

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Joe Ascencio v. Smart Systems Technologies, Inc., Los Angeles Superior Court Case No. BC696187

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY SMART SYSTEMS TECHNOLOGIES, INC. (“DEFENDANT”) IN CALIFORNIA AS A NON-EXEMPT OR PIECE-RATE PAID PRODUCTION INSTALLER AT ANY TIME BETWEEN MARCH 2, 2014 THROUGH APRIL 1, 2019, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Joe Ascencio v. Smart Systems Technologies, Inc.*, Los Angeles Superior Court Case No. BC696187 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Kenneth R. Freeman on April 2, 2020, at 10:00 a.m. in Department SSC-14 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable (the “Final Approval Hearing”). As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement.
OBJECT	To object to the Settlement, you may submit a simple written statement explaining why you don’t like the Settlement or explain your objections yourself or through an attorney at the Final Approval Hearing. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All current and former non-exempt or piece-rate paid employees of Defendant employed in California as Production Installers (“Covered Positions”) during the Class Period (the “Class Period” is March 2, 2014 through April 1, 2019).

According to Defendant’s records, you are a member of the Class (“Class Member”).

What is this case about?

In the Action, Plaintiff Joe Ascencio (“Plaintiff”) alleges on behalf of himself and the Class the following causes of action: (1) Failure to Pay Minimum and Straight Time Wages [Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Lab. Code § 2802]; (6) Failure to Pay Vested Vacation Wages at Termination [Lab. Code § 227.3]; (7) Failure to Timely Pay Final Wages at Termination [Lab. Code §§ 201-203]; (8) Failure to Provide Accurate Itemized Wage Statements [Lab. Code § 226]; (9) Unfair Business Practices [Bus. & Prof. Code §§ 17200, et seq.]; and (10) Civil Penalties pursuant to the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Allen Feghali
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Defendant’s Counsel

Jeremy Johnson
Kenneth L. Mariboho II
BREMER WHYTE BROWN & O’MEARA, LLP
20320 S.W. Birch Street, 2nd Floor
Newport Beach, California 92660
Telephone: (949) 221-1000
Facsimile: (949) 221-1001

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$600,000 (the “Gross Settlement Amount”) for: (a) individual Settlement Payments to participating Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff; (c) the Court-approved attorneys’ fees and costs to Class Counsel; (d) payment to the Labor and Workforce Development Agency (“LWDA”) for PAGA penalties; and (e) payment to the Settlement Administrator for settlement administration services.

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement (“participating Class Members”).

The Net Settlement Amount shall be divided among all participating Class Members on a pro rata basis based upon the total number of workweeks worked by each respective participating Class Member as a non-exempt hourly employee in the State of California during the Class Period. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net Settlement Amount] = individual Settlement Payment for a Settlement Class Member. Your estimated individual Settlement Payment is listed on the **Notice of Settlement Payment** enclosed in this Notice Packet.

For tax reporting purposes, the payments to participating Class Members will be allocated 20% as wages and 80% as penalties and interest. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of participating Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for individual Settlement Payments paid to participating Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not cashed by a participating Class Member within that time. Thereafter, the funds represented by any uncashed or undeliverable checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Class Members who did not cash their checks until such time that they claim their property. In such event, the participating Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$200,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$10,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of up to \$5,000.00 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$15,000.00. A payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$10,000 set aside for payment under PAGA.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement, and except as to such rights or claims as may be created by this Settlement, Plaintiff and each participating Settlement Class Member will fully release and hold harmless Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees") from the **following claims** ("Released Claims") for the entire Class Period:

- 1) any and all claims stated in the Action, implicitly or explicitly, including but not limited to state and/or federal wage and hour claims (including all claims under the California Labor Code) for unpaid wages, unreimbursed business expenses, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512.5, 516, 558, 1174, 1194, 1198, 2698 et seq., and 2802, derivative claims under California Business & Professions Code Sections 17200 et seq. and all claims under the Wage Order, and the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"); and,
- 2) as to any Settlement Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Settlement Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly (a notation on the check shall state the consent to join effect of signing and negotiating the check).

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to participating Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing and state your objections to the Court, you can have an attorney object for you, or you can submit a simple written statement of objection to the Settlement Administrator at the following address: Smart Systems Technologies, Inc. Settlement, c/o ILYM Group. Inc., P.O. Box 2031, Tustin, CA 92781. If you submit a written objection, the written objection should contain sufficient information to confirm your identity and the reason for the objection, including: (1) your full name; (2) the reason for the objection; (3) your signature; and (4) be postmarked on or before **March 20, 2020**, and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. If you do not object in writing, the Court will still allow you to state any objections you may have at the Final Approval Hearing. **You do not have to object in writing to explain any objections you have at the Final Approval Hearing. Even if you object, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone, will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Settlement. If you do not want to be part of the Settlement, you must sign and return a “Request for Exclusion from Settlement” to the Settlement Administrator at Smart Systems Technologies, Inc. Settlement, c/o ILYM Group. Inc., P.O. Box 2031, Tustin, CA 92781. In order to be valid, your Request for Exclusion from Settlement must be signed and postmarked on or before **March 20, 2020**. If you do not submit a signed Request for Exclusion from Settlement on time (as evidenced by the postmark), your Request will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a signed Request for Exclusion from Settlement, you will have no further role in the Action, and you will not be entitled to any benefit, including money, as a result of the Action and Settlement and will not be entitled to or permitted to assert an objection to the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on April 2, 2020, at 10:00 a.m. in Department SSC-14 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website created by the Settlement Administrator for this case for a period of six months following the entry of that Order in the Court record. That website is: <http://www.ilymgroupclassaction.com/cases/smartsystems>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Second Amended Joint Stipulation of Class Action Settlement, attached to the Supplemental Declaration of H. Scott Leviant in support of Plaintiff’s First Amended Motion for Preliminary Approval of Class Action Settlement. The Second Amended Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles Superior Court. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

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