

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Guillen. v. DMD Construction, Inc., et al.
(Santa Clara County Superior Court Case No. 22CV393451)

**THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.
PLEASE READ THIS NOTICE CAREFULLY.**

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 not.

To: All individuals who were employed by the company defendants in California as non-exempt and/or hourly paid employees at any time(s) between January 19, 2018 through **March 29, 2023**.

Upon Court approval, you will be eligible to receive money from this settlement. Your options are:

| Option | Description of Option | Deadline |
|--|--|----------------------|
| Do Nothing and Receive Money Under the Settlement | If you do nothing, and if the Court grants final approval of the Settlement, you will receive an estimated \$ [individual amount] . For more information see Sections F-G. | N/A |
| Dispute Your Number of “Workweeks” | If you disagree with the total number of “workweeks” calculated for you in Section F, you may dispute the calculation. For more information see Section H. | June 17, 2023 |
| Opt-Out | If you do not want to participate in the settlement you may request exclusion. For more information see Section I. | June 17, 2023 |
| Object | If you want to ask the Court to deny final approval of the settlement, you may submit an objection. For more information see Section J. | June 17, 2023 |
| Provide Your Current Mailing Address | If you did not receive this notice at your current mailing address, or if your mailing address has changed, you should contact the Settlement Administrator. For more information see Section H. | June 17, 2023 |

PLEASE READ THIS NOTICE CAREFULLY AS IT WILL AFFECT YOUR LEGAL RIGHTS

A. WHY DID I GET THIS NOTICE?

You have received this Notice because your employment records with DMD Construction, Inc. indicate that you are a class member who is entitled to receive a payment from the proposed Settlement in this case. You do not need to do anything to receive money from this proposed Settlement.

This Notice describes the proposed Settlement (“Settlement”) of the class action lawsuit entitled *Guillen. v. DMD Construction, Inc., et al.*, Superior Court of California for the County of Santa Clara, Case No. 22CV393451 (the “Lawsuit”), filed by Plaintiff Edgar Guillen (“Plaintiff”). This Notice is being sent to you by order of the Superior Court of California for the County of Santa Clara, which preliminarily approved the Settlement and conditionally certified the class on **March 29, 2023**. This Notice informs you of the terms of the Settlement, describes your rights in connection with the Settlement, and explains what steps you may take to participate in, object to, or exclude yourself, from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves this Settlement, you will be bound to the terms of the Settlement and any final judgment.

B. WHAT IS THIS LAWSUIT ABOUT?

On January 19, 2022, the Lawsuit was filed by Plaintiff in Santa Clara County Superior Court seeking unpaid wages, penalties, and other monetary relief on behalf himself. Plaintiff later amended the complaint to include class allegations. The operative complaint alleges the following causes of action: (1) Failure to Pay wages for All Hours Worked; (2) Overtime Wages; (3) Meal Period Violations; (4) Rest Break Violations; (5) Wage Statement Violations; (6) Waiting Time Penalties; (7) Failure to Indemnify for Necessary Business Expenses; (8) Unfair Competition Law; and (9) Civil penalties pursuant to California’s Private Attorneys General Act.

Defendants deny each of Plaintiff’s allegations, deny that the claims are appropriate for class certification, are defending the case, and contend that they have complied with all applicable California laws with respect to the claims alleged by Plaintiffs.

After engaging in investigation, as well as a full-day mediation session before an experienced mediator, the Parties agreed on the proposed Settlement that was preliminarily approved by the Court on **March 29, 2023**.

C. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Plaintiffs are the preliminarily-approved Class Representatives in the Lawsuit, and they assert claims on behalf of themselves and the Class. DMD Construction, Inc., Kystian Konefal, and Maciej Wnorowski are the Defendants. A class action allows the Court to resolve the claims of all the class members at the same time. Unless a class member requests to be excluded (as described in Section I), each class member is bound by the determination or judgment entered in the case and may not file his/her/their own lawsuit on the same claims that were alleged and released in the class action. A class action allows the Court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves.

D. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who were employed by the company defendants in California as non-exempt and/or hourly paid employees at any time(s) between January 19, 2018 through **March 29, 2023**. (“Settlement Class Members”). For purposes of the Settlement, January 19, 2018 through **March 29, 2023**, is referred to as the “Class Period.”

E. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against them and entry of final judgment, Defendants will pay \$150,000.00 (“Gross Settlement Amount”) to the Settlement Administrator within thirty (30) calendar days of the Effective Date.¹ After deductions from the Gross Settlement Amount for court-approved payments of attorneys’ fees and costs to preliminarily-approved Class Counsel, a service award to Plaintiff as preliminarily-approved Class Representative, payment to the California Labor & Workforce Development Agency (“LWDA”) for a release of claims under the Private Attorneys General Act (“PAGA”), PAGA payments to the PAGA Aggrieved Employees, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) will be distributed to all Participating Settlement Class Members.

Preliminarily-Approved Class Counsel Fees and Expenses Award: You do not need to pay any portion of either Plaintiff’s or Defendants’ attorneys’ fees and costs. Preliminarily-approved Class Counsel will request that the Court award up to one-third of the Gross Settlement Amount (\$50,000) as payment of attorneys’ fees for their work performed in prosecuting the Lawsuit plus reimbursement of actual litigation costs up to \$10,000. These amounts will be paid from the Gross Settlement Amount, are subject to Court approval at the final approval hearing, and any amounts requested but not awarded will be returned to the NSA.

Preliminarily-Approved Class Representative Service Award: Preliminarily-approved Class Counsel will request a service award in the amount of \$7,500.00 for Preliminarily-approved Class Representative Edgar Guillen. This amount will be paid from the Gross Settlement Amount, is subject to Court approval at the final approval hearing, and any amount not awarded will revert to the NSA. Plaintiffs will also be entitled to receive their settlement payment from the NSA as described below.

Settlement Administration Costs: A Settlement Administrator, Phoenix Settlement Administrators, has been appointed by the Court to administer the settlement including the mailing of this notice. The cost of settlement administration, which is estimated to be \$5,250, pays for tasks such as mailing this Notice, calculating payments based on data provided by the parties, mailing checks and tax forms, and reporting to the parties, counsel and the Court.

Payment to California Labor & Workforce Development Agency (“LWDA”): Because Plaintiff is suing, in part, on behalf of the State of California under the Private Attorneys General Act, payment of \$7,500 will be made to the State of California (the LWDA) for its 75% portion of the \$10,000 allocated to civil penalties under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* The remaining 25% of the PAGA Amount (\$2,500) shall be distributed to the PAGA Aggrieved Employees on a pro-rata basis based on the comparative number of workweeks worked by each PAGA Aggrieved Employee from October 18, 2020 through **March 29, 2023**.

F. HOW IS AN INDIVIDUAL SETTLEMENT PAYMENT DETERMINED?

Subject to Court approval, the Individual Settlement Payments from the NSA will be allocated as follows:

Each member of the Settlement Class who does not timely request exclusion, or “opt out” of the settlement will be deemed a “Participating Class Member” and will receive a settlement share calculated by the Settlement Administrator based on the number of pay periods worked between January 19, 2018 through **March 29, 2023**. Specifically, each Class Member’s settlement share will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s number of pay periods worked during the Class Period, and the denominator of which is the total pay periods worked by all participating Settlement Class members during the Class Period.

¹ Effective Date means: (a) if no Class Member files and serves any timely and valid objection to the Settlement, then the date upon which the Court grants Final Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.

DEFENDANTS' RECORDS REFLECT THAT YOU WORKED THE FOLLOWING NUMBER OF PAY PERIODS DURING THE CLASS PERIOD (FROM JANUARY 19, 2018 THROUGH MARCH 29, 2023: [REDACTED].

BASED UPON THIS FIGURE, YOUR ESTIMATED CLASS SETTLEMENT SHARE PAYMENT IS: \$[INDIVIDUAL'S AMOUNT].

DEFENDANTS' RECORDS REFLECT THAT YOU WORKED THE FOLLOWING NUMBER OF PAY PERIODS DURING THE PAGA PERIOD (FROM OCTOBER 18, 2020 THROUGH MARCH 29, 2023): [REDACTED].

BASED UPON THIS FIGURE, YOUR ESTIMATED PAGA PAYMENT IS: \$[INDIVIDUAL'S AMOUNT].

The Net Settlement Amount (estimated to be \$[REDACTED]), will be allocated as follows: sixty-seven percent (67%) of each Settlement Share will be treated as a payment in settlement of the Class Member's claims for statutory and civil penalties, and thirty-three percent (33%) as wages. Statutory and civil penalties will be reported to the tax authorities as to each Participating Class Member on Tax Form 1099. Wages will be reported to the tax authorities as to each Participating Class Member on Tax Form W-2. Individual PAGA Payments will be allocated as civil penalties and will be reported to the the tax authorities on Tax Form 1099.

