

NOTICE OF SETTLEMENT OF CLASS ACTION

Sengyong v. ProBuild Company LLC, et al.
United States District Court for the Southern District of California
Case No. 3:19-cv-02231-MMA (JLB)

To: All current and former non-exempt, hourly employees working at ProBuild Company LLC, Builders FirstSource Dallas LLC and/or Builders FirstSource, Inc. in California at any time between October 15, 2015 and October 3, 2020.

This notice relates to a proposed Settlement of a class action and representative action lawsuit in which you may be entitled to receive money. You are not being sued. Your legal rights are affected, whether you act or not.

A federal district court permitted this notice. This is not an advertisement.

ProBuild Company LLC, Builders FirstSource Dallas, LLC and Builders FirstSource, Inc. will not retaliate against you regarding this settlement, whether you do nothing, ask to be excluded, or file an objection.

Please review this notice carefully.

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1. Why Should You Read This Notice?

This notice outlines a settlement for a class and representative action lawsuit. It informs you of your right to share in certain amounts of the settlement and your ability to “opt out” of, or object to, some of the settlement. On March 11, 2021, in the United States District Court for the Southern District of California, Judge Michael M. Anello preliminarily approved the settlement and directed that you receive this notice.

You have received this notice because records indicate that you are a Settlement Class Member in this lawsuit. The settlement will resolve all claims described below.

On July 29, 2021, at 3:00 p.m., the Court will hold a Final Approval Hearing concerning the proposed settlement in Courtroom 3D (3rd Floor) of the, United States District Court for the Southern District of California, 221 West Broadway, San Diego, CA 92101.

2. *What Is The Case About?*

A putative class action and Private Attorneys' General Act ("PAGA") representative lawsuit entitled *Otina Sengvong v. ProBuild Company, LLC, et al.*, was filed on October 15, 2019 in San Diego County Superior Court, Case No. 37-2019-00054729-CU-OE-CTL (the "Action"), alleging that ProBuild Company, LLC, Builders FirstSource Dallas, LLC, and Builders FirstSource, Inc. ("Defendants") violated California law by failing to properly pay its California non-exempt employees for all regular and overtime hours worked, failing to reimburse for expenses, failing to provide properly itemized wage statements, failing to timely pay employees upon termination, and failing to provide rest breaks and meal periods.

Defendants contend they have complied with all laws, deny the allegations raised in the Action, and assert that they have no liability for any of the Settlement Class and PAGA Group Members' claims under any law, including any statute, wage order, regulation, common law, or equitable theory.

Plaintiff and Defendants disagree about whether a class can be certified. With the assistance of a professional mediator, Plaintiff and Defendants agreed to a settlement to be paid on the terms set forth below.

3. *What Is This Notice About?*

You may be entitled to receive money from a settlement that has been reached in the Action. The Court must finally approve the terms of the settlement described below as fair and reasonable to the class. The settlement will affect all members of the class, including you. This notice will explain the terms of the settlement and the amount of money you may get. This notice is only a summary. A more detailed Stipulation of Class Action and Release of Claims is on file with the Court, where it is available for your review.

4. *Who Are The Parties In This Class Action?*

Otina Sengvong is the Plaintiff in this class action lawsuit, acting on behalf of himself and on behalf of certain current and former non-exempt employees in California. ProBuild Company, LLC, Builders FirstSource Dallas, LLC, and Builders FirstSource, Inc. are the Defendants.

The "Settlement Class" is comprised of all persons employed by Defendants in California as non-exempt employees at any time during the period of October 15, 2015 through October 3, 2020 (the "Settlement Class Period").

The "PAGA Group" is comprised of all persons employed by Defendants in California as non-exempt employees at any time during the period of August 6, 2018 through October 3, 2020 (the "PAGA Period").

You have been identified as a member of the Settlement Class.

5. *What Are The Reasons For The Settlement?*

The Parties agreed to enter into this settlement after weighing the risks and benefits of this settlement compared with those of continuing the Action. The factors included the uncertainty and delay associated with continued legal proceedings, a trial and appeals, and the uncertainty of legal and factual issues that have yet to be determined. The Parties balanced these and other substantial risks in determining the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interests of Settlement Class and PAGA Group Members.

