

1 **EMPLOYMENT RIGHTS LAW GROUP, APC.**

2 Amir H. Seyedfarshi, (SBN 301656)
3 amir@employmentrightslawgroup.com
4 6380 Wilshire Blvd, Suite 1602
5 Los Angeles, California 90048
6 Telephone: (424) 777-0964

FILED

MAR 03 2023

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY  DEPUTY

5 **LAW OFFICE OF TATIANA HERNANDEZ, P.C.**

6 Tatiana Hernandez, Esq. (State Bar No. 255322)
7 tatiana@thlawpc.com
8 1180 South Beverly Drive, Suite 610
9 Los Angeles, California 90035
10 Telephone: (213) 909-4248
11 Facsimile: (310) 388-0639

12 Attorneys for Plaintiff and the Class

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF STANISLAUS**

15 MANUEL FIERROS, individually and on
16 behalf of all others similarly situated,

17 **PLAINTIFF,**

18 v.

19 Colt Builders Corp., a Utah Corporation, and
20 DOES 1 to 10, inclusive,

21 **DEFENDANT.**

CASE NO. CV-22-003178

~~PROPOSED~~ **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 1, 2023

Time: 8:30 a.m.

Dept.: 24

Judge: Hon. Sonny S. Sandhu

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of a Class Action Settlement came before this Court on
3 March 1, 2023, the Honorable Sonny S. Sandhu presiding. The Court having considered the papers
4 submitted in support of the application of the parties, HEREBY ORDERS THE FOLLOWING:

5 1. The Court grants preliminary approval of the Settlement and the Settlement Class based
6 upon the terms set forth in the Joint Stipulation of Class Action Settlement and Release (“Settlement
7 Agreement”). All terms used herein shall have the same meaning as defined in the Settlement
8 Agreement. The settlement set forth in the Settlement Agreement appears to be fair, adequate and
9 reasonable to the Class.

10 2. The Settlement, with a gross settlement amount of \$630,000, falls within the range of
11 reasonableness and appears to be presumptively valid, subject only to any objections that may be
12 raised at the final fairness hearing and final approval by this Court.

13 3. A final fairness hearing on the question of whether the proposed Settlement, attorneys’
14 fees and costs to Class Counsel, and the Class Representative’s Enhancement Award should be finally
15 approved as fair, reasonable and adequate as to the members of the Class is scheduled in Department
16 4 on the date and time set forth in the implementation schedule in Paragraph 9 below.

17 4. This Court approves, as to form and content, the Notice of Class Action Settlement (the
18 “Class Notice”), in substantially in the form attached to the Settlement Agreement as Exhibit A and
19 attached hereto as Exhibit 1, which is to be sent in English and Spanish. The Court approves the
20 procedure for Class Members to participate in, to opt out of, and to object to, the Settlement as set
21 forth in the Settlement Agreement.

22 5. The Court directs the mailing of the Class Notice by first class United States mail to
23 the Class Members in accordance with the Implementation Schedule set forth below. The Court finds
24 the dates selected for the mailing and distribution of the Class Notice, as set forth in the
25 Implementation Schedule, meet the requirements of due process and provide the best notice
26 practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled
27 thereto.

28 6. It is ordered that the Class is preliminarily certified for settlement purposes only.

1 7. The Court appoints Plaintiff Manuel Fierros as Class Representative, and Amir H.
2 Seyedfarshi of Employment Rights Law Group, APC. and Tatiana Hernandez of Law Office of
3 Tatiana Hernandez, P.C. as Class Counsel.

4 8. The Court appoints ILYM Group, Inc. as the Settlement Administrator.

5 9. The Court orders the following Implementation Schedule for further proceedings:

6		
7	a.	Deadline for Defendant to Submit Class List to Settlement Administrator
8		[Within 15 calendar days of Preliminary Order] S.A. ¶ 4.2
9	b.	Deadline for Settlement Administrator to mail Notice Packets to Class Members
10		[Within 10 calendar days after receiving the Class List] S.A. ¶ 4.4
11	c.	Deadline for Class Members to Object or Request to be Excluded from Settlement
12		[60 calendar days after the date that the Class Notice is mailed to Class Members] S.A. ¶ 1.43
13	d.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees and Costs, and Enhancement Award
14		[16 court days prior to the Final Approval and Fairness Hearing] S.A. ¶ 3.2.2
15	e.	Final Approval and Fairness Hearing
16		<u>July 18, 2022</u> at <u>8:30 a.m.</u> / <u>p.m.</u> <u>2023</u>
17		