G. WHAT IF I DO NOTHING?

Subject to Court approval, if you are a member of the Settlement Class, and you do not opt-out of the settlement, you will automatically receive a pro rata share of the settlement based on the formula explained above, and will automatically release all claims as described below. No further action is required.

Also, if you worked at any time between October 18, 2020 through March 29, 2023, you are also a PAGA Aggrieved Employee and will receive a payment for your pro rata share of the PAGA payment. Even if you opt-out of the class settlement, if you're a PAGA Aggrieved Employee you will receive your pro rata share of the \$2,500 PAGA payment. Upon the Court's approval of the settlement of the PAGA Claim, all PAGA Aggrieved Employees will release all claims for civil penalties under the PAGA that were pled or that could have been pled in the Complaint based on the facts alleged, arising out of or related to services or work performed for Defendants (any of them) during the PAGA Period. Settlement Class Members who are also PAGA Aggrieved Employees and who otherwise submit a valid Request for Exclusion from the class action Settlement will nevertheless still receive a PAGA Aggrieved Employee Payment and be bound by the PAGA release regardless of whether they cash their check for the PAGA payment.

If you did not receive this notice at your current mailing address, or if your mailing address has changed, you will need to contact the settlement administrator (see contact details at Section H) and provide your current mailing address, the name of the case and case number (*Guillen. v. DMD Construction, Inc., et al.*, Case No. 22CV393451) and your full name, and telephone number.

IMPORTANT: IT IS YOUR RESPONSIBILITY TO ENSURE THAT THE SETTLEMENT ADMINISTRATOR, PHOENIX SETTLEMENT ADMINISTRATORS, HAS YOUR MOST CURRENT ADDRESS FOR PURPOSES OF FUTURE NOTICES AND ISSUANCE OF YOUR SETTLEMENT AWARD. LIKEWISE, IF YOU LOSE YOUR CHECK AND NEED TO REQUEST A REPLACEMENT CHECK FROM THE SETTLEMENT ADMINISTRATOR, YOU MAY CONTACT THEM BY TELEPHONE, FAX, OR EMAIL (SEE SECTION H FOR CONTACT INFORMATION) TO REQUEST A NEW CHECK.

By doing nothing and accepting the payment as described in this section, and upon the Court's final approval of the settlement, you are giving up your right to pursue any and all claims that were actually alleged by Plaintiff in the Second Amended Complaint, or could have been brought based on factual allegations contained in the Second Amended Complaint from January 19, 2018 through March 29, 2023, including, but not limited to claims to pay all wages due, including minimum and overtime premium wages; failed to provide compliant rest breaks and meal periods; failed to pay all final wages upon termination; and failed to render accurate wage statements, for the period from January 19, 2018 through preliminary approval. Such claims include, but are not limited to, claims under Labor Code sections 223, 226.2, 1194, 510, 226.7, 512, 226, 201, 202, 203, 2802, 1198.5, 2699 *et seq.*, Business & Professions Code §§ 17200, *et seq.*

Settlement Share checks to Participating Class Members will be distributed by the Settlement Administrator after the Effective Date of this Settlement and will remain valid and negotiable for **one hundred and eighty (180) days from the date of issuance**. If one or more Class Members fail to cash their Settlement Share checks within 180 days after mailing to their last known address, and if the aggregate funds represented by the uncashed checks totals \$10,000 or more, such uncashed funds will be distributed to Class Members who are participating in the Settlement and cashed their Settlement Share checks in the same pro rata manner as the Settlement Share checks. If the aggregate funds represented by uncashed Settlement Share checks total less than \$10,000, they will be donated to the George & Katherine Alexander Community Law Center, a 501(c)(3).

H. WHAT IF THE NUMBER OF “WORKWEEKS” LISTED IN SECTION F IS INACCURATE?

Your estimated Settlement Payment is based upon the number of pay periods worked as a non-exempt employee for Defendants from January 19, 2018 through **March 29, 2023**. Section F reflects this information. If you do not do anything then your settlement award will be based upon this information. If you believe Defendants’ records of the number of workweeks you worked during this period in Section F is inaccurate, then you may submit a dispute to the Settlement Administrator by submitting (by email, FAX, or mail) the attached Individual Class Member Dispute Form, *including supporting documents* (such as paycheck stubs or tax returns) to the Settlement Administrator at the following address:

Guillen. v. DMD Construction, Inc., et al.
PHOENIX SETTLEMENT ADMINISTRATORS
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
Email: notice@phoenixclassaction.com

The Individual Class Member Dispute Form and supporting documents must be postmarked, faxed, or emailed by no later than **June 17, 2023**.

The Settlement Administrator shall consider the merits of any timely disputes. The Settlement Administrator shall have authority to resolve the dispute and make a final and binding determination regarding any dispute regarding the number of total workweeks worked by current or former employees.

I. WHAT IF I DON’T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. If you exclude yourself from the settlement, you will not receive your individual settlement checks, will not be bound by the Release in Section G, and will not have standing to object to the settlement. You may wish to request exclusion if you do not want to be bound by the settlement or the orders of the court, or you wish to pursue your claim on an individual basis. To do so, you must submit (either by mail, e-mail, or fax) a written request for exclusion (the “Opt-Out Form”), enclosed with this Notice, to the Settlement Administrator as detailed below.

To be valid, the Opt-Out Form **must** be completely filled out and include: (1) the name, address, and telephone number of the person requesting exclusion; (2) the last four digits of the person’s social security number or Individual Taxpayer Identification Number (“ITIN”); (3) be signed by the person requesting exclusion; and (4) be postmarked, emailed or faxed to the Settlement Administrator at the specified address by **June 17, 2023**. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement, including the Release described in this Notice.

Please remember that if you request to be excluded from this settlement you will not be entitled to receive any money from the settlement; you will not be bound by the Release outlined in Section G; and you will be free to pursue your own claims, if any, against Defendant.

J. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you’re a Class Member, you can object to the settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. For example, you can object to the settlement generally, the PAGA allocation, the request for attorneys’ fee award, the requested class representative service award, etc . . . If you submit an objection, you still remain eligible to receive an individual settlement award and will be bound by the terms of the Settlement.

If you choose to object to the settlement, the Court will consider your objection at the Final Approval Hearing on **September 27, 2023**. At the Final Approval Hearing the Court will review/listen to any objections to the settlement and determine whether the settlement and the requested attorney fee award and class representative service award are fair and reasonable.

To object, you must email, fax, or mail a letter to Settlement Administrator (see contact information above in Section G) saying that you object to the *Guillen v. DMD Construction, et al.* settlement by **June 17, 2023**. Be sure to include your name, address, telephone number, signature, and the reasons (see above) you object to the settlement. The Settlement Administrator will forward any objections received to the lawyers for Plaintiff and Defendants. Absent good cause found by the Court, objections will be waived or not considered if not timely or otherwise compliant.

You do not need to appear in person at the hearing on final approval in order for your timely, written objection to be considered by the Court. However, only Settlement Class Members who have submitted timely written objections will be entitled to be heard at the Court hearing on whether or not to approve of the settlement (the “Final Approval Hearing”), unless the Court orders otherwise. The hearing will be open to the public and Class Members may attend if they’d like. The Final Approval Hearing is scheduled to take place on **September 27, 2023, at 1:30 p.m.** in Department 3 of the Santa Clara County Superior Court, located at 191 North First St., San Jose, CA 95113.

K. WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The Settlement, if finally approved by the Court, will bind all Settlement Class Members who do not request to be excluded from the settlement, **whether or not they cash their Settlement Share checks**. Final approval of the settlement will bar any Settlement Class Member who does not request to be excluded from the settlement from hereafter initiating a lawsuit or proceeding regarding the Released Claims during the period between January 19, 2018 through **March 29, 2023**.

L. FURTHER INFORMATION

This Notice only provides a summary of the Lawsuit, settlement and related matters. For more information, you may contact the Settlement Administrator at **(800) 523-5773**, visit the settlement website at **www.advocatesforworkers.com/DMD**.

You may also access the full docket in the Lawsuit free of charge on the Court's website at <https://portal.scsccourt.org/>. Click the "Search" at the top and select the "Case Information" option, then enter 22CV393451 and press "Search."

If you have any questions, you can also contact preliminarily-approved **Class Counsel** listed below. You may also seek the advice and guidance of your own attorney at your own expense.

ADVOCATES FOR WORKER RIGHTS LLP

212 9th Street, Suite 314
Oakland, California 94607
Telephone: (510) 269-4200
Facsimile: (408) 657-4684

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.