

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MANUEL VIGUERAS and GENNY VASQUEZ, on
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

RED ROBIN INTERNATIONAL, INC., WHICH
WILL DO BUSINESS AS RED ROBIN BURGER
SPIRITS EMPORIUMS, a Nevada corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 8:17-cv-01422-JVS (DFMx)

**NOTICE OF PROPOSED CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

To: All persons who were employed by Red Robin International, Inc. as non-exempt, hourly employees at Red Robin’s restaurants in California from July 14, 2013 to October 23, 2018 (the “Class Period”) and who were not excluded as part of Defendant’s motion to decertify the class based upon pre-dispute arbitration agreements signed before July 14, 2017 (collectively, the “Class Members”); and

All persons who were employed by Red Robin International, Inc. as non-exempt, hourly employees at Red Robin’s restaurants in California from September 21, 2016 to July 15, 2020 (the “PAGA Period”) (collectively, the “PAGA Group Members”)

**PLEASE READ THIS NOTICE CAREFULLY: IT MAY AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO COMPENSATION FROM THIS SETTLEMENT.**

*A court approved this notice. This is not an advertisement.
You are not being sued.*

I. INTRODUCTION

You received this Notice because Red Robin International, Inc.’s (“Red Robin”) records show that you may be a Class Member and/or PAGA Group Member.

You received this Notice to make you aware that a proposed class and representative action settlement of the civil action pending in the United States District Court of the Central District of California (the “Court”), titled MANUEL VIGUERAS v. RED ROBIN BURGER SPIRITS EMPORIUM, et al., Case No. 8:17-cv-01422-JVS (DFMx) (“Vigueras I”) has been reached by the parties and has been granted preliminary approval by the Court. This Settlement also includes the related civil action pending in the Superior Court of California for the County of Orange, titled MANUEL VIGUERAS, et al. v. RED ROBIN BURGER SPIRITS EMPORIUMS, et al., Case No. 30-2017-00945592-CU-OE-CXC (“Vigueras II”) (collectively referred to as the “Actions”).

As a Class Member and/or PAGA Group Member, you are entitled to compensation under the Settlement. The Settlement will affect your legal rights. The purpose of this Notice is to: (1) describe the Actions; (2) inform you of the terms of the Settlement; and (3) inform you of your options in connection with the Settlement. Red Robin will not fire, punish, retaliate, or otherwise discriminate against you because you choose to participate or not participate in this Settlement, or because you object to the Settlement.

II. SUMMARY OF THE ACTIONS

Plaintiffs Manuel Viguera and Genny Vasquez (“Plaintiffs”) allege that, during the applicable time period, Red Robin failed to pay all wages owed including overtime; failed to provide lawful meal periods; failed to authorize and permit lawful rest periods; failed to provide accurate itemized wage statements; and failed to reimburse necessary business expenses. Plaintiffs further alleged unfair competition. Plaintiffs seek to bring their claims as a class action on behalf of themselves and similarly situated persons and as a representative action on behalf of all aggrieved employees under the California Labor Code Private Attorneys General of 2004 (“PAGA”). Plaintiffs seek allegedly unpaid wages, unreimbursed expenses, statutory penalties, and civil penalties related to these claims.

By agreeing to settle, Red Robin does not admit, and expressly denies, liability on any of the factual allegations or claims in the case and that the case can or should proceed as a class and/or representative action. The Court has not ruled on the merits of Plaintiffs’ claims or Red Robin’s defenses.

The Court granted preliminary approval of the Settlement on behalf of a Class defined as:

All persons who were employed by Red Robin International, Inc. as non-exempt, hourly employees at Red Robin’s restaurants in California from July 14, 2013 to October 23, 2018 and who were not excluded as part of Defendant’s motion to decertify the class based upon pre-dispute arbitration agreements signed before July 14, 2017; and

The Court also granted approval of the parties’ PAGA Settlement on behalf of a PAGA Group defined as:

All persons who were employed by Red Robin International, Inc. as non-exempt, hourly employees at Red Robin’s restaurants in California from September 21, 2016 to July 15, 2020.

