

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

«PSA_ID»

MERARDO ATILIO CRUZ, CARLOS DE LA CRUZ, LUIS ARMANDO ESPANA, MARIO ELIAS GARCIA, MARIO ELIAS GARCIA, JR., SANTOS GONZALO ESCOBAR, FRANCISCO SAUL HERNANDEZ, JEURY JOSUE MARTINEZ, VICTOR ANTONIO SANCHEZ, ERICK ADIEL TENAS, HARVY PINEDA COFFIN, JOSUE HERNANDEZ, and ANGEL MACIAS, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

TRANS OCEAN CARRIER INC., and DOES 1 through 50, inclusive.

Defendant.

Case No. BC634606

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

To: All current and former drivers who contracted with Trans Ocean Carrier Inc. (“TOC”) as independent contractors from September 20, 2012 through February 10, 2021 (the “Class Period”) (the described persons are “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Merardo Atilio Cruz, et al. v. Trans Ocean Carrier Inc.*, Los Angeles Superior Court Case No. BC634606 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. TOC’s records show that you contracted with TOC as a Driver at some point between September 20, 2012 and February 10, 2021. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Merardo Atilio Cruz, Carlos De La Cruz, Luis Armando Espana, Mario Elias Garcia, Mario Elias Garcia, Jr., Santos Gonzalo Escobar, Francisco Saul Hernandez, Jeury Josue Martinez, Victor Antonio Sanchez, Erick Adiel Tenas, Harvy Pineda Coffin, Josue Hernandez, and Angel Macias (collectively named “Plaintiffs”) brought this Lawsuit against TOC, seeking to assert claims on behalf of a “class” of Drivers who contracted with TOC. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Class Members, are known as “Class Counsel.”

Plaintiffs’ operative Complaint asserted the following causes of action: (1) misclassification of employees; (2) unlawful deductions and reimbursable expenses; (3) unpaid minimum wages; (4) waiting time penalties; (5) failure to pay all wages owed every pay period; (6) failure to provide meal periods; (7) failure to provide rest periods; (8) inaccurate wage statements; (9) violation of the unfair competition law; and (10) violation of the Private Attorneys General Act (“PAGA”).

TOC denies that it has done anything wrong. TOC further denies that it owes Class Members any wages, restitution, penalties, or other damages. TOC strongly believes that the Drivers it contracts with have always been properly classified as independent Owner Operators. To the extent TOC continues to contract with any Class Member in the future, it will do so as an independent contractor. The Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of TOC, which expressly denies all liability. The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, attorney’s fees, costs, inconvenience, and interference with its business operations, TOC has made the decision that it is in the best interests of all parties to settle the Lawsuit on the terms summarized in this Notice. The Court has only determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable. A final determination on whether the Settlement is fair, adequate and reasonable will be made at the Final Approval hearing.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to TOC, TOC's current financial condition, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

Who are the Attorneys?

Attorneys for Plaintiff/Class Members: GOMEZ LAW GROUP Alvin M. Gomez Stephen Noel Ilg 2725 Jefferson Street, Suite 7 Carlsbad, California 92008 Telephone: (858) 552-0000 Facsimile: (760) 542-7761	Attorneys for Defendant TOC: SHEPPARD, MULLIN, RICHTER & HAMPTON LLP Adam R. Rosenthal Hilary A. Habib 333 South Hope Street, 43 rd Floor Los Angeles, California 90071 Telephone: (213) 620-1780 Facsimile: (213) 620-1398
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What are the core terms of the Settlement?

On February 10, 2021, the Court preliminarily certified, for settlement purposes only, all current and former drivers who contracted with TOC as independent contractors from September 20, 2012 through February 10, 2021.

Class Members who do not exclude themselves from the Settlement pursuant to the procedures set forth in this Notice will be automatically bound by the Settlement and will release their claims against TOC as described below (referred to as "Settlement Class Members").

TOC has agreed to pay \$1,300,000 (the "Gross Settlement Fund") to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, Class Counsel's Award and costs, administration costs, payment to the LWDA, and the Class Representative awards. The Gross Settlement Fund will be paid out over a three-year period as described in the Payment Schedule in the Settlement Agreement.

The following deductions from the Gross Settlement Fund will be requested by the parties:

- Administrator Costs. The Court has approved Phoenix Class Action Administration Solutions to act as the "Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties will request up to \$6,750.00 from the Gross Settlement Fund to pay the administration costs.
- Class Counsel Award and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Fund. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Fund, which is estimated to be \$433,333.33, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$55,000 for verified costs Class Counsel incurred in connection with the Lawsuit.
- Class Representative Service Award. Class Counsel will ask the Court to award the Class Representatives a service award in the amount of \$5,000 to compensate each Class Representative for his service and extra work provided on behalf of Class Members and in exchange for a broader general release between each Class Representative and the Released Parties.
- PAGA Payment to the State of California. The parties have agreed to allocate \$7,500 towards the Settlement of the PAGA claims in the Lawsuit. \$5,625 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$1,875 will be allocated to Settlement Class Members.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Fund will form the Net Settlement Fund ("NSF"), which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion form (described below) over a three-year period. The NSF is estimated at approximately \$734,291.67. Each Settlement Class Member who contracted with TOC from September 20, 2012 through February 10, 2021 will be entitled to a Settlement Payment based on the proportionate number of weeks the Class Member contracted with TOC as a Driver during the time period of September 20, 2012 through February 10, 2021.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Payments will be mailed to all Settlement Class Members who did not submit a valid and timely Request for Exclusion. As set forth in the Payment Schedule contained in the Settlement Agreement, payments will be sent once per year over a three (3) year period.

Allocation and Taxes. For tax purposes, each Settlement Payment will be treated as follows: 50% to settlement of claims for reimbursable business expenses and interest; and 50% to settlement of claims for statutory penalties. An IRS form 1099 will be issued for these payments. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Payments. The Administrator, TOC and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, and after the third-party Claims Administrator mails out the third and final payment by TOC, each Settlement Class Member who has not submitted a valid Request for Exclusion will fully release and discharge TOC and its parents, predecessors, successors, subsidiaries, affiliates, related companies, brother and/or sister companies, divisions, joint venturers, assigns, any entities deemed a client employer or labor contractor of Defendant under Labor Code section 2810.3, service providers, insurers, consultants, subcontractors, any individual or entity deemed a statutory employer or joint employers (under any legal theory of joint employment) and all respective agents, employees, officers, directors, stockholders, shareholders, owners, fiduciaries, insurers, consultants, subcontractors, and attorneys thereof (collectively the “Released Parties”) from the following “Released Claims” for the entire Class Period:

Any and all claims reasonably related to claims in the Lawsuit (including but not limited to claims in the First Amended Complaint), as well as any and all local, state, and/or federal wage and hour claims (including all claims under the California Labor Code and the Fair Labor Standards Act) for unpaid wages, unreimbursed business expenses, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, wage theft, the Wage Orders of the Industrial Welfare Commission, Hours of Service violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the California Labor Code including but limited to Labor Code Sections (and all relevant subsections) 201-204, 210, 216, 218.6, 221, 224, 226, 226.3, 226.7, 510, 512, 516, 558, 621, 1171.5, 1174, 1194, 1198, 2698, 2750.3, 2802, and 3351, derivative claims under California Business & Professions Code Sections 17200 et seq. and all claims under any California Industrial Welfare Commission Wage Order, the Fair Labor Standards Act 29 U.S.C. § 201 et seq., and the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. (“PAGA”); and any and all claims that were or could have been asserted based on the facts pleaded in the Lawsuit or any amendments thereto for any purported violation of any local, state, or federal wage and hour laws, regulations, and/or ordinances, including such laws, regulations, and/or ordinances related to the non-payment of wages, minimum wages, overtime wages, misclassification, or any other wage-related or recordkeeping-related claims; liquidated damages; attorneys’ fees, costs and expenses; pre- and post-judgment interest; or damages or relief of any kind arising from the allegation that the Class Members were misclassified and not properly compensated for all time worked on a daily or weekly basis, under state or federal law, at any time through Preliminary Approval.

Participating Class Members will be deemed to have released any and all claims under the Fair Labor Standards Act (“FLSA”) when they cash, deposit, or otherwise negotiate their first settlement check.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How much can I expect to receive from the Settlement?

The amount of money you are entitled to receive from this settlement (your “Individual Settlement Payment”) is based on the number of weeks you contracted with TOC during the Class Period. According to TOC’s records:

- (a) You contracted with TOC as a Driver for «Total_Weeks» weeks from September 20, 2012 through February 10, 2021.
- (b) The estimated settlement dollar value for each week you contracted with TOC as a Driver during the Class Period is \$19.51.

Based on the above, your Individual Settlement Payment is estimated at «Est_Set_Amt».

Dispute Information in this Notice of Settlement.

