

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(Western Division)

ENRIQUE ENCISO,  
individually and on behalf of  
all others similarly-situated,

Plaintiffs,

vs.

EVANS DEDICATED SYSTEMS, INC., et al.,

Defendants.

CASE NO. CV-07-2274 VBF (JTLx)

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

TO: All truck drivers who were employed by Evans Dedicated Systems, Inc. in California at any time from January 26, 2003 through August 8, 2008.

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

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR DECEMBER 15, 2008 AT 1:30 P.M. BEFORE THE HONORABLE VALERIE BAKER FAIRBANK, DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF.

**I. INTRODUCTION**

On January 26, 2007, Plaintiff Enrique Enciso filed a lawsuit against defendant Evans Dedicated Systems, Inc. (Evans) for damages, interest, penalties and other monetary relief for unpaid regular and overtime compensation under the Fair Labor Standards Act (FLSA) and other California Labor Code violations in the Superior Court of California, County of Los Angeles. The action was removed by Evans to the U.S. District Court, Central District of California on April 5, 2007.

In this lawsuit, Enrique Enciso, individually and on behalf of other truck drivers, alleges that he worked for Evans as a truck driver and was entitled to overtime compensation for hours worked in excess of forty (40) per week, but that Evans failed to pay him at overtime rates for those overtime hours worked. He also alleges that he was not provided meal and rest periods and was not compensated for all of the work he performed for Evans. Evans denies these allegations.

A tentative settlement of the case has been reached with Evans. The settlement applies to all persons who meet one or both of the following definitions ("Settlement Classes"):

### Settlement Class 1 (FLSA “Opt-In Class)

All persons who are now employed or have been employed by defendant Evans Dedicated Systems, Inc. in the State of California who, on or after January 26, 2004 to August 8, 2008, have worked as a truck driver.

### Settlement Class 2 (State-Law “Opt-Out” Class)

All persons who are now employed or have been employed by defendant Evans Dedicated Systems, Inc. in the State of California who, on or after January 26, 2003 to August 8, 2008, have worked as a truck driver.

## **II. THE REASON YOU HAVE RECEIVED THIS NOTICE**

You are believed to be a member of one or both of the Settlement Classes. If so, your rights will be affected because the Class Representative, Enrique Enciso and Evans (“the Parties”) have tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry and final approval of the settlement. By preliminary approval of the proposed settlement on August 8, 2008, the Court has preliminarily determined that this lawsuit could be settled against defendant.

You are hereby notified that:

1. A settlement of the claims of the Settlement Classes has been proposed by plaintiff and Class Representative Enrique Enciso and his attorney and Defendant Evans and its attorneys.
2. The proposed Settlement has been submitted to the Court and has received preliminary approval.
3. If you have received a FLSA Consent Form and a Claim Form, you are a member of both Settlement Classes. If you have received only a Claim Form, you are a member of only Settlement Class 2. You have the right to participate in the Settlement by submitting one or both of these forms.
4. You and any other persons in the Settlement Classes have the right to object to the proposed settlement or exclude yourself by following the procedures in Parts V-VII of this notice.
5. A hearing to finally approve the settlement is scheduled for December 15, 2008 at 1:30 p.m. in Room 9, at the United States Courthouse, 312 N. Spring St., Los Angeles, California 90012 before the Honorable Valerie Baker Fairbank, U.S. District Judge.

At the hearing, any member of the Settlement 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 V of this Notice have been followed. You should read that part carefully. Settlement Class members who do not make objections in the manner provided in Part V 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. You may obtain a copy of the Settlement Agreement by contacting Class Counsel who is identified in Part VIII below.

## **III. NATURE OF THE LAWSUIT**

In this case, Plaintiff Enrique Enciso has sued Evans for damages for nonpayment of overtime for hours worked in excess of forty in a week, for unpaid compensation for meal and rest periods, for unpaid compensation for work performed for Evans and for interest and penalties resulting from these violations. Evans has denied and continues to deny all of the allegations made by the Plaintiff.

The Plaintiff and Evans have tentatively settled this lawsuit. The Settlement has received preliminary approval of the Court, subject to notice being provided to the members of the Classes 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 one or both of the Settlement Classes established by the court, you will receive such benefits, if any, as you may qualify for under the proposed Settlement. 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.

You should also be aware of the existence of another lawsuit currently pending in the Superior Court of the State of California in and for the County of Los Angeles entitled: Simons v. Evans Dedicated Systems, Inc., Case No. BC 362925. Your decision to participate in the settlement in this case may affect your rights to participate in the Simons lawsuit.