17
18 **IT IS SO ORDERED.**

19
20 Dated: 5/2/23

20 
21 HON. SONNY S. SANDHU

EXHIBIT 1

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

***Manuel Fierros, individually and on behalf of all others similarly situated v. Colt Builders Corp.,
Case Number CV-22-003178.***

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit ("Action") against Colt Builders Corp. ("Colt Builders") for alleged wage and hour violations. The Action was filed by a former Colt Builders employee ("Plaintiff") and seeks payment of (1) back wages and penalties for a class of hourly and non-exempt employees ("Class Members") who worked for Colt Builders during the Class Period (July 14, 2018 to November 30, 2022); and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for Colt Builders during the PAGA Period (June 13, 2021 to November 30, 2022) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Colt Builders to fund Individual Class Payments, and (2) a PAGA Settlement requiring Colt Builders to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Colt Builders' records, and the Parties' current assumptions, your Individual Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA Payment is estimated to be \$____. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Colt Builders' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Colt Builders' records showing that you worked _____ shifts during the Class Period and you worked _____ pay periods during the PAGA Period. If you believe that you worked more shifts during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Colt Builders to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Colt Builders.

If you worked for Colt Builders during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Colt Builders has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Colt Builders Will Pay \$630,000.00 as the Gross Settlement Amount (Gross Settlement). Colt Builders has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Colt Builders will fund the Gross Settlement not more than 90 days after the Court's order granting the final approval of the settlement. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ 210,000.00 (33.33% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000.00 to the Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$15,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$63,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in

amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period shifts.

4. Taxes Owed on Payments to Class Members. Plaintiff and Colt Builders are asking the Court to approve an allocation of % 25 of each Individual Class Payment to taxable wages ("Wage Portion") and % 75 to interest and penalties. ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Colt Builders will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Colt Builders have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Colt Builders.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Colt Builders based on the PAGA Period facts alleged in the Action.

7. **The Proposed Settlement Will be Void if the Court Denies Final Approval.** It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Colt Builders have agreed that, in either case, the Settlement will be void: Colt Builders will not pay any money and Class Members will not release any claims against Colt Builders.
8. **Administrator.** The Court has appointed a neutral company, ILYM Group Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over shifts, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. **Participating Class Members' Release.** After the Judgment is final and Colt Builders has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Colt Builders or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from those claims alleged in the Operative Complaint and that arose during the Class Period, including claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 1194, 1194.2, 1994.2, 1198, 2698 – 2699.5, 2802, as well as IWC Wage Order No. 16 sections 11 and 12, and the California Business and Professions Code sections 17200 – 17204, based on the foregoing (the "Released Claims"), as well as any civil penalty claims predicated on the claims alleged in the Complaint under PAGA, Labor Code section 2698 et seq. Except as set forth in Section 6.3 of the Settlement Agreement, 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.

10. **Aggrieved Employees' PAGA Release.** After the Court's judgment is final, and Colt Builders has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Colt Builders, whether or not they exclude themselves from the Settlement. This means that

all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Colt Builders or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and 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.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of shifts worked by all Participating Class Members, and (b) multiplying the result by the number of Shifts worked by each individual Participating Class Member.
2. **Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments by (a) dividing \$_____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. **Shifts/Pay Period Challenges.** The number of Class Shifts you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Colt Builders's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Shifts and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Shifts' calculation of Shifts and/or Pay Periods based on Shifts' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Shifts and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Shifts' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. **Participating Class Members.** The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. **Non-Participating Class Members.** The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Manuel Fierros v. Colt Builders Corp., CV-22-003178, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by _____, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Colt Builders are asking the Court to approve. At least _____ days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website

<https://stanportal.stanct.org/search>

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is**

_____. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address,

telephone number, and approximate dates of employment for Colt Builders and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ (time) in Department 24 of the Stanislaus Court, located at 801 10th Street Modesto, CA 95354. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) personally. Please check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Colt Builders and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Stanislaus County Superior Court's website at <https://stanportal.stanct.org/search>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://stanportal.stanct.org/search>) and entering the Case Number for the Action, Case No. CV-22-003178. You can also make an appointment to personally review court

documents in the Clerk's Office at City Towers Courthouse by calling (209)530-3100.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN
INFORMATION ABOUT THE SETTLEMENT.**

Tatiana Hernandez, Esq.

tatiana@thlawpc.com

LAW OFFICE OF TATIANA HERNÁNDEZ, P.C.

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (213) 909-4248

Amir H. Seyedfarshi, Esq.

amir@employmentrightslawgroup.com

EMPLOYMENT RIGHTS LAW GROUP, APC.

6380 Wilshire Blvd., Suite 1602

Los Angeles, California 90048

Telephone: (424) 777-0964

Settlement Administrator: Name of Company,

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.