

Express Messenger Systems Wage and Hour Cases, No. JCCP 4789
 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
 NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

Si desea una traducción al Español de este Aviso, por favor llame al administrador al 1-888-975-2363

To: All individuals who personally performed last-mile delivery and pickup services for OnTrac (“Defendant”) in California at any time from February 22, 2009 to August 6, 2021 (“Class Members”), or January 31, 2013 to August 6, 2021 (“PAGA Members”), and who were designated as independent contractors. Excluded this group are individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers.

ATTN: «FullName»

On August 6, 2021 the Honorable Kenneth R. Freeman of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 180 days—checks that are not cashed within 180 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members’ name.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 10:00 a.m. on January 6, 2022 in Department SSC-14 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the hearing, but if you wish to attend, the Court’s preference is that you attend the hearing telephonically (remotely), which can be set up through LA Court Connect (www.lacourt.org/lacc/). A prescheduled appointment is currently necessary to review any documents in the clerk’s office. Please see www.lacourt.org for up-to-date safety measures as they may change, and also see http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf for more information about the Court’s social distancing protocols.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit www.cptgroupcaseinfo.com/expressmessengersystems for any scheduling changes.

Questions? Contact the Settlement Administrator toll free at 1-888-975-2363

Summary of the Litigation

Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal, on their behalf and on behalf of other current and former service providers, allege that Defendant violated California state labor laws as a result of its alleged failure to classify Class Members as non-exempt employees. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. Following years of negotiations, the parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs' claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$10,500,000. Subject to Court approval, this amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$15,000, each, to Thomas Lewis, Aurelio Sanchez, and Eliseo Leal for their services on behalf of the class and for general releases of all claims arising out of their relationship with Defendant; (3) \$4,200,000 in attorneys' fees and up to \$225,000 in litigation costs and expenses; (4) a \$200,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$150,000 payment to the California Labor and Workforce Development Agency ("LWDA"), and a \$50,000 payment ("PAGA Fund") to PAGA Members, and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$40,000. After deducting the above payments, a total of approximately \$5,790,000.00 ("Net Settlement Amount") will be allocated to Class Members who do not opt out of the Settlement Class. Additionally, all PAGA Members will receive a proportional share of the \$50,000 PAGA Fund, regardless of whether they opt out of the Settlement Class.

Payments from the Net Settlement Amount. Each Class Member's share of the Net Settlement Amount will be based on the number of payments each Class Member received during the period from February 22, 2009 to August 6, 2021 ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

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- (b) Defendant will calculate the total number of periods in which a Class Member received a payment via Subcontracting Concepts, Inc. (“SCI”), based on the records and data maintained by SCI, for each Class Member from the time period between February 22, 2009 and August 6, 2021 (“Active Settlement Periods”).
- (c) Each Class Member’s share of the Net Settlement Amount will be calculated according to the following formula: $\text{Class Member's Active Settlement Periods} \div \text{Entire Class' Active Settlement Periods} \times \text{Net Settlement Amount}$.

According to Defendant’s records, you worked during a total of «Payperiods» Active Settlement Periods during the Class Period. Accordingly, your estimated payment is approximately «estAmount».

Payments from the PAGA Fund. Each PAGA Member’s share of the PAGA Fund will be based on the number of payments each PAGA Member received during the period from January 31, 2013 to August 6, 2021. (“PAGA Period”). The formula for calculating settlement payments is as follows:

- (a) The entire PAGA Fund will be disbursed to all PAGA Members.
- (b) Defendant will calculate the total number of periods in which a PAGA Member received a payment via SCI, based on the records and data maintained by SCI, for each PAGA Member from the time period between January 31, 2013 and August 6, 2021 (“PAGA Active Settlement Periods”).
- (c) Each PAGA Member’s share of the PAGA Fund will be calculated according to the following formula: $\text{PAGA Member's PAGA Active Settlement Periods} \div \text{All PAGA Members' PAGA Active Settlement Periods} \times \text{PAGA Fund}$.

According to Defendant’s records, you worked during a total of «PAGA Payperiods» PAGA Active Settlement Periods during the PAGA Period. Accordingly, your estimated payment is approximately «PAGA Amount».

Disputes. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes should be postmarked or faxed on or before October 4, 2021 to:

Lewis v. Express Messenger Systems, Inc., et al. Settlement
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax No. 1-949-419-3446

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, the Individual Settlement Payment will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

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Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”):

Settlement Class Members’ Released Claims: Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys’ fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the operative Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432, 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 *et seq.* (PAGA Claims), and 3700 *et seq.*; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code sections 17200 *et seq.*; and any other similar California state or federal law, for non-payment of wages, minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage statements, failure to provide workers’ compensation insurance, meal periods, rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys’ fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest (“Settlement Class Members’ Released Claims”). Settlement Class Members’ Released Claims do not include claims that, as a matter of law cannot be released. The Settlement Class Members’ Released Claims are released from February 22, 2009 through August 6, 2021.

PAGA Members’ Released Claims: All claims for civil penalties pursuant to PAGA as alleged in Plaintiffs’ PAGA pre-filing notice and operative Complaint, and based on all provisions of the Labor Code, Wage Orders or any other statute or regulation identified in the Action to the fullest extent permitted by law (“PAGA Members’ Released Claims”). The PAGA Members’ Released Claims are released from January 31, 2013 through August 6, 2021.

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name,

Questions? Contact the Settlement Administrator toll free at 1-888-975-2363

signature (even if you have counsel), address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Lewis v. Express Messenger Systems, Inc., et al. Settlement
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

The written request to be excluded must be postmarked not later than October 4, 2021. If you submit a request for exclusion which is not postmarked by October 4, 2021, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Amount.
- Not release the Settlement Class Members' Released Claims.
- You will, however, release the PAGA Members' Released Claims, and will receive a payment from the PAGA Fund.

Option 3 – *Object to the Settlement*

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement.

Written objections must provide: (1) your full name, signature (even if you have counsel), address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at Lewis v. Express Messenger Systems, Inc., et al. Settlement, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

All written objections must be received by the administrator by not later than October 4, 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for January 6, 2022 at 10:00 a.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Questions? Contact the Settlement Administrator toll free at 1-888-975-2363

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT'S ATTORNEYS WITH INQUIRIES.

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