

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Juan Barco, et al. v. Kellytoy, Inc., et al., Los Angeles Superior Court Case No. 20STCV12539 and related case *Daniel Cardona v. Kellytoy Worldwide, Inc.*, Los Angeles Superior Court Case No. 20STCV21917

A Court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT THE RIGHTS OF: All current and former non-exempt employees who worked for Defendants within California at any time during the period from March 27, 2016 through November 24, 2021 (the "Settlement Class"). For purposes of this Notice, Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Kellytoy Worldwide, Inc. are collectively referred to as "Defendants." Further, the term "Plaintiffs" and/or "Class Representatives" collectively refers to Plaintiffs Juan Barco, Julio Xolalpa and Daniel Cardona.

Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in the class action lawsuits entitled *Juan Barco, et al. v. Kellytoy, Inc., et al.* (Case No. 1) and *Daniel Cardona v. Kellytoy Worldwide, Inc.* (Case No. 2). The cases were related and Case No. 1 is the lead case. Throughout this Notice of Proposed Class Action Settlement ("Class Notice"), Case No. 1 and Case No. 2 are collectively referred to as "the Lawsuit." The purpose of this Class Notice is to briefly describe the Lawsuit and to inform you of your rights and options in connection with the Lawsuit and the proposed Settlement. The proposed Settlement will resolve all claims in the Lawsuit, subject to Court approval.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Kenneth R. Freeman on November 14, 2023 at 11:00 a.m. in Department 14 of the Los Angeles Superior Court, located at 312 N. Spring St., Los Angeles, California 90012, to determine whether the Settlement is fair, adequate and reasonable. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and any final determination of these issues will be made at the final approval hearing. As a Settlement Class Member, you are eligible to receive an Individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Class Notice and the Second Revised Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be considered part of the Settlement Class and you will receive settlement benefits as explained more fully below. You will be deemed a "Participating Class Member" and you will also give up rights to pursue a separate legal action against Defendants for the release of claims asserted in the Lawsuit as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	You have the option to exclude yourself, in writing, from the Settlement. If you submit a valid Request for Exclusion, you will not receive any benefits under the Settlement and you will not be bound by the terms of the Settlement. You will be deemed a "Non-Participating Class Member"
OBJECT	To object to the Settlement, you may write to the Settlement Administrator about why you don't like the Settlement. This option is available only if you do not exclude yourself from the Settlement.

Who is affected by this proposed Settlement?

All current and former non-exempt employees who worked for Defendants within California at any time during the period from March 27, 2016 through November 24, 2021" ("Settlement Class"). According to Defendants' records, you are a member of the Settlement Class.

What is this case about?

On March 27, 2020, Plaintiffs Barco and Xolalpa filed a class action in Los Angeles Superior Court against Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly, Case No. 20STCV12539 (Case No. 1). Plaintiffs Barco and Xolalpa contend that Defendants Kellytoy (USA), Inc., Jonathan Kelly, and Hannah Kelly violated various provisions of the Labor Code by its alleged for: (1) Failure to Pay Minimum Wage (Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, et seq.); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1198 & 510, et seq.); (3) Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512(a) & 1198 et seq.); (4) Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7 & 1198 et seq.); (5) Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226); (6) Failure to Pay Wages Upon Discharge (Cal. Lab. Code §§ 201 & 202, et seq.); (7) Violation of the Private Attorneys General Act of 2004 (California Labor Code §2698, et seq.); and (8) Unfair Competition (Business and Professions Code § 17200 et seq.).

On June 5, 2020, Plaintiff Cardona filed a class action in Los Angeles Superior Court against Defendant Kellytoy Worldwide, Inc., Case No. 20STCV21917 (Case No. 2). Plaintiff Cardona contends that Defendant Kellytoy Worldwide, Inc. violated various provisions of the Labor Code by its alleged for: (1) Failure To Pay Overtime Wages; (2) Failure To Pay Minimum Wage; (3) Failure To Provide Meal Periods; (4) Failure To Provide Rest Periods; (5) Failure To Pay All Wages Upon Termination; (6) Failure To Provide Accurate Wage Statements; and (7) Unfair Competition.

As set forth above, these case were related and are referred to in this Class Notice as the Lawsuit. Further, Hannah Kelly was dismissed and is not longer part of the Lawsuit. Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiffs' claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiffs and Defendants (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiffs also believe that this Settlement is in the best interest of all Settlement Class Members. The Court has not ruled on the merits of the claims or defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Lawsuit are:

Class Counsel

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What are the Settlement terms?

