

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ADRIANA HERNANDEZ, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

2523 E. ANAHEIM, INC. d/b/a XS AFTERHOURS
GENTLEMEN’S CLUB, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Lead Case No. 19STCV16831
(Related to Case No. 19STCV15211)

*Assigned for All Purposes to the Hon. Ann I. Jones in
Department 11*

CLASS ACTION

CLASS NOTICE

Action Filed: May 15, 2019

**YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. PLEASE
CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.**

Notice is given that a proposed class action settlement (the “Class Settlement”) has been reached between plaintiff Adriana Hernandez (“Plaintiff”) and defendants 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen’s Club and The Palms Gentlemen’s Club (“Defendants”). The lawsuit comprises two (2) class action lawsuits; one entitled *Hernandez, et al. v. 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen’s Club* and *Hernandez, et al. v. The Palms Gentlemen’s Club* (the “Litigation” or “Actions”).

The Class Settlement will resolve all Settled Claims made against Defendants and other Released Parties, as that term is defined in the Settlement Agreement, on behalf of the Class, i.e., all individuals who: (a) worked as an independent contractor, lessee, employee or other outside entertainer providing bikini, semi-nude, and/or nude entertainment for 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen’s Club or the Palms Gentlemen’s Club in the State of California during the period between May 2, 2015 and February 24, 2021 (the “Class Period”).

A. PURPOSE OF THIS NOTICE

The Court has ordered that this Class Notice be sent to you because Defendants’ records reflect that you are a potential member of the Class. The purpose of this Notice is to: (a) provide a brief description of the Litigation; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Litigation and the Settlement.

B. DESCRIPTION OF THE LITIGATION

The Actions were filed by Plaintiffs on behalf of all individuals who provided bikini, semi-nude, and/or nude entertainment for Defendants 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen’s Club and/or the Palms Gentlemen’s Club during the Class Period. As alleged in the Actions were Plaintiffs claim that Class Members were misclassified as independent contractors and wrongfully denied wages and overtime compensation, meal and rest breaks, accurate wage statements, reimbursement of business expenses, and other rights guaranteed under the California Labor Code.

The Actions allege claims against Defendants for: (1) Failure to Provide Meal Breaks in Violation of Labor Code § 226.7; (2) Failure to Provide Rest Breaks in Violation of Labor Code § 512; (3) Failure to Pay Wages in Violation of Labor Code §§ 510 and 1194; (4) Failure to Pay All Wages Upon Separation of Employment in Violation of Labor Code § 203; (5) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code § 226; (6) Failure to Provide Reimbursement of Expenses in Violation of Labor Code § 2802; (7) Failure to Keep Accurate Payroll Records in Violation of Labor Code § 1198.5 *et seq.*; (8) Violation of Business and Professions Code § 17200, *et seq.*; (9) Failure to Maintain Workers Compensation Insurance Coverage in Violation of Labor Code § 3700 *et seq.*; and (10) Violation of Labor Code § 2698, *et seq.* Defendants deny each and all of the claims and contentions alleged by the Plaintiffs.

The Court has made no ruling on the merits of Plaintiffs’ class claims or Defendants’ defenses. The Court will decide whether to give final approval to the Class Settlement at a hearing scheduled for September 7, 2021 at 11:00 a.m., in Department 11 of the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012.

Attorneys for the Class (“Class Counsel”) in the Litigation are:

CLASS COUNSEL

Peter E. Garrell, Esq.
John M. Kennedy, Esq.
FORTIS LLP
650 Town Center Drive, Suite 1530
Costa Mesa, California 92626
Telephone: (714) 839-3800

Attorneys for the Defendants (“Defendants’ Counsel”) in the Litigation are:

**Counsel For Defendants 2523 E. Anaheim, Inc. d/b/a
XS Afterhours Gentlemen’s Club and the Palms Gentlemen’s Club**

Steven J. Shapero, Esq.
Martin M. Shapero, Esq.
SHAPERO & SHAPERO
5950 Canoga Avenue, Suite 235
Woodland Hills, California 91367-5060
Telephone: (818) 710-1200

