

# **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Salvador Perez Espinoza v. McGee Contracting Inc.*  
Riverside County Superior Court, Case No. CVSW2102108

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.  
PLEASE READ THIS NOTICE CAREFULLY.  
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

**To: All current and former California non-exempt (i.e., entitled to overtime pay, meal breaks and rest breaks) hourly employees of McGee Contracting Inc. who worked at any time from January 1, 2018, through November 15, 2021.**

## **BASIC INFORMATION**

### **1. What is this settlement about?**

You are receiving this notice as a result of a lawsuit brought on March 16, 2021, by Salvador Perez Espinoza (“Plaintiff”) against McGee Contracting Inc. (“Defendant”). The case is currently pending in the Riverside County Superior Court, Case No. CVSW2102108 (the “Action”). Defendant’s records show that you currently work, or previously worked, for Defendant in California.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods and associated premium pay, did not properly pay employees all wages owed for all time worked, did not provide accurate wage statements, did not timely pay all wages owed at termination of employment, failed to reimburse employees for necessary business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that Defendant violated the California Labor Code and the California Business and Professions Code, and that Plaintiff and other employees like him are entitled to damages, penalties and restitution. Defendant denies all alleged violations and denies that it owes any damages, penalties, or restitution. The Court has not made a ruling on the merits of the lawsuit. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the Final Approval Hearing. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the lawsuit or that the lawsuit can or should proceed as a class action or PAGA action.

### **2. What is a class action?**

You have an opportunity to participate in this lawsuit because the lawsuit was brought as a “class action.” In a class action, one or more people called the Class Representative (in this case Mr. Espinoza, also known as “Plaintiff”), sue on behalf of people who appear to have similar claims. All of these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Riverside County Superior Court is in charge of this particular class action.

As part of the settlement, Plaintiff and Defendant agreed to resolve the lawsuit on a class basis with respect to all of the claims Plaintiff alleged against Defendant as a class and representative action, for settlement purposes only, and to ask the Court to approve the settlement.

### **3. Why is there a settlement?**

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Amended Joint Stipulation of Class Action Settlement and Release (“Agreement” or “Settlement”). On January 26, 2023, the Court granted preliminary approval of the Settlement, appointed Plaintiff Salvador Perez Espinoza as the Class Representative, and appointed his attorneys at Payne Nguyen, LLP as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

## WHO IS IN THE SETTLEMENT?

### 4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as a California non-exempt (i.e., entitled to overtime pay, meal breaks and rest breaks) hourly employee who worked at any time from January 1, 2018, through November 15, 2021 (the “Class Period”).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Six Hundred Eighty-Three Thousand Four Hundred Forty Dollars (\$683,440.00) (“Total Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Total Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Total Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one-third (1/3) of the Total Settlement Amount or Two Hundred Twenty-Seven Thousand Eight Hundred Thirteen Dollars and Thirty-Three Cents (\$227,813.33);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Fifteen Thousand Dollars (\$15,000.00);
- C. **Enhancement Payment to the Plaintiff** in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- D. **Settlement Administration Costs** in an amount not to exceed Nine Thousand Seven Hundred Fifty Dollars (\$9,750.00); and
- E. **PAGA Penalties** in the amount of Seventy-Five Thousand Dollars (\$75,000.00) for the settlement of claims arising under the PAGA. Seventy-Five percent (75%) of this amount (\$56,250.00) shall be paid to the Labor & Workforce Development Agency (“LWDA”). The remaining twenty-five percent (25%) (\$18,750.00) will be distributed to PAGA Members (i.e., all current and former California non-exempt hourly employees of Defendant who worked at any time from March 16, 2020, through November 15, 2021 (“PAGA Period”)) for their claims arising under PAGA.

The amount you are eligible to receive from the Net Settlement Amount will be determined on a *pro rata* basis, based on the number of weeks you performed work for at least one day in California as a non-exempt hourly employee of Defendant from January 1, 2018, through November 15, 2021 (i.e., “workweeks”). If eligible, your share of the PAGA Penalties will be calculated on a *pro rata* basis, based on the number of pay periods that you worked between March 16, 2020, through November 15, 2021. The total amount you are eligible to receive from the Settlement, i.e., your “Individual Settlement Payment,” includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Penalties.

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages and eighty percent (80%) interest and penalties. If you opt out of the class claims portion of the Settlement, then your share of PAGA Penalties, if you are eligible to receive this payment, will be apportioned as one hundred percent (100%) penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Total Settlement Amount. The penalties and interest portions of each class member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

**You worked \_\_\_\_ workweeks during the Class Period as a Class Member. Your estimated Individual Settlement Payment is \$\_\_\_\_, less applicable taxes and withholdings. The amount of this payment is subject to change depending on the payments approved by the Court and other factors.**

This amount was determined based on Defendant’s record of your employment between January 1, 2018, through November 15, 2021, and is presumed correct. If you dispute the accuracy of Defendant’s records as to the number of weeks you worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by May 8, 2023. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator’s contact information is listed below:

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
Telephone: (800) 523-5773

## HOW TO GET A PAYMENT FROM THE SETTLEMENT

### 6. How can I get a payment from the settlement?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

### 7. What am I giving up if I do not request to be excluded from the settlement?

Upon the funding of the Total Settlement Amount by Defendant, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion shall release the “Released Parties” from the “Released Class Claims” for the Class Period.