If the Action continued, the Court might rule in favor of Defendants and the Settlement Class and PAGA Group Members might not receive any recovery or monetary compensation. Defendants agreed to this proposed settlement in order to avoid the expense and distraction associated with continued legal proceedings and the chance that the Court might rule in favor of Settlement Class and PAGA Group Members.

6. *What Are The Terms of the Settlement?*

Provided the Settlement is finally approved by the Court, Defendants have agreed to pay a "Gross Settlement Amount" of One Million Four Hundred Thousand Dollars (\$1,400,000.00) to fully resolve all claims in the Action, including payments to Class Members, Class Counsel's attorneys' fees and costs, Claims Administration Costs, payment to the California Labor and Workforce Development Agency ("LWDA") for its share of PAGA civil penalties, and the Class Representative's Incentive Payment. Defendants also agree to pay their employer side payroll taxes in addition to the Gross Settlement Amount. The Court must approve these payments at the Final Approval Hearing.

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

Class Counsel Fees and Costs. Class Counsel have been prosecuting the Action on behalf of 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 Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount in attorneys' fees, which is currently estimated at \$466,666, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization as well as costs incurred in connection with the Action which Class Counsel currently estimate will be no greater than \$15,000.

Claims Administration Costs. The Court has approved Phoenix Class Action Administration Solutions to act as the "Claims Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$15,000 from the Gross Settlement Amount to pay the claims administration costs.

Class Representative Incentive Payment. Class Counsel will ask the Court to award the Class Representative an incentive payment in the amount of \$15,000 to compensate him for his service and extra work provided on behalf of the Class Members.

PAGA Payment to State of California. The parties have agreed to allocate \$40,000 towards the Settlement of the PAGA claims in the Action. \$30,000 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$10,000 will be allocated to Class Members as described below.

Payment of the Settlement: The net sum remaining after deducting these Court-approved payments (called the "Net Settlement Amount") will be available for distribution to Settlement Class Members, as described in Question 8 below. All checks for Settlement Awards shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. Any amounts from settlement checks that remain uncashed and otherwise unclaimed shall be disbursed to the California State Controller's Unclaimed Property Fund.

Allocation and Taxes: For tax purposes, each individual Settlement Award shall be treated as follows: one third non-wage penalties, to be reported to the Settlement Class Member on an IRS Form 1099, one third interest, to be reported to the Settlement Class Member on an IRS Form 1099, and shall not be subject to withholdings, and one third wages, subject to withholdings, to be reported to the Settlement Class Member on an IRS Form W-2. Settlement Class Members shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them. The Claims Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

7. Who Are The Attorneys Representing The Parties?

Attorneys for Plaintiff & the Class are:

The Spivak Law Firm

David G. Spivak
Maralle Messrelian
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Toll Free: (877) 203-9010
Facsimile: (213) 634-2485
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United Employees Law Group

Walter Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (888) 474-7242
Facsimile: (562) 256-1006

Attorneys for Defendants:

Ballard Rosenberg Golper & Savitt LLP
Matthew B. Golper
David J. Fishman
15760 Ventura Boulevard, 18th Floor
Encino, CA 91436
Telephone: (818) 508-3700

8. How Do I Receive Money From This Settlement?

Do nothing. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks you worked for Defendants during the Settlement Class Period, and the number of pay periods you worked for Defendants during the PAGA Period, as stated below in Section 12. You also will be bound by the settlement, including the release of claims stated herein.

9. *Excluding Yourself From The Settlement.*

If you **do not** wish to be included in the settlement, you must mail to the Claims Administrator a written "Exclusion Letter" letter or postcard requesting to be excluded from the settlement postmarked no later than June 18, 2021 with your full name, current address and telephone number, last four digits of your social security number, and your signature. The Exclusion Letter should state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SENGVONG V. PROBUILD COMPANY, LLC ET AL LAWSUIT." Please note that you are not able to exclude yourself from the PAGA portion of the Settlement, and you will still receive a portion of the PAGA Payment if you worked during the PAGA Period regardless of whether you request to exclude yourself.

If you submit a valid and timely Exclusion Letter to the Claims Administrator, you will receive only the amount you are entitled to, if any, as a member of the PAGA Group based on the number of pay periods you worked for Defendants during the PAGA Period.

Send the Exclusion Letter directly to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Any person who submits a valid and timely Exclusion Letter shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in the Class Released Claims portion of the Settlement, and shall receive no benefits from the Settlement (aside from a portion of the PAGA Payment if the person was employed by Defendants during the PAGA Period). Do not submit both an objection and an Exclusion Letter. If you do, the Exclusion Letter will be deemed invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

If you do nothing and do not request exclusion, following entry of judgment and exhaustion of appeals or other post-judgment proceedings, the judgment entered by the Court will bind you and you will release the claims described below. You will only receive money from the settlement if you do not request exclusion.

If you are a current employee of Defendants, your decision as to whether or not to be excluded from the settlement will not affect your employment with Defendants.

10. *Objecting to the Settlement.*

If you do not submit a valid and timely Exclusion Letter and wish to object to the settlement, you have the right to object to the terms of the Settlement. You should mail an objection that includes the case name and states why you object to the settlement. Your objection should state your full name, address, telephone number, last four digits of your social security number, and your signature. The "Notice of Objection" should be mailed to the Claims Administrator at Sengvong Class Action Settlement Claims Administrator, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, and must be postmarked on or before June 18, 2021. Class members who fail to submit a timely objection in the manner specified in this notice shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the settlement, unless otherwise ordered by the Court. Regardless of whether you comply with this procedure, you may appear at the final approval hearing to speak with the Court about the Settlement.

If you properly object or wish to appear, you may appear and discuss your objections with the Court and the Parties at the Final Approval Hearing set for July 29, 2021 at 3:00 p.m. in Courtroom 3D (3rd Floor) of the Edward J. Schwartz United States Courthouse, United States District Court for the Southern District of California, 221 West Broadway, San Diego, CA 92101. Due to the COVID-19 pandemic, however, hearings before the judge overseeing this case are currently being conducted remotely with the assistance of a third-party service provider or a comparable mode of communication with the Court by telephone or video. If that remains the case at the time of the Final Approval Hearing, Class Members who wish to appear at the Final Approval Hearing should contact Class Counsel to arrange a telephonic appearance at least three days before the hearing if possible. Any third-party service provider fees for an appearance by an objecting Class Member shall be paid by Class Counsel. In the discretion of the Court, any Class Member may orally object at the final approval hearing, at their own expense, without mailing a Notice of Objection. The date for the Final Approval Hearing is subject to change without further notice and Class Members are encouraged to follow the Court docket and contact the Settlement Administrator for any changes in the schedule.

If you object to the settlement and the Court approves the settlement against your objection, and you have not returned a request for exclusion from the Settlement, you will receive a payment from the settlement and be bound by the terms of the Settlement in same way as Settlement class members who do not object.

11. *Effect Of The Settlement.*

If the proposed settlement is approved by the Court, a Judgment will be entered by the Court fully and finally settling the Action.

