

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LUIS MORENO, an individual, on behalf of and
others similarly situated

Plaintiff,

vs.

HATHAWAY DINWIDDIE CONSTRUCTION
COMPANY; DOES 1 thru 50, inclusive,

Defendants.

) CASE NO. CGC-16-554443

) **NOTICE OF CLASS ACTION SETTLEMENT**

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IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

A court authorized this notice. This is not a solicitation from a lawyer.

A proposed class action settlement (the “Settlement”) has been reached between Plaintiff Luis Moreno (the “Representative Plaintiff”) and Defendant Hathaway Dinwiddie Construction Company (“Hathaway Dinwiddie”) on behalf of the following “Settlement Classes”:

“All persons who are employed or have been employed as an employee by HATHAWAY DINWIDDIE CONSTRUCTION COMPANY, in the State of California who are or were members of a Union with a collective bargaining agreement to which HATHAWAY DINWIDDIE CONSTRUCTION COMPANY is a signatory, from September 22, 2015 to October 16, 2016. (‘Proposed Class’)”

Hathaway Dinwiddie’s records indicate that you are a member of the Settlement Class. The Settlement resolves a putative class action lawsuit entitled, *Luis Moreno, et al. v. Hathaway Dinwiddie Construction, Co.*, in the San Francisco County Superior Court, Case No. CGC-16-554443 (the “Lawsuit”) which asserts claims that Hathaway Dinwiddie violated California’s wage and hour laws by allegedly failing to provide compliant wage statements during the Class Liability Period (defined below).

Hathaway Dinwiddie denies all of the claims and allegations in the Lawsuit, denies that the Representative Plaintiff or that any of the Settlement Class members are entitled to any relief in this case, and denies that absent a settlement, any class should be certified.

Both the Representative Plaintiff and Hathaway Dinwiddie recognize the costs and risks of litigation, however, and believe that the proposed Settlement is a fair and reasonable resolution of this case.

YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR RIGHTS, WHETHER YOU ACT OR DO NOT ACT.

YOU CAN RECEIVE MORE INFORMATION ON THIS SETTLEMENT AT

<http://www.cptgroup.com/hathawaysettlement>.

YOUR ESTIMATED PAYMENT INFORMATION

A \$658,642.50 SETTLEMENT FUND HAS BEEN CREATED TO PAY CLAIMS OF CLASS MEMBERS IN ORDER TO SETTLE THE LAWSUIT.

The Settlement provides for monetary payments based on your employment records with Hathaway Dinwiddie for the period between September 22, 2015 through October 16, 2016 (“Class Liability Period”).

The Distribution Amount will be allocated to Class Members as follows: (1) each Class Member shall receive a pro rata share of the Distribution Amount based on the number of wage statements they received during the Class Period; and (2) the wage statements for each Class Member in the Class will be derived from the hire and termination

dates and payroll data contained in the records kept by Hathaway Dinwiddie in the ordinary course of business during the respective Class Period. Any unapproved attorneys' fees, costs, penalties to the Labor Code and the Private Attorney General Act of 2004 ("PAGA"), or Representative Plaintiff Enhancement will be added to the Distribution Amount. These amounts are described in Section 5.

You received _____ wage statements during the applicable Class Period.

Your estimated payment amount in the settlement is \$_____. This amount is your pro rata share of the settlement, based on the number of wage statements you received during your employment with Hathaway Dinwiddie.

OVERVIEW OF YOUR OPTIONS UNDER THE SETTLEMENT

TO RECEIVE A SHARE OF THE SETTLEMENT	If you want to receive a monetary payment from the Settlement, you do not need to take any further action. However, if you no longer live at the address this Notice was mailed to, or if you move, you should promptly contact the Claims Administrator, whose contact information is listed in response to Question 8. In addition, if you wish to challenge the amount of your payment or the number of pay periods you worked, you must follow the procedures set forth in response to Question 10.
TO OPT OUT OF THE CLASS	If you remain a member of the Settlement Class, you will give up your right to pursue the "Class Member Released Claims" (defined in response to Question 6) against Hathaway Dinwiddie, other than in this lawsuit. If you do not want to remain a member of the Settlement Class, you must opt out of or request exclusion from the Settlement Class by submitting a Request For Exclusion in accordance with the procedures set forth in response to Question 11. If you opt out of the Settlement Class, you will not receive any monetary payment from the Settlement.
TO OBJECT TO THE SETTLEMENT	If you wish to object to the Settlement, you must submit a written objection in accordance with the procedures set forth in response to Question 15. By objecting, you will be informing the Court of your objection, but you will remain a Settlement Class Member, you will still be bound by the terms of the Settlement, and you will still receive a monetary payment if the Settlement is approved.

