

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(FRESNO DIVISION)

EDUARDO AGUAYO,  
individually and on behalf of  
all others similarly-situated,

Plaintiffs,

vs.

OLDENKAMP TRUCKING,

Defendant.

CASE NO. CV F 04-6279 AWI LJO

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

TO: All truck drivers who were employed by Oldenkamp Trucking, in California at any time from September 20, 2000 through January 1, 2005 and who hauled milk solely within California.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR SEPTEMBER 19, 2006 BEFORE THE HONORABLE LAWRENCE J. O'NEILL, MAGISTRATE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF.

### I. INTRODUCTION

On September 20, 2004, Eduardo Aguayo, individually and on behalf of other truck drives, filed a lawsuit against Oldenkamp Trucking, alleging that he worked for Oldenkamp Trucking as a truck driver and was entitled to overtime compensation for hours worked in excess of forty (40) per week, but that Oldenkamp Trucking failed to pay him at overtime rates for those overtime hours worked. Oldenkamp Trucking denies these allegations.

A tentative settlement of these cases has been reached. The settlement will apply to all persons who meet the following definitions ("Settlement Classes"):

#### Settlement Class 1

All persons who are now employed or have been employed by defendant OLDENKAMP TRUCKING in the State of California, who, on or after January 18, 2003 to January 1, 2005, have worked as an intrastate truck driver hauling milk solely within the State of California and have worked in excess of forty (40) hours per week without being paid overtime compensation by OLDENKAMP for those excess hours.

#### Settlement Class 2

All persons who are now employed or have been employed by defendant OLDENKAMP TRUCKING in the State of California, who, on or after September 20, 2000 to January 1, 2003, have worked as an intrastate truck driver hauling milk solely within the State of California and have worked in excess of forty (40) hours per week without being paid overtime compensation by OLDENKAMP for those excess hours.

## **The Reason You Have Received This Notice**

You are believed to be a member of one the Settlement Classes. If so, your rights will be affected because the parties have tentatively settled the lawsuits. Pursuant to that tentative settlement, the Court is considering the entry and final approval of the settlement of the case. By preliminary approval of the proposed settlement on June 16, 2006, the Court has preliminarily determined that the lawsuit could be settled.

You are hereby notified that:

1. A settlement of the claims of the Settlement Classes has been proposed by Plaintiff Eduardo Aguayo and his attorney and Defendant Oldenkamp Trucking, and its attorneys;
2. The proposed Settlement has been submitted to the Court, and has received preliminary approval;
3. If this settlement is finally approved by the court, you will obtain only the relief provided in the settlement, and you will have no further claim against Oldenkamp Trucking, for any claim occurring during the period from September 20, 2000 through January 1, 2005 that was raised or could have been raised in the Plaintiff's complaint.
4. You and any other persons in the Settlement Class have the right to object to the proposed settlement or exclude yourself by following the procedures in Parts IV-V of this notice.
5. A hearing to finally approve the settlement is scheduled for September 19, 2006 in Courtroom No. 8, at the United States Courthouse, 2500 Tulare Street, Fresno, California 93721.

At the hearing, any member of the Classes may appear and object to the proposed settlement. However, no such person shall be heard at the hearing, and no papers or written briefs shall be considered, unless the procedures set forth in Part IV of this Notice have been followed. You should read that part carefully. Class members who do not make objections in the manner provided in Part IV of this Notice shall be deemed to have waived such objections.

This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in these lawsuits. This notice is sent for the sole purpose of informing you of the pendency of these lawsuits and the terms of the proposed settlement so that you may make appropriate decisions. In the event of any conflicts between this notice and the Settlement Agreement, the terms of the Settlement Agreement shall govern.

## **II. NATURE OF THE LAWSUIT**

In this case, the Plaintiff has sued Oldenkamp Trucking, for nonpayment of overtime for hours worked in excess of forty in a week. Oldenkamp Trucking has denied and continues to deny all of the allegations made by the Plaintiff.

The Plaintiff and Oldenkamp Trucking, ("the Parties") have tentatively settled these lawsuits. The Settlement has received preliminary approval of the Court, subject to notice being provided to the members of the Class and final approval by the Court after a public hearing. This proposed settlement is described in the next section.

If you are a member of the Settlement Classes established by the court, you will receive such benefits, if any, as you may qualify for under the proposed Settlement and you will be forever barred from asserting any rights with respect to matters which are the subject of this case. If the proposed settlement is not approved, then the offer of settlement will be deemed withdrawn, and the case will proceed in Court as if no settlement had ever been made.

### **III SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT AGREEMENT**

For purposes of settlement, and without admitting any liability, Oldenkamp Trucking has agreed to provide certain relief to persons in the Classes. The following is only a summary of the relief contained in the proposed Settlement. In the event there are any conflicts between this Notice and the Settlement Agreement, the terms of the Settlement shall govern. For a copy of the proposed Settlement, you may contact Class Counsel, whose name, address, and telephone number are listed below in Part VI. The relief granted by the proposed Settlement Agreement is summarized as follows:

1. Oldenkamp Trucking, will pay the total sum ("Sum") of one hundred twenty-nine thousand three hundred dollars (\$129,300.00) less attorney fees and costs awarded to Class Counsel and any enhancement awarded to the Plaintiff Eduardo Aguayo .
2. In order to receive payment under this section, each class member must file a timely Claim Form, which is enclosed with this Notice.
3. Oldenkamp Trucking will pay reasonable attorneys' fees in a maximum amount not to exceed \$15,000.00 and actual costs. All payments for attorneys' fees and costs will be paid from the Sum, which will reduce any payments made to you as a class member. Class Counsel will apply to the court for approval of his attorneys' fees and costs at the hearing scheduled for September 19, 2006.
4. The Court will also be asked to award an enhancement payment to Eduardo Aguayo in the amount of \$5,000.00.

Based upon the equitable formula that has been devised, there will be substantial difference among Plaintiff Class members as to the amount each individual participating Plaintiff will receive in settlement. Monies paid pursuant to the Settlement are taxable. Oldenkamp Trucking will make all lawful payroll deductions from any payments paid to Class members from the Sum as set forth in the Settlement Agreement.

### **IV. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT**

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to the proposed Settlement Agreement, you must take the following steps (your failure to do so will be deemed a waiver of your objections):

A. So that it is postmarked by August 10, 2006, you must mail a request by first class postage to the Court at United States District Court for the Eastern District of California, Courtroom No. 8, United States Courthouse, 2500 Tulare Street, Fresno, California, 93721, to Class Counsel, Jerry Budin, Esq., Law Office of Jerry Budin, 1500 "J" Street, Modesto, CA 95354, and to Geoffrey DeBoskey, Esq., Sheppard, Mullin, Richter & Hampton, 333 South Hope Street, 48th Floor, Los Angeles, CA 90071 (Defendant's Counsel): (i) a written statement advising if you plan to address the Court at the hearing; (ii) a written statement of your objections; and (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda. You may appear personally, or through your own counsel, paid for at your own expense.

B. If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for September 19, 2006 before the Honorable Lawrence J. O'Neill, Magistrate Judge, United States District Court for the Eastern District of California, Courtroom No. 8, United States Courthouse, 2500 Tulare Street, Fresno, California 93721.

**V. PROCEDURE FOR EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT AGREEMENT**

Even if you do not object to the proposed Settlement Agreement, you may still exclude yourself from the proposed Settlement by taking the following steps.

A. So that it is postmarked by August 10, 2006, you must mail a request by first class postage to Class Counsel, Jerry Budin, 1500 J Street, Modesto, CA 95354 if you wish to be excluded from the Settlement Agreement. The written request must contain your name, address, telephone number, Social Security number and the location and years of your employment by Oldenkamp Trucking

B. If you do not submit a Request for Exclusion, you will be bound by the Settlement Agreement, if it is approved by the Court.

C. Furthermore, if you do nothing, that is if you do not submit a Claim Form and do not submit a written exclusion, you will be bound by the Settlement Agreement, but will receive no monetary compensation.

**VI. CLASS COUNSEL**

If you have any questions concerning the proposed Settlement Agreement, or this Notice, you may contact Class Counsel Jerry Budin, Esq., Law Office of Jerry Budin, 1500 "J" Street, Modesto, California 95354, telephone (209) 544-3030.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.