The “Released Parties” include Defendant McGee Contracting Inc. and its officers, directors, and employees.

The “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action that are alleged, reasonably could have been alleged, based on the facts set forth in the operative complaint in the Action. The Released Class Claims shall be limited to those claims that arose during the Class Period from January 1, 2018, through November 15, 2021.

## EXCLUDING YOURSELF FROM THE RELEASE OF CLASS CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Class Claims, then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Penalties because the Request for Exclusion does not apply to this claim.

### 8. How can I exclude myself from the settlement?

To exclude yourself from the release of Released Class Claims, you must submit a written and signed Request for Exclusion. You must include your full name, address, telephone number, and the last four digits of your social security number. Your Request for Exclusion must also include a statement that you do not wish to be included in this lawsuit similar to the following: “I wish to exclude myself from the class action settlement reached in the matter of *Espinoza v. McGee Contracting Inc.* I understand that by excluding myself, I will not receive money from the class portion of the settlement reached in this matter.” A Request for Exclusion form has been included with this notice for you to use and a statement to this effect is already included on the enclosed Request for Exclusion form.

The written Request for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by May 8, 2023. You cannot exclude yourself by phone.

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

If you submit a valid and timely Request for Exclusion form, you will not be legally bound by the release of Released Class Claims.

Class Members who fail to submit a valid and timely Request for Exclusion form on or before May 8, 2023 will be bound by all terms of the Settlement and any final disposition entered if the Settlement is approved by the Court.

**9. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. Unless you submit a valid and timely Request for Exclusion, you give up the right to sue Defendant and Released Parties for the Released Class Claims. If you have a pending lawsuit involving the Released Class Claims, speak to your lawyer in that lawsuit immediately.

**10. If I exclude myself, can I get money from this settlement?**

No, except if you worked for Defendant at any time from March 16, 2020, through November 15, 2021, in which case you will still receive the portion of your Individual Settlement Payment for the claims that arise under PAGA.

**THE LAWYERS REPRESENTING YOU**

**11. Do I have a lawyer in this case?**

The Court has approved PAYNE NGUYEN, LLP as Class Counsel. The firm's contact information is:

**PAYNE NGUYEN LLP**  
Cody Payne, Esq.  
Kim Nguyen, Esq.  
100 Wilshire Boulevard, Suite 700  
Santa Monica, California 90401  
Telephone: (310) 360-9882

Class Counsel will ask the Court for attorneys' fees of up to \$227,813.33 and reimbursement of litigation cost/expenses of up to \$15,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

**OBJECTING TO THE SETTLEMENT**

You can object to the Settlement or some part of it.

**12. How do I tell the Court if I don't like the settlement?**

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To make a written objection, you must mail your signed objection to the Settlement Administrator no later than May 8, 2023. An Objection Form has been included with this notice for you to use. Your written objection must include your full name, address, telephone number, the last four digits of your social security number, and the specific reason for your objection. You may also come to the Final Approval Hearing on June 15, 2023 and make an oral objection at that time, regardless of whether you submitted a written objection.

**13. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself by submitting a valid and timely Request for Exclusion, you have no basis to object because the case no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend.

**14. When and where will the Court decide whether to approve the settlement?**

The Court will hold the Final Approval Hearing at 8:30 a.m. on June 15, 2023, at the Riverside County Superior Court – Southwest Justice Center, located at 4050 Main Street, Riverside, California 92501, in Department 1.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

**15. Do I have to come to the hearing?**

No. If you agree to the Settlement, you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. You may attend in person, but you may also attend remotely if you wish. Please see <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php> for information on how to schedule remote appearances.

**16. How will I learn if the settlement was approved?**

A notice of final judgment will be posted on the Settlement Administrator's website located at <https://www.phoenixclassaction.com/espinoza-v-mcgee-contracting/>.

**IF YOU DO NOTHING**

**17. What happens if I do nothing at all?**

If you do nothing, you will receive your share of the Settlement, and you will release the Released Class Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or Released Parties about the Released Class Claims, ever again.

If the Settlement is approved by the Court, your Individual Settlement Payment will be mailed to you by the Settlement Administrator after the Final Approval Hearing and after the full funding of the Settlement, which will occur approximately one year after the Court grants final approval of the Settlement. This check will remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be transferred to the Controller of the State of California's Unclaimed Property Fund in your name. You may then claim these funds from there.

**GETTING MORE INFORMATION**

**18. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by viewing the Settlement located on the Settlement Administrator's website at <https://www.phoenixclassaction.com/espinoza-v-mcgee-contracting/> or by contacting the Settlement Administrator or Class Counsel.

The Settlement Agreement is also attached to the Declaration of Cody Payne in Support of Plaintiff's Amended Motion for Preliminary Approval of Class Action and PAGA Settlement as Exhibit 1. This document was filed on September 27, 2022 and may be viewed at the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501 or online by entering Case No. CVSW2102108 on the Riverside County Superior Court website, located at <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=user/login&destination=node/379> and purchasing this document from the Court's docket.

**WHAT IF MY INFORMATION CHANGES?**

**19. What if my contact information changes?**

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE**