

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES - CENTRAL CIVIL WEST**

Coordination Proceeding Special Title  
(Rule 3.550)

**NOTICE OF CLASS ACTION**

**EXPRESS MESSENGER SYSTEMS  
WAGE AND HOUR CASES<sup>1</sup>**

**TO: ALL “FIRST AND LAST MILE” DELIVERY DRIVERS WHO  
DELIVERED OR PICKED UP ONTRAC PACKAGES IN THE STATE OF  
CALIFORNIA AT ANY TIME FROM FEBRUARY 22, 2009, TO THE  
PRESENT.<sup>2</sup>**

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

**1. WHY SHOULD I READ THIS NOTICE?**

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in a class action lawsuit pending before Judge Kenneth R. Freeman of the Los Angeles County Superior Court (the “Court”), filed against Express Messenger Systems, Inc. dba OnTrac (“OnTrac”). The Court has ordered that this Notice be sent to

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<sup>1</sup> *Included Actions: Lewis v. Express Messenger Systems, Inc., et al.*, Los Angeles County Superior Court No. BC5015211; *Leal v. Express Messenger Systems, Inc., et al.*, Los Angeles County Superior Court No. BC509904; *Wakaba v. Express Messenger Systems, Inc., et al.*, Ventura County Superior Court No. 56-2014-004526570-CU-OE-VTA; *Fano v. Express Messenger Systems, Inc., et al.*, Los Angeles County Superior Court No. BC557985; *Montenegro v. Express Messenger Systems, Inc., et al.*, Ventura County Superior Court No. 56-2015-00470321-CU-OE-VTA; *Peasnall v. Express Messenger Systems, Inc., et al.*, Santa Barbara County Superior Court No. 15CV02765; *Chaidez v. Express Messenger Systems, Inc., et al.*, Los Angeles County Superior Court No. BC614950; *Benjamin v. California Overnight Inc., dba OnTrac, et al.*, Los Angeles County Superior Court No. BC628864; *Astorga v. OnTrac, et al.*, San Diego Superior Court No. 37-2017-00007584-CU-OE-CTL, and *Rincon v. OnTrac, et al.*, San Diego Superior Court No. 37-2017-00027163-CU-OE-CTL.

<sup>2</sup> Excluded from the class are those drivers and/or businesses that entered into direct contractual agreements with defendant (other than a Marketing Agreement) and drivers classified as employees.

you so that you can be fully informed about the lawsuit and your rights and options in connection with it.

On January 18, 2019, the Court entered an order certifying this case as a class action. Former delivery drivers Eliseo Leal and Thomas Lewis have been appointed as the class representatives. In certifying this case as a class action, the Court has not expressed any opinion as to the merits of the claims. The Court has, however, decided that the case will proceed as a class action. In other words, the action will proceed on a group basis.

## **2. WHAT IS THE LITIGATION ABOUT?**

This case is proceeding on behalf of a class of delivery drivers, defined below, who claim they were misclassified as independent contractors instead of employees. As a result of this misclassification, Plaintiffs in this matter claim that OnTrac failed to pay overtime, failed to pay minimum wages, failed to provide meal periods or appropriate compensation for missed meal periods, failed to provide rest periods or appropriate compensation for missed rest periods, failed to provide accurate wage statements, failed to provide all tools and equipment that were required or necessary to perform the job, and engaged in unfair business practices under the Unfair Competition Law.

Class: All “first and last mile” delivery drivers who delivered or picked up OnTrac packages in the state of California at any time from February 22, 2009, to the present. Excluded from the class are those drivers and/or businesses that entered into direct contractual agreements with OnTrac (other than a marketing agreement) and drivers classified as employees.

OnTrac denies Plaintiffs’ claims and maintains that OnTrac (1) did not hire or engage any of the delivery drivers in the class, (2) was not and is not responsible for the payment of any of the delivery drivers for delivery services, and (3) does not owe any of the amounts claimed in the lawsuit.

No decision has been made as to who is correct in how they see this lawsuit.

