

NOTICE OF CLASS ACTION SETTLEMENT

**SI DESEA UNA TRADUCCIÓN AL ESPAÑOL DE ESTE AVISO, COMUNÍQUESE
CON EL ADMINISTRADOR DE LA CLASE EN ILYM GROUP, INC., P.O. BOX 2031
TUSTIN, CA 92781**

**IF YOU ARE A CURRENT OR FORMER CALIFORNIA-BASED EMPLOYEE WHO
WORKED AT ANY OF BIRCH GOLD GROUP'S LOCATIONS WITHIN THE
STATE OF CALIFORNIA AT ANY TIME DURING THE PERIOD OF
FEBRUARY 28, 2013 TO JUNE 29, 2020,
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

You do **NOT** have to do anything if you want to participate in this settlement. Checks will automatically be mailed to you consistent with the Settlement Agreement.

A court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

On June 29, 2020, the Court in this action granted preliminary approval of a proposed settlement as set forth in the Settlement Agreement and Release ("Settlement Agreement") concerning the lawsuit noted above ("the Lawsuit"). You are receiving this Notice because records show you are a California-based employee of Birch Gold Group who worked at any of Birch Gold Group's locations within the State of California at any time during the period from February 28, 2013 to preliminary approval of this Settlement ("Class Period"), and, you may be entitled to recover a portion of the funds to be made available for the proposed settlement of this class action.

You are not being sued. However, your rights may be affected by the legal proceedings in the Lawsuit. If the proposed settlement of this class action is granted final approval by the Court, you, as a Class Member, may have the right to be paid a share of the proposed settlement funds.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE**

You have received this Notice because Birch Gold Group's records indicate that you are a member of the Class. This notice is designed to inform you about **your options in this Settlement**, all of which are dependent on the Court's final approval of the Settlement.

YOUR OPTIONS

- 1. Do Nothing:** You **WILL** receive money from the Settlement and you will release certain claims you may have against Birch Gold Group;
- 2. Opt Out of the Settlement:** You may exclude yourself from the Settlement, in which case you will receive nothing from the Settlement; or
- 3. Object to the Settlement:** You may express your objection to the Settlement to the Los Angeles Superior Court as detailed below.

1. What Is This Case About?

Christopher Moore and Kyle Shaw (“Named Plaintiffs”) asserted causes of action for violation of the California Labor Code, the California Business and Professions Code and sought to recover penalties pursuant to the Private Attorney General Act. Principally, Named Plaintiffs alleged that Defendant Birch Gold Group (“Defendant”) failed to pay its employees overtime wages, failed to provide meal and rest breaks, failed to separately compensate rest breaks, failed to pay minimum wages for all hours worked, failed to pay all wages upon termination, failed to timely pay wages during employment, and failed to keep complete and accurate wage statements and payroll records. Specifically, Named Plaintiffs alleged that Defendant failed to pay its employees for their hourly work at least twice each month, failed to separately compensate rest breaks as required by California law, and required employees to pay for certain business expenses such as postage. No representations are being made concerning the value of the claims alleged in the operative complaint.

On June 29, 2020 the Court granted the Named Plaintiffs’ motion for preliminary approval of class action settlement, conditionally certifying the following class:

All current and former California-based employees, who worked at any of Defendant’s locations within the State of California at any time during the period, from February 28, 2013 to preliminary approval of this settlement (the “Class Period”).
 (“the Class”).

Based on Birch Gold Group’s records, you may be a member of the Class and you may be entitled to receive money from the proposed settlement.

The settlement of this case is dependent on the Court’s approval. If the Court approves the proposed settlement at the Final Approval Hearing scheduled for November 3, 2020 the proposed settlement will bind all members of the Class who do not previously file a valid and timely Request for Exclusion with the Claims Administrator, consistent with the Court’s order certifying the Settlement Class. If the Court does not approve the proposed settlement, the Settlement Agreement will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

2. How Can I Receive Money From The Settlement?

You do not have to do anything to receive money from this Settlement. If the Court grants final approval of the Settlement and you **do not** file a Request for Exclusion, you will receive money from this settlement. Checks will be automatically mailed to you, consistent with the Settlement, consistent with your pro rata share. Checks will be valid for 180 days from issuance; if you do not cash or deposit your check within 180 days the funds will revert to Birch Gold Group.