C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. **OPTION 1: Complete a Claim Form and a Substitute IRS Form W-9 to become a Member of the Class and Participate in the Settlement.**

If you want to participate in the Class Settlement and receive a Settlement Payment you must complete a Claim Form and a Substitute IRS Form W-9 to be included in the Settlement and will receive the Settlement Payment as detailed below. If you move, make sure you contact the Settlement Administrator at the following address or phone number:

*Hernandez v. 2523 E. Anaheim, Inc.
d/b/a XS Afterhours Gentlemen's Club*
Settlement Administrator
P.O. Box 43208
Providence, RI 02940-3208
1-866-795-5072

Your payment amount will be based on the number of shifts you worked during the Class Period. The exact Settlement Payment allocated to you will not be determined until the class notice process is completed and the Court grants final approval of the Class Settlement.

IF YOU HAVE NOT RECEIVED THIS NOTICE BUT BELIEVE YOU ARE A MEMBER OF THE CLASS, PLEASE FILL OUT A CLAIM FORM AND SUBMIT IT TO THE SETTLEMENT ADMINISTRATOR.

If you choose to participate in the Class Settlement, you will be bound by all the terms set forth in the Class Settlement, including a full release of claims for the matters being settled in the Actions.

2. **OPTION 2: Opt Out of the Class and Receive Nothing Under the Class Settlement**

If you do not want to remain a member of the Class, you can request exclusion from the Class (i.e., “opt out”). You can opt out of the Class by submitting a written request to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than August 23, 2021. This Opt-Out request must be **signed** by you.

If you opt out of the Class, you will no longer be a member of the Class, you will be barred from participating in this Class Settlement, and you will receive NO Settlement Payment or other benefit from this Class Settlement. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendants, and you will be free to pursue them on an individual basis, if you choose to do so.

3. **OPTION 3: Object to the Settlement**

If you are a Class Member who does not opt out of the Class Settlement, you may object to the Class Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator, at the address set forth above. All written objections must be signed and must contain your address, telephone number and a reference to the case name and number.

All objections must be sent to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than August 23, 2021. Your written objection should clearly explain why you object to the Class Settlement and must state whether you (or someone on your behalf) intend to appear at the final fairness hearing on September 7, 2021. Your failure to timely submit your objection to the Settlement Administrator may preclude your objection from being heard at the final fairness hearing. If you object to the Class Settlement and if the Court approves the Class Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Class Settlement in the same way as a Class Member who does not object.

D. SUMMARY OF TERMS OF SETTLEMENT

The principal terms of the Class Settlement reached between Plaintiffs and Defendants are summarized below.

1. Settlement Terms

The Settlement provides that (a) Defendants 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen's Club and The Palms Gentlemen's Club will pay \$375,000 (the "Settlement Amount") to resolve all class claims asserted in the Actions, enhancement awards, and Class Counsel's attorneys' fees and costs, as described more fully below; (b) within 30 days of the date of final approval, Defendants 2523 E. Anaheim, Inc. d/b/a XS Afterhours Gentlemen's Club and The Palms Gentlemen's Club shall convert all of its independent contractor, lessee, or other outside entertainers performing bikini, nude or semi-nude entertainment at its clubs located at 2523 E. Anaheim Street, Wilmington, CA 90744 and 2540 N. Palm Drive, Signal Hill, CA 90755 to employees and (c) Defendants will stipulate to the certification of the Class for settlement purposes only, conditioned upon the Court granting final approval of the Settlement.

- Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of attorneys' fees of no more than \$124,987.50, which is approximately 33⅓% of the Settlement Amount. In addition, Class Counsel will seek reimbursement of costs of no more than \$10,000, as well as settlement administration costs of \$20,000. The attorneys' fees and costs will be paid out of the Settlement Amount.
- Class Representative Enhancement Award. Named Plaintiff will request an enhancement award of \$7,500. The enhancement award will be paid out of the Settlement Amount.
- PAGA Payment. Plaintiffs will request a payment pursuant to the Private Attorneys General Act ("PAGA") of \$15,000, of which 75% (or \$11,250) will be paid to the Labor Development Workforce Agency, and 25% (or \$3,750) will be paid to Aggrieved Employees, as defined by the Settlement Agreement. This PAGA payment will be paid out of the Settlement Amount.
- Payments To Participating Class Members. After the deductions from the total Settlement Amount, the remaining amount of approximately \$197,512.50 will remain to be distributed to Participating Class Members based on each Class Member's shifts during which the Class Member worked during the Class Period.

