

Garcia v. Barney's College, Inc., No. RG21113350
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ALAMEDA
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who worked for Defendants Barney's College, Inc., Barney's Piedmont, Inc., Barney's San Francisco, Inc., Barney's San Vicente, Inc., Barney's Solano, Inc., Barney's Brentwood, Inc., Barney's Shattuck, Incorporated, and Barney's Steiner, LLC ("Defendants") in non-exempt positions in the State of California at any time during the period from September 21, 2017 to December 1, 2022 ("Class Members").

All persons who worked for Defendants in non-exempt positions in the State of California at any time during the period from July 9, 2020 to December 1, 2022 ("PAGA Members").

On January 18, 2023, the Honorable Tara Desautels of the Alameda County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants' records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. Even if you opt-out from being a Class Member, as member of the Labor Code Private Attorneys General Act of 2004 ("PAGA") portion of the settlement, you will be mailed a check for your share of the PAGA Fund.

The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 2:30 p.m. on June 7, 2023 in Department 16 of the Alameda County Superior Court located at 1225 Fallon Street, Oakland, California 94612. You are not required to attend the hearing, but you may at your own expense.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit <https://www.phoenixclassaction.com/barneys-college/> for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never directly receive your settlement payment and further funds based on settlement payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered to the Legal Aid Society - Employment Law Center as the cy pres recipient. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

Plaintiffs Jonathan Garcia and Oscar Mendoza, on their behalf and on behalf of other current and former non-exempt employees, allege that Defendants violated California state labor laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for all necessary business expenses; (5) pay reporting time wages; (6) pay split-shift premiums; and (7) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On May 23, 2022, the parties participated in a mediation with Marc Feder, Esq., an experienced and well-respected class action mediator. With Mr. Feder's guidance, the parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Capstone Law APC and Boyamian Law, Inc. ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiffs' claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs.

Questions? Contact the Settlement Administrator toll free at 1-(800) 523-5773

Summary of The Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$575,000. This amount is inclusive of: (1) individual settlement payments from the Net Settlement Fund to all Class Members who do not opt out (“Participating Class Members”); (2) Class Representative Service Award of \$10,000, or such lower amount as approved by the Court, each, to Jonathan Garcia and Oscar Mendoza for their services on behalf of the class, and for a release of all claims arising out of their employment with Defendants; (3) up to \$191,667 in attorneys’ fees and up to \$15,000, or such lower amount as approved by the Court in litigation costs and expenses; (4) a \$20,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$15,000 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection with the PAGA, and a \$5,000 payment (“PAGA Fund”) to all PAGA Members; and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$11,500. After deducting the above payments, a total of approximately \$316,833 will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Fund”). Additionally, all PAGA Members will receive a proportional share of the \$5,000 PAGA Fund, regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. Defendants will calculate the total number of Pay Periods worked by each Participating Class Member from September 21, 2017 to December 1, 2022 (“Class Period”) and the aggregate total number of Pay Periods worked by all Participating Class Members during the Class Period. To determine each Participating Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Pay Periods, resulting in the “Pay Period Value.” Each Participating Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of Pay Periods by the Pay Period Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Pay Periods worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

Payments from PAGA Fund. Defendants will calculate the total number of Pay Periods worked by each PAGA Member from July 9, 2020 to December 1, 2022 (“PAGA Period”) and the aggregate total number of Pay Periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Pay Periods, resulting in the “PAGA Pay Period Value.” Each PAGA Member’s share of the PAGA Fund will be calculated by multiplying each individual PAGA Member’s total number of Pay Periods by the PAGA Pay Period Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

Estimated Payment. According to Defendants’ records, you worked during the Class Period in a non-exempt position for a total of _____ Pay Periods. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ _____ and your estimated payment from the PAGA Fund is approximately \$ _____.

Your Estimated Payment: Based on the above, your estimated payment from the settlement is approximately \$ _____. If you believe the Pay Period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before April 3, 2023 and must be sent to:

Settlement Administrator
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: 1 (800) 523-5773
Facsimile: (949) 209-2503

If you dispute the information stated above, Defendants’ records will control unless you are able to provide documentation that establishes otherwise.

As noted above, if you move, you must send the Settlement Administrator your new address; otherwise, you may never directly receive your settlement payment. Furthermore, funds representing settlement payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered to the Legal Aid Society - Employment Law Center as the cy pres recipient. It is your responsibility to keep a current address on file with the Settlement Administrator.

Questions? Contact the Settlement Administrator toll free at 1-(800) 523-5773

Cy Pres Distribution. What is *Cy Pres* Distribution of the Settlement Funds? When it is difficult for all Settlement Class Members to receive individual shares of the recovery or when there are unclaimed class member settlement funds, under the legal doctrine known as *cy pres* and/or California Code of Civil Procedure section 384(b), courts may approve the distribution of the settlement funds to support public or non-profit activities instead of distributing funds directly to the allegedly affected party. In this case, the recipients of any settlement funds distributed pursuant to the Settlement's *cy pres* is the non-profit entity: the Legal Aid Society - Employment Law Center.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members, PAGA Members, and the appropriate taxing authorities reflecting the payments they receive under the settlement by the Settlement Administrator. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Do Nothing; Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Released Class Claims: All claims, rights, demands, liabilities, and causes of action arising from, or related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (a) all claims for unpaid overtime; (b) all claims for meal and rest break violations; (c) all claims for unpaid minimum wages; (d) all claims for the failure to reimburse for necessary business expenses; (e) all claims for reporting time violations; (f) all claims for split-shift violations; (g) all claims for the failure to timely pay wages upon termination based on the preceding claims; (h) all claims for the failure to timely pay wages during employment based on the preceding claims; (i) all claims for wage statement violations based on the preceding claims; (j) all known and unknown claims arising under California Labor Code sections 200, 201, 202, 203, 204, 206.5, 226, 226.7, 450, 510, 512, 516, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2698-2699.5, 2802; (k) the corresponding sections of the IWC Wage Order 4 and 5; (l) the California Unfair Competition Law, Business and Professions Code section 17200 *et seq.* based on the preceding claims; and (m) the Released PAGA Claims.

Released PAGA Claims: All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged in Plaintiffs' LWDA letter during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: 1 (800) 523-5773
Facsimile: (949) 209-2503

The Request for Exclusion must be postmarked or faxed not later than April 3, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by April 3, 2023, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- **NOTE:** PAGA Members will still release the Released PAGA Claims, and will receive payments from the PAGA Fund.

Questions? Contact the Settlement Administrator toll free at 1-(800) 523-5773

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at P.O. Box 7208, Orange, CA 92863.

All written objections must be received by the administrator by not later than April 3, 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above in Option 2. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for June 7, 2023 at 2:30 p.m. in the Superior Court of the State of California, for the County of Alameda, located at 1225 Fallon Street, Oakland, California 94612 and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS' ATTORNEYS WITH INQUIRIES.