The Court still has to decide whether to grant final approval to the Settlement. Payments will only be issued to the Settlement Class members if the Court grants final approval to the Settlement.

SUMMARY OF THE LAWSUIT AND THE SETTLEMENT

1. What is the Lawsuit about?

The Lawsuit generally involves claims under California wage and hour laws. The Representative Plaintiff worked as a Journeyman Carpenter on various projects as assigned by Hathaway Dinwiddie during the Class Liability Period. The Representative Plaintiff alleged that Hathaway Dinwiddie failed to provide compliant wage statements in accordance with California law, to Settlement Class members, all of whom are current or former Hathaway Dinwiddie employees. Through the Lawsuit, the Representative Plaintiff sought to recover statutory and civil penalties under the Labor Code and the PAGA, and other related relief, on behalf of himself and Class members. Hathaway Dinwiddie denies all liability for the claims in the Lawsuit, that any of the claims and allegations have merit, and that a class action is proper for any purpose other than settlement. Both the Representative Plaintiff and Hathaway Dinwiddie believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the Settlement Class (defined below in response to Question 3).

2. Why is this lawsuit a class action?

In a class action, the "class representative" (in this case, Luis Moreno) sues on behalf of people who have similar claims. All of these people together are a "Class" or "Class Members." One court resolves the issues for all class members, except for the claims of those who opt out of the Class.

3. Who is a Class Member?

On October 4, 2019, the Honorable Judge Anne-Christine. Massullo of the California Superior Court in San Francisco granted preliminary approval of the Settlement and conditionally certified the following “Settlement Class” solely for purposes of this Settlement:

“All persons who are employed or have been employed as an employee by HATHAWAY DINWIDDIE CONSTRUCTION COMPANY, in the State of California who are or were members of a Union with a collective bargaining agreement to which HATHAWAY DINWIDDIE CONSTRUCTION COMPANY is a signatory, from September 22, 2015 to October 16, 2016. (‘Proposed Class’)”

4. Why is there a Settlement?

After investigating the claims at issue, and the possible defenses to those claims, both sides agreed to the Settlement to avoid the cost and risk of further litigation. Hathaway Dinwiddie denies all of the legal claims in the case, and also asserts that a class action is improper for any purpose other than this Settlement. In view of the risks that continued litigation would entail, Plaintiff Moreno and their lawyers think the Settlement is in the best interests of all Settlement Class Members.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the Settlement provide?

Under the terms of the Settlement, Hathaway Dinwiddie agrees to pay a “Total Settlement Amount” of \$658,642.50. If approved by the Court, deductions will be made from the Total Settlement Amount for attorneys’ fees of up to \$219,547.50, up to \$15,000.00 in costs to Class Counsel, service awards to the Representative Plaintiff for his services of up to \$5,000.00, up to \$12,750.00 in claims administration expenses to the Claims Administrator (with an updated estimated amount of \$11,000.00), and up to \$50,000.00 in penalties under the PAGA (with \$37,500.00 being allocated to the Labor & Workforce Development Agency for statutory penalties and \$12,500.00 remaining in the Distribution Amount to be distributed to the Class Members). The Court may award less than these requested deductions. If lesser amounts are awarded, the difference will be distributed to those Class Members participating in the settlement on a proportionate basis relative to the number of wage statements received during the Class Liability Period. The amount remaining after these items are deducted is the “Distribution Amount.”

Each Settlement Class Member who does not opt out of the Settlement shall be entitled to a “Settlement Share” from the Distribution Amount, which will be based on the individual Settlement Class Member’s employment records indicating the number of wage statements received during the Class Liability Period.

The entirety of the Distribution Amount will be paid to Settlement Class Members. The entire amount paid to each Class Member will be treated as penalties on which there will be no tax withholding. Each Settlement Class Member will receive a Form 1099 for the balance of his or her share of the Settlement and will be responsible for the payment of any taxes owing on the amount he or she receives, if any.