The individual Settlement Payments to Class Members will vary based on a number of factors, including the number of Class Members who participate. The Settlement Payment will be mailed to you within approximately 90 days of the Court's Order granting final approval of the Class Settlement. If you change your address, please notify the Settlement Administrator.

Taxes: For purposes of this settlement, 20% of your Settlement Payment will be considered wages, 80% of your Settlement Payment will be considered penalties and interest. Prior to mailing your Settlement Payment, the Settlement Administrator will calculate and deduct from your Settlement Payment an amount necessary to pay the required withholdings and taxes, including all payroll taxes. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and Form W-2. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

2. Release

The Settlement provides that each Class Member who does not opt out of the Settlement fully releases and discharges Defendants and the Released Parties (as defined in the Settlement Agreement) from any and all claims, known or unknown, contingent or accrued, against Defendants and the Released Parties that have been, or could have been, asserted against Defendants and the Released Parties in the Actions based on the facts alleged in the Actions that arose during the Class Period. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for: failure to provide meal periods; failure to provide rest breaks; failure to pay for all hours worked, including minimum wage and overtime; failure to timely pay all wages owed; failure to pay all wages due upon separation; failure to provide accurate itemized wage statements; failure to reimburse for necessary business expenses; failure to maintain required records; and failure to maintain workers compensation insurance coverage including alleged violations of Labor Code §§ 201-204, 210, 218, 218.5, 218.6, 221, 226,

226.2, 226.3, 226.7, 350, 351, 353, 354, 356, 432, 432.5, 433, 510, 511, 512, 558, 1174, 1174.5, 1175, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 2802, 2810.5, 3700; the California Code of Regulations, Title 8, section 11000 *et seq.*; the applicable California Wage Orders and California Business and Professions Code Section 17200 *et seq.*; relief under California Labor Code Section 2698 *et seq.* and the Fair Labor Standards Act. In addition, with respect to Aggrieved Employees, the Settled Claims include claims under California Labor Code sections 2698 *et seq.* that arose during the PAGA Period.

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Class Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator.

3. Conditions of The Settlement

The Class Settlement is conditioned upon the Court entering an Order at or following the final fairness hearing approving the Class Settlement as fair, reasonable, and adequate and in the best interests of the Class.

4. No Admission of Liability

Defendants do not admit any wrongdoing or liability, and specifically deny any liability or wrongdoing. The Class Settlement reflects a compromise of disputed claims and does not mean that Defendants violated any state wage requirements or is liable for any of the allegations made by Plaintiffs.

E. FINAL FAIRNESS HEARING ON PROPOSED SETTLEMENT

You are not required to attend the final fairness hearing or file an objection, although you may do both. The final fairness hearing on the fairness and adequacy of the Class Settlement, the plan of distribution, costs of administration, the enhancement awards to Plaintiffs, and Class Counsel's request for attorneys' fees and costs will be held on September 7, 2021 at 11:00 a.m., in Department 11 of the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012.

The final fairness hearing may be continued to another date without further notice. If you plan to attend the final fairness hearing, you may contact Class Counsel to confirm the date and time.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Named Plaintiff, or any other aspect of the Settlement. If the Settlement is not approved, the Actions will continue to be prepared for class certification, trial, or other judicial resolution.

F. ADDITIONAL INFORMATION

This Notice only summarizes the Actions and the Class Settlement. For more information, you may inspect the Court files in Department 11 of the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, from 8:00 a.m. to 4:00 p.m., Monday through Friday (Note: Please check in advance with the court clerk at 213-310-7000 if any COVID-19 closings are impacting hours or if an appointment is needed), or you can view the case records online at the Court's website: www.lacourt.org (go to online services, case access, enter Case No. 19STCV16831). Any questions regarding this Class Notice or the Actions may be directed to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above. If your address changes or is different from the address on the forms included with this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.