The Court also preliminarily approved Plaintiffs to serve as Class Representatives. It has also preliminarily approved the James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC as Class Counsel.

III. SUMMARY OF SETTLEMENT TERMS

Gross Settlement Amount. Red Robin has agreed to pay \$8,500,000.00 (the “Gross Settlement Amount”) to fully resolve the Actions and obtain a release of claims as described below.

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Gross Settlement Amount as follows, each of which will be subject to final Court approval:

- Settlement Administration. Payment to the Settlement Administrator of no more than \$135,000 for the expense of notifying the Class Members and PAGA Group Members of the Settlement, processing objections and opt-outs submitted by Class Members, and distributing settlement payments.
- Attorneys’ Fees and Expenses. Payment to Class Counsel of attorneys’ fees not to exceed \$2,833,050.00 as compensation for work Class Counsel performed and will continue to perform in the Actions through finalization of the Settlement, and for costs not to exceed \$375,000.00 to reimburse Class Counsel for litigation costs actually incurred in prosecuting with the Actions.
- PAGA Penalty Payment. Payment to PAGA Group Members of \$250,000.00 to settle claims under PAGA, of which 75% (\$187,500.00) will be allocated to civil penalties and paid to the Labor & Workforce Development Agency as required under PAGA and 25% (\$62,500.00) will be paid to the PAGA Group Members on a pro rata basis.
- Class Representative Enhancement Payments to Plaintiffs. Class Representative Enhancement Payments not to exceed \$37,500.00 for Plaintiff Manuel Viguera and not to exceed \$17,500.00 for Plaintiff Genny Vasquez to compensate them for services on behalf of the Class and PAGA Group in prosecuting the Actions. This payment is in addition to any payment each Plaintiff is otherwise entitled to as a Class Member. Plaintiffs will also execute a general release of any claims against Defendant.

Net Settlement Amount. The remaining amount after these payments have been made is referred to as the “Net Settlement Amount” and is estimated to be \$4,851,950.00. The Net Settlement Amount will be paid entirely to Class Members who do not request to be excluded (“opt-out”) of the Settlement on a pro rata basis as set forth below. The Court has tentatively approved these payments to be made from the Gross Settlement Amount, and the final payment of these amounts is subject to Court approval.

Calculation of Individual Settlement Payments to Participating Class Members. Each Class Member who does not opt out of the Settlement will become a “Participating Class Member.” Participating Class Members will be eligible to receive a share of the Net Settlement Amount. The share distributed to each Participating Class Member is referred to as the “Individual Settlement Payment” and is calculated as follows:

- (1) Each Class Member will receive one (1) point for each workweek the Class Member worked at least one shift as a non-exempt restaurant employee on the payroll of Red Robin at any time during the Class Period and one (1) additional point for each shift the Class Member worked over five (5) hours, which sum is referred to as the “Total Individual Points”.
- (2) The Total Individual Points earned by all Participating Class Members will be added together, which sum is referred to as the “Total Class Points.”
- (3) The Total Individual Points of each Participating Class Member will be divided by the Total Class Points, and the result is referred to as the Participating Class Member’s “Percentage Share;” and
- (4) The Net Settlement Amount shall be multiplied by each Participating Class Member’s Percentage Share, and the result of this multiplication is the Participating Class Member’s Individual Settlement Payment.

Calculation of Individual PAGA Payments to PAGA Group Members. Each PAGA Group Member will receive a share of the PAGA Penalty Payment. The share distributed to each PAGA Group Member is referred to as the “Individual PAGA Payment” and is calculated as follows:

1. For each PAGA Group Member, the Settlement Administrator will calculate the number of workweeks the PAGA Group Member worked at least one shift as a non-exempt restaurant employee on the payroll of Red Robin at any time during the PAGA Period (“Individual Qualifying Workweeks”).
2. The value of each Individual Qualifying Workweek shall then be determined by dividing the portion of PAGA Penalty Payment to be paid to PAGA Group Members by the Total Qualifying Workweeks for all PAGA Group Members, resulting in the “Qualifying Workweek Value.” Each PAGA Group Member’s Individual PAGA Payment shall then be determined by multiplying the PAGA Group Member’s Individual Qualifying Workweeks by the Qualifying Workweek Value.

