

Eilerman v. McLane Company, Inc.
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

TO: ALL INDIVIDUALS WHO (1) RESIDED IN WASHINGTON STATE, (2) WERE EMPLOYED BY MCLANE COMPANY, INC. DBA MCLANE/NORTHWEST (“DEFENDANT” OR “MCLANE”) AS A TRUCK DRIVER, (3) WHO DROVE AT LEAST ONE ROUTE OF THREE HOURS OR MORE WITHIN WASHINGTON STATE, AND (4) WHO WERE PAID ON A “PER MILE” PIECE-RATE BASIS, AT ANY TIME FROM MARCH 17, 2013 THROUGH AND INCLUDING DECEMBER 31, 2016 (THE “SETTLEMENT CLASS”)

PLEASE READ THIS NOTICE CAREFULLY. YOU ARE NOT BEING SUED. A SETTLEMENT HAS BEEN REACHED IN A LAWSUIT INVOLVING DEFENDANT AND ITS EMPLOYEES.

DEFENDANT’S RECORDS INDICATE THAT YOU ARE ENTITLED TO A PAYMENT FROM THE SETTLEMENT BECAUSE YOU WERE EMPLOYED BY AND WORKING FOR DEFENDANT AS A TRUCK DRIVER IN WASHINGTON STATE BETWEEN MARCH 17, 2013 AND DECEMBER 31, 2016 (THE “SETTLEMENT CLASS PERIOD”). THEREFORE YOU ARE ENTITLED TO A SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT AGAINST DEFENDANT.

AFTER READING THIS NOTICE, IF YOU WISH TO RECEIVE YOUR SETTLEMENT PAYMENT, THEN THERE IS NOTHING MORE THAT YOU NEED TO DO. A CHECK WILL BE MAILED TO YOU AT THE ADDRESS THIS NOTICE WAS MAILED TO YOU ONCE THE SETTLEMENT BECOMES FINAL.

HOWEVER, IF YOU DO NOT WANT TO BE A PART OF THE SETTLEMENT AND YOU DO NOT WANT TO RECEIVE YOUR PAYMENT, THEN YOU MUST SUBMIT A REQUEST FOR EXCLUSION ON OR BEFORE MAY 8, 2017 IN ORDER TO BE EXCLUDED FROM THE SETTLEMENT CLASS.

ADDITIONALLY, IF YOU WISH TO FILE AN OBJECTION TO THE SETTLEMENT, YOU MUST DO SO ON OR BEFORE MAY 8, 2017.

Pursuant to the order of United States District Judge Benjamin Settle, entered on February 28, 2017, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A settlement has been reached between the parties in the lawsuit described above, which has been litigated in the United States District Court, Western District of Washington, on behalf of the Settlement Class described above. You have received this notice because Defendant’s records indicate that you qualify as a member of the Settlement

Class. The purpose of this Notice is to inform you about the settlement and about how you can participate in this settlement, or how you can choose to object to or be excluded from the settlement.

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement, which can be viewed at <http://www.simpluris.com/pages/case-info.aspx>, or by contacting class counsel at the address listed on the last page of this Notice, or by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.wawd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Western District of Washington, Tacoma Courthouse, 1717 Pacific Avenue, room 3100, Tacoma, Washington, 98402, between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE PAYMENT PROCESS.

I. BACKGROUND OF THE CASE

On March 17, 2016, Plaintiff Steven Eilerman filed a proposed class action against Defendant McLane Company, Inc. dba McLane/Northwest, in the Superior Court of the State of Washington, County of Pierce, and is now being litigated in the United States District Court for the Western District of Washington (the “Litigation”).

In the operative Complaint, Plaintiff alleges, among other things, that members of the Settlement Class were not properly paid for rest break time as allegedly required under Washington state law, were not provided such rest breaks, and were not provided itemized wage statements that comply with the requirements of Washington law, and seeks various damages and/or penalties flowing from the allegedly improper practices, plus attorneys' fees, costs and interest as may be awarded by the Court or the jury.

Plaintiff has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have engaged in investigation and mediation to assess the merits of the claims and the defenses to those claims, including data analysis and damages modeling using retained experts.

Class Counsel in this case believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted, and of course no one can predict how the various legal questions in the lawsuit, including the amount of damages, would ultimately be resolved. Therefore, after careful consideration of all of the facts and circumstances of this case, and after full mediated settlement negotiations, Class Counsel believe that the proposed settlement is fair, reasonable and adequate, and in the best interests of the members of the Settlement Class.

