employee in California by Defendant. To be valid and effective, any objections to approval of the Settlement must be filed with the Clerk of the Court, Stanislaus County Superior Court, 801 10th Street, 4th Floor, Modesto, California 95354, and delivered to the Settlement Administrator and each of the above-listed attorneys no later than thirty (30) calendar days after the Settlement Administrator mails this Class Notice to the Class Members, or fifteen (15) calendar days after it has been re-mailed to you, whichever is later. **DO NOT TELEPHONE THE COURT.**

However, a Class Member may appear at the Final Approval Hearing, either in person or through their own counsel, and object to the Settlement Agreement and any of its terms without submitting a prior objection in the manner and by the deadline specified above. If you choose to file an objection to the terms of this Settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney at your own expense. To do so, you must file an Entry of Appearance with the Clerk of the Stanislaus County Superior Court and deliver copies to the Settlement Administrator and each of the attorneys listed above.

Such Entry of Appearance must be filed with the Court and delivered to the above attorneys no later than thirty (30) days after the Settlement Administrator mails this Class Notice to Class Members, or fifteen (15) calendar days after it has been re-mailed to you, whichever is later. You will then continue as a Settlement Class Member either *in propria persona* or with representation by your own attorney, and you will be solely responsible for the fees and costs of your own attorney. The final fairness hearing at which the Court will be asked to approve the Settlement will be at 8:30 a.m. (Pacific Time) on June 30, 2023, in Department 21, Superior Court of the State of California for the County of Stanislaus, 801 10th Street, Modesto, CA 95354, or such other later date as the Court may authorize.

You may also learn more about making a remote appearance in this matter by reviewing the webpage located at <https://www.stanislaus.courts.ca.gov/online-services/remote-telephonic-hearings>

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

Upon Final Approval being granted by the Court, each and every Class Member, who does not opt out of the Settlement, will release Defendant and the Released Parties from the Released Class Claims as described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period who worked overtime and received incentive pay, and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released the above-described Released Class Claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the Released Claims covered by this Settlement. Upon Final Approval being granted, PAGA Members will release Defendant and the Released Parties from the Released PAGA Claims regardless of whether they opted out as a Class Member. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 21 of the Superior Court of the State of California in and for the County of Stanislaus, 801 10th Street, 6th Floor, Modesto, California 95354, on June 30, 2023, at 8:30 a.m. (Pacific Time), to determine whether the Settlement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the costs of administration, and the Enhancement Award to be paid to the Class Representative. Class Counsel's application for attorneys' fees and litigation costs will be on file with the Court no later than June 7, 2023, and will be available for review after that date. Class Counsel are seeking approval of a total of not more than thirty-three and one-third percent (33 1/3%) of the Settlement for attorneys' fees, which equals \$56,666.67.67, and not more than \$30,000 for attorneys' costs.

The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing, unless you wish to object to the Settlement.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant ("Settlement Agreement") which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the Stanislaus County Superior Court, at 7801 10th Street, 4th Floor, Modesto, California 95354. You may also visit www.ilymgoup.com which will include links to the Settlement Agreement, Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available. If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel:

Dennis S. Hyun (SBN 224240)
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Telephone: (213) 488-6555

William L. Marder (SBN 170131)
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Hollister, CA 95023

Telephone: (831) 531-4214

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