Tax Treatment. Individual Settlement Payments to Participating Class Members will be classified as 25% wages that are subject to normal payroll taxes and withholdings, and W-2 reporting. The remaining 75% will be classified as 25% unreimbursed expenses, 25% penalties, and 25% interest and subject to IRS Form 1099 reporting. Individual PAGA Payments to PAGA Group Members will be classified as 100% penalties subject to IRS Form 1099 reporting. Any and all tax obligations arising from any payments to Participating Class Members and PAGA Group Members will be the sole responsibility of the individual receiving such payment(s). Participating Class Members and PAGA Group Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Class Member Releases. Upon the Effective Date, each Participating Class Member shall fully and finally release the Released Parties from any and all Released Claims arising during the Class Period. Released Parties means Defendant and their officers, directors, employees, and agents. Released Class Claims means the claims released by each Participating Class Member, which are all applicable wage and hour claims, rights, demands, liabilities, penalties, and causes of action arising from the claims asserted in the Consolidated Amended Complaint or that could have been asserted in *Vigueras I*, *Vigueras II* and/or the Consolidated Amended Complaint filed in *Vigueras I* based on the facts and circumstances alleged therein, including claims based on California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2698 et seq., 2802, California Code of Regulations, Title 8 Section 11000 et seq., the applicable Industrial Welfare Commission (IWC) Wage Orders, Business & Professions Code section 17200-17208 or any related damages, penalties, restitution, disgorgement, interest or attorneys’ fees. The Released Claims shall include all the above claims during the Class Period.

PAGA Group Member Releases: Upon the Effective Date, each PAGA Group Members shall fully and finally release the Released Parties from any and all Released PAGA Claims arising during the PAGA Period. Released Parties means Defendant and their officers, directors, employees, and agents. Released PAGA Claims means the PAGA claims released by Plaintiffs and each PAGA Group Member, which are all PAGA claims asserted in the Consolidated Amended Complaint or that could have been asserted in *Vigueras I*, *Vigueras II*, and/or the Consolidated Amended Complaint filed in *Vigueras I* based on the facts and circumstances alleged therein, including PAGA claims, within the PAGA period, based Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2698 et seq., and 2802. The Released PAGA Claims shall exclude claims for unemployment insurance, disability, and workers' compensation, and claims outside of the PAGA Period. Further, the Released PAGA Claims in this Settlement Agreement shall not release any non-PAGA class claims or release any PAGA Group Member individual claims other than Plaintiffs' individual released claims.

IV. RIGHT TO COMPENSATION FROM THE SETTLEMENT

Class Member Individual Settlement Payments: **YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT IS \$«Class Estimated Settlement Amount»** based on «**Class Individual Points**» Total Individual Points. You will automatically receive your Individual Settlement Payment and be bound by the terms of the Settlement unless you exclude yourself from the Settlement or "opt-out". If you believe the number of Total Individual Points is incorrect, you can dispute that information by submitting to the Settlement Administrator: (i) a written, signed statement describing your challenge to the Total Individual Points identified; and (ii) providing documentation to support your challenge.

PAGA Group Member Individual PAGA Payments: **YOUR ESTIMATED INDIVIDUAL PAGA PAYMENT IS \$«PAGA Estimated Settlement Amount»** based on «PAGA_Workweeks» Individual Qualifying Workweeks. You will automatically receive your Individual PAGA Payment and be bound by the terms of the Settlement. If you believe the number of Individual Qualifying Workweeks is incorrect, you can dispute that information by submitting to the Settlement Administrator: (i) a written, signed statement describing your challenge to the Individual Qualifying Workweeks identified; and (ii) providing documentation to support your challenge.

IF YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT OR YOUR ESTIMATED INDIVIDUAL PAGA PAYMENT IS \$0.00 IT IS BECAUSE YOU ARE EITHER NOT PART OF THE CLASS OR PAGA GROUP.