6. What am I giving up in exchange for the settlement benefits?

If you do not opt of the settlement (see paragraph 11), and if the Court grants final approval of the settlement (see paragraph 15), you will give up your legal right to pursue certain claims you may have against Hathaway Dinwiddie known as the “Class Member Released Claims.” More specifically:

Each settlement class member will finally and forever release and discharge Hathaway Dinwiddie from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities that each participating Class Member had, now has, or may hereafter claim to have for those claims or causes of action that were asserted in or could have been asserted in the Lawsuit, as alleged in Plaintiff’s Third Amended Complaint, regardless of whether such claims arise under state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Claims specifically include, but are not limited to: (1) failure to provide itemized wage statements pursuant to Labor Code section 226(a); and (2) Penalties Pursuant to Labor

Code § 2699(f) for failure to provide itemized wage statements, that were or could have been asserted during the Class Period.

You can talk to one of the lawyers appointed as Class Counsel (listed in response to Question 7 below) for free or you can talk to your own lawyer if you have questions about the released claims and what they mean.

WHO ARE THE LAWYERS REPRESENTING YOU?

7. Do I have a lawyer in this case?

The Court has preliminarily appointed the following lawyers to serve as Class Counsel for all members of the Settlement Class:

ERIC B. KINGSLEY (SBN: 185123)
 LIANE KATZENSTEIN LY (SBN: 259230)
 KINGSLEY & KINGSLEY, APC
 16133 Ventura Blvd., Suite 1200
 Encino, CA 91436
 Telephone: (818) 990-8300; Facsimile: (818) 990-2903

HOW TO GET A PAYMENT

8. How do I get a payment?

If the Settlement is approved, you will be mailed a payment unless you opt out of the Settlement Class in accordance with the procedures set forth in response to Question 11. If you no longer live at the address listed on the envelope to this notice, or if you move, please update your address with the Claims Administrator, whose contact information is as follows:

Moreno v. Hathaway Dinwiddie Construction Company
 c/o CPT Group, Inc.
 50 Corporate Park, Irvine, CA 92606
 Telephone: (888) 804-1489

9. When will I receive my check?

Checks will be mailed to Settlement Class Members only after the Court grants “final approval” of the Settlement at a Final Approval Hearing to be held on February 11, 2020 at 9:15 a.m. (see paragraph 15). Even if the Court approves the Settlement at that hearing, there may be appeals that could further delay payments. Resolving any such appeals could take some time, so please be patient.

Please also be advised that if you do not cash your check within 180 days of the date of its issuance, or if your check is returned to the Claims Administrator as undeliverable. If the check is returned before the expiration of the 180 days with a new address, the check will be re-mailed to that address. If the check is returned a skip trace will be performed to determine if there is a new address where the check can be mailed. Any uncashed amounts in excess of \$7,350.00, shall be redistributed amongst the Class Members that cashed their checks on a pro rata basis based on the number of itemized wage statements each Class Member that cashed their check received during the Class Liability Period. The costs associated with this second distribution shall be deducted from the uncashed amounts prior to the second distribution. If the uncashed amounts do not exceed \$7,350.00, these amounts shall be allocated pursuant Section 384 of the Code of Civil Procedure, subject to Court approval. The Parties have selected the Homeless Advocacy Project as the cy pres designee. However, the Court has to approve this cy pres designee at the final approval hearing. No unclaimed funds will be returned to Hathaway Dinwiddie.

10. How do I challenge the number of wage statements used in determining my Settlement allocation?

If you want to challenge the number of wage statements you received, which came from your employment records at Hathaway Dinwiddie and which appear on the second page of this Notice, you must submit a written, signed challenge along with copies of any supporting documents (if any exist), to the Claims Administrator at the address

provided below no later than December 30, 2019 (60 days from mailing). If a Settlement Notice is returned because of an incorrect address or a new forwarding address and re-mailed to an updated address, the Class Member shall have thirty (30) calendar days after the first re-mailing or sixty (60) calendar days after notice was first mailed, whichever is later, to challenge. After consulting with the attorneys for the Representative Plaintiff and Hathaway Dinwiddie, the Claims Administrator will make a final determination concerning your challenge.

OPTING OUT OF THE SETTLEMENT CLASS

11. How do I ask the Court to exclude me from the Settlement Class?

If you do not wish to participate in the Settlement, and do not wish to receive a payment from the Settlement, you may be excluded (i.e., “opt out”) by mailing a written letter requesting exclusion containing your name, address, telephone number and the last four digits of your social security number, as well as your signature (a “Request for Exclusion”) to the Claims Administrator. Your Request for Exclusion must be postmarked no later than December 28, 2019 (60 days from mailing). If a Settlement Notice is returned because of an incorrect address or a new forwarding address and re-mailed to an updated address, the Class Member shall have thirty (30) calendar days after the first re-mailing or sixty (60) calendar days after notice was first mailed, whichever is later, to opt out. The Claims Administrator’s contact information is as follows:

Moreno v. Hathaway Dinwiddie Construction Company
c/o CPT Group, Inc.
50 Corporate Park, Irvine, CA 92606
Telephone: (888) 804-1489

Requests for Exclusion that do not include all required information and/or that are not postmarked by December 30, 2019 will be deemed null, void, and ineffective. Class Members who do not submit a valid and timely Request for Exclusion will be bound by all terms of the Settlement and any Final Judgment if the Court finally approves the Settlement.

12. If I exclude myself, can I get anything from the settlement?

No. If you exclude yourself now you will not get anything from the settlement. If you ask to be excluded, you will not get a payment, and you cannot object to the settlement. But you may sue, continue to sue, or be part of a different lawsuit against Hathaway Dinwiddie in the future. You will not be bound by anything that happens in this lawsuit.

13. If I do not exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Hathaway Dinwiddie for the claims in this lawsuit. You must exclude yourself from the Settlement Class to start or continue your own lawsuit.

14. What if I do nothing?

If you do nothing, in other words, you do not opt out of the settlement and you do not cash your settlement check within 180 days of the date of its issuance, your check will be considered unclaimed, the check will be voided. Additionally, if you do nothing, you will still be bound by the Release in section 6, above.

In the alternative, if you opt out of the settlement as described in Question 11, then any amount that you would have been entitled to as a class member will be distributed amongst the Class Members who remain in the settlement class.

OBJECTING TO THE SETTLEMENT

15. How do I comment on or object to the Settlement?

Any Settlement Class Member who does not opt out of the Settlement Class object to the Settlement, or any portion thereof. Class Members must object in writing by mailing their comments or objections to the Claims Administrator postmarked no later than December 30, 2019 (sixty days from mailing). However, in the case of a Settlement Notice returned because of an incorrect address or a new forwarding address and re-mailed to an

updated address, the Class Member shall have thirty (30) calendar days after the first re-mailing or sixty (60) calendar days after notice was first mailed, whichever is later, to object. The objection must set forth, in clear and concise terms, the grounds for the objection. The Claims Administrator contact information is as follows:

Moreno v. Hathaway Dinwiddie Construction Company
 c/o CPT Group, Inc.
 50 Corporate Park, Irvine, CA 92606
 Telephone: (888) 804-1489

THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on **February 11, 2020 at 9:15 a.m. in Department 304, San Francisco Superior Court, 400 McAllister Street, San Francisco, CA 94102**. The hearing may be moved to a different date and/or time without additional notice. At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to grant final approval. If there are objections, the Court will consider them. The Court will also consider how much to award to Class Counsel in attorneys' fees and costs, how much to award the Representative Plaintiff as a service award, and the PAGA payment. We do not know how long it will take the Court to decide these issues.

This notice summarizes the Joint Stipulation of Class Action Settlement and Release. The entire proposed Settlement and other case-related documents (including the Class Notice, all papers filed on connection with final and preliminary approval, the Operative complaint, and all orders regarding approval) are available on the internet at <http://www.cptgroup.com/hathawaysettlement>. These documents along with the full case docket may also be viewed on the San Francisco Superior Court's website at <http://www.sfsuperiorcourt.org/online-services/>, by searching for Case No. CGC-16-554443.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. If you submit a valid timely objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also have another lawyer attend the hearing at your expense, but it is not required.

18. May I speak at the hearing?

A Class Member may appear at the Final Approval Hearing and orally present his or her objection to the Court.

GETTING MORE INFORMATION

19. How do I get more information?

For more information please visit the administration website at <http://www.cptgroup.com/hathawaysettlement> or the San Francisco Superior Court's website at <http://www.sfsuperiorcourt.org/online-services/>, by searching for Case No. CGC-16-554443.

More information may also be obtained from Class Counsel or the Claims Administrator. **PLEASE DO NOT CONTACT THE COURT OR HATHAWAY DINWIDDIE'S COUNSEL DIRECTLY.**