If you believe Birch Gold Group may not have your most up to date address, please provide your address to ILYM Group, Inc., P.O. Box 2031 Tustin, CA 92781 to ensure that you receive your share of the settlement.

3. Will I Be Subject To Discipline or Retaliation If I Participate in the Settlement?

No.

4. How Much is the Settlement?

To fully settle all claims set forth in this Lawsuit, Birch Gold Group has agreed to pay two installment payments: the first installment will total \$500,000. The second installment will include: the first \$250,000 of the proceeds from a related lawsuit alleging that Birch Gold Group’s former attorneys are liable for legal malpractice, and, one-third of all proceeds in excess of \$450,000 from the same related lawsuit (hereinafter, “Malpractice Action”). The California Labor and Workforce Development Agency will be paid \$3,750 out of the gross settlement amount, accounting for civil penalties under the Private Attorney General Act of 2004. The Claims Administrator’s fees, up to \$15,000 will also be paid out of the gross settlement amount.

The Malpractice Action is currently pending in Orange County Superior Court – Birch Gold v. Gordon & Rees, et al. In the Malpractice Action, Birch Gold brought a cause of action for legal malpractice against Gordon & Rees and (soon to be added defendant) Smith LC for legal malpractice due to their roles in creating Defendant’s employment policies at issue in the instant class action matter, including the commission agreements, pay structures and break policies. Defendant believes its damages includes the amounts at issue in the instant class action settlement. The Malpractice Action is currently pending in Orange County Superior Court under Case No. 30-2018-00989318-CU-PO-CJC.. All of the court filings in the Malpractice Action can be obtained from the Orange County Superior Court, or by contacting Birch Gold Group’s attorney listed in section 14 below, which Class Counsel permits for the purposes of discussing the Malpractice Action.

Additionally, the Court will determine the amount of attorneys’ fees to be allocated from the Settlement to Named Plaintiffs’ counsel (in an amount not to exceed 35% of the total settlement payment). Named Plaintiffs’ counsel will also request that the Court

reimburse them for actual and reasonable costs and expenses incurred in bringing, maintaining and pursuing this action (in an amount not to exceed \$25,000). Named Plaintiffs will request incentive awards as follows: up to \$10,000 for Christopher Moore and \$5,000 for Kyle Shaw.

5. How Much Money Will I Receive?

If the settlement is finally approved by the Court, and you do not exclude yourself from the settlement, you will receive your pro rata share of the settlement proceeds, based on the number of weeks you worked for Birch Gold Group during the Class Period. Your pro rata share will be reduced by any amount you received for previously executing an individual settlement purporting to release the claims alleged in this case.

For purposes of tax obligations, one fifth of the money you receive will be considered wages, two fifths of the money you receive will be considered penalties, and two fifths of the money you receive will be considered interest. Wages are subject to certain payroll taxes and will be reported to tax authorities on a W-2 form, while penalties and interest are not subject to those payroll taxes and will be reported to tax authorities on a 1099 form. You should consult a tax professional if you have any questions concerning your tax obligations.

6. When Will I Receive the Money?

If the Court grants final approval of the settlement, the Claims Administrator will pay your pro rata share of the Settlement within five (5) days of receiving each installment payment from Defendant. Defendant will be required to pay the first installment on the Effective Date of the settlement (within one week of when the court's final approval of the settlement becomes final and not subject to appeal), and will be required to pay the second installment within fifteen (15) days of receiving the corresponding proceeds from the related malpractice lawsuit against its former attorneys. The Claims Administrator will promptly distribute that money when received from Birch Gold Group.

7. Can I Object to The Settlement?

Yes. To do so, you must mail a signed, written statement of objection to the Class Administrator at the address listed below, including your full name, mailing address, telephone number, and the reason(s) for objecting to the settlement. The attorneys for Plaintiffs and Defendant will then forward your objection to the Court. You may also appear at the Final Approval Hearing, either yourself or through an attorney representing you, to communicate to the Court any objection you may have to the proposed settlement.

Your objection must be received by the Class Administrator no later than thirty-five (35) days prior to the Final Approval Hearing.

If you fail to make your objections in the manner specified above, you shall be deemed to have waived any objections and you shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement, or any aspect of the proposed settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, the incentive awards to the Named Plaintiffs, or any award of attorneys' fees or reimbursement of costs and expenses.

If the Court rejects your objection, you will still be bound by the terms of the Settlement Agreement and the Release described below.