Your award is based on the number of weeks you contracted with TOC as a Driver during the Class Period. The information contained in TOC’s records regarding each of these factors, along with your estimated Settlement Payment, is listed above. If you disagree with the information listed above, you may submit a dispute, along with any supporting documentation, to Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. The deadline to dispute the Gross Individual Settlement Payment or the dates a Class Member contracted with Defendant as a Driver as listed on a Claim Form will be within the 45-day Opt-Out/Objection Deadline Date. Any disputes, along with supporting documentation, must be postmarked no later than May 1, 2021. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties will investigate any dispute in consultation with the Administrator. The Administrator will make the final determination regarding the amount of your Individual Settlement Payment.

What are my options going forward?

1. Participate in the Settlement – Do Nothing

You do not need to file a claim in order to receive a payment from the Settlement. Under the settlement, if you **do nothing, you will automatically receive Individual Settlement Payments**, as described above.

2. Opt Out of the Settlement

If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Administrator executed signed Request for Exclusion Form postmarked no later than May 1, 2021, with your name, address, telephone number, last four digits of your social security number, your signature, and the date. If you are receiving this Notice as a result of a re-mailing, you will be given an additional seven days to respond.

Send the Request for Exclusion Form directly to the Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

3. Object to the Settlement

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You may object to the Settlement by simply attending the Final Approval Hearing and objecting in person at the Hearing. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or objection. If you wish to object to the Settlement in writing, or any portion of it, you may mail a written objection to the Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, or file a written objection with the Court in Department SSC-7 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. Objections must be filed or postmarked no later than May 1, 2021.

As described above, if you choose to object to the Settlement in person, you may appear at the Final Approval Hearing scheduled for May 25, 2021, at 2:00 p.m., in Department SSC-7 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. Class Members will be apprised of any changes in time or location to the Final Approval Hearing via the website indicated below which has been set up by the parties and the Administrator. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before May 1, 2021. All objections or other correspondence must state the name and number of the case, which is *Merardo Atilio Cruz, et al. v. Trans Ocean Carrier Inc.*, Los Angeles Superior Court Case No. BC634606.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on May 25, 2021, at 2:00 p.m., in Department SSC-7 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. Class Members will be apprised of any changes in time or location to the Final Approval Hearing via the website indicated below which has been set up by the parties and the Administrator. You may also contact Phoenix Settlement Administrators or Class Counsel for updates regarding the location of the Final Approval Hearing as the location of the Final Approval Hearing is subject to change. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Awards to the Class Representatives. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

If you appear at the hearing, check the Court's website for its social distancing protocols (http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf). As of July 1, 2020, the following protocols were in place:

General Safety Measures to Prevent the Spread of Coronavirus/COVID-19

- People seeking court support services or self-help services must have a prescheduled appointment. Others seeking such services without an appointment are directed to calling centers or the Court's website (www.lacourt.org) for assistance.
- Persons entering a courthouse who are displaying symptoms consistent with COVID-19 are prohibited from entering any court facility.
- Individuals entering the courthouse must wear facial coverings over the mouth and nose. Paper, disposable masks will be provided to persons who do not have one and who request to enter. ADA exceptions may apply.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

You may also visit www.phoenixclassaction.com/cruz-v-trans-ocean to view the Settlement Agreement, Notice of Pendency of Class Action, Request for Exclusion, or Final Judgment. Class Members will also be apprised of any changes in time or location to the Final Approval Hearing via this website.

**PLEASE DO NOT CALL OR WRITE THE COURT, TOC, OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

The deadline for submitting a Request for Exclusion, Dispute or written Objection is **May 1, 2021**. These deadlines will be strictly enforced. Once again, if you want to receive your Individual Settlement Payment you do **not** have to submit any further paperwork.

BY ORDER OF THE COURT ENTERED ON FEBRUARY 10, 2021.

REQUEST FOR EXCLUSION FORM

Merardo Atilio Cruz, et al. v. Trans Ocean Carrier, Inc.
Los Angeles County Superior Court
Case No.: BC634606

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE MAY 1, 2021, ADDRESSED AS FOLLOWS:

**PHOENIX SETTLEMENT ADMINISTRATORS
SETTLEMENT ADMINISTRATOR
MERARDO ATILIO CRUZ, ET AL. V. TRANS OCEAN CARRIER, INC.
P.O. BOX 7208
ORANGE, CA, 92863
(800) 523-5773**

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Merardo Atilio Cruz, et al. v. Trans Ocean Carrier, Inc.*, Los Angeles County Superior Court Case No. BC634606.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *MERARDO ATILIO CRUZ, ET AL. V. TRANS OCEAN CARRIER, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL **NOT RECEIVE** ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name Telephone Number

Address

Date Signature

Last Four Digits of Social Security Number: ____ _