

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ABEL ESCOBEDO and CHRISTOPHER CARVER, on
behalf of themselves, all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

MATHESON TRI-GAS, INC., an unknown business entity;
and DOES 1 through 25, inclusive,

Defendants.

CASE NO.: 37-2020-00044507-CU-OE-CTL

NOTICE OF PENDENCY OF PUTATIVE CLASS ACTION,
PROPOSED SETTLEMENT AND HEARING DATE FOR
COURT APPROVAL

Judge:	Hon. Ronald F. Frazier
Dept.:	C-65
Action Filed:	December 4, 2020
Trial Date:	Not set

TO: All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through June 28, 2022.

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to submit a request for exclusion or notice of objection on or before June 28, 2023. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered on March 3, 2023, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is <<____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On December 4, 2020, Abel Escobedo ("Escobedo") filed a class action complaint in the San Diego County Superior Court entitled *Abel Escobedo v. Matheson Tri-Gas, Inc.*, Case No. 37-2020-00044507-CU-OE-CTL, on behalf of himself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Matheson Tri-Gas, Inc.* ("Matheson" or "Defendant"), in which he asserted claims for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to Permit Rest Periods; (6) Waiting time penalties; (7) Civil Penalties Under the Private Attorney General Act of 2004; and (8) Unlawful Business Practices. On May 10, 2021, Christopher Carver ("Carver," and together with Escobedo, "Plaintiffs") filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020711-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging the following claims: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of Termination of Employment; (7) Irregular Pay Periods; (8) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and (9) Violation of Unfair Competition Law. That same day, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020726-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA. These complaints have now been consolidated into a single action. Collectively, the complaints and associated letters to the LWDA constitute the "Litigation."

Matheson contends the claims in this Litigation are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the Litigation.

Plaintiffs have vigorously prosecuted this case, and Matheson has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Plaintiffs' class action and representative claims and Matheson's defenses to those claims. Plaintiffs' attorneys ("Class Counsel") reviewed extensive documents and information produced by Matheson and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Plaintiffs and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. Gross Fund Value Amount: Defendant will pay \$750,000.00 to settle the Litigation. The \$750,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel's Attorney's Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. Class Counsel's Attorney's Fees: Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount, subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. Litigation Costs: Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. Class Representative Service Award: Plaintiffs anticipate requesting a service award of no more than \$10,000.00 each, subject to court approval, for their role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. Private Attorneys General Act (PAGA) Allocation: The Parties have designated \$25,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$18,750.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$6,250.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. Settlement Administration Expenses: The Parties have selected, and the court has approved Phoenix Class Action Settlement Administration Solutions ("Phoenix") to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to Phoenix to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Settlement Fund, and other activities required to administer the settlement. The Parties estimate that the payment to Phoenix will be approximately \$10,000, which shall be paid from the Gross Fund Value Amount.

G. Net Fund Value Amount: The Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. Class Defined: "Class" means "All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through July 28, 2022."

I. Settlement Class Defined: "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. Settlement Period Defined: "Settlement Period" – means December 4, 2016 through July 28, 2022.

K. Allocation of Net Fund Value Amount Among Settlement Class Members: Each Settlement Class Member shall be entitled to a portion of the Net Settlement Fund which will be allocated proportionally based on the amount of weeks worked by each Settlement Class Member during the Settlement Period in proportion to the total number of weeks worked by all Participating Class Members during the Settlement Period.

L. Tax Treatment of Payments to Settlement Class Members: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated one-third wages, one-third penalties, and one-third interest. The Claims Administrator shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall report such Individual Settlement Payments as wages received. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to a penalty for purposes of Section 62(f) of the Internal Revenue Code of 1986, but rather shall be classified as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Plaintiffs and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Matheson as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << ____ >>, which is based on Defendant's records showing you worked ____ workweeks during the Settlement Period. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must mail a written objection entitled "Class Member Objection" by June 28, 2023 to:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
<https://www.phoenixclassaction.com/escobedo-v-matheson-tri-gas/>

Any Class Member Objection shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any Class Member Objection to approval of the settlement must be mailed to the Settlement Administrator no later than June 28, 2023. **DO NOT TELEPHONE THE COURT.**

Objectors who want to appear at the final fairness/approval hearing must state the intention to do so at the time of submitting the written objection(s). The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on October 20, 2023 at 8:30 a.m. in Department C-65 of the San Diego County Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., "opt-out") by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before June 28, 2023, and mailed to:**

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
<https://www.phoenixclassaction.com/escobedo-v-matheson-tri-gas/>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court's final approval of the class settlement and entry of final judgment, each Class Member shall be deemed have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims that were asserted and that could have been asserted based on the facts contained in the Complaint filed in this Action and which were included leading up to and during mediation, including without limitation to, any and all alleged claims for unpaid wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to provide requisite writings, waiting time penalties under the California Labor Code and Business & Professions Code (including Section 17200 *et seq.*); claims for penalties brought under the Labor Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*); claims for restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement Class Members during the Settlement Period.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-65 of the San Diego County Superior Court, 330 West Broadway, San Diego, CA 92101, on October 20, 2023 at 8:30 a.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Awards to be paid to the Class Representatives. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely submitted an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Stipulated Settlement Agreement and Release of Claims, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, or by contacting Class Counsel below:

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DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE SUPERIOR COURT