

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

McCombs, Murray and Hays v. Robertson’s Ready Mix, Inc., et al.

Los Angeles County Superior Court, Case No. 19STCV33829

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: All current and former non-exempt, hourly-paid employees who were employed by Robertson’s Ready Mix, Ltd. in California in the position of mixer driver during the period of September 24, 2015 through October 20, 2020.

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was commenced by plaintiffs Ron McCombs and Terry Murray against Robertson’s Ready Mix, Ltd. (“Defendant”) on September 24, 2019, and a separate lawsuit was commenced by plaintiff Reginald Hays against Defendant on December 16, 2019. The two cases have been consolidated and the case is currently pending in the Los Angeles County Superior Court, Case No. 19STCV33829.

The consolidated lawsuits claim that Defendant violated provisions of the California Labor Code and California Business and Professions Code. Specifically, plaintiffs McCombs, Murray and Hays (“Plaintiffs”) have alleged that Defendant did not pay all wages owed, did not pay the prevailing wage when required, did not properly calculate and pay overtime wages and meal and rest period premiums using the correct regular rate of pay, did not provide accurate wage statements, did not timely pay all wages during employment and at termination of employment, did not maintain accurate records, and engaged in unfair business practices. The lawsuit seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit also claims that the Class Members are entitled to an award of monetary damages, statutory and civil penalties, including pursuant to the California Private Attorneys General Act (“PAGA”), and restitution. Defendant denies all alleged violations and denies that it owes Class Members any amount of money or any penalty payments. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, the named plaintiff(s) asks the court to certify a class of individuals who the plaintiff(s) claims were subjected to the same alleged non-compliant policies and practices of the defendant, and asks the court to approve him or her as the “class representative” of all such individuals. In this case, the proposed Class is all individuals who were employed by Robertson’s Ready Mix, Ltd. in California in the non-exempt (hourly paid) position of mixer driver at any time during the period of September 24, 2015 through October 20, 2020. All such individuals are referred to in this Notice as Class Members. The Los Angeles County Superior Court is in charge of this class

action, and the Court will resolve the issues in the lawsuit for all Class Members, except for those who exclude themselves from the Class.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a settlement, which is documented in the Stipulation of Class Action Settlement and Release of Claims (“Agreement” or “Settlement”).

On October 20, 2020, the Court granted preliminary approval of the Settlement, appointed Plaintiffs as the Class Representatives, and appointed their attorneys, Buchsbaum & Haag, LLP and Donahoo & Associates, PC, as counsel for the Class (“Class Counsel”).

The Class Representatives and Class Counsel think the Settlement is best for the Class.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you are or were employed by Defendant in California in the non-exempt (hourly paid) position of mixer driver at any time during the period of September 24, 2015 through October 20, 2020.

THE SETTLEMENT BENEFITS

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Nine Hundred Eighty Thousand (\$980,000) (“Maximum Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion (“Class Members”). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 33-1/3% of the Maximum Settlement Amount or Three Hundred Twenty-Six Thousand Six Hundred Thirty-Four Dollars (\$326,634);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Seventeen Thousand Five Hundred Dollars (\$17,500);
- C. **Enhancement Payments to the Class Representatives** in an amount not to exceed a combined total of Fifteen Thousand Dollars (\$15,000) for all three;
- D. **Settlement Administration Costs** which are currently estimated to be Nineteen Thousand Five Hundred Dollars (\$19,500).
- E. **Payment to California the Labor Workforce Development Agency (“LWDA”)** in the amount of Fifteen Thousand Dollars (\$15,000) which represents the LWDA’s Seventy-

Five Percent (75%) portion of civil penalties from the Twenty Thousand Dollars (\$20,000) allocated toward PAGA claims. (“PAGA Settlement Amount”).

After deducting the foregoing amounts from the Maximum Settlement Amount, it is estimated that the Net Settlement Amount for distribution to Class Members will be Five Hundred Eighty-Six Thousand Three Hundred Sixty Six Dollars (\$586,366).

The portion of the Net Settlement Amount that you are eligible to claim (“Estimated Settlement Share”) will be determined on a *pro rata* basis, based on the number of weeks you worked for Defendant as a mixer driver in California during the period of September 24, 2015 through the October 20, 2020 (“Workweeks”).

Your Estimated Settlement Share will be apportioned as twenty percent (20%) wages, forty percent (40%) penalties, and forty percent (40%) interest. The wage portion of the Estimated Settlement Share will be subject to withholding for employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately from and in addition to the Maximum Settlement Amount. The penalties and interest portions of each Class Member’s settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

According to Defendant’s records, you worked «TotalWorkweeks» workweeks during the Class Period (as defined in the Agreement). Your Estimated Settlement Share is «estAmount». The amount of the payment may change depending on the number of timely and valid requests for exclusions are submitted in the Settlement, if any, and rulings of the Court as to attorneys’ fees and costs and the settlement administrator’s fees.

Defendant’s record of your employment is presumed correct. If you dispute the accuracy of Defendant’s records as to the number of weeks you worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by **January 8, 2021**. All disputes regarding your workweeks will be resolved and decided by the recommendation of the Settlement Administrator to counsel for the parties, and if they cannot agree, then by the court, whose decision on all such disputes will be final and binding. The Settlement Administrator’s contact information is listed below:

McCombs, et al. v. Robertson’s Ready Mix, Inc., et al. Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park,
Irvine, CA 92606
Toll Free Number: 1-888-470-1091
Fax: 1-949-419-3446

HOW TO GET A PAYMENT FROM THE NET SETTLEMENT AMOUNT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Net Settlement Amount.

7. What am I giving up if I do not request to be excluded from the Settlement?

In exchange for the monetary payments provided from the Settlement, upon the Effective Date (as defined in the Agreement), Class Members who do not submit a timely request for exclusion will release the “Released Parties” from the “Released Claims” for the “Release Period.”

The “Released Parties” means Defendant and each of its current and former parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

The “Released Claims” means any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged or that reasonably could have arisen out of the facts alleged in the Complaint, including, but not limited to claims for: (a) all claims for unpaid wages, including minimum wages and overtime pay; (b) all claims for violation of the prevailing wage laws; (c) all claims for failure to properly calculate and pay overtime wages and meal and rest period premiums using the correct regular rate of pay; and (d) any and all claims for recordkeeping or pay stub violations, untimely payment of wages (including waiting time penalties) and all other civil and statutory penalties, including those recoverable under PAGA. The Released Claims include without limitation claims meeting the above definitions under any and all of the following statutes: California Labor Code §§ 96-98.2, *et seq.*; the California Payment of Wages Law, California Labor Code §§ 200, *et seq.*, and in particular, §§ 200-204, 218, 218.5, 226, 226.7 and 226.8; California Labor Code §§ 300, *et seq.*; California Labor Code §§ 400, *et seq.*; the California Working Hours Law, California Labor Code §§ 500, *et seq.*, and in particular, §§ 510, 512, 518, and 558; California Labor Code §§ 1174, 1174.5 1182.12, 1189, 1194, 1194.2, 1197, 1197.1, 1198, 1720.9, 1770-1784, 1811, 1815, 2802, and 2810.5; the California Unfair Competition Act, California Bus. & Prof. Code §§ 17200, *et seq.*; California Civil Code § 9558; PAGA; California Civil Procedure Code § 1021.5; and any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations. The approval of this Settlement by the Court bars all Settlement Class Members from bringing any of the Released Claims in any future proceeding and from participating in any proceeding seeking penalties under PAGA.

The “Release Period” means the period from September 24, 2015 to the date on which the Court gives final approval of the Settlement.

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims (other than those which arise under PAGA (California Labor Code sections 2698, *et seq.*), then you must submit a request for exclusion in conformity with the requirements set forth in the next section. If you exclude yourself, you will not receive payment of a portion of the Net Settlement Amount, however you will receive payment in an amount equal to your estimated *pro rata* share of the PAGA Settlement Amount.

All Class Members will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all Released Claims arising under the Private Attorney General Act (California Labor Code sections 2698 *et seq.*) with respect to all of the Released Parties even if the Class Member has timely submitted a request for exclusion.

8. How can I exclude myself from the Settlement?

To exclude yourself from the Settlement and not be covered by the release, you must submit a written request for exclusion. You must include your name, address, and telephone number. Your request for exclusion must also include a statement that you do not wish to be included in the Class and the settlement of this lawsuit.

The written Request for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by **January 8, 2021**. You cannot exclude yourself by phone.

McCombs, et al. v. Robertson's Ready Mix, Inc., et al. Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park,
Irvine, CA 92606
Toll Free Number: 1-888-470-1091
Fax: 1-949-419-3446

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount (except for an amount attributable to you from the PAGA Settlement Amount), and you will not be able to object to the Settlement. You will not be legally bound by the release of Released Claims (except for Released Claims that arise under PAGA, California Labor Code sections 2698, *et seq.*).

You may be able to sue Defendant and/or the other Released Parties or continue any suit you have pending against Defendant and/or the other Released Parties for the Released Claims (except for Released Claims that arise under PAGA).

9. If I do NOT exclude myself, can I sue Defendant for the same thing later?

No. Unless you submit a request for exclusion, you give up the right to sue Defendant and/or the other Released Parties for the Released Claims. If you have a pending legal action involving the Released Claims, speak to your lawyer in that lawsuit immediately.

10. If I exclude myself, can I get money from this settlement?

No (except for money for Released Claims that arise under PAGA). However, if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against Released Parties for Released Claims (except for Released Claims that arise under PAGA).

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has approved Buchsbaum & Haag, LLP and Donahoo & Associates, PC as Class Counsel. The contact information for these law firms is:

BUCHSBAUM & HAAG, LLP

Brent S. Buchsbaum, Esq.
Laurel N. Haag, Esq.
100 Oceangate, Suite #1200
Long Beach, CA 90802
Tel: (562)733-2498
Fax: (562) 628-5501

DONAHOO & ASSOCIATES, PC

Richard E. Donahoo, Esq.
Sarah L. Kokonas, Esq.
440 West First Street, Suite 101
Tustin, CA 92780
Tel: (714) 953-1010
Fax: (714) 953-1777

The contact information for counsel for Defendant is: Stephen L. Berry, Esq., Paul Hastings LLP, 695 Town Center Dr., 17th Floor, Costa Mesa, CA 92626; 714-668-6200.

12. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of up to (\$326,634); and reimbursement of litigation cost/expenses of up to \$17,500. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can object to the Settlement or some part of it.

13. How do I tell the Court if I object to the settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than **January 8, 2021**. Your objection must include your full name, address, the last four digits of your social security number or employee ID number, the dates you worked for Defendant, the specific reason for your objection, and whether you plan to attend the final approval hearing. You may also come to the Final Approval Hearing on **January 26, 2021** and make an objection at that time.

14. What is the difference between objecting and requesting to be excluded?

Objecting is simply telling the Court the reason(s) why you feel the Court should not approve the Settlement. You can object only if you stay in the Class. Requesting to be excluded is telling the Court that you do not want to be part of the Settlement. If your request to be excluded, you have no basis to object because the case no longer affects you.

THE COURT’S FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement (“Final Approval Hearing”). You may attend, but you do not have to attend.

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

The Court will hold the Final Approval Hearing at 9:30 a.m. on January 26, 2021, in Department 52 of the Los Angeles County Superior Court located at 111 N. Hill St. Los Angeles, CA 90012, the Hon. Susan Bryant-Deason, presiding.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them at or before the hearing.

16. Do I have to come to the hearing?

No. If you have not objected to the Settlement, you do not have to be present at the Final Approval Hearing. However, you may attend if you choose to do so. You may also retain your own lawyer at your expense to attend on your behalf.

17. How will I learn if the settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator website located at www.cptgroupcaseinfo.com/robertsonsreadymix.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Net Settlement Amount, and you will release the Released Claims against the Released Parties for the Release Period. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or any of the other Released Parties about the Released Claims for the Release Period, ever again.

GETTING MORE INFORMATION

19. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Agreement. You can get a copy of the Agreement by contacting the Settlement Administrator or Class Counsel.

WHAT IF MY CONTACT INFORMATION CHANGES?

20. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated contact information to ensure receipt of settlement payments or communications regarding the Settlement and related proceedings. You can change or update your contact information by contacting the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE