

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL

Nathan Smith v. McMillen Enterprises, Inc., et al.

(County of Stanislaus, California Superior Court Case No. 20-CV-002938)

As a current or former hourly-paid, non-exempt California employee for McMillen Enterprises, Inc., doing business as “United Paving”, you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because McMillen Enterprises, Inc., doing business as “United Paving” and David Joseph McMillen’s (“Defendants”) records show you are a “Class Member,” and therefore entitled to a payment from this class action Settlement. Class Members are all persons currently or formerly employed by Defendants as non-exempt, hourly-paid employees in the State of California any time from July 8, 2016 through July 31, 2021.

- The settlement resolves a class-action lawsuit, *Nathan Smith v. McMillen Enterprises, Inc., et al.* (the “Lawsuit”), which alleges Defendants: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal and rest periods and associated premium pay under California law, (4) failed to timely pay wages to Class Member during employment; (5) failed to provide Class Members with legally compliant wage statements, (6) failed to timely pay wages upon termination, (7) failed to reimburse employees for business expenses, and (8) engaged in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seek penalties under the California Labor Code Private Attorney Generals Act (“PAGA”) pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699.
- On December 2, 2021, the California Superior Court for the County of Stanislaus granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for April 8, 2022 at 8:30 a.m. in the City Towers Courthouse of Stanislaus County Superior Court, located at 801 10 th Street, Department 21, Modesto, California 95354.

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 8:30 a.m. on April 8, 2022, in the City Towers Courthouse of Stanislaus County Superior Court, located at 801 10th Street, Department 21, Modesto, California 95354. You are not required to attend the Hearing, but you are welcome to do so.

Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773

Why Am I Receiving This Notice?

Defendants' records show that you currently work, or previously worked, for Defendants, either directly or through any subsidiary or affiliate, as a non-exempt hourly, hourly paid employee in the State of California any time from July 8, 2016 through July 31, 2021. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Nathan Smith was a non-exempt employee for Defendants in California. He is the "Plaintiff" in this case and is suing on behalf of himself and Class Members for Defendants' alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest periods and associated premium pay under California law, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to timely pay wages upon termination, failure to reimburse employees for business expenses, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the California Labor Code Private Attorney Generals Act pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699.

Defendants deny all of the allegations made by Plaintiff and deny that they violated any law. The Court has made no ruling on the merits of Plaintiff's claims and will not do so as part of the Settlement approval process. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$285,800.00. The Gross Settlement includes: (1) Administration Costs up to \$6,000; (2) a service payment of up to \$7,500.00 to Plaintiff for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) up to \$100,030.00 in attorneys' fees and actual litigation costs up to \$25,000 to Class Counsel; and (4) payment allocated to PAGA penalties in the amount of \$10,000.00, \$7,500 of which will be payable to the Labor and Workforce Development Agency and \$2,500 which will be payable to Class Members. After deducting these sums, a total of approximately [\$XXXX] will be available for distribution to Class Members ("Net Settlement Amount"). In addition to the Gross Settlement, Defendants will separately pay all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

Distribution to Class Members

Class Members who do not opt out will receive a pro-rata payment based on the number of weeks worked by Class Members for Defendants during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual Class Member's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount.

Defendants' records indicate that you worked [Eligible Workweeks] as a non-exempt, hourly paid employee in California between July 8, 2016 and July 31, 2021. Based on these records, your estimated payment as a Class Member would be [Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than **January 31, 2022**. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

20% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 80% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. Within 7 days after expiration of the 180-day period, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the California State Controller, to be held for you and other Class Members as settlement funds belonging to you and/or any Class Member who did not cash his or her Settlement check(s).

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator.

“Released Claims” means all claims against the Released Parties asserted in the First Amended Complaint in the Class Action, or any and all claims, demands, rights, liabilities, causes of action, injuries, grievances, obligations, losses, damages, penalties, interest, fines, debts, liens, liabilities, attorneys’ fees, costs and any other form of relief or remedy in law or equity, of every nature and description whatsoever, , asserted or that might have been asserted against the Released Parties in the First Amended Complaint filed in the Action, or that may be asserted against the Released Parties based on the factual allegations in the First Amended Complaint, whether arising under federal, state or other applicable law; including, but not limited to, California Labor Code and any applicable IWC Wage Orders, expressly including, for the duration of the Class Period, those which arise out of, relate to, or are in connection with: (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide compliant meal and rest periods and associated premium pay; (d) all claims for failure to timely pay wages during employment; (e) all claims for the failure to timely pay wages upon termination; (f) all claims for non-compliant wage statements; and (g) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended Complaint. The release extends to the Fair Labor Standards Act, 29 USC § 201 (“FLSA”), *et seq.* only insofar as you timely cash their Individual Settlement Payment checks. Only in such an instance will you be deemed to have opted into the action for the purposes of the FLSA and thereby released any claims you may have under the FLSA. For individuals employed during the PAGA Period, the release includes, for the duration of the PAGA Period, all claims released during the Class Period, as well as all asserted PAGA claims for penalties arising out of Labor Code Sections 210, 226.3, 558, 1197.1 and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the First Amended Complaint filed on September 18, 2020, which include, without limitation, alleged violations of Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5.

“Class Period” means the period from July 8, 2016 through July 31, 2021.

“PAGA Period” means the period from April 11, 2019 through July 31, 2021.

“Released Parties” shall mean Defendants and each of their past, present, and future respective subsidiaries, dba’s, affiliates, parents, divisions, related entities, joint venturers, insurers and reinsurers, and company-sponsored employee benefit plans of any nature and their successors, assigns and predecessors in interest, including all of their officers, directors, shareholders, members, partners, owners, co-employers, employees, agents, principals, heirs, spouses, associates, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, Social Security Number, and signature. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

The written request to be excluded from the Settlement must be postmarked or received by the Administrator no later than **January 31, 2022**. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your objection must provide your full name, address, your reasons why you think the Court should not approve the Settlement, along with any legal authority, if any, you assert supports your objection, and your signature. Your objection must be mailed to the Administrator no later than **January 31, 2022**. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Fairness Hearing

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for April 8, 2022 at 8:30 a.m. in the City Towers Courthouse of Stanislaus County Superior Court, located at 801 10th Street, Department 21, Modesto, California 95354, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit <http://www.phoenixclassaction.com/>, call the Settlement Administrator at (800) 523-5773 or Class Counsel:

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You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of Stanislaus County Superior Court, located at 801 10th Street, Modesto, CA 95354, during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Claims Administrator toll free at (800) 523-5773