

SAN FRANCISCO COUNTY SUPERIOR COURT

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

Liliya Gotishan v. Kyo Autism Therapy, LLC

If you were employed by Kyo Autism Therapy, LLC in California, a class action settlement may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. The San Francisco County Superior Court has authorized this notice in the matter of *Gotishan v. Kyo Autism Therapy, LLC*, Case No. CGC-21-596378 (the “**Litigation**”). This is not a solicitation from a lawyer.

- Liliya Gotishan (called the “**Plaintiff**” in this notice), was employed in California by Kyo Autism Therapy, LLC (called the “**Defendant**”). Plaintiff filed a class action lawsuit against Defendant on November 10, 2021. Plaintiff filed an amended complaint, which added a cause of action under the Private Attorneys General Act, on November 19, 2021.
- Plaintiff claims that Defendant failed to pay all minimum wages and overtime wages due to non-exempt employees, failed to provide meal periods and rest periods, failed to provide accurate wage statements, failed to timely pay all wages after the end of employment, failed to reimburse business expenses, violated the Unfair Competition Law, and is liable for civil penalties under the Private Attorneys General Act (“**PAGA**”).
- Defendant disputes Plaintiff’s claims. Defendant expressly and specifically denies violating any laws but has agreed to settle the Litigation in order to avoid costly, disruptive, and time-consuming litigation.
- For settlement purposes only, the Court has conditionally certified the Litigation to be a class action on behalf of all non-exempt employees employed by Defendant in California from November 10, 2017, through January 1, 2023, (the “**Class Period**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before **August 26, 2023**.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(1) DO NOTHING	(1) Receive part of the Settlement. <i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Defendant; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Defendant.</i>
(2) OPT-OUT	(2) Opt-out or exclude yourself from the Settlement. <i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money from the Class portion of the Settlement, and you will not give up any rights you may have, except as to the PAGA portion of the Settlement.</i>
(3) OBJECT	(3) Write to the Court about why you object to the Settlement. <i>If you object to the Settlement, you can write to the Court about why you don’t agree with the Settlement. You may also present oral objections to the Court at the Final Approval Hearing. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.</i>

THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

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You are receiving this notice because the San Francisco County Superior Court has granted preliminary approval to a class action settlement for settlement purposes only, and Defendant’s records indicate that you may be a member of the settlement Class. As such, you may be eligible for compensation from this Settlement.

As a Class Member, your interests are being represented at no expense to you by Zachary Crosner, Jamie Serb, and Chad Saunders of Crosner Legal, P.C. (“**Class Counsel**”). You may also hire your own lawyer at your own expense.

I. BACKGROUND OF THE CASE

On November 10, 2021, Plaintiff filed a complaint in San Francisco County Superior Court (“**the Court**”) on behalf of all current and former non-exempt employees employed by Defendant in the State of California (referred to as “**Class Members**”). The complaint made claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide off-duty meal periods, (4) failure to authorize and permit rest breaks, (5) failure to provide accurate wage statements, (6) waiting time penalties, (7) failure to reimburse business expenses, and (8) unfair competition unfair business practices. On November 19, 2021, Plaintiff filed the First Amended Complaint, which added a claim for civil penalties under PAGA.

The Parties thoroughly investigated the case. Plaintiff and Defendant were then able to agree on a Settlement of the case.

Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class. Defendant expressly and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Litigation. Defendant settled the Litigation in order to avoid costly, disruptive, and time-consuming litigation.

On April 12, 2023, the Court gave preliminary approval to the Settlement and conditionally certified the Settlement Class for Settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Defendant had occurred.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. What Are the Terms of the Settlement?

Defendant has agreed to pay \$1,015,000.00 to settle the Litigation (“**Gross Settlement Amount**”). The Gross Settlement Amount includes attorneys’ fees and costs, costs of Settlement Administration, PAGA penalties, and the Class Representative’s Enhancement Payment.

The “**Net Settlement Amount**” is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$338,333.33 (one-third of the Gross Settlement Amount) for Class Counsel’s attorneys’ fees; (2) Class Counsel’s actual litigation costs, not to exceed \$30,000; (3) the costs of settlement administration, not to exceed \$20,000; (4) \$50,000 for the PAGA penalties; (5) up to \$10,000 to Plaintiff for serving as a Class Representative; and (6) \$10,000 to Plaintiff in exchange for agreeing to a general release of her individual claims.

B. Who is Included in the Settlement?

Included in the Settlement are all non-exempt employees employed by Defendant in California from November 10, 2017, through January 1, 2023.

C. How Are Settlement Payments Calculated?

Any Class Member who does not submit a written request to be excluded from the Settlement will have his or her “Settlement Payment” calculated as follows:

a. All Participating Class Members: Each Participating Class Member will receive a proportionate share of the Net Settlement Amount (“NSA”) that is equal to (i) the number of weeks he or she worked for Defendant during the Class Period in California based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members during the Class Period based on the same Class data, which is then multiplied by the NSF.

b. PAGA Penalties Subclass: This Settlement covers claims brought under the California Labor Code’s Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 et seq.) (“PAGA”). “PAGA Members” are all non-exempt employees of Defendant who were employed in California from September 15, 2020, through January 1, 2023 (“PAGA Members” or “PAGA Subclass”). The Settlement designates a total of \$50,000.00 as penalties under the PAGA. From this amount, \$12,500 (25%) will be allocated to the PAGA Members. The remainder of the PAGA penalties (\$37,500) will be paid to the LWDA, as required by law. Each PAGA Member will receive a proportionate share of the PAGA Payment which equals (i) the number of weeks he or she worked for Defendant during the PAGA Period in California based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all PAGA Members during the PAGA Period based on the same Class data, which is then multiplied by \$12,500.

c. Tax Treatment of Settlement Payments: One third (33.3%) of each Settlement Payment will be designated as wages, which shall be reduced by your lawful deductions and withholdings. You will also receive a W-2 form for the wages portion. Two thirds (66.7%) of each Settlement Payment will be allocated to penalties and interest for which you will receive a 1099 form.

