

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

LILA BURNS, Individually and on behalf of all similarly-situated employees of Defendants in the State of California

Plaintiff,

v.

DRIVELINE RETAIL MERCHANDISING, INC.,
a Corporation, and DOES 1 through 50, Inclusive,

Defendants.

CASE NO. 34-2018-00246691

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED SETTLEMENT,
AND HEARING DATE FOR COURT
APPROVAL

Judge.: Hon. David I. Brown
Dept: 53
Action Filed: December 17, 2018
Trial Date: Not set

TO: All current and former employees who were employed by Defendant in the State of California as “merchandisers” jobs with similar titles at any time between August 28, 2015 through October 31, 2019.

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before December 9, 2019. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the Sacramento County Superior Court, entered October 31, 2019, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the Sacramento County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is «Est_Set_Amt». This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On December 17, 2018, Lila Burns filed a class action complaint, amended by the First Amended Complaint filed on January 17, 2019, (“Complaint”) in the Sacramento County Superior Court entitled Lila Burns v. Driveline Retail Merchandising, Inc., Case No. 34-2018-00246691, on behalf of herself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by Driveline Retail Merchandising, Inc in which she asserted claims for: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay Wages Due Upon Separation of Employment; (8) Failure to Provide Sick Leave; (9) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.); and (9) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Lila Burns has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Driveline’s class action and representative claims and Defendant’s defenses to those claims. Ms. Burns’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Driveline and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$1,280,000.00 to settle the Litigation. The \$1,280,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below

B. **Class Counsel’s Attorney Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$426,666.67), subject to court approval, which shall be paid from the Gross Fund Value Amount

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Lila Burns anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$15,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$11,250.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$3,750.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, Phoenix Settlement Administrators to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to Phoenix Settlement Administrators to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to Phoenix Settlement Administrators will be approximately \$10,000, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel’s Attorney’s Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** “Class” shall mean “All current and former employees who were employed by Defendant in the State of California as “merchandisers” or jobs with similar titles at any time between August 28, 2015 through October 31, 2019.

I. **Settlement Class Defined:** “Settlement Class” – means all those persons who are members of the Class and who have not properly and timely excluded themselves (“opted out”) from the Litigation.

J. **Settlement Period Defined:** “Settlement Period” shall mean August 28, 2015 through October 31, 2019.

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of gross wages earned by each Settlement Class Member during the Settlement Period in their positions as merchandisers (or otherwise similar job duties and/or title) in proportion to the total aggregated gross wages earned by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 33.3% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 66.6% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer’s share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

M. **An Internal Review of Corporate Payroll Policy:** Defendant has agreed to undertake an analysis of internal payroll policy to ensure compliance with all applicable California laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Lila Burns and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney’s fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is «Est_Set_Amt». This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814, by December 9, 2019, and serve copies to the following:

CLASS COUNSEL:

Brian R. Short
Dorota A. James
SHORTLEGAL, APC
350 10th Avenue, Ste. 1000
San Diego, CA 92101
Tel: (619) 272-0720 / Fax: (619) 839-3129

Kira M. Rubel
3615 Harborview Drive NW, Suite C
Gig Harbor, WA 98332
Tel: (253) 251-2955 / Fax: (206) 238-6910

COUNSEL FOR DEFENDANT:

Yvette Davis
HAIGHT BROWN & BONESTEEL LLP
2050 Main Street, Ste. 600
Irvine, CA 92614
Tel: (714) 426-4600 / Fax: (714) 754-0826

Kathryn D. Terry
Lauren Barghols Hanna
PHILLIPS MURRAH P.C.
101 N. Robinson
Corporate Tower, 13th fl
Oklahoma City, OK 73102
Telephone: (405)235-4100
Facsimile: (405) 235-4133

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than December 9, 2019. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the Sacramento County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than December 9, 2019. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on January 24, 2020, at 2:00 p.m. in Department 53 of the Sacramento Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. Your letter requesting exclusion must be hand-delivered or postmarked on or before December 9, 2019, and mailed to:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Toll Free 1 (800) 523-5773

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Release Rights and Claims:

Upon the court’s final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents,

and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 30 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 53 of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 on January 24, 2020, at 2:00 p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is available via the internet at <http://www.phoenixclassaction.com/burns-v-driveline/> and which is also on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, are also available via the internet at <http://www.phoenixclassaction.com/burns-v-driveline/> or may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 or by contacting Class Counsel.

DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE SUPERIOR COURT.