Subject to final Court approval, Defendants will pay \$410,000.00 (the "Gross Settlement Fund") for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court approved Class Representative Enhancement Awards to Plaintiffs; (c) the Court approved attorneys' fees and litigation costs to Class Counsel; (d) the costs of administering the Settlement; and (e) payment to the State of California Labor and Workforce Development Agency ("LWDA") for PAGA penalties. As set forth more fully below, Defendants will receive a \$35,000.00 credit in consideration for "Pick Up Stix" payments made by them prior to the mediation of this matter on August 23, 2001. As such, Defendants will only be responsible for paying \$375,000.00 in new money (in addition to employer-side payroll taxes).

Individual Settlement Payments. After deduction from the Gross Settlement Fund for attorneys' fees and litigation costs, the Class Representative Enhancement Awards to Plaintiffs, the PAGA payment to the LWDA, and the costs of administering the Settlement, there will be a Net Settlement Fund. From this Net Settlement Fund, Individual Settlement Payment will be made to each Settlement Class Member who does not request to be excluded from the Settlement.

The Net Settlement Fund shall first be used to make True-Up Payments (see below for definition). The Net Settlement Fund shall then be divided among all Settlement Class Members on a proportional basis based upon the total number of workweeks worked by each respective Settlement Class Member during the Class Period. Your estimated Individual Settlement Payment is listed on the **INFORMATION SHEET** enclosed in this Class Notice

Your Compensable Workweeks and Estimated Individual Settlement Payment: According to Defendants' records, your Compensable Workweeks for the Class Period are <<Total Weeks>>. Based on the number of your Compensable Workweeks, **your estimated Individual Settlement Payment is <<ESA Before PAGA>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above.

Further, you were employed by Defendants as non-exempt employees in California during the period from March 27, 2019 through November 24, 2021 (the "PAGA Period"). As such, you are entitled to a PAGA payment. According to Defendants' records, your PAGA Workweeks for the PAGA Period are <<PAGA Weeks>>. Based on the number of your PAGA Workweeks, **your estimated PAGA Payment is <<PAGA Payment>>**. Please note that this is only an estimate; your actual PAGA Payment may be greater or smaller than the amount reported above. You will be paid this amount regardless of whether you request to be excluded from the Settlement.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 10% as wages, 45% as penalties, and 45% as interest. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of the Individual Settlement Payments.

All checks for Individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred twenty (120) days from the date of the checks' issuance. If an Individual Settlement Payment check remains un-cashed after one hundred twenty (120) days from issuance, the Settlement Administrator shall cancel the un-cashed check and take all necessary steps to ensure that these fund(s), including unpaid cash residue(s), or other unclaimed or abandoned fund(s), are transmitted to the State Controller's Office, Unclaimed Property Division in the name of the Settlement Class Member. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member.

Class Counsel Attorneys' Fees and Litigation Costs, Class Representative Enhancement Awards, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$136,666.00 (one-third of the Gross Settlement Fund) and reimbursement of reasonable costs incurred in the Lawsuit not to exceed \$25,000.00. In addition, Class Counsel will ask the Court to authorize the Class Representative Enhancement Award payments of \$5,000.00 each to the Class Representatives for their efforts in the prosecution of this Lawsuit. The Parties estimate the cost of administering the Settlement will not exceed \$25,000.00. A payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties.

What are True-Up Payments and how do they affect the proposed Settlement?

While this class action lawsuit was pending, Defendants separately and individually paid some Settlement Class Members an amount of money in exchange for those Settlement Class Members to release claims against Defendants. Payments made by Defendants to those Settlement Class Members totaled approximately \$35,000.00. These payments are referred to as "True-Up Payments." Accordingly, prior to distribution of the Net Settlement Fund to Settlement Class Members who have not opted out or objected, payments of \$8.57 per workweek worked during the Class Period, deducted from the GSA, shall first be made to the Settlement Class Members who did not sign a "Pick-Up Stix" release and/or accept a "Pick-Up Stix" payment from Defendants while litigation was pending ("True-Up Payments"). True-Up Payments are contemplated to assure equal treatment of all class members.

What claims are being released by the proposed Settlement?

Class Release:

Release by Participating Class Members Who Are Not Aggrieved Employees.