D. Your Settlement Calculation

Your Settlement Payment is estimated to be \$<<amount>>, based on the following dates of employment as reflected in Defendant’s records, and the calculations described above:

Start Date: <<start date>>

End Date: <<end date>>

Workweeks: <<weeks>>

If you do not opt-out of the Settlement, then you will receive a check for your Settlement Payments. Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement. After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be deposited with the California Unclaimed Property division.

E. Release of Claims Against Defendant.

Upon the Final Approval of the Settlement by the Court, Plaintiff and all members of the Settlement Class who do not submit timely requests for exclusion (described below) will release Kyo Autism Therapy, LLC, its parents, subsidiaries, affiliated entities, past or present officers, directors, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, and affiliated entities (“Released Parties”) for any and all claims arising during the Class Period for: (i) failure to pay minimum wage in violation of Labor Code sections 1194, 1197, and 1197.1; (ii) failure to pay overtime in violation of Labor Code sections 510, 1194, and 1198; (iii) failure to provide meal periods and pay meal period premiums in violation of Labor Code sections 226.7 and 512; (iv) failure to provide rest breaks and pay rest break premiums, including nonpayment and underpayment, in violation of Labor Code section 226.7; (v) failure to timely pay final wages in violation of Labor Code sections 201, 202, and 203; (vi) failure to provide accurate wage statements in violation of Labor Code section 226; (vii) failure to reimburse business expenses in violation of Labor Code sections 2800 and 2802; (viii) violation of Business and Professions Code section 17200, et seq.; (ix) violation of the Private Attorney General Act, Labor Code section 2699, et seq. on the basis of violation of the foregoing Labor Code claims as well as any claims related to unlawful background checks under Labor Code 1024.5 and 432.7, and any violations of California’s sick leave requirements found in Labor Code Sections 245 through 248.5; and (x) any other wage and hour claims, or claims for violations of the Labor Code and or the Fair Labor Standards Act, that

were asserted or could have been asserted based on the factual or legal allegations contained in the First Amended Complaint, and that arose any time during the Class Period with respect to claims against the Released Parties. The Class Members shall release the Released Parties for all such claims through January 1, 2023.

Only those Class Members who were employed during the PAGA Period, will release their claims for PAGA penalties.

These claims are referred to in this Notice as the “**Released Claims.**” For more information regarding the scope of the release, please read the Settlement Agreement available at www.kyoautismsettlement.com.

III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether you worked during the Class Period and, if so, the number of workweeks you worked during the Class Period.

Please keep your address current! To assist the Court and the parties in maintaining accurate lists of Class Members, please mail notice of any change in your address to the Settlement Administrator (address below), or call 1-888-233-2228. *Please say that you are a part of the Gotishan v. Kyo Autism Therapy Settlement Class.*

B. **Option 2: Exclude Yourself from the Settlement.**

IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement. To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than **August 26, 2023**, to:

Gotishan v. Kyo Autism Therapy Settlement
C/O Atticus Administration
PO Box 64053
St. Paul, MN 55164

Your request for exclusion must contain your full name and a statement that you wish to be excluded. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above and must be postmarked on or before **August 26, 2023**. If you request exclusion, you will not be excluded from the PAGA Subclass. If you request exclusion, you will still be entitled to receive your share of the PAGA portion of the Settlement, if any, and will still be bound by the PAGA portion of the Settlement if you are a member of the PAGA Subclass.

C. **Option 3: Object to the Settlement.**

Any Settlement Class Member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing and/or orally at the Final Approval Hearing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: (1) clearly identify the case name and number (*Gotishan v. Kyo Autism Therapy, LLC*, Case No. CGC-21-596378); and (2) be mailed to the Settlement Administrator postmarked on or before **August 26, 2023**. A Settlement Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court.

COUNSEL FOR THE PARTIES

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YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.

NO MATTER WHICH OPTION YOU CHOOSE, DEFENDANT WILL NOT RETALIATE AGAINST YOU.

IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on September 14, 2023, at 9:30 a.m., in Department 302, 400 McAllister St., San Francisco, CA 94102, Hon. Richard B. Ulmer, Jr. presiding, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting www.kyoautismsettlement.com or through the Court's website: <https://sfsuperiorcourt.org/>, and then entering the case number for this action, CGC-21-596378 in the Online Services > Case Information > Case Query section.

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense, as long as you provide the Court with timely notice of your intent to appear.

At no expense to you, Class Counsel will represent your interests as a Class Member. Or, you may hire your own lawyer at your own expense.

V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may read the detailed Settlement Agreement, which is available at www.kyoautismsettlement.com. You may also access Plaintiff's Motion for Preliminary Approval, Plaintiff's Motions for Final Approval and Attorneys' Fees (when available), and other important documents related to this case, at the above website. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel.

DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL