

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY

**FILED**

APR 16 2015

Barry P. Sarkisian, J.S.C.

GONZALO CHIRINO, FELIX D. JAY, :  
ANDREW ANKLE, GARY JOSEPHS, :  
RENE CAMPBELL, ASTON HEMLEY, :  
and MARYAN VASYUTA, on behalf of :  
themselves and all others similarly situated, :

DOCKET NO. HUD-L-6191-11

Plaintiffs,

Civil Action

v.

PROUD 2 HAUL, INC., and IVANA :  
KOPROWSKI, :

**NOTICE OF CLASS ACTION  
SETTLEMENT AND OPPORTUNITY TO  
OPT-OUT OR OBJECT TO SETTLEMENT**

Defendants. :

**TO: ALL PERSONS WHO PROVIDED TRUCKING SERVICES AS OWNER-  
OPERATORS OR DRIVERS TO PROUD 2 HAUL, INC. AT ANY TIME  
THROUGH MARCH 31, 2014**

**RE: SETTLEMENT OF CLAIMS FOR ALLEGED IMPROPER DEDUCTIONS  
FROM PAY**

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS --  
PLEASE READ IT CAREFULLY**

**I. INTRODUCTION**

This "NOTICE OF SETTLEMENT AND OPPORTUNITY TO OPT-OUT OR OBJECT TO SETTLEMENT" is to inform you that Defendants Proud 2 Haul, Inc. ("PH") and Ivana Koprowski have agreed to settle a class action lawsuit claiming that PH violated the Truth-in-Leasing Regulations, 49 C.F.R. Part 376, as enforced by the Motor Carrier Act ("MCA"), 49 U.S.C. §§ 13901-2, 14102, 14704, as well as on their claims under the Worker's Compensation Law ("WCL"), N.J.S.A. 34:15-57.4, and the Wage Payment Law ("WPL"), N.J.S.A. 34:11-4.1 *et seq.* by, among other things, taking deductions from the pay of Class members during a period in which Defendants had no written lease with Class members; making deductions for worker's compensation, other, fuel fee, parking, port pulls and E-log, and failing to pay fuel tax from on or about November 19, 2010, to on or about June 4, 2012.

**THIS NOTICE IS TO INFORM YOU ABOUT:**

- A PROPOSED SETTLEMENT OF THIS CLASS ACTION LAWSUIT;
- YOUR RIGHT TO RECEIVE A SHARE OF THE SETTLEMENT FUNDS
- YOUR RIGHT TO FILE WITH THE COURT ANY OBJECTIONS YOU MAY HAVE TO THE SETTLEMENT; AND
- YOUR RIGHT TO EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT BY OPTING OUT

**II. DESCRIPTION OF THE LAWSUIT**

Plaintiffs Gonzalo Chirino, Felix D. Jay, Andrew Ankle, Gary Josephs, Rene Campbell, Aston Hemley, and Maryan Vasyuta filed their Complaint in this matter on December 5, 2011, which was subsequently amended on June 26, 2012. Plaintiffs alleged that Defendants violated the Truth-in-Leasing Regulations, 49 C.F.R. Part 376, as enforced by the Motor Carrier Act (“MCA”), 49 U.S.C. §§ 13901-2, 14102, 14704, as well as on their claims under the Worker’s Compensation Law (“WCL”), N.J.S.A. 34:15-57.4, and the Wage Payment Law (“WPL”), N.J.S.A. 34:11-4.1 *et seq.* by, and the common law by, among other things, taking deductions from the pay of Class members during a period in which Defendants had no written lease with Class members; making deductions for worker’s compensation, other, fuel fee, parking, port pulls and E-log, and failing to pay fuel tax from on or about November 19, 2010, to on or about June 4, 2012. Plaintiffs sought declaratory, injunctive and compensatory damages as relief.

Defendants have denied all of the substantive allegations of Plaintiffs’ pleadings. They contend that they have not violated the MCA, WCL and WPL, or any of the common law claims, and that they owe no monies to plaintiffs or any members of the Class.

A Class consisting of the past and present drivers of Defendant PH was certified on December 7, 2012.

