

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
Raul Frias-Estrada v. Trek Retail Corporation
Case No. MSC20-01916

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - _ _ _ _

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

TREK RETAIL CORPORATION WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Contra Costa County Superior Court has been reached by Trek Retail Corporation (“Trek”) and Raul Frias-Estrada (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The Contra Costa County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Trek has agreed to settle a lawsuit brought on behalf of all persons who worked for Trek in California as an hourly-paid or non-exempt employee during the period from September 22, 2016 through December 1, 2021 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Trek: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Trek. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Trek from liability for these claims.
- The parties in the lawsuit disagree on whether Trek is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Trek about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in Contra Costa County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Trek denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Trek contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Trek further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Trek. Plaintiff thinks he would have prevailed on his claims at a trial. Trek does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for Trek in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

Trek will pay a total of Six Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00) (the "Settlement Amount") to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys' Fees (not to exceed 33 1/3 % of the Settlement Amount, or \$225,000.00), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$10,000.00, and an enhancement payment to the Named Plaintiff not to exceed

\$10,000.00. Any and all Employer Taxes which Trek normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Trek separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys' Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount.

"Net Settlement Amount" means the Settlement Amount minus the Attorneys' Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency ("LWDA"), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Trek during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not "opt out" (as defined on pages 5-6 below) during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 50% as wages and 50% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

As of the date on which Trek fully funds the settlement, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Trek, and its divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including the following claims: 1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission ("IWC") Wage Orders, or any comparable federal statute under any theory of liability; 2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7, and the IWC Wage Orders; 5) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-204; 7) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violation pursuant to California Labor Code §§ 226 and 1174.5; 8) all claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify

employees for expenditures pursuant to California Labor Code § 2802; 9) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 10) all claims alleged in the operative complaint, under any legal theory of liability, for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*); and 11) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any other amounts that could be potentially owed to Class Members arising out of and/or related to the allegations in the Litigation arising during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 246, 558, 925, and 1197.1.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on February 16, 2023, at 725 Court Street, Martinez, CA 94553, in Department 39 of the Contra Costa County Superior Court (Wakefield Taylor Courthouse). The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff’s counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

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

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The average potential recovery for each proposed Settlement Class Member is \$ _____.

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between September 22, 2016 through December 1, 2021. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Trek, subject to time limits called Statute of Limitations and other potential defenses that Trek may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. To be valid, your request for exclusion must be postmarked no later than January 12, 2023.

• **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863 by January 12, 2023.

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

PLAINTIFF’S/CLASS COUNSEL

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CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

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

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation Re: Class Settlement” and “First Amendment to Joint Stipulation Re: Class Settlement,” which are available for viewing online, along with other court records regarding this case, on the following website:

URL: <https://www.phoenixclassaction.com/frias-estrada-v-trek-retail-corporation/>

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the Contra Costa County Superior Court’s website, by going to the following webpage: <https://odyportal.cc-courts.org/Portal/?clearSession=True> and entering “MSC20-01916” for the case number.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, (800) 523-5773. Please refer to the *Raul Frias-Estrada v. Trek Retail Corporation* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS