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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR THE COUNTY OF SAN DIEGO**

8 MIGUEL HERNANDEZ, on behalf of
9 himself, all others similarly situated, and on
10 behalf of the general public,

11 Plaintiff,

12 v.

13 MJ INDUSTRIES, INC.; MJ TANK LINES,
14 INC.; and DOES 1-100,

15 Defendants.
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Case No.: 37-2017-00003218-CU-OE-CTL

**DECLARATION OF MARY BUTLER
REGARDING NOTICE AND
SETTLEMENT ADMINISTRATION**

Date: January 15, 2021

Time: 8:30 a.m.

Dept: C-74

Judge: Hon. Ronald L. Styn

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1. I am employed as a Case Manager by Simpluris, Inc. (“Simpluris”), the Settlement Administrator in the above-entitled action. Our Corporate Office address is 3194-C Airport Loop Drive, Costa Mesa, CA 92626. My telephone number is (714) 824-8590. I am over twenty-one years of age and authorized to make this declaration on behalf of Simpluris and myself.

3. Simpluris was appointed by the Court as the Settlement Administrator to administer the Settlement in accordance with the terms of the Joint Stipulation and Settlement Agreement, (the “Settlement”). Simpluris has been responsible, among other things, for: (a) printing and mailing the Notice of Class Action Settlement (“Notice”); (b) receiving undeliverable Notices; (c) receiving and requests for exclusion; (d) and answering questions from Class Members. If the Court grants final approval of the Settlement, Simpluris will be responsible, among other things, for: (e) calculating individual Settlement payments, distributing funds, and tax-reporting following final approval; (f) mailing Settlement checks; (g) and for such other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

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5. On or around July 24, 2020, Simpluris received the Court-approved Notice from the Parties. The Notice advised Class Members of their right to participate, opt out of the Settlement,

1 object to the Settlement, or do nothing, and the implications of each such action. The Notice advised
2 Class Members of applicable deadlines and other events, including the date of the Final Approval
3 Hearing, and how Class Members could obtain additional information. A true and correct copy of an
4 exemplar Notice is attached hereto as “**Exhibit A**”.

5 6. On August 1, 2020, Counsel for Defendant provided Simpluris with a data list
6 containing the names, Social Security numbers, last known addresses, and dates of employment during
7 the Class Period for each Class Member (“Class List”). The Class List contained data for 188
8 individuals identified as Class Members.

9 7. The mailing addresses contained in the Class List were processed and updated utilizing
10 the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service (“USPS”).
11 The NCOA contains changes of addresses filed with the U.S. Postal Service. In the event that any
12 individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA
13 was utilized in connection with the mailing of the Notices.

14 8. On August 13, 2020, after updating the mailing addresses through the NCOA, the Notice
15 was mailed via First Class U.S. Mail to 188 individuals identified as Class Members in the Class List.

16 9. As of the date of this declaration, twenty-four (24) Notices were returned by the post
17 office. For those without a forwarding address, Simpluris performed an advanced address search (i.e.
18 skip trace) on all of these addresses by using Accurant, a reputable research tool owned by Lexis-Nexis.
19 Simpluris used the Class Member’s name, previous address and Social Security number to locate a
20 more current address. Twenty (20) Notices were re-mailed to either a newfound address, with
21 forwarding addresses provided by the United States Postal Service or at the request of the Class
22 Member. Ultimately, after additional searches, four (4) Notices were undeliverable because Simpluris
23 was unable to find a better address.

24 10. As of the date of this declaration, there are 184 Class Members who will be paid their
25 portion of the Net Settlement Fund. The Net Settlement Amount available to pay Participating Class
26 Members was determined as follows:

27 11. The Net Settlement Fund of \$61,036.10 is available to pay Claimants was determined by
28 subtracting Class Counsel Fess of \$50,000.00, Class Counsel Costs of \$15,000.00, Named Plaintiffs

1 Service Awards of \$10,000.00, PAGA of \$3,750.00, estimated employers taxes of \$3,964.90, and the
2 Administration Costs of \$6,249.00 from the Maximum Settlement Amount of \$150,000.00.

3 12. The ***average estimated payment*** is \$331.72 and the ***highest estimated payment*** is
4 \$1,435.54.

5 13. Class Members were directed to submit a Request for Exclusion to the Settlement
6 Administrator by September 12, 2020. As of the date of this declaration, Simpluris received 4 Requests
7 for Exclusion from the Settlement.

8 14. Class Members who wished to object were directed to submit a written objection to the
9 Settlement Administrator by September 12, 2020. As of the date of this declaration, Simpluris has not
10 received any objections to the Settlement.

11 15. As of the date of this declaration, Simpluris has not received any disputes over the
12 number of workweeks worked by Class Members. The deadline to submit a dispute to the Settlement
13 was September 12, 2020.

14 16. Simpluris' total costs for services in connection with the administration of this
15 Settlement, including fees incurred and anticipated future costs for completion of the administration, is
16 \$6,249.00, which includes all work to conclude Simpluris' duties and responsibilities pursuant to the
17 Settlement, mailing of settlement payment checks, respond to class member inquiries, and the like.

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19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct and that this declaration was executed on this 4th day of November, 2020, in Frisco,
21 TX.

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Mary Butler

Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

«City», «State» «Zip»-«ZipDPC3»

TO: All individuals employed by Defendant MJ Industries, Inc. dba MJ Tank Lines as drivers at any time between January 25, 2013, through July 24, 2020.

The Superior Court of California, County of San Diego has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned lawsuit ("Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All individuals employed by Defendant MJ Industries, Inc. dba MJ Tank Lines as drivers at any time between January 25, 2013, through July 24, 2020.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?	Page 1
2. What Is This Case About?	Page 2
3. Am I A Class Member?	Page 2
4. How Does This Class Action Settlement Work?.....	Page 2
5. Who Are the Attorneys Representing the Parties?.....	Page 2
6. What Are My Options?.....	Page 3
7. How Do I Opt Out or Exclude Myself From This Settlement?.....	Page 3
8. How Do I Object to the Settlement?.....	Page 3
9. How Does This Settlement Affect My Rights? What are the Released Claims?.....	Page 4
10. How Much Can I Expect to Receive From This Settlement?.....	Page 4
11. How Will Class Counsel Be Paid?.....	Page 5

1. Why Have I Received This Notice?

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from January 25, 2013, through July 24, 2020 (the "Class Period").

A Preliminary Approval Hearing was held on July 24, 2020, in the Superior Court of California, County of San Diego. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on January 15, 2021 at 8:30 a.m., before the Honorable Ronald L. Styn in Department C-74, located at 330 West Broadway, San Diego, California 92101.

2. What Is This Case About?

The Action was commenced on January 25, 2017 in the San Diego County Superior Court (Case Number 37-2017-00003218-CU-OE-CTL). This action was brought against Defendant seeking damages, restitution, penalties, interests, costs and attorney's fees and other relief based on the following alleged causes of action: 1) failure to pay all straight time or overtime wages including time shaving; 2) failure to pay compensation for all time worked; 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) waiting time penalties; and 7) violation of the Unfair Competition Law. The Action was later amended to allege a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to Class Members.

3. Am I A Class Member?

You are a Class Member if you are employed or were employed by Defendant in California as a driver for the period of January 25, 2013 through July 24, 2020.

4. How Does This Class Action Settlement Work?

Plaintiff brings this action on behalf of himself and all other similarly situated employees who are or were employed by Defendant in California as a driver for the period of January 25, 2013, through July 24, 2020. Plaintiff and these other current and former employees comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. If you would like copies of the settlement documents, you can contact the Settlement Administrator or Class Counsel.

5. Who Are the Attorneys Representing the Parties?

Class Counsel (Attorneys for Plaintiff and the Class)	Attorneys for Defendants
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Fax: (619) 234-4048	FISHER & PHILLIPS LLP Christine D. Baran Colin P. Calvert Ashton M. Riley 2050 Main Street, Suite 1000 Irvine, California 92614 Telephone: (949) 851-2424 Fax: (949) 851-0152

The Court has decided that Mara Law Firm, PC is qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will not receive an Individual Settlement Share payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined in Section No. 9 below.
- **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at Hernandez vs. MJ Industries, Inc. P.O. Box 26170, Santa Ana, CA, 92799; (d) be signed by you or your lawful representative; and (e) be postmarked no later than September 12, 2020.

The Final Judgment entered, following Final Approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement.

8. How Do I Object To The Settlement?

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later September 12, 2020. The objection must state: (a) the case name (e.g. *Hernandez v. MJ Tank Lines*) and case number (37-2017-00003218-CU-OE-CTL); (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class.

Class Members who timely file valid objections to the Settlement may appear at the Final Approval hearing, either in person or through the objector’s own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than September 12, 2020.

If the Court rejects your objection, you will receive a settlement payment and will be bound by the terms of the Settlement.

9. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties¹ from the Released Claims. The Released Claims are as follows:

10. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendant could be required to pay under this Settlement is no more than \$150,000 (“Gross Settlement Amount” or “GSA”).

The “Net Settlement Amount” or “NSA” means the portion of the GSA available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payment to Plaintiff in an amount not to exceed \$10,000, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$7,500; (3) a payment of \$3,750 (75% of \$5,000 allocated to the Labor Code Private Attorneys General Act of 2004 claims) to the California Labor Workforce Development Agency (“LWDA”) (4) payment to Class Counsel in an amount not to exceed \$50,000 (1/3 of the GSA) for attorneys’ fees and an amount not to exceed \$15,000 for litigation costs; and (5) payment of both employee and employer payroll taxes on the portion of the settlement shares earmarked as wages to the appropriate local, state, and federal taxing authorities. All of these payments are subject to court approval.

A. How Your Payment Is Calculated.

After deducting the above-referenced items, the remaining NSA, will be proportionately distributed amongst all Class Members who have not opted out. The Settlement Administrator will assign to each Participating Class Member² a settlement share which shall be calculated as follows: (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked.

B. Your Estimated Settlement Payment.

Your exact share of the NSA cannot be precisely calculated until after the time during which individuals may object or opt out of the Settlement concludes. However, based upon the calculation above, your *estimated* share of the Net Settlement Amount is:

\$«MERGED_EstSettAmnt_CALC», less taxes. This is based on Defendant’s records which shows you worked «MERGED_WW_CALC» workweeks during the Class Period.

C. Tax Treatment

One-third (1/3) of each Individual Settlement Share is intended to settle each Class Member’s claims for unpaid wages (the “Wage Portion”). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant’s share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and will also be paid out of the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Settlement Share.

One-third (1/3) of the Individual Settlement Share is intended to settle each Class Member’s claims for interest and one-third (1/3) of the Individual Settlement Share is intended to settle each Class Member’s claim for penalties (collectively, the “Non-Wage Portion”). The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Settlement Share.

D. What Happens If I Don’t Cash My Check?

- E. It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or deposit it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the uncashed amounts will be sent to the California State Controller’s Office – Unclaimed Property Fund in your name, where you will be able to claim your settlement payment at a future date.

² A Participating Class Member is a Class Member who does not exclude themselves (opt out) from the Settlement.

11. How Will Class Counsel Be Paid?

Subject to Court approval, Class Counsel (the attorneys for Plaintiff and the Class) shall be paid an amount not to exceed one-third (1/3) of the GSA (\$50,000) for attorney fees and up to \$15,000 for litigation costs. Subject to Court approval, Plaintiff will be paid an amount not to exceed \$10,000, for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and risks of being blacklisted from future employment.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the MJ Tank Lines Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 330 West Broadway, San Diego, California 92101. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.