The Parties have entered into a Settlement Agreement which has now been reviewed and granted preliminary approval by the Court. The Court has also conditionally certified this case to proceed as a class action for purposes of this settlement and appointed Class Counsel. As discussed in Section V of this Notice, the Court will hold a hearing to determine whether to grant final approval of the Settlement Agreement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

The Class Representative and Class Counsel support this settlement. The reasons for supporting a settlement include the risk that a class may not be certified, the risk that class members could recover substantially less as a result of further litigation, the risk of going to trial and then losing such that no one would recover anything, and the delays associated with further litigation, including the high likelihood that even if Plaintiff were to win at trial, Defendant would then pursue its right to appeal any judgment. In addition, significant risk of Plaintiff and/or the class members recovering nothing without going to trial exists related to Defendant's intended assertion of federal preemption defenses to the Washington state law claims being pursued in the Litigation.

The settlement provides for the following:

A. Settlement Class: all individuals who (1) resided in Washington State, (2) were employed by Defendant as a truck driver, (3) who drove at least one route of three hours or more within Washington State, and (4) who were paid on a "per mile" piece-rate basis, at any time from March 17, 2013 through and including December 31, 2016.

B. Settlement Formula:

The total settlement to be paid by Defendant will be Seven Hundred and Seventy-Five Thousand Dollars (\$775,000) (the "Settlement Fund") if the Court approves the settlement. From the \$775,000 Settlement Fund, deductions will be made from the total for the payment of the Court approved attorneys' fees and costs to Class Counsel, for the class representative enhancement to be paid to the Plaintiff who stepped forward to lead the lawsuit, as well as for the cost of the Settlement Administrator to administer the Settlement. The amount that remains after these Court approved deductions is referred to as the Net Settlement Fund ("NSF"). Specifically included in the NSF are employee payroll taxes and Defendant's obligations for all types of applicable employer-side payroll taxes which may be owed as a result of the payments to be made to the Settlement Class Members. In this case, the NSF is expected to be approximately \$480,546.83.

Each Settlement Class Member will be entitled to a settlement payment based on a payment ratio representing his or her proportionate share of the NSF based on a distribution formula that will be calculated for each Settlement Class Member as follows: Each Settlement Class Member's share of the NSF shall be calculated by multiplying the Net Settlement Fund by a point value fraction, the numerator of which is the total number of full or partial calendar weeks a Settlement Class Member was employed by Defendant in Washington during the Settlement Class Period and the denominator of which is the total number of full or partial calendar weeks all of the Settlement Class Members were employed by Defendant in Washington during the Settlement Class Period. Such calendar weeks shall be calculated by the Settlement Administrator from Defendant's records as reflected on the Class List Defendant provides to the Settlement Administrator.

C. Your estimated settlement payment:

Based on preliminary estimates, the net amount of the settlement payment you would receive would be approximately \$[MERGED_EstSettAmnt_CALC], which is the net amount after subtraction of employer and employee payroll taxes, and after the deductions for the fees, costs, incentive awards, and administration expenses, as mentioned above. It is estimated that you were employed [MERGED_WW_CALC] calendar weeks as a Settlement Class Member for Defendant in Washington during the applicable Settlement Class Period.

If you wish to dispute the determination of your number of calendar weeks as set forth above, you must notify the Settlement Administrator in writing **by email or mail**, no later than **May 8, 2017 to the address is set forth in Section III. C below**. Please provide any proof you may have that you were employed more calendar weeks than the number provided in this notice.

D. Release: Each Settlement Class Member who does not timely exclude himself or herself from the Settlement (following the procedures specified in Section III. C. below) will release Defendant McLane Company, Inc., and all related or affiliated entities, from any and all claims each Settlement Class Member may have arising out of or related to the claims and allegations made in connection with the

Litigation, as described below in Section IV .A.

E. Class Representative: The Class Representative is Steven Eilerman. The Class Representative will apply to the Court for a class representative enhancement in such amount as the Court determines to be fair and reasonable, at the time of the Final Approval Hearing. The Parties' agreement proposes a payment of no more than \$5,000 to the Class Representative for the enhancement, in addition to the settlement payment to which he is entitled just like all the other Settlement Class Members. Class Counsel considers this amount to be fair, reasonable and adequate given the time which the representative has expended while pursuing the case, the Class Representative's agreement to release all claims against Defendant, the job-related risks that may be faced by the Class Representative in an employment class action, and his willingness to expose himself to the legal system to pursue this case. The Class Representative's motion for approval of the requested enhancement award shall be filed with the Court no later than 15 days before the deadline for the filing of any objections to the final approval of the settlement (discussed in Section III. B. below), and will be available for review online or at the Court file on or after that date.

F. Attorneys' Fees and Costs: The attorneys for the class will ask the Court to award Plaintiff's attorneys' fees, and the requested fees shall not exceed 30% of the Settlement Fund, or \$232,500. In addition, the attorneys for the class will ask the Court to approve that they be reimbursed for all appropriate costs and expenses incurred by Class Counsel in prosecuting this action, not to exceed \$15,000. Class Counsel's application for attorneys' fees and reimbursement of expenses shall be filed with the Court no later than 15 days before the deadline for the filing of any objections to the final approval of the settlement (discussed in Section III. B below), and will be available for review online or at the Court file on or after that date.

G. Costs of Settlement Administration: In addition, the attorneys for the class will seek the Court's approval to pay the costs of settlement administration out of the total settlement payment, not to exceed \$10,000 to be paid to the third party Settlement Administrator, Simpluris.

H. Unclaimed Funds: In the event that any checks mailed to Settlement Class Members remain uncashed after the expiration of 180 days, or an envelope mailed to a Settlement Class Member is returned and no forwarding address can be located for the Settlement Class Member after reasonable efforts have been made, then the Settlement Administrator will arrange for the funds to be transmitted to the Washington State Department of Revenue Unclaimed Property Fund, to be held there in the name of and for the benefit of such class members under Washington's escheatment laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by the Class Representative and by the Court appointed Class Counsel. You will receive a settlement check from the settlement unless you opt out of the Settlement Class, and as a member of the Settlement Class, you will then 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 Defendant as described below. As a member of the Settlement Class, you will not be individually responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

A. Participating in the Settlement

If you were employed by or working for Defendant as a truck driver as set forth in the definition of the "Settlement Class," above, from March 17, 2013 through December 31, 2016, and you have received this Settlement Notice packet, then it has been determined that you qualify for inclusion in the Settlement Class. **If you wish to participate in the settlement and receive your payment, you are not required to take any action. There is nothing that you need to do.** If the Court grants final approval of the settlement and you qualify as a Settlement Class member, you will receive your settlement payment calculated as described above. 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 Litigation.

B. Objecting to the Settlement

You can ask the Court to deny approval of the settlement by filing a written objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement described in this Notice. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you believe should happen, you must object.

You must submit any objection to the proposed settlement, including Class Counsel's application for fees, reimbursement of expenses, and class representative's enhancement award, in writing. If you do so, then you may also appear at the Final Approval Hearing, either in person or through your own attorney, provided that you notify the Court and all counsel in writing not less than 30 days before the scheduled date of the Final Approval Hearing of your intention to appear. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Eilerman v. McLane Company, Inc.*, Case No. 3:16-cv-05303-BHS), and (b) be submitted to the Settlement Administrator, postmarked on or before May 8, 2017, which is the 30th day following the date that this Notice was mailed (the objection deadline), and it must be mailed to:

Eilerman v. McLane Company, Inc.
c/o Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799

You must also serve any objection on Class Counsel and counsel for Defendant, at the addresses set forth below in Section VI.

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. **DO NOT TELEPHONE THE COURT.**

C. Excluding Yourself from the Settlement

If you qualify to be part of the Settlement Class but do not wish to participate in the settlement, you may exclude yourself (in other words, you may “opt out”) by submitting a written request for exclusion to the Settlement Administrator. Your opt out request must be signed by you personally and must contain the following language, in order to effectuate your election to opt-out: “I elect to opt out of the Eilerman v. McLane Company, Inc. class action settlement. I understand that by doing so, I will not be able to participate in the settlement, and will not receive a share of the settlement proceeds.” **Your request must be postmarked on or before May 8, 2017 which is the 30th day following the date that this Notice was mailed (the opt-out deadline), and it must be mailed to:**

Eilerman v. McLane Company, Inc.
c/o Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799

Any person who submits a timely written opt-out request shall 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 release any claims he or she may have against Defendant, and may pursue those claims so long as it is done in conformance with the applicable statute of limitations. You should consider consulting with an attorney of your own choosing, promptly, if you wish to pursue your own claims.

In the event that more than 10% of the Settlement Class Members submit elections to opt-out of the settlement, Defendant will have the right to rescind and terminate the settlement without prejudice to its pre-settlement positions and defenses in the Litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon final approval by the Court, each Settlement Class Member who has not opted-out of the settlement will release McLane Company, Inc. dba McLane/Northwest, and each of its affiliates, parent companies, subsidiaries, shareholders, officers, officials, partners, directors, members, owners, servants, employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal representatives, successors and assigns, past, present, and future, and each and all of their respective officers, partners, directors, members, owners, servants, agents, shareholders, employees, employers, agents, contractors, representatives, executors, personal representatives, accountants, insurers, attorneys, pension, profit sharing, retirement savings, health and welfare, and any other employee benefit plans of any nature and the respective trustees, administrators, sponsors, fiduciaries, successors, agents and employees of all such plans, predecessors, successors and assigns, past, present, and future, and all persons acting under, by, through, or in concert with any of them, of and from any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, damages, obligations or liabilities of any and every kind, contingent or accrued, arising out of or related to the claims and allegations made in the Complaint and/or otherwise in connection with the Litigation, including without limitation as to the payment of compensation, provision of breaks required under applicable law(s) or regulation(s), and/or wage or payroll statements provided by Defendant, through and including December 31, 2016.

