

CALIFORNIA SUPERIOR COURT, COUNTY OF ALAMEDA

Arnold Garcia, on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiff, vs.
McCollister’s Transportation Systems, Inc., et al., Defendants
Case No. RG21112345 and Case No. RG21112189 (“Complaints” or “Action”)

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don’t act.

TO: All persons who contracted with McCollister’s Transportation Systems, Inc., McCollister’s Global Services, Inc., and McCollister’s Auto Transport, LLC (“McCollister’s”) as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom McCollister’s classified as independent contractors, and who drove in California from September 10, 2017, through January 7, 2023.

The California Superior Court, County of Alameda has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned actions (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All persons who contracted with McCollister’s as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom McCollister’s classified as independent contractors, and who drove in California from September 10, 2017, through January 7, 2023.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

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1. Why Have I Received This Notice?

McCollister’s Transportation Systems, Inc., McCollister’s Global Services, Inc., and McCollister’s Auto Transport, LLC’s (hereinafter referred to as “McCollister’s” or “Defendants”) records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims, as described in Section No. 9 below, from September 10, 2017, through January 7, 2023 (the “Class Period”).

A Preliminary Approval Hearing was held on April 10, 2023, in the California Superior Court, County of Alameda. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on August 29, 2023, at 3:00 p.m., before Judge Brad Seligman, located at 1221 Oak Street, Oakland, CA 94612, Department 23.

2. *What Is This Case About?*

A class action complaint against Defendants was filed by Plaintiff in the Alameda County Superior Court on September 10, 2021 (Case No. RG21112345). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) knowing and intentional failure to comply with itemized employee wage statement provisions; (5) failure to pay all wages at the time of termination of employment; (6) failure to reimburse business expenses; and (7) violation of Unfair Competition Law, on behalf Plaintiff and those similarly situated.

A PAGA representative action complaint against Defendants was filed by Plaintiff (as an agent of California’s Labor and Workforce Development Agency, or “LWDA”) in the Alameda County Superior Court on September 9, 2021 (Case No. RG21112189). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all wages at the time of termination of employment; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages owed twice per month; (7) failure to reimburse business expenses; and (8) willful misclassification of employees as independent contractors.

The two cases (Case No. RG21112345 and RG21112189) have been consolidated for settlement purposes. The Court has not made any determination as to whether the claims advanced by the Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or McCollister’s; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

McCollister’s expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you contracted with McCollister’s as an owner/operator to haul freight, and worked a majority of your time under the contract in California and/or had your base of operations in California, McCollister’s classified you as an independent contractor, and you drove in California at any point from September 10, 2017, January 7, 2023.

If you contracted with McCollister’s as an owner/operator to haul freight, who worked a majority of your time under the contract in California and/or had your base of operations in California, McCollister’s classified you as an independent contractor, and you drove in California at any point from July 1, 2020 through January 7, 2023, you are also an “Aggrieved Employee” under the settlement.

4. *How Does This Class Action Settlement Work?*

Plaintiff Arnold Garcia brings this action behalf of himself and all other similarly situated individuals who contracted with McCollister’s as an owner/operator to haul freight in California at any time during the Class Period. Plaintiff and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court’s website, known as “eCourt Public Portal,” at <https://eportal.alameda.courts.ca.gov>

After arriving at the website, click the “Search” tab at the top of the page, then select the Document Downloads link, enter the case number and click “Submit.” Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class	Attorneys for Defendants
<p>MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048</p> <p>HUNTER PYLE LAW Hunter Pyle John J. Darin 1300 Broadway, Eleventh Floor Oakland, California 94612 Telephone (510) 444-4400</p>	<p>FISHER & PHILLIPS LLP Lonnie D. Giamela Victoria H. Shin 444 S Flower St., Suite 1590 Los Angeles, CA 90071 Telephone: (213) 330-4454 Facsimile: (213) 330-4501</p>

The Court has decided that Mara Law Firm, PC and Hunter Pyle Law are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863; (d) be signed by you or your lawful representative; and (e) be postmarked no later than July 5, 2023.

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

8. How Do I Object To The Settlement?

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than July 5, 2023. The objection must state: (a) the case name; (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims:

The Released Class Claims include, for the entire Class Period, all claims made or that could have been made based on the facts and circumstances alleged in the Complaints, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.7, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2810.5 and 2802; California Business and Professions Code section 17200, *et seq.*; California Wage Order No. 9-2001; California Code of Regulations Title 8, section 11090; and any claim for attorneys’ fees and costs related to the above-referenced released claims.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all claims under the California Private Attorney General Act (“PAGA”), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims made or that could have been made based on the facts and circumstances alleged in the Complaints and Plaintiff’s notice to the LWDA, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.2, 226.7, 226.8, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2810.5; California Wage Order No. 9-2001; California Code of Regulations Title 8, sections 11070 and 11090; and any claim for attorneys’ fees and costs related to the above-referenced released claims.

10. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendants could be required to pay under this Agreement shall be up to but no more than \$400,000 (“Gross Settlement Amount” or “GSA”).

A. Deductions from the Settlement

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payment to the named Plaintiff in an amount up to \$7,500, for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$5,000; (3) a payment of \$25,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$133,333.33 (1/3 of the Gross Settlement Amount) for attorneys’ fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

¹ “Released Parties” means Defendants and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants, based on the Class Data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (September 10, 2017, through January 7, 2023).

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$18,750 (75% of the \$25,000 total PAGA Payment). The remaining \$6,250 is the "Net PAGA Settlement Amount" or "NPSA" and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants, based on the PAGA Data provided by Defendants, divided by (ii) the total number of weeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that he or she worked during the PAGA Period (July 1, 2020 through January 7, 2023).

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ _____, less taxes. This is based on the Class Data which shows you worked ___ workweeks during the Class Period.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ _____. This is based on the PAGA Data which shows you worked ___ workweeks during the PAGA Period.

E. Tax Treatment of Your Settlement Payments

One-third (1/3) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendants' share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

One-third (1/3) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest, and one-third (1/3) of the Individual Class Settlement Share is intended to settle each Class Member's claims for penalties. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to Legal Aid at Work.

11. How Will the Attorneys for the Class and the Class Representative Be Paid?

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed 1/3 of the Gross Settlement Amount (\$133,333.33) for attorney fees and \$30,000 for litigation costs.

Defendants have paid all of their own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$7,500, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. You can also obtain documents related to this case and this settlement by visiting <https://www.phoenixclassaction.com/mccollisters-transportation-systems/>, a website maintained by the Settlement Administrator. Please refer to the McCollister's Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, the pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal," at <https://portal.alameda.courts.ca.gov>

After arriving at the website, click the "Search" tab at the top of the page, then select the Document Downloads link, enter the case number and click "Submit." Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. You may also contact Plaintiff's counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.