

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

Rigoberto Sarmiento, Gustavo Luevano-Vaca. v. Fresh Harvest, Inc., Fresh Foods, Inc., SMD Logistics, Inc., and Rava Ranches, Inc.

United States District Court for the Northern District of California, San Jose Division
Case No. 5:20-cv-7974-BLF

This Notice provides important information about a proposed settlement in the class action lawsuit (the “Lawsuit”) entered into by Plaintiffs Rigoberto Sarmiento and Gustavo Luevano-Vaca (“Plaintiffs”) and Defendants Fresh Harvest, Inc., Fresh Foods, Inc., SMD Logistics, Inc., and Rava Ranches, Inc. (“Defendants”) and your right to participate in or exclude yourself from the Settlement.

A. Summary of the Claims

Plaintiffs allege that Defendants owe money to their truck drivers, that is, hourly commercial drivers, excluding bus drivers, who operated over-the-road highway vehicles in excess of 26,000 pounds gross vehicle weight in California or Arizona for Defendants from November 12, 2016 to December 10, 2022 (“Settlement Class Members”). Plaintiffs allege that they and other truck drivers were not paid at the prevailing hourly wage rate that Plaintiffs contend was owed under the Federal government’s H-2A program, that Defendants failed to pay them overtime wages and premium wages for missed meal and rest breaks, and that Defendants failed to provide them with accurate paystubs. Specifically, Plaintiffs allege claims for violations of the following: (1) The Migrant and Seasonal Agricultural Workers Protection Act (“AWPA”), 29 U.S.C. §§ 1801 et seq.; (2) California minimum wages laws, Cal. Lab. Code §§ 1182.11-1182.13, 1194 and 1197; (3) California overtime laws, Cal. Lab. Code § 1194 and Wage Order 14; (4) California meal period laws, Cal. Lab. Code §§ 226.7, 512 & Wage Orders; (5) California rest break laws, Cal. Lab. Code §§ 226.2, 226.7, 1198 and Wage Orders; (6) Breach of employment contract; (7) California itemized wage statement laws, Cal. Lab. Code §§ 226, 226.2 and Wage Orders; (8) California’s Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200 et seq.; (9) Waiting time penalties for failure to pay all wages due under Cal. Labor Code § 203; and (10) the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 et seq.

Defendants deny all of the claims and allegations in the Lawsuit and maintain that they have complied with all wage and hour laws. The Court has not ruled on the merits of Plaintiffs’ claims and allegations, has not determined whether Defendants violated any laws, and has not determined whether Plaintiffs or any other Class Members are entitled to any money or other relief.

B. Why You Are Receiving This Notice

On April 14, 2023, the United States District Court for the Northern District of California, San Jose Division (the “Court”) preliminarily approved a settlement of the Lawsuit. According to Defendants’ records, you worked as a truck driver and are a Settlement Class Member. Because you are a Settlement Class Member, you have the right to participate in, object to, or exclude yourself from the Settlement. This letter explains your legal rights and options with respect to the Settlement which would pay you an estimated amount of money detailed on the final page of this Notice.

Your Legal Rights And Options Are Affected By This Settlement	
YOU ARE A SETTLEMENT CLASS MEMBER	Unless you exclude yourself by following the procedure described below, you are a Settlement Class Member and will receive the benefits conferred by the Settlement, as explained in this Notice, and you will be bound by any orders or judgment relating to the Settlement approved by the Court.
YOU MUST ARRANGE PAYMENT	If the Settlement is finally approved by the Court, you must contact the Settlement Administrator to arrange your payment. You may receive a check or bank transfer and should provide your address or bank information by contacting the Settlement Administrator at 1-888-442-8688 or WhatsApp 612-205-1767, or by email Acuerdochoferes@atticusadmin.com .
YOU CAN EXCLUDE YOURSELF	If you exclude yourself, you will not be entitled to the Settlement benefits. Among other things, this will allow you to sue the Defendants on your own regarding the claims discussed in this Notice if your claims are still valid and not expired. An exclusion request must be in writing and sent by email, fax, WhatsApp or postmarked on or before September 11, 2023.
YOU CAN OBJECT TO THE SETTLEMENT	You can write to the Court about why you do not agree with any aspect of the Settlement. You may only object if you do not exclude yourself from the Settlement. An objection must be in writing, and submitted or postmarked on or before September 11, 2023.

C. The Terms of the Settlement

Defendants are to pay an amount totaling One Million Six Hundred and Fifty-Six Thousand Seven Hundred and Twenty-Four Dollars (\$1,656,724.00) in addition to the Three Hundred Seventy-Four Thousand Two Hundred Seventy-Six Dollars (\$374,276) in prior out-of-court payments Defendants directly made to some truck drivers for a total Base Settlement of \$2,031,000. The \$2,031,000 Base Settlement Amount the Defendants will pay resolves the class claims Plaintiffs allege in the complaints filed in the Lawsuit. It is estimated that, after deducting the litigation costs (not to exceed \$75,000) and attorney's fees awarded to Class Counsel (not to exceed \$497,000, that is, 30% of the Gross Settlement Amount), any excess administration costs (estimated at \$8,000), and the service payments awarded to Plaintiffs (not to exceed \$30,000 total) approximately \$1,046,724 (the "Net Settlement Amount") will be available to pay Class Members like yourself. Each member of the Settlement Class who does not submit a timely request for exclusion from the Settlement will receive his/her pro-rata share of the Net Settlement Amount based on the amount of damages the Settlement Class Member is owed. The damage calculations are based on (1) the employer listed on the Settlement Class Member's paystub, (2) the Settlement Class Member's weeks of employment with Defendant(s), and (3) whether the Settlement Class Member worked under the terms of an H-2A visa. An estimate of your payment is attached as the final page of this Notice.

In addition, the Settlement provides that, after Court approval, prior payments Defendants made to certain Settlement Class Members while the lawsuit was on-going will be included as part of the Settlement in this lawsuit and cannot be reclaimed from Settlement Class Members by the Defendants. Any prior payment you received according to Defendants' records will be considered as part of the settlement distribution and deducted from your estimated payment. If the prior payment

you received exceeds your estimated payment, you will not receive any additional amount and you will not be required to return any amount already paid. The amount of prior payments you received from Defendants, if any, is included on your payment estimate on the final page of this Notice.

D. Your Options

You have three options: (1) participate in the Settlement; (2) object to the Settlement; or (3) exclude yourself from the Settlement.

1. Participate in the Settlement

To receive your share of settlement benefits, as estimated on the last page of this Notice, you **must** update your contact information so that your money can be sent to you. As long as you do not exclude yourself from the Settlement by submitting a written exclusion request to Atticus Administration, the Settlement Administrator, you will receive whatever settlement benefits you are entitled to following final approval of the Settlement and you will be bound by the release of claims in the Settlement, which means that you will not be able to sue the Defendants for any of the claims asserted against them in the lawsuit. **If the Court approves the Settlement at the final approval hearing, the Settlement payments to you and the other Settlement Class Members are expected to be made by the end of November 2023.** Your payment will be sent to you directly but you must provide to the Administrator your address, bank account, or preferred method for payment. If you update your address with Atticus Administration by sending a change of address request by e-mail Acuerdochoferes@atticusadmin.com, fax 1-888-326-6411, mail Sarmiento v. Fresh Harvest, c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164, WhatsApp 612-205-1767 or calling 1-888-442-8688, your payment will be mailed to the address you provide. If you are **in Mexico** or if you wish a bank transfer, **you must provide your bank information** (routing and account number for US accounts) and include the CLABE for Mexican accounts. If you do not provide updated information and reside in the U.S.A, a check will be mailed to the address this Notice was mailed to sixty-days after final approval. More information, case filings and all contact information are also available on the Settlement Website: www.truckdriversettlement.com.

2. Object to the Settlement

You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

As long as you do not exclude yourself from the Settlement, you have the right to object to the Settlement. Any objection to the proposed Settlement must be in writing. If you file a timely written objection, 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.

All written objections and supporting papers must (a) clearly identify the case name and number (Sarmiento v. Fresh Harvest, Case Number 5:20-cv-7974-BLF), (b) be submitted by regular mail, e-mail, WhatsApp or fax to the Settlement Administrator at the below address, OR to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California, or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 280 South First Street, San Jose, CA 95113;

and (c) be sent or postmarked on or before September 11, 2023. The Court will rule on your objection at the Final Class Settlement Approval Hearing discussed below.