Plaintiffs’ motion for partial summary judgment against Defendants with regard to the deduction of the fuel tax for those drivers who used the Wright Express (“WEX”) diesel credit card was granted, and judgment in the amount of \$382,753.17 for damages and \$18,663.17 in prejudgment interest was entered jointly and severally against Defendants on November 15, 2013, additionally including \$275,462.30 in attorney’s fees and \$8,896.62 in costs.

Plaintiffs also moved for partial summary judgment granting seeking a declaration that defendant had violated the TIL Regulations, when on or about June 4, 2012, it terminated all of its agreements with the drivers as part of its revised “business model”. Under that “model”, the drivers contracted with Trucking Support Services, LLC (“TSS”) d/b/a Contractor Resource Solutions, LLC (“CRS”) who then purported to lease back the drivers to PH without PH having any form of written lease agreement or written relationship with the drivers. That motion was

granted by the Court on December 20, 2013, as amended on January 15, 2014.

Defendants moved for reconsideration of this decision, which the Court denied on February 14, 2014. Plaintiffs moved to quantify the damages for the failure to have a lease, and the Court granted same on February 28, 2014, finding that defendants were jointly and severally liable for \$4,481,747.37 in damages and \$92,296.37 in interest to the Class for a total due and owing of \$4,74,043.74. Plaintiffs' motion for additional attorney's fees was granted in the amount of \$96,990.70 and \$4,276.27 respectively.

On July 11, 2014, Plaintiffs were *inter alia* granted a declaratory judgment that Defendants violated the MCA by their deduction of worker's compensation, other, fuel fee, parking, port pulls and E-log from Class members' pay.

On November 22, 2013, the Court granted plaintiffs interim injunctive relief requiring defendants to assure that any purchaser of defendant PH would pay the damages and attorney's fees on the motion for partial summary judgment. On April 28, 2014, Plaintiffs were granted a permanent injunction to have thereafter written leases in place with the Class that conform to the TIL Regulations.

Remaining for trial were the following issues: did Defendants' pay deductions violate either the WCL or the WPL and, if so, what would the damages be, and what damages, if any, would the Class be entitled to for the MCA violations as declared by the Court on July 11, 2014 (collectively "the Remaining Issues"). A trial of the Remaining Issues was set for April 27, 2015. In lieu of going forward with the trial, the Parties have reached the Settlement described below.

Plaintiffs' counsel believes that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiffs and the Class. Plaintiffs' counsel advises that there are genuine risks to trial, including a substantial possibility of loss. Both parties wish to settle to avoid the costs, time, risks of trial and disruption.

On April 16, 2015, the Superior Court, Law Division, granted preliminary approval of this class action settlement. This **NOTICE** is being sent to you because you are a member of the Class. As a member of the Class, you may be entitled to certain damages under the terms specified. **THIS SETTLEMENT AFFECTS YOUR LEGAL RIGHTS.**

### III. TERMS OF THE PROPOSED SETTLEMENT

- A. Upon due notice and approval by the Court of this Settlement, Defendants agree to the entry of Judgment on the Remaining Claims holding them jointly and severally liable in the amount of \$1,492,054.20, a sum representing \$1,422,054.20 or approximately 70% of the damages on the Remaining Claims for which Plaintiffs contended, plus an incentive award of \$70,000 in total (\$10,000 each) to the named plaintiffs ("the Remaining Issues Judgement"). Plaintiffs agree not to take any actions to collect the Remaining Issues Judgement,

pending the Appellate Division's decision on Defendants' appeal of the Appealable Orders (defined below). Plaintiffs agree to dismiss with prejudice any claim for additional damages for violations of the Motor Carrier Act, the Worker's Compensation Law and the Wage Payment Law, or under the common law as alleged in their Amended Complaint in this matter, now pending before the Superior Court and scheduled for trial on April 27, 2015.

- B. Defendants to take a prompt appeal on a specific and delineated set of issues concerning the Court's previous decisions awarding damages under the Motor Carrier Act in its decisions of November 15, 2013; December 20, 2013; February 14, 2014; February 28, 2014 and paragraph 5 of the decision of July 11, 2014 ("the Appealable Orders"). Defendants shall limit their appeal to the Appealable Orders and shall limit the issues raised to (a) whether proof of "exact damages" sustained by each plaintiff as opposed to a fair and reasonable estimate is required for monetary compensation under the MCA, and (b) whether Defendants were required to have a written lease with the Plaintiff Class during the period from on June 4, 2012, to March 31, 2014. Plaintiffs shall not cross-appeal on any issue.
- C. The effect of the outcome in the Appellate Division on the monetary obligations of Defendants to Plaintiffs shall be as follows:
  - If Defendants succeed in having all of the Appealable Orders reversed by the Appellate Division and thereby eliminate any monetary obligation of Defendants to Plaintiffs, or if the matter is remanded by the Appellate Division to allow for the submission of proofs of exact damages, Plaintiffs shall
    - cooperate with Defendants to secure the prompt vacation of the Remaining Issues Judgment;
    - cooperate with Defendants in causing to be entered a Judgment of Dismissal of all claims with prejudice; and
    - not seek any further relief on any claim that was brought or could have been brought in the instant matter.
  - If the Appealable Orders are affirmed, Plaintiffs may, without further notice to Defendants seek to collect the Appealable Orders and the Remaining Issues Judgment.
    - If Defendants succeed in having all of the Appealable Orders either reversed or remanded for proof of exact damages, with the exception that the Order of November 15, 2013, is affirmed, Plaintiffs acknowledge that \$1,000,000.00 of the Remaining Issues Judgment has been paid, and that \$492,054.20. remains to be paid.

*PLEASE NOTE: This NOTICE provides only a summary of the most pertinent terms and*

*conditions of the settlement. The complete terms of the proposed settlement are in the actual Settlement Agreement that has been tentatively approved by the Court. You may obtain a copy of the complete Settlement Agreement from Plaintiffs' Attorneys, listed in Section VIII below, or from the office of the Clerk of the Superior Court of New Jersey, Law Division, Hudson County, Brennan Courthouse, 3d Floor, 583 Newark Ave., Jersey City, NJ 07306.*

#### **IV. BINDING EFFECT AND DISMISSAL**

If the Court grants final approval of the Settlement Agreement, the proposed Settlement will be binding on all members of the Class who do not opt out, and will bar any Class member who does not timely opt out from bringing any claim alleging that any deduction from the Class member's pay to be unlawful under any statute or under the common law, as any such claim will be dismissed with prejudice as part of the Settlement.

#### **V. OPT-OUT PROCEDURE**

You have the right to opt out if you do not want to be part of this settlement. If you opt out, you (a) will not receive any money under the Settlement in this case; (b) will not be bound by the terms of this Settlement and (c) may, subject to the applicable statutes of limitations, bring a separate legal action against one or both Defendants. If you opt out of this lawsuit and bring a separate individual legal action, you may lose your case and receive nothing, or you may obtain less money than you could get under this lawsuit even if you prevail, and it may take several years to obtain such money.

**TO OPT OUT OF THIS LAWSUIT, YOU MUST SEND A SIGNED LETTER STATING THAT YOU WISH TO OPT OUT TO COUNSEL FOR PLAINTIFFS AND TO COUNSEL FOR DEFENDANTS WHOSE ADDRESSES ARE SPECIFIED IN SECTION VIII AND IX BELOW. IN YOUR LETTER, INCLUDE YOUR FULL NAME; ADDRESS INCLUDING STREET TOWN AND ZIP CODE; PHONE NUMBER; AND SOCIAL SECURITY or TAXPAYER IDENTIFICATION NUMBER. TO BE TIMELY YOUR WRITTEN OPT OUT REQUEST MUST BE POSTMARKED NO LATER THAN JULY 16, 2015.**

#### **VI. OBJECTIONS TO THE PROPOSED SETTLEMENT**

You have the right to object to the Settlement, if you believe for any reason that the Court should not grant final approval of the Settlement.

