

NOTICE OF CLASS ACTION SETTLEMENT

ILYM ID: <<ILYMID>>

ATTN: «FirstName» «LastName»

«Address1»

«City», «State» «Zip»

PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

TO: ALL CURRENT AND FORMER NON-EXEMPT INDIVIDUALS EMPLOYED BY CAPSTONE LOGISTICS, LLC WITHIN THE STATE OF CALIFORNIA AT ANY TIME DURING THE PERIOD FROM AUGUST 1, 2019, TO APRIL 8, 2024 (“CLASS MEMBERS” OR “SETTLEMENT CLASS”).

1. Why Have I Received This Notice?

This Notice of Class Action Settlement (“Notice”) was sent to you to inform you that an Arbitrator has issued an Award giving preliminarily approval to the terms of a class action settlement in a claim filed against Capstone Logistics, LLC (“Capstone” or “Defendant”) by a former employee named Andrea Otanez Verdugo (“Plaintiff”), alleging that Defendant: (1) failed to provide required meal periods; (2) failed to provide required rest breaks; (3) failed to pay overtime wages; (4) failed to provide minimum wages; (5) failed to timely pay wages during employment; (6) failed to timely pay wages upon separation of employment; (7) failed to provide accurate itemized wage statements; (8) failed to reimburse or indemnify employees for necessary business expenditures; (9) failed to maintain records; (10) owes penalties under the California Private Attorneys General Act (“PAGA”) (citing Cal. Labor Code § 2698, *et seq.*); and (11) violated of the California Business and Professions Code §§ 17200, *et seq.* Plaintiff’s claim is brought on behalf of all current and former non-exempt individuals employed by Capstone within the State of California between August 1, 2019, and April 8, 2024 [the “Class Period”]. Capstone records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims (described in Section 8, below) for the time period from August 1, 2019, through April 8, 2024.

On April 8, 2024, the Effective Date, Arbitrator Hunter Hughes, Esq. issued an Award giving preliminarily approval of the class action settlement reached by the Plaintiff and Capstone (the “Parties”) and directed that you and the other Class Members receive this Notice. The Arbitrator also preliminarily appointed Plaintiff as the representative of the Class (“Class Representative”). The Arbitrator will hold a Final Approval Hearing concerning the proposed class settlement on January 13, 2025, at 10:00 a.m., in Sonoma, California.

2. What Is This Case About?

On March 15, 2022, Plaintiff filed a state court lawsuit against Defendant, on behalf of herself and all other individuals who have been employed by Capstone as non-exempt employees in California (the “Action”). On May 9, 2022, Capstone removed the Action to the United States District Court for the Central District of California. Plaintiff alleged in the Action that Capstone failed to provide required meal periods and rest breaks; failed to pay overtime wages; failed to provide minimum wages; failed to timely pay wages during employment; failed to timely pay wages upon separation of employment; failed to provide accurate itemized wage statements; failed to reimburse or indemnify employees for necessary business expenditures; and owes penalties under PAGA and the California Business and Professions Code §§ 17200, *et seq.*

Capstone denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action. Subsequently, the Action was re-filed in Arbitration.

3. Am I a Class Member?

You are a Class Member if you worked as a non-exempt employee for Capstone any time from August 1, 2019, through April 8, 2024. As a Class Member, you are part of the Non-Exempt Settlement Class if you are a current employee who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, to April 8, 2024. You are part of the Waiting Time Settlement Class if you are a former employee who worked for Capstone within the State of California in a non-exempt position from August 1, 2019, but were no longer employed on April 8, 2024.

You are part of the PAGA Representative Group if you are a current or former employee who worked for Capstone within the State of California in a non-exempt position any time from August 1, 2019, to April 8, 2024.

4. How Does This Class Action Settlement Work?

In this claim, Plaintiff sues on behalf of other current and former nonexempt employees who allegedly have similar claims. For purposes of this settlement, Plaintiff and these other employees are deemed to comprise a “Class” and are “Class Members.” The settlement of this lawsuit resolves the wage and hour claims of all Class Members, except for those who exclude themselves from the Class. Class Members who do not exclude themselves will be deemed “Settlement Class Members” and will be eligible to receive a payment under the settlement based on their number of Workweeks (as defined in Section 7 below) from August 1, 2019, through the April 8, 2024 [Effective Date] (“Settlement Share”).

Persons who choose to exclude themselves from the Class will not receive a Settlement Share, but they will preserve any claims they might have against Capstone that were asserted or that could have been asserted based on the allegations in the original and amended complaints in the Action.

