

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID GARCIA, an individual, for himself and those
similarly situated,

Plaintiff,

vs.

FREEMPORT MCMORAN OIL & GAS, LLC.; a
Delaware limited liability corporation; and DOES 1
through 100,

Defendants.

Case No. CV 16-04320-DMG (AJWx)

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former hourly employees of Defendant Freeport McMoRan Oil & Gas, LLC., who, at any time from April 1, 2012, through March 13, 2020 (“Class Period”), worked on oil platforms off the California coast on the Outer Continental Shelf (consisting of submerged lands, subsoil, and seabed more than three nautical miles off the mainland) for periods of 24 hours or more, stayed offshore overnight, and whose offshore shifts or hitches began from and ended on California soil.

**PLEASE READ CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *David Garcia v. Freeport McMoRan Oil & Gas, LLC*, U.S. District Court for the Central District of California, Case No. CV 16-04320-DMG (AJWx) (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Freeport McMoRan Oil & Gas LLC’s (“Freeport”) records show that you were employed at Freeport as a non-exempt employee in California working on oil platforms located off the California coast (or similarly titled position) between April 1, 2012 and March 13, 2020 (the “Class Period”) and stayed overnight on such a platform at least once during the Class Period. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff David Garcia (“Plaintiff”) brought this Lawsuit against Freeport on a class and representative basis on behalf of a class of all current and former non-exempt employees of Freeport who worked on oil platforms off the California coast for periods of 24 hours or more during the time period of April 1, 2012 March 13, 2020 (collectively the “Settlement Class”). Plaintiff David Garcia is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Lawsuit alleges that Freeport failed to pay Settlement Class members all earned minimum, overtime and double-time wages, failed to provide all legally-required meal and rest periods, failed to provide complete, accurate and/or properly formatted wage statements, failed to timely pay all wages due or final wages due upon separation of

employment, engaged in unfair competition, and as a result of the foregoing alleged violations, engaged in unlawful business practices, and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Freeport denies that it has done anything wrong. Freeport also denies that it owes Settlement Class members any wages, restitution, penalties, damages, or other amounts. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Freeport, by whom all liability is expressly denied.

To avoid additional expense, inconvenience, and interference with its business operations, Freeport has concluded that it is appropriate to settle the Lawsuit on the terms summarized in this Notice. After Freeport provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Freeport, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation. Most importantly, at the time settlement was reached, there was uncertainty regarding the merit of the claims considering the pending motion for class certification in *Parker Drilling Management Services, Ltd., Petitioner v. Brian Newton*, Case No. 18-389. The Supreme Court issued its decision on June 10, 2019, *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, No. 18-389, 139 S. Ct. 1881, 1893 (2019), vacating and remanding the Ninth Circuit’s decision (unanimously). The Judgment issued on July 12, 2019. The Supreme Court dismissed *Newton’s* overtime and minimum wage claims but remanded relating to remaining claims to be determined consistent with its decision.

Given the parties’ disagreement regarding which, if any, of Plaintiff’s remaining claims will have merit, including following the U.S. Supreme Court ruling in *Newton*, and based on that, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class.

If you are still employed by Freeport or its related companies, your decision about whether to participate in the Settlement will not affect your employment. California law and Freeport’s policies strictly prohibit unlawful retaliation. Freeport will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff/Settlement Class: Aris E. Karakalos Strauss & Strauss, APC 121 N. Fir St., Suite F Ventura, California 93001 aris@strausslawyers.com 805.641.6600 tel. 805.641.6607 fax www.strausslawyers.com	Attorneys for Freeport: Baldwin J. Lee Allen Matkins Leck Gamble Mallory & Natsis LLP Three Embarcadero Center, 12 th Floor San Francisco, California 94111 blee@allenmatkins.com 415.273.7446 tel.
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What are the terms of the Settlement?

On March 13, 2020 the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who have worked for Freeport in California on oil platforms located off the California coast from April 1, 2012 through March 13, 2020 and stayed overnight at least once on such a platform. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Freeport as described below.

Freeport has agreed to pay \$4,000,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, PAGA Payment to State of California, and the Class Representative’s Service Award.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for up to 25% of the Maximum Settlement Amount, which is currently estimated at \$1,000,000.00 as reasonable compensation for the work Class Counsel performed and will continue to perform in the Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$4,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved CPT Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Class Representatives’ Service Awards. Class Counsel will ask the Court to award the Class Representative, David Garcia, a service award in the amount of \$10,000.00, to compensate him for his services and extra work provided on behalf of the Settlement Class members.

PAGA Payment to State of California. The parties have agreed to allocate \$20,000.00 towards the settlement of the PAGA claims in the Lawsuit. \$15,000.00 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$5,000.00 will be allocated to Settlement Class members as described below.