Unless you inform the Settlement Administrator of an updated address, your settlement payment will automatically be mailed to the address this Class Notice was mailed to.

V. RIGHT TO OPT-OUT

If you are a Class Member and do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt-out." **If you opt-out, you will not receive your Individual Settlement Payment from the Settlement and you will not be bound by its terms.** To opt-out, you must complete and submit the enclosed Request for Exclusion Form. Your Request for Exclusion Form must be mailed to the Settlement Administrator, ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781 and be postmarked no later than **October 27, 2020**, or it will not be considered and you will be bound by the Settlement.

Even if you exclude yourself from the Settlement as a Class Member, if you are *also* a PAGA Group Member you may not exclude yourself from the Settlement of the claims under the California Private Attorneys General Act as a PAGA Group Member. As a PAGA Group Member, you may not exclude yourself from the Settlement and you will still be sent an Individual PAGA Payment representing your portion of the PAGA Penalty Payment and you will release the PAGA Released Claims.

VI. RIGHT TO OBJECT

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out and the Actions will continue.

You may object to the proposed Settlement in writing. To do so, you must complete and submit the enclosed Objection Form. Your Objection Form must be mailed to the Settlement Administrator, ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781 and be postmarked no later than **October 27, 2020**, or it will not be considered. The Settlement Administrator will submit the objection to counsel for the parties.

If you object to the Settlement, you will be deemed a Participating Class Member, and, if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Any Participating Class Member who does not timely object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

If you wish to appear and be heard at the hearing where the Court will consider whether to grant final approval of the Settlement, you may do so at your own expense, and you must state your intention to appear at the hearing in your written objection.

Any attorney who intends to represent an individual objecting to the Settlement must submit a notice of appearance with the Court and serve counsel for all parties, at the below addresses, at least ten (10) calendar days before the Final Approval hearing.

If you timely mail a notice of objection and later decide to withdraw your objection, you can do so in writing by submitting a statement of withdrawal to the Settlement Administrator prior to the Final Approval Hearing or orally at the Final Approval Hearing.

VII. HEARING ON THE SETTLEMENT

The Final Approval Hearing will be held at 1:30 p.m. on November 30, 2020 in Department 10C of the United States District Court for the Central District of California located at 411 West 4th Street, Santa Ana, CA 92701. The hearing may be continued without further notice. You are not required to attend the Final Approval Hearing, although any Participating Class Member is welcome to attend the hearing. At the hearing, the Court will determine: (i) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Class Members; (ii) whether the Class Members should be bound by the terms of the Settlement; (iii) the amount of the Class Counsel Fees and Expenses (attorneys’ fees and litigation costs and expenses to Class Counsel); and (iv) the amounts to be awarded to Plaintiffs as Class Representative Enhancement Awards. The Court will also hear all timely and properly filed objections, as well as arguments for and against the proposed Settlement.

VIII. ADDITIONAL INFORMATION

This Notice is only a summary of the Actions and the Settlement. Class Members and PAGA Group Members should contact the Settlement Administrator or Class Counsel at the addresses and telephone numbers listed below with any questions regarding the Settlement.

<u>Class Counsel</u>	<u>Settlement Administrator</u>
James R. Hawkins Christina M. Lucio Mitchell J. Murray JAMES HAWKINS APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Telephone: (949) 387-7200 Facsimile: (949) 387-6676	ILYM Group, Inc. Attn: Red Robin Settlement Administration P.O. Box 2031 Tustin, CA 92781 Telephone: (888) 250-6810 Facsimile: (888) 845-6185

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online at the website known as “Public Access to Court Electronic Records” or “PACER” at <https://www.pacer.gov>. After arriving at the website, you must register for an account by clicking on the “Register” link and following the prompts. Once you have created an account, click the “Find A Case” link, then enter 8:17-cv-01422-JVS as the case number and click “SEARCH.” You may view every document filed in the case through the “Docket” link at a minimal charge.

You may also go to the Settlement website and view the frequently answered questions and relevant court documents at <http://ilymgrouppclassaction.com/redrobinintl.com>.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.