The Arbitrator has not decided on the Action in favor of Plaintiff or Capstone or made any determination on the merits of the Action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, all parties avoid the risks and cost of a trial, and the people affected will receive compensation quickly. Plaintiff and her attorneys think the settlement is in the best interests of the Class. Capstone denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiff or the Class. Capstone is settling the Action as a compromise to avoid the expense and burden of future litigation. A hearing will be held (“Final Approval Hearing”), at which time the Arbitrator will decide these issues. See Section 14 below for more information.

5. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

STAY IN THE CLASS: If you do not request to be excluded from the Settlement Class, you will remain a member of the Settlement Class, and, if the Arbitrator grants final approval of the settlement, and a state court confirms the final approval award, you will receive a Settlement Share based on the number of weeks you worked for Capstone as a non-exempt employee within the State of California during the time period from either August 1, 2019, through April 8, 2024 (“Workweeks”). If you are a member of the Waiting Time Settlement Class, you also will receive a share of the Net Class Settlement Fund allocated to the Waiting Time Settlement Class based on the total number of Waiting Time Settlement Class Members. In exchange, you give up the right to sue Capstone for the Released Claims, which are defined in Section 9, below. To ensure you receive your Settlement Share, all you need to do is keep the Settlement Administrator informed of your current mailing address. If the Arbitrator grants final approval of the Settlement and a court confirms the award, the Administrator will mail your check to the address on file for you. You will have 180 days from the date on the check to cash the check. If you do not cash the check, the money will revert to the state, but you may still be able to claim the funds under the California unclaimed property law.

ASK TO BE EXCLUDED: If you ask to be excluded or “opt out” of the Settlement Class within 45 days of the date of this Notice (or date of remailing this Notice, if applicable), and if the Arbitrator grants final approval of the settlement, and a state court confirms the final approval award, you will not receive payment under the settlement, but you will retain any rights you might have to sue Capstone for the claims resolved through this settlement. **YOU CANNOT ASK TO BE EXCLUDED AND STILL RECEIVE A SETTLEMENT SHARE.**

OBJECT: You may object to the proposed settlement. Only Class Members who do not request to be excluded from the settlement (*i.e.*, Settlement Class Members) may object to the settlement. You will have 45 days from the date of this Notice (or date of remailing this Notice, if applicable) to object. If your objection is overruled by the Arbitrator, you will still receive a Settlement Share, and you will be bound by the terms of this settlement.

6. What Does the Settlement Provide?

Under the proposed settlement, Capstone will pay \$1,422,809.21 to fully and finally resolve all claims in the Action (the “Gross Settlement Fund”). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the “Net Class Settlement Fund”) will be the Gross Settlement Fund, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$45,000; (b) enhancement payment to Plaintiff Andrea Otanez Verdugo not to exceed \$20,000.00 for her work and efforts in prosecuting this case; (c) Class Counsel’s attorney’s fees not to exceed one-fourth of the Gross Settlement Fund; (d) reimbursement of Class Counsel’s actual litigation costs and expenses in an amount not to exceed \$25,000; (e) the PAGA Settlement Amount of \$40,000, 25% of which (i.e., \$10,000) shall be paid to the PAGA Representative Group and 75% of which (i.e., \$30,000.00) shall be paid to the Labor and Workforce Development Agency for its share of the penalties under the PAGA (“LWDA Payment”); and (f) the employer-side payroll taxes owed in connection with such Settlement Payment, and less applicable withholdings. **The attorneys’ fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to the Arbitrator’s review and approval and state court confirmation of the Arbitrator’s approval awards.**

The shares of the Net Class Settlement Fund for Class Members who exclude themselves from the Settlement Class will be distributed *pro rata* to the Class Members who did not exclude themselves from the Settlement Class (i.e., Settlement Class Members), based upon their initial allocations.

7. How Much Will My Settlement Share Be?

Each Class Member’s estimated Settlement Share is calculated as follows:

Net Class Settlement Fund

Non-Exempt Settlement Class: Seventy percent (70%) of the Net Class Settlement Fund multiplied by the ratio of (a) the number of total hours worked as a non-exempt employee in California during the Class Period by each Settlement Class Member to (b) total number non-exempt hours worked by all Settlement Class Members in California during the Class Period, according to Capstone records.

Waiting Time Settlement Class: Thirty percent (30%) of the Net Class Settlement Fund multiplied by the ratio of (a) one to (b) the total number of Waiting Time Settlement Class Members, according to Capstone records.

PAGA Settlement Amount

The Net PAGA Settlement Amount (\$10,000) shall be allocated among the PAGA Representative Group as follows: the Net PAGA Settlement Amount multiplied by the ratio of (a) the number of total weeks worked as a non-exempt employee in California during the Class Period by each member of the PAGA Representative Group to (b) total number non-exempt weeks worked by all members of the PAGA Representative Group in California during the Class Period, according to Capstone records.

Settlement Payments. If practicable, the Settlement Payments to each Class Member shall be distributed as one payment (“Individual Settlement Payment”) and shall be equal to the portion of the Net Class Settlement Fund allocated to that person, plus the portion of the Net PAGA Settlement Amount allocated to that person less any employer-side payroll taxes owed in connection with such Settlement Payment, and less applicable withholdings as described below.

Allocation of Individual Settlement Payments for Withholding. Each Individual Settlement Payment will be characterized as 50% Form 1099 income and 50% Form W-2 income, to reflect that 50% of the payment will account for penalties and interest and 50% will account for unpaid wages. In accordance with applicable tax laws, required tax withholdings and payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to recipients for their respective Individual Settlement Payments. Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

If you believe that the number of Non-Exempt Hours credited to you, as stated above, is not correct, please see Section 10 below.

8. *How Does This Settlement Affect My Rights?*

If the settlement is approved by the Arbitrator by way of an Award, and a state court confirms the Approval Award, you will release the claims resolved by the settlement. This means you will not be able to sue, continue to sue, or be part of any other lawsuit against Capstone that involves the same or similar legal claims as those resolved through this settlement. Specifically, you will be giving up or “releasing” the “Released Claims” described below:

Released Class Claims: Upon final approval of the Settlement, each member of the Settlement Class who did not submit a timely and valid Request for Exclusion shall be considered to have released forever Defendant, and each of its past, present, and future agents, employees, servants, officers, directors, business partners, clients, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations, and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, with Defendant, the “Released Parties”), from any and all claims that were asserted in the operative complaint filed in the Action or any claims that could have been asserted based on or arising out of the allegations or facts alleged, irrespective of the theory of recovery (the “Released Claims”). This release shall apply to all Released Claims arising at any point prior to the end of the Class Period. Settlement Class Members who have not submitted a timely and valid Request for Exclusion Form may hereafter discover facts in addition to or different from those they now know or believe to be true; however, upon final approval, all Settlement Class Members who have not submitted a timely and valid Request for Exclusion Form shall be barred from pursuing against any of the Released Parties and shall be deemed to have, and by operation of the final judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

Released PAGA Claims: Upon approval of the Settlement, each member of the PAGA Representative Group and the LWDA shall fully release and forever discharge the Released Parties, from any and all PAGA claims that are asserted in, arise from, or reasonably relate to the factual allegations and legal assertions made in the Action, including the operative complaint and amended PAGA notice. The PAGA Released Claims are all PAGA claims that were asserted in the complaints filed in the Action or any PAGA claims that could have been asserted based on or arising out of the allegations or facts alleged, irrespective of the theory of recovery, including all PAGA claims for civil penalties relating to, based upon, or arising out of the Released Parties’ alleged failure to pay all wages due, provide minimum wages or pay for all hours worked, failure to pay straight time, overtime, or double-time compensation, failure to properly calculate the regular rate of pay, failure to provide meal and/or rest breaks, failure to pay proper meal or rest period premiums, failure to keep accurate records, failure to provide and maintain accurate itemized wage statements, failure to keep accurate employee payroll records, failure to timely pay wages due during or at separation of employment, failure to reimburse all business-related expenses, and improper or unauthorized deductions (collectively, the “PAGA Released Claims”), against the Released Parties. Upon approval, Plaintiff, each member of the PAGA Representative Group, and the LWDA will be forever barred from pursuing against the Released Parties and shall be deemed to have, and by operation of the final judgment shall have, fully, finally, and forever settled and released any and all of the PAGA Released Claims, including any and all claims for civil penalties under PAGA based upon alleged violations of the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or that could have been alleged to have been violated in, or are reasonably related to, the Action, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of different or additional facts. This release shall apply to all PAGA Released Claims arising at any point prior to the end of the Class Period.

9. *How Do I Opt Out or Exclude Myself from This Settlement?*

To exclude yourself from the Settlement Class, you must send a completed, signed and dated Request for Exclusion from the Settlement of Class (“Opt-Out”) Form to the Settlement Administrator, postmarked no later than **December 9, 2024**, at the following address: P.O. Box 2031, Tustin, CA 92781. The Request for Exclusion Form must include your full name (and former names, if any), current address, and current telephone number, and must be signed and dated by you. All Requests for Exclusion must be postmarked by **December 9, 2024** (*Within forty-five (45) calendar days from the date of mailing of this Notice, or date of remailing this Notice, if applicable*).

If you send an Opt-Out to the Settlement Administrator which complies with the above requirements, you will not be a member of the Settlement Class, you will not participate in this settlement, and you will receive no benefit from this settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have against Capstone, and you will be free to pursue them, at your own cost, if you choose to do so.

Class Members who belong to the PAGA Representative Group are not permitted to opt out of the settlement of PAGA claims in this Action.

10. How Do I Object to The Settlement?

If you are a member of the Class who does not opt out of the Settlement Class, you may object to the Class Settlement or any aspect of the Class Settlement. You can ask the Arbitrator to deny approval of the Class Settlement by filing an objection. You cannot ask the Arbitrator to order a different settlement; the Arbitrator can only approve or reject the settlement. If the Arbitrator denies approval, no settlement payments related to the Class claims will be sent out and the lawsuit will continue as to those claims. If that is what you want to happen, you must object. Any Objection must be sent to the Arbitrator and the Settlement Administrator and must be postmarked and received by the Claims Administrator by **December 9, 2024** (*No later than 45 days after the first date of mailing of the Notice of Class Action Settlement*). All written objections and supporting papers must contain: (a) the name of this arbitration, *Andrea Otanez Verdugo v. Capstone Logistics, LLC*; (b) the full name and current address of the Class Member making the Objection; and (c) the specific reason(s) for the Objection. If you file a timely written objection, within 45 days of this Notice, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. Additionally, if you wish to be heard at the time of the Final Approval Hearing, your objection must also clearly state your intention to appear at the Final Approval Hearing. Objecting to the settlement will not remove you from the Settlement Class. A Settlement Class Member who submits an objection remains bound by the settlement. Settlement Class Members who timely submit an Objection may be subject to deposition if Plaintiff or Defendant chooses to take their deposition and receives permission from the Arbitrator to do so. To remove yourself from the Settlement Class, you must opt out of the settlement by following the instructions in Section 9, above. If you opt out of the Settlement Class, you may not object to the settlement.

11. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Settlement Class

POTTER HANDY LLP
Mark D. Potter
James M. Treglio
100 Pine Street, Suite 1250
San Francisco, California 94102

Attorneys for Capstone Logistics LLC

DUANE MORRIS LLP
Gerald L. Maatman, Jr.
Jennifer A. Riley
190 South LaSalle St., Suite 3700
Chicago, Illinois 60603

The Arbitrator has appointed the law firm of Potter Handy LLP to represent the Settlement Class. This law firm is referred to as “Class Counsel.”

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

12. How Will Class Counsel and the Class Representative Be Paid?

Class Counsel will be paid from the Gross Settlement Fund. Class Counsel will ask for an award of attorneys’ fees not to exceed one-fourth the Gross Settlement Fund and for reimbursement of actual litigation costs and expenses in an amount not to exceed \$25,000. The actual amounts awarded shall be determined by the Arbitrator.

Class Counsel will also request that the Arbitrator approve an enhancement payment to the Class Representative of up to \$20,000.00 to be paid from the Gross Settlement Fund, for her service on behalf of the Class. Class Counsel will petition the Arbitrator for an award of attorneys’ fees by motion to be filed with the Arbitrator within 14 days after the mailing of this Notice and will be available at that time at the website listed in Section 14, below.

13. Notice of Hearing on Final Approval and Objections to Class Action Settlement

You are hereby notified that a Final Approval Hearing will be held on January 13, 2025, at 10:00 a.m., to determine whether the proposed Class Settlement is fair, reasonable, and adequate, and should be finally approved by the Arbitrator. The Arbitrator may change the date and time of the Final Approval Hearing without further notice to the Class Members.

If final approval of the Class Settlement is granted by the Arbitrator, the Arbitrator will enter an award pursuant to the Settlement, which will be submitted to a state court for confirmation, and if the Arbitrator's final approval award is confirmed by a state court, all Class Members who have not requested exclusion from the Settlement Class will be deemed to have waived and released the Released Claims against the Releasees, as defined in Section 9, above.

14. How Do I Get More Information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please contact Class Counsel at (858) 375-7385.

If you have any additional questions about the settlement, you may also contact the Settlement Administrator:

Verdugo et al. v. Capstone Logistics, LLC Class Action Settlement
c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

Toll-Free Telephone Number: 1(888) 250-6810

Website: www.ILYMgroup.com/CapstoneLogistics

PLEASE DO NOT CONTACT CAPSTONE LOGISTICS, LLC OR ITS REPRESENTATIVES FOR INFORMATION ABOUT THIS SETTLEMENT.