The Class Representative identified in Section II. E, above, is providing a broader general release of any and all claims he may have against Defendant and the other released parties through the date of Final Approval of the Settlement Agreement.

B. Payment to Settlement Class Members

Your distribution from the Settlement Fund will be paid as soon as practicable after the Settlement Administrator is in receipt of the settlement funds. This will only occur if the Settlement is granted Final Approval by the Court, and then becomes “final”, as provided in the Settlement Agreement. If, at any time on or before the Effective Date of the settlement, federal legislation is enacted expressly providing that any of the types of claims being asserted in the Litigation are preempted by federal law, then Defendant will have the right to rescind and terminate the settlement without prejudice to its pre-settlement positions and defenses in the Litigation, without any financial obligation related to the proposed settlement set forth in the settlement agreement other than to pay for the costs of administration of the settlement incurred by the Settlement Administrator through the time of such rescission and termination.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing on May 17, 2017, in Courtroom E of the Tacoma Courthouse, located at 1717 Pacific Avenue, Tacoma, WA 98402, 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 attorneys' fees and reimbursement of costs and expenses and the service award to be paid to the Class Representative. Class Counsel's application for attorneys' fees and reimbursement of expenses will be on file with the Court no later than 15 days prior to the objection deadline, which is 30 days after the date of the mailing of this Notice, and will be available for review on or 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 filed an objection, and even then, only if you wish to be heard on your objection by the Court.

VI. ADDITIONAL INFORMATION

The following additional information is provided:

1. Contact information for Class Counsel to answer questions:

ACKERMANN & TILAJEF, P.C.
CRAIG J. ACKERMANN (SBN 229832)
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635
Email: cja@ackermanntilajef.com

HAMMOND LAW, P.C.
JULIAN HAMMOND (SBN268489)
POLINA PECHERSKAYA (SBN 269086)
ARI CHERNIAK (SBN 290071)
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
Telephone: (443) 739-5758
Facsimile: (310) 295-2385
Email: jhammond@hammondlawpc.com
Email: ppecherskaya@hammondlawpc.com
Email: acherniak@hammondlawpc.com

2. Contact information for Defendant's counsel:

MCGUIREWOODS LLP

Matthew C. Kane, Esq.
Sabrina A. Beldner, Esq.
Sylvia J. Kim, Esq.
1800 Century Park East, 8th Floor
Los Angeles, CA 90067
Telephone: (310) 315-8200
Email: mkane@mcguirewoods.com
Email: sbeldner@mcguirewoods.com
Email: skim@mcguirewoods.com

3. The address for the website, created and maintained by the Settlement Administrator, that has links to the Settlement Class Notice, motions for settlement approval, application for attorneys' fees, reimbursement of expenses, and Class Representative enhancement awards, and other important documents in the case, is as follows:

<http://www.simpluris.com/pages/case-info.aspx>

4. Instructions on how to access the case docket via PACER or in person at any of the Court's locations:

Docket information for the Western District of Washington is available from the electronic filing system via PACER (www.pacer.gov). The Case Management/Electronic Case Filing (CM/ECF) system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district and appellate courts. CM/ECF allows courts to accept filings and provide access to filed documents over the Internet. The system also offers instantly updated dockets and immediate online access to new filings, which can be downloaded and printed directly from the court system. For more information, please go to <http://wawd.uscourts.gov/cm-ecf>

For in-person review, in order to view or retrieve documents in any format, you may access the PACER system on one of the terminals in the Records Section of any Clerk's Office location, where you may search party names to obtain a case number. Most case files are now available entirely in electronic format through ECF. A physical file is created for each case but only manually filed documents are placed in the file; electronically filed documents (the vast majority of filings in court) are only available electronically. Manually filed

documents are scanned and are accessible via the electronic docket.

Physical case files and dockets may be obtained on a same day basis, unless they are being reviewed by someone at the courthouse at the time of the request or are in the Federal Records Center, where paper files in closed cases are housed after one year or more. Clerk's Office staff can tell you whether the file is in the courthouse or at the Federal Records Center.

A valid government-issued picture identification card is needed to view a paper case file or docket. Acceptable identification cards include a state driver's license, a Washington state identification card, a United States passport, or a federal, state, county or city employee card. Credit cards, car keys, or student identification cards will not be accepted.

5. Settlement Class members are advised to check the settlement website or the Court's PACER site to confirm that the date for hearing on final approval has not been changed.

You may also contact the Settlement Administrator, Simpluris, Inc., toll-free at (888) 369-3780.

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

BY ORDER OF THE DISTRICT COURT