**IF YOU WANT TO OBJECT TO THE SETTLEMENT, YOU MUST FILE AN OBJECTION IN WRITING WITH THE CLERK OF THE SUPERIOR COURT, LAW DIVISION, BRENNAN COURTHOUSE, 3D FLOOR, 583, NEWARK AVE., JERSEY CITY, NJ 07306. IN THE WRITTEN STATEMENT, YOU STATE EACH BASIS YOU HAVE FOR OBJECTING TO THE SETTLEMENT. YOU MUST ALSO SEND COPIES OF YOUR OBJECTIONS TO COUNSEL FOR PLAINTIFFS' AND COUNSEL FOR DEFENDANTS WHOSE ADDRESSES ARE SPECIFIED IN SECTIONS VIII and IX**

**BELOW. TO BE TIMELY YOUR WRITTEN OPT OBJECTION MUST BE POSTMARKED NO LATER THAN JULY 16, 2015.**

If you have filed and served a timely and proper written objection, you may also appear at the final approval hearing on September 4, 2015, at 1:30 p.m. before the Hon. Barry M. Sarkisian, J.S.C., Brennan Courthouse, 2d Floor, 583 Newark Ave., Jersey City, NJ 07306. Objections not previously filed in writing and properly served by July 16, 2015, will not be considered by the Court. If you fail to file a timely objection or an objection that fails to the requirements set forth in this Notice, you will no right to appear and present any argument at the final approval hearing. You may be represented by an attorney at the final approval hearing. Any attorney who will represent an individual objecting to the settlement must file a notice of appearance with the Court and serve same on counsel for all parties by August 10, 2015. All objections must state the name and docket number of the case *Chirino et al. v. Proud 2 Haul, Inc. et al.*, Docket No. HUD-L-6191-11.

**VII. ATTORNEY'S FEES AND COSTS**

Plaintiffs' Counsel is entitled to standard contingent fees as set out in R.1:21-7(c) on any amounts collected and to which the Class is entitled per the Remaining Issues Judgement and the Appealable Orders following the decision of the Appellate Division as set forth in Section III ( c) above. Plaintiffs' Counsel may in addition be entitled to additional attorney's fees from Defendants directly. Costs already assessed will be paid by Defendants if Plaintiffs are successful in the Appellate Division and fees granted or otherwise borne by Plaintiffs' Counsel.

**VIII. FURTHER INFORMATION AND ADDRESS OF PLAINTIFFS' COUNSEL**

**PLEASE DO NOT CALL OR CONTACT THE COURT FOR FURTHER INFORMATION CONCERNING THIS SETTLEMENT.**

If you have any questions about the settlement, yo may contact Plaintiffs' Counsel at the address or phone number below

David Tykulsker, Esq.  
David Tykulsker & Associates  
161 Walnut St.  
Montclair, NJ 07042  
(973) 509 9292

This is the address at which any objection or opt-out notice must be served.

Further information concerning this settlement will be available on Plaintiffs' Counsel's website, [www.dtesq.com](http://www.dtesq.com) after May 1, 2015. Plaintiffs' Counsel may be contacted via email at [david@dtesq.com](mailto:david@dtesq.com).

**IX. ADDRESS OF DEFENSE COUNSEL**

For purposes of serving any objection, notice of appearance and opt-out, the address for Defendants is

Frank Capece, Esq.  
Garrubbo & Capece  
2204 Morris Ave # 304  
Union, NJ 07083

#### **X. IF THE CLASS ACTION SETTLEMENT IS NOT APPROVED**

If this Settlement is not approved by the Court, this Settlement will be voided, no money will be paid, and the parties will continue to litigate this case. If that happens, there is no assurance that (a) any of the Appealable Orders would remain in effect; (b) any decision at trial or post-trial would be favorable to members of the Class; (c) a verdict would be as favorable to Class members as this Settlement; or (d) that any favorable trial or post-trial decision would be upheld if an appeal is filed.

#### **XI. NO OPINION EXPRESSED AS TO THE MERITS**

On April 16, 2015, the Court preliminarily approved the Settlement, finding it to be fair and reasonable. The Court has expressed no opinion as to the merits of any of the claims made in this case.

#### **XII. ADDRESS CHANGES**

It is your responsibility to keep Plaintiffs' Counsel apprised of your correct address until the settlement has been approved and payments have been made. Please sign and mail any change of address along with your Social Security or taxpayer identification number, date of birth and former and new addresses to David Tykulsker, Esq., David Tykulsker & Associates, 161 Walnut St., Montclair, NJ 07042.

BY ORDER OF THE COURT



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Hon. BARRY SARKISIAN, J.S.C.

Dated: April 16, 2015