8. What Happens If I Do Nothing?

You will receive money from this settlement and you will be bound by the Settlement Agreement and the Release described below.

9. What Rights Am I Giving Up?

Upon final approval by the Court, each member of the Class who does not submit a valid and timely Request for Exclusion with the Claims Administrator, consistent with the Court's order certifying the Settlement Class, releases Defendant, and each of its officers, directors, agents, parents, subsidiaries, affiliates, representatives, insurers, predecessors, successors and counsel (collectively referred to as the "Released Parties") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, penalties, damages, restitution, injunctive relief, or a remedy of any other type, arising during the Class Period, which are based on, arise out of, could have been made, or are related to the causes of action of the Action, including but not limited to, claims made pursuant to the California Labor Code for failure to pay minimum wage or overtime compensation, failure to provide adequate rest periods, failure to provide accurate wage statements, failure to pay wages in a timely fashion, failure to maintain records for inspection or copying, waiting time penalties, and any similar claims under federal law including, but not limited to, the Fair Labor

Standards Act, claims under California Business and Professions Code sections 17200 et seq., and claims made under the California Private Attorney General Act of 2004 (“PAGA”) codified in California Labor Code section 2698, et seq.

10. Who Are The Class Representatives?

The Court has appointed Christopher Moore and Kyle Shaw as the Class Representatives to represent you in the Lawsuit.

11. How Will The Attorneys’ Fees For The Class Be Paid?

You do not need to pay any portion of either Class Counsel’s or Birch Gold Group’s attorneys’ fees and costs. All payment for Class Counsel’s attorneys’ fees and costs will be paid consistent with the Settlement Agreement. Class Counsel has actively litigated this case since May 2017, and worked on this matter even prior to filing a lawsuit. It is customary for courts to award to class counsel attorneys’ fees to compensate counsel for their work, risk and expenses and in recognition of the benefit of a class. In this case, Class Counsel will request an award of fees in an amount not to exceed 35% of the Settlement Payment and costs in an amount not to exceed \$25,000 for their work in prosecuting the Lawsuit. If the Court approves the Settlement, those fees and costs will be paid consistent with the Settlement Agreement.

12. When and Where is the Final Approval Hearing?

The Final Approval Hearing has been scheduled for November 3, 2020 at 10:00 a.m. before the Honorable Carolyn Kuhl in Department 12 of the Los Angeles County Superior Court located at 312 N. Spring Street, Los Angeles, CA, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable and adequate to the Class; and (2) whether the proposed Final Approval Order and Judgment should be entered by the Court. The Final Approval Hearing date and time may change without further notice given to you. Please contact Class Counsel or Birch Gold Group’s counsel at the address and telephone in Section 14 of this Notice to find out if there has been a change to the date and time of the Final Approval Hearing. You may also check the court’s docket at www.lacourt.org/casesummary/ui/index.aspx?casetype=civil by entering the case number BC661398.

You Are Not Required To Attend The Final Approval Hearing.

You are welcome to attend the Final Fairness and Approval Hearing, at your own expense. You may hire your own attorney at your own expense to speak at the Final Approval Hearing, or you may speak at the Final Approval Hearing on your own behalf.

13. How Do I Exclude Myself From the Settlement?

If you wish to exclude yourself from the Settlement, you may complete and sign the enclosed “Opt-Out Form,” and mail it to the Claims Administrator at the address listed below:

ILYM Group, Inc.
P.O. Box 2031 Tustin, CA 92781
Telephone: (888)250-6810

To exclude yourself from the settlement, you must mail the completed Opt-Out Form to the Claims Administrator by September 26, 2020.

14. Where Can I Get Additional Information?

This Notice provides only a summary of the matters relating to the proposed settlement. For further information, you may contact the:

Defendant’s counsel as follows:
Fadi K. Rasheed, Esq.
LEECH TISHMAN FUSCALDO & LAMPL
2041 Rosecrans Avenue, Suite 300
El Segundo, CA 90245
Telephone: (424) 738-4400

Class Counsel as follows:
Kevin I. Shenkman, Esq.
Mary R. Hughes, Esq.
Andrea Alarcon, Esq.
SHENKMAN & HUGHES
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970

PLEASE DO NOT CALL OR CONTACT THE COURT WITH QUESTIONS ABOUT THE PROPOSED SETTLEMENT OR THE SETTLEMENT PROCESS.