Calculation of Individual Settlement Class Members’ Settlement Awards. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement. The Net Settlement Amount is estimated at approximately \$2,961,000.00 and will be divided as follows:

- (i) 90% of the Net Settlement Amount will be allocated to all participating Settlement Class members in proportion to the number of workweeks that he or she worked during the Class Period.
- (ii) 5% of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Freeport at any time from April 1, 2015 to March 13, 2020 shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the time period of April 1, 2015 to March 13, 2020.
- (iii) 5% of the Net Settlement Amount shall be designated as the “Waiting Time Amount” and will be allocated in equal amounts to all participating Settlement Class members whose employment with Freeport ended at any time between April 1, 2013 and March 13, 2020.
- (iv) \$5,000.00 of the Maximum Settlement Amount has been designated as the “PAGA Amount.” Each participating Settlement Class member who was employed by Freeport at any time from April 1, 2015 to March 13, 2020 shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the time period of April 1, 2015 to March 13, 2020.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement.

Allocation and Taxes. For tax purposes, each Settlement Award shall be treated as follows: 33.33% as “wages,” for which an IRS Form W-2 will be issued; and 66.6% as penalties and interest, for which an IRS Form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the individual settlement payments. The Settlement Administrator, Freeport and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion from the Settlement, will fully release and discharge Freeport McMoRan Oil & Gas, LLC, including its parents, subsidiaries, and affiliates, and related companies, and all of its and their respective past and present officers, directors, shareholders, employees, attorneys, insurers, agents, principals, heirs, representatives, accountants, auditors, consultants, assignees and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the “Released Parties”), from all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative complaint, including, but not limited to: (a) failure to pay all minimum wages owed, including any and all claims for failure to pay minimum wages based upon incorrect or improper calculation of the regular rate of pay under California Labor Code and 29 U.S.C. sections 206, 207, 211 and 216b; (b) failure to pay all premium wages owed, such as overtime and double-time wages pursuant to the California Labor Code and 29 U.S.C. 207, 211 and 216b; (c) failure to provide all meal and/or rest periods; (d) failure to provide complete, accurate and/or properly formatted wage statements; (e) failure to timely pay all wages due or final wages due upon termination of employment, pursuant to the California Labor Code and 29 U.S.C. sections 206, 207, 211 and 216b; (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief pled in the operative complaint; (g) all other wage, rest and meal period claims arising under the California Labor Code and/or the Fair Labor Standards Act, including, but not limited to, claims made under 29 U.S.C. section 211 and 216b; (h) all claims under PAGA that could have been premised on the claims, causes of action or legal theories pled in the operative complaint; and (i) all claims under the California Business & Professions Code, including unfair competition under section 17200, *et seq.* (collectively, the “Released Claims”). This release shall run from April 1, 2012 through March 13, 2020.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above. After final approval of the Settlement, you will receive a check in the mail that you must cash within 180 days from date of mailing.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, whether you have separated employment from Freeport between April 1, 2013 and March 13, 2020 (for Waiting Time Amount), and the proportionate number of workweeks you worked between April 1, 2015 and March 13, 2020 (for Wage Statement Amount), and the proportionate number of workweeks you worked between April 1, 2015 and March 13, 2020 (for PAGA Amount). Information contained in Freeport’s records regarding each of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **June 9, 2020. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form no later than **June 9, 2020**, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion Form directly to the Settlement Administrator at Garcia v. Freeport McMoRan Oil & Gas, LLC, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator at Garcia v. Freeport McMoRan Oil & Gas, LLC, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before **July 17, 2020**.

If you wish, you may also appear at the Final Approval Hearing scheduled for **July 31, 2020 at 10:00 a.m.** in Courtroom 8C of the United States District Court for the Central District of California, located at 350 W. First Street, Los Angeles, CA 90012. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *David Garcia v. Freeport McMoRan Oil & Gas, LLC*, U.S. District Court for the Central District of California, Case No. CV 16-04320-DMG (AJWx).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

By June 19, 2020, Class Counsel will file a motion for final approval of this Settlement and a motion for attorneys' fees and costs and service award that will be available for inspection at the courthouse and on the website identified below.

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **July 31, 2020 at 10:00 a.m.**, in Courtroom 8C of the United States District Court for the Central District of California, located at 350 W. First Street, Los Angeles, CA 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Awards to the Class Representatives. The Final Approval Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, visit www.cptgroup.com/FreeportSettlement, where you may view copies of this Notice, the Request for Exclusion form, the Settlement Agreement, and the forthcoming motion for attorneys' fees and costs and motion for final approval. You may also inspect those documents at the Office of the Clerk of the United States District Court for the Central

District of California, located at 350 W. First Street, Los Angeles, CA 90012, during regular court hours. In addition, you may contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, FREEPORT, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes or Requests for Exclusion is **June 9, 2020**. The deadline for submitting any Objections is **July 17, 2020**. These deadlines will be strictly enforced.