#### **IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT AGREEMENT**

For purposes of settlement, and without admitting any liability, Evans has agreed to provide certain relief to persons in the Settlement 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 VIII. The relief granted by the proposed Settlement Agreement is summarized as follows:

1. Evans will pay the total sum ("Sum") of Three Hundred Fifty Thousand Dollars (\$350,000.00) less attorney fees and costs awarded to Class Counsel, any enhancement awarded to the Class Representative Enrique Enciso and a payment of \$2,625.00 to the California Labor Workforce and Development Agency (LWDA). The Sum will be divided between the Classes as follows: 50% of the Sum to Settlement Class 1 and 50% of the Sum to Settlement Class 2.
2. Evans will pay reasonable attorneys' fees in a maximum amount not to exceed \$87,500.00 (25% of the Sum) and actual costs. All payments for attorneys' fees and costs will be paid from the Sum, which will reduce any payments made to the Settlement Classes. Class Counsel will apply to the court for approval of his attorneys' fees and costs at the hearing scheduled for December 15, 2008 at 1:30 p.m.
3. Plaintiff and Class Representative Enrique Enciso will apply to the Court at the hearing scheduled for December 15, 2008 for an enhancement payment not to exceed \$15,000.00 in recognition of the time and efforts he has expended in this case on behalf of the classes.
4. The Class 1 Settlement provides monetary compensation to truck drivers in Settlement Class 1 for unpaid regular and overtime compensation under federal law.
5. The Class 2 Settlement provides monetary compensation to truck drivers in Settlement Class 2 for unpaid regular and overtime compensation under California state law.
6. If you are a member of both Settlement Classes, you have received two Forms. If you are a member of only Settlement Class 2, you have received only the Settlement Class 2 Claim Form. You are not required to submit any of these forms. However, please remember that:

**IN ORDER TO RECEIVE PAYMENT UNDER THIS SETTLEMENT, EACH SETTLEMENT CLASS 1 MEMBER MUST SUBMIT A FLSA CONSENT FORM.**

**IN ORDER TO RECEIVE PAYMENT UNDER THIS SETTLEMENT, EACH SETTLEMENT CLASS 2 MEMBER MUST SUBMIT A CLAIM FORM.**

7. Any Settlement Class member has the right to object to the proposed settlement by following the procedures set forth in Part V below.
8. Any Settlement Class 1 member has the right to exclude themselves from the Class 1 Settlement by following the procedures set forth in Part VI below. Any Settlement Class 2 member has the right to exclude themselves from the Class 2 Settlement by following the procedures set forth in Part VII below.

Based upon the equitable formula that has been devised, there will be substantial difference among Settlement Class members as to the amount each individual participating Settlement Class Member will receive in settlement. The formula provides that each Settlement Class Member will receive a portion of the settlement in proportion to the number of weeks that he/she worked for Evans as compared to all the weeks worked by all the Settlement Class Members. Monies paid pursuant to the Settlement are taxable and Evans will make all lawful payroll deductions from any payments paid to Settlement Class members.

#### **V. 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 November 7, 2008, you **MUST** mail a request by first class postage to all of the following: (i) the Court at United States District Court, Central District of California, United States Courthouse, 312 N. Spring Street, Los Angeles, California, 90012, (ii) to Class Counsel, Jerry Budin, Esq., Law Office of Jerry Budin, 2401E. Orangeburg Avenue, Ste. 675-309, Modesto, CA 95355, and (iii) to Jennifer Zargarof, Esq., Sheppard, Mullin, Richter & Hampton, 333 South Hope Street, 48<sup>th</sup> Floor, Los Angeles, CA 90071 (Defendant's Counsel).

The request **MUST** include: (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 December 15, 2008 at 1:30 p.m. before the Honorable Valerie Baker Fairbank, U.S. District Judge, United States District Court, Central District of California, Room 9, United States Courthouse, 312 N. Spring Street, Los Angeles, California 90012.

**VI. PROCEDURE FOR EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT AGREEMENT IF YOU ARE A CLASS 1 MEMBER.**

Even if you do not object to the proposed Settlement Agreement, you may still exclude yourself from the proposed Class 1 Settlement by simply failing to submit a FLSA Consent Form.

In other words, if you do nothing, that is if you do not submit a FLSA Consent Form, you will not be bound by the Settlement Agreement regarding Settlement Class 1 and will receive no monetary compensation regarding the Class 1 Settlement.

Furthermore, if you do nothing, your individual rights, if any, under Federal Law will be preserved and you will have the right if you so choose to pursue those rights, if any, against Evans.

**VII. PROCEDURE FOR EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT AGREEMENT IF YOU ARE CLASS 2 MEMBER**

Even if you do not object to the proposed Settlement Agreement, you may still exclude yourself from the proposed Class 2 Settlement by taking the following steps.

A. So that it is postmarked by November 7, 2008, you **MUST** mail a request by first class postage to the Claims Administrator c/o Desmond, Marcello & Amster, P.O. Box 451999, Los Angeles, CA 90045 if you wish to be excluded from the Class 2 Settlement. The written request must contain your name, address, telephone number, Social Security number and the dates of your employment by Evans.

B. If you do submit a request for exclusion, your individual rights, if any, under California State Law will be preserved and you will have the right if you so choose to pursue those rights, if any, against the Evans defendants.

C. If you do not submit a Request for Exclusion, you will be bound by the Settlement Agreement regarding Settlement Class 2, if it is approved by the Court.

D. 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 regarding Settlement Class 2, but will receive no monetary compensation from the funds assigned to the Class 2 Settlement.

**VIII. 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, 2401 E. Orangeburg, #675-309, Modesto, California 95355, telephone (209) 544-3030, e-mail address: [jerrybudin@msn.com](mailto:jerrybudin@msn.com).

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