As a result of the Settlement and judgment to be entered, Plaintiff and the Settlement Class Members who did not opt out of the Settlement by filing a timely, valid Request for Exclusion will have released and discharged Defendants and their former and present employees, directors, shareholders, officers, owners, attorneys, agents, insurers, successors, assigns, parents, subsidiaries, affiliates, or legal representatives and any individual or entity which could be jointly liable with Defendants and all persons or entities acting by, through, under, or in concert with any of them (“Released Parties”) from all claims under California law that were asserted against Defendants in the operative Complaint or that could have been asserted based on the factual allegations alleged in the operative Complaint, including those for alleged: (1) alleged failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (2) failure to authorize and permit rest periods or pay rest period premiums; (3) failure to provide meal periods or pay meal period premiums; (4) failure to provide accurate and itemized wage statements; (5) failure to pay final wages due at separation; (6); failure to reimburse or indemnify all necessary business expenses; (6) claims brought under Business & Professions Code section 17200, et seq., including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (7) claims under PAGA for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Complaint, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194, 1197, 1198, 2802 and any applicable Wage Order; (8) claims of any nature, related to or arising out of or related to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194, 1197, 1198, 2802 and any applicable Wage Order; (9) penalties of any nature; (10) interest; (11) attorneys' fees and costs; and (12) any other claims arising out of or related to the Complaint filed in the Action (the “Released Claims”). Plaintiff and Settlement Class Members shall be permanently barred and enjoined from the institution or prosecution of any and all Released Claims against the Released Parties, except as to such rights or claims as may be created by the Settlement. If the settlement is approved and you do not request to be excluded, you will receive compensation and will be forever barred from asserting the above claims against the Released Parties.

Plaintiff and members of the PAGA Group may not opt out of the settlement of the release of claims under PAGA for civil penalties due to any Labor Code violations by Defendants that were asserted against Defendants in the operative Complaint or that could have been asserted due to any alleged Labor Code violations by Defendants during the PAGA Period arising out of or related to events alleged in the Complaint, including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, et seq., 1194, 1197, 1198, 2802 and any applicable Wage Order and any applicable interest and attorneys' fees and costs. If the settlement is approved, you will receive compensation and be forever barred from asserting the above claims against the Released Parties, regardless of whether you submitted an Exclusion Letter.

12. *How Much Can I Expect To Receive?*

Your individual payment under the settlement will be calculated based on two calculations: (1) the number of weeks you worked for Defendants between October 15, 2015 and October 3, 2020 and (2) the number of pay periods you worked for Defendants between August 6, 2018 through October 3, 2020.

- Defendants' records show that you worked «Total_Weeks» weeks as a non-exempt employee during the October 15, 2015 and October 3, 2020 period.
- Defendants' records indicate that you worked «Total_Pay_Periods» pay periods as a non-exempt employee during the August 5, 2018 through October 3, 2020 period.
- Based on the above, your Settlement Share is estimated at «Est_Set_Amt».

This Notice sets forth the number of work weeks that you worked for Defendants during the Settlement Class Period. The Notice also provides an estimate of your Settlement Share. This amount may decrease or increase without further notice to you depending on orders by the Court. It is important that you carefully check and confirm the number of (1) workweeks you worked as a non-exempt employee during the period of October 15, 2015 through October 3, 2020 and (2) the number of pay periods you worked for Defendants between August 6, 2018 through October 3, 2020, and correct any inaccuracies in this Notice.

If you dispute the above information from Defendants' records, you may submit a dispute, along with any supporting documentation to the Claims Administrator. Any dispute, along with supporting documentation, must be postmarked no later than June 18, 2021. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

13. *How Will The Attorneys For The Class And Plaintiff Be Paid?*

The attorneys for Sengvong will be paid from the Gross Settlement Amount. The attorneys have asked for an award of up to \$466,666, one third (33 and 1/3%) of the Gross Settlement Amount, in fees and up to \$15,000 in costs, and will receive that award if their request is approved by the Court. If approved by the Court, Plaintiff Otina Sengvong will be paid from the Gross Settlement Amount a Class Representative Incentive Payment of up to \$15,000 for his service, in addition to his individual Settlement Award pursuant to section 10 above.

14. *Release*

Upon final approval by the Court of the settlement, each Settlement Class Member who has not opted out of this settlement shall release the Released Parties from the Settled Claims during the Settlement Class Period.

If you need more information or have any questions, you may call Class Counsel at the telephone numbers listed above, you may call the Claims Administrator at the telephone number listed below, toll free, or visit www.SengvongProBuildSettlement.com. Please refer to the Sengvong Class Action Settlement.

Sengvong Class Action Settlement
Claims Administrator
Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
(800) 523-5773

Please do not call the Court for information about this settlement.

Please do not contact Defendants' attorneys for information about this settlement.