3. Exclude Yourself from the Settlement

If you wish to exclude yourself from the Settlement, you must submit a written request for exclusion. The exclusion request must be sent by September 11, 2023 by regular mail, e-mail or fax to the Settlement Administrator at the following address:

Sarmiento v. Fresh Harvest
c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164
Email: Acuerdochoferes@atticusadmin.com
Fax: 1-888-326-6411
WhatsApp: 612-205-1767

Settlement Class Members who submit a valid and timely request for exclusion will not be entitled to recover any Settlement benefits or object to the Settlement but will retain the right to bring any claims they may have against Defendants. Any Settlement Class Member who does not exclude himself or herself from the Settlement will upon final approval of the Settlement be bound by the release of claims against Defendants and lose the right to sue Defendants for any of the claims covered by the release.

E. Release of Claims

Unless you exclude yourself from the Settlement, upon final approval of the Settlement by the Court you will be deemed to irrevocably release, acquit and forever discharge Defendants and each of their past and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, divisions, predecessors, successors, alter-egos, insurers and assigns as well as all related companies, corporations, associations and/or partnerships (defined as a company, corporation, association, and/or partnership that is, directly or indirectly, under common control with Defendants or any of their parents and/or affiliates), consultants, joint ventures, any actual or alleged joint employers, co-employers, affiliates, and all of their respective past, present and future employees, directors, officers, agents, attorneys, insurers, stockholders, fiduciaries, parents, subsidiaries, and assigns, but only with respect to those work weeks for which one of the Defendants was that Truck Driver's W-2 employer, as set forth on the Class Member Data File to be transmitted by Defendants to the Claims Administrator (collectively, "Released Parties"), from any and all claims alleged in the Lawsuit arising during the Settlement Class Period (November 12, 2016 through December 10, 2022), and all claims arising during the Settlement Class Period that were or could have been alleged in the Lawsuit based on the facts, transactions, occurrences, or claims alleged in the Lawsuit, including, but not limited to: failure to pay wages; failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, or double-time compensation; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; reimbursement for business expenses; inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; failure to timely pay wages upon discharge or quitting; claims that the Released Parties employed Settlement Class Members for longer hours than those fixed by state, federal, or local law and/or under conditions of labor prohibited by state, federal, or

local law; claims for breach of contract for failure to pay wages; violation of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 *et seq.*; failure to pay any prevailing wage rate that may be due under 20 CFR 655.100; violations of the federal H-2A or H-2B visa programs, 20 CFR 655.1 through 20 CFR 655.235; claims asserted for unfair or unlawful business practices arising out of any or all of the aforementioned claims; any claim for penalties arising out of any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs.

Separately, Truck Drivers employed in California from March 9, 2022 through December 10, 2022 fully and finally release the Released Parties from any and all claims alleged in the Lawsuit arising under California's Private Attorney General Act ("PAGA") during the PAGA Period (March 9, 2022 through December 10, 2022), and all PAGA claims arising during the PAGA Period that could have been alleged in the Action arising in connection with or related to the facts, transactions, occurrences, or claims alleged in the Action.

F. Final Class Settlement Approval Hearing

The Court has scheduled a Final Class Settlement Approval Hearing for October 26, 2023, at 9:00 a.m. in Courtroom 3, Fifth Floor of the United States District Court for the Northern District of California, San Jose Division, located at the Robert F. Peckham Federal Building and United States Courthouse, 280 South First Street, Room 2112, San Jose, CA 95113. At the Final Class Settlement Approval Hearing, the Court will decide whether to grant final approval of the Settlement. The Court will also rule on the application by Plaintiffs for an award of attorney's fees not to exceed \$497,000 (30% of the Gross Settlement Amount), costs (not to exceed \$75,000) and service payments to Plaintiffs (not to exceed \$30,000 total). You have the right to attend the Final Class Settlement Approval Hearing and, if you object to the Settlement, address the Court. You also have the right to retain an attorney, at your own expense, to speak on your behalf. You may access the court website at <https://www.cand.uscourts.gov/> or get additional court filings from the Settlement website www.truckdriversettlement.com.

G. Where to Get More Information

If you want more information about the Lawsuit or the Settlement, you can contact the attorney for the Settlement Class at the address or telephone numbers listed below or any other advisor of your choice.

DAWSON MORTON
LAW OFFICES OF SANTOS GOMEZ
1003 Freedom Boulevard
Watsonville, CA 95076
Telephone: (831) 228-1560; Cellular Number: (805) 236-1743

You can also view and obtain copies of Lawsuit related documents in the Court's file by going to the clerk's office located on the second floor of the Robert F. Peckham Federal Building and United States Courthouse, 280 South First Street, Room 2112, San Jose, CA 95113. A website with the information from the case will also be available at www.truckdriversettlement.com.

DO NOT CONTACT THE COURT WITH QUESTIONS