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendants KellyToy USA, Inc., Kellytoy Worldwide, Inc., Jonathan Kelly, Hannah Kelly, and all of their past, present, and future owners, officers, directors, agents, employees, attorneys, insurers, re-insurers, parent companies, subsidiaries, affiliated or related entities, shareholders, partners, agents, investors, representatives, and all of their respective successors and assigns (including, but not limited to, Kelly Toys Holdings, LLC, Kelly Amusement Holding, LLC, and Jazwares, LLC) (collectively “Released Parties”), from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action], including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney’s fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint (“Released Claims”). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

Release by Non-Participating Class Members Who are Aggrieved Employees.

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, and only after the settlement has been fully funded, all Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including, including any state or federal claims relating to the failure to pay wages and overtime, failure to provide meal or rest breaks, failure to provide accurate and complete wage statements, failure to keep requisite payroll records, failure to timely pay employees during employment or at termination, failure to reimburse employees for business expenses, unfair competition, waiting time penalties, interest, attorney’s fees, or any other claim not presented in the operative complaint but are based on the facts alleged in the operative complaint.

In addition to the releases made by the Settlement Class Members, and only after the settlement has been fully funded, Plaintiffs make the additional general release of all claims, known or unknown, in exchange and consideration of the Enhancement Award.

What are my options in this matter?

You have three options under this Settlement, each of which is further discussed below. You may (A) remain in the Settlement Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below. Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don’t want to be a part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you remain in the Settlement Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you remain in the Settlement Class, you will be subject to any Judgment that will be entered in the Lawsuit, including the release of claims as described above.

OPTION A. Remain in the Settlement Class. If you wish to remain in the Settlement Class and be eligible to receive an Individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Settlement Class and receiving settlement monies, you consent to the release of claims as described above.

OPTION B. Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, submit a statement of objection (“Notice of Objection Form”) to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. The Notice of Objection Form shall state: (1) your full name; (2) the dates of your employment; (3) the last four digits of the Social Security number and /or Employee ID number; (4) the basis for the objection; (5) be signed by you; and (6) be postmarked on or before September 29, 2023 and returned to the Settlement Administrator at the address listed above. A Notice of Objection Form is enclosed with this Class Notice. You can also hire an attorney at your own expense to represent you in your Objection or appear at the Settlement Fairness hearing and orally object without first providing a written objection. Any Settlement Class Member who does not timely object in the manner described above shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement. **Please note, even if you submit an objection, you will be bound by the terms of the Settlement unless the Court does not approve the Settlement.**

OPTION C. Request to Be Excluded from the Settlement. If you do not want to be part of the Settlement, you have to submit a Request for Exclusion (which is included in this Class Notice) to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion has to be signed and postmarked on or before September 29, 2023. If you do not timely submit a signed Request for Exclusion (as evidenced by the postmark), your Request for Exclusion will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of claims as described above and all other terms of the Settlement. If you timely submit a signed Request for Exclusion, you will have no further role in the Lawsuit, and you will not be entitled to any benefit as a result of the Lawsuit and Settlement, and you will not be entitled to or permitted to object to the Settlement. You will however still receive your share of PAGA penalties if you are eligible.

What is the next step in approval of the Settlement

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Enhancement Awards to Plaintiffs, the Settlement Administration Costs, and the payment to the LWDA for PAGA penalties, on November 14, 2023 at 11:00 a.m., in Department 14 of the Los Angeles Superior Court, located at 312 N. Spring St., Los Angeles, California 90012. If the Court grants final approval of the Settlement, your Individual Settlement Payment will be mailed to you. The Final Approval Hearing may be continued. In the event Final Approval is continued, notice of the new hearing date will be posted on the Settlement Administrator's website <https://www.phoenixclassaction.com/barco-v-kellytoy-usa/>. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment. If the Court grants final approval of the Settlement, notice of final judgment will be posted on the Claims Administrator's website <https://www.phoenixclassaction.com/barco-v-kellytoy-usa/> within seven (7) calendar days after entry of the Final Order and Judgment.

How can I get additional information?

This Class Notice summarizes the Lawsuit and the basic terms of the Settlement. More details regarding the Settlement and its terms are in the Revised Settlement Agreement itself. The Revised Settlement Agreement (attached as Exhibit 4 to the Supplemental Declaration of Daniel Srourian filed in support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement), and all other relating to the lawsuit are available for inspection and/or copying at Clerk's Office of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. Per recent health concerns, Settlement Class Members who wish to view documents related to this case at the Clerk's Office of the Los Angeles Superior Court must first make an appointment with the Clerk and follow all mandatory courthouse and/or courtroom rules including, but not limited to social distancing and the use of face masks and/or facial coverings. You may also access the Revised Settlement Agreement online at online at: www.lacourt.org. Additional information is also available from the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.