## **3. WHAT IS A CLASS ACTION?**

A class action is a type of lawsuit in which one or a few plaintiffs bring suit on behalf of all the members of a similarly situated group to recover damages for all members of the group, without the necessity of each member of the group filing his or her own lawsuit as an individual plaintiff. Class actions may be used by courts when the legal claims and evidence appear to raise issues of law or fact that may be common to all members of the class, thereby making it fair to bind all class members to the orders and the judgment in the case.

## **4. WHAT RECOVERY DOES THE ACTION SEEK?**

Plaintiffs seek recovery of wages and penalties under California Wage Order No. 9. Plaintiffs also seeks attorneys’ fees and costs.

**5. WHO REPRESENTS THE CLASS?**

Plaintiffs Eliseo Leal and Thomas Lewis have been approved by the Court to act as the Class Representatives. They are former delivery drivers who handled OnTrac shipments. The following attorneys have been approved by the Court to act as the Class Counsel:

Stanley D Saltzman  
Stephen P. O'Dell  
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James R. Hawkins  
Gregory E. Mauro  
JAMES HAWKINS, APLC  
9880 Research Drive, Suite 200  
Irvine, California 92618  
Telephone: (949) 387-7200  
Facsimile: (949) 387-6676

As a member of the class, you also have the option to enter an appearance through an attorney of your choice. If you so choose to be represented by an attorney other than Class Counsel, you will be responsible for the attorneys' fees and costs associated with retaining your own attorney.

**6. WHAT FEES AND COSTS ARE INVOLVED?**

Class Counsel is representing the class on a contingency fee basis. Class members may participate in any ultimate judgment or settlement without incurring any out-of-pocket fees or costs. Class Counsel will make a request to the Court for attorneys' fees and costs, to be paid from any judgment or settlement. Applications for attorneys' fees and expenses are subject to Court approval.

**7. WHAT ARE MY RIGHTS IN REGARD TO THIS MATTER?**

You have three options:

**1) Remain in the class, and be represented by Class Counsel:**

If you wish to participate in the case and to be represented by Class Counsel (Marlin & Saltzman, LLP, Capstone Law, APC, The Hamideh Firm, P.C., and James Hawkins, APLC) you do not need to do anything right now. You will be automatically included as a member of the certified class and you will receive further notices as the case progresses. You will retain the possibility of receiving money or benefits that may come from further litigation of the case. You will also be bound by the results, whether favorable or

unfavorable, and you will give up the right to separately sue OnTrac for legal claims that are the same as or related to those alleged in this lawsuit.

**2) Remain in the class, but retain your own lawyer:**

If you wish to remain in the class, but retain counsel of your own choosing, you must notify the attorneys for the class, and whichever attorney(s) you choose must notify the Court. You will be responsible for any fees incurred by your attorney(s). You will retain the possibility of receiving money or benefits that may come from further litigation of the case. You will also be bound by the results, whether favorable or unfavorable, and you will give up the right to separately sue OnTrac for legal claims that are the same as or related to those alleged in this lawsuit.

**3) Exclude yourself from the class:**

If you do not wish to participate in this case, you also have the right to exclude yourself from the class. If you do not want to participate in the lawsuit, you must request to be excluded by completing and submitting a Request for Exclusion Form. You will retain the right to pursue your own claims against OnTrac with legal counsel of your choosing, but the statute of limitations on your claim will continue to run. You will not give up any rights or claims you may have by excluding yourself from this action. You will not be bound by any judgment or settlement reached in the class action. If you decide not to participate, the Court will exclude you from the class if your request is either submitted by visiting the following website and completing the Request for Exclusion Form there, no later than November 12, 2019:

[www.EMSWageAndHour.com](http://www.EMSWageAndHour.com)

OR you may submit your request by mailing the enclosed Request for Exclusion form to the claims administrator at the address listed below and it is postmarked no later than November 12, 2019:

Express Messenger Systems Wage and Hour Cases  
c/o CPT Group Inc.  
50 Corporate Park  
Irvine, California 92606  
1-(888) 373-2581

You do not need to submit both, you may exclude yourself by submitting the Request for Exclusion form online OR by mailing it to the address above.

**PLEASE DO NOT CONTACT THE COURT  
REGARDING THIS MATTER.**