

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

HECTOR GARCIA, ROBERT CAHIGAL,
BRIAN HOLLIDAY, and TINA DIEMER,
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

PPG INDUSTRIES, INC.,

Defendant.

Case No. 3:15-cv-00319-WHO

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

TO: «First1» «Last1»

YOU ARE COVERED BY THE SETTLEMENT OF THE ABOVE CLASS ACTION LAWSUIT.

UNDER THE SETTLEMENT, YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT ALLOCATION CURRENTLY CALCULATED AT \$«EstAmt», SUBJECT TO WITHHOLDINGS AS SET FORTH IN THIS NOTICE.

READ THIS DOCUMENT CAREFULLY. IT SUMMARIZES THE TERMS OF THE SETTLEMENT AND EXPLAINS YOUR RIGHTS UNDER THE SETTLEMENT.

A proposed settlement (the “Settlement”) has been reached in the above-referenced class/collective action lawsuit currently pending in the United States District Court for the Northern District of California. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. As explained in more detail below, you will be included in the settlement unless you affirmatively request to be excluded from the settlement by submitting a written notice to the Claims Administrator by June 18, 2016 (as evidenced by the postmark).

1. Why did I get this notice?

The United States District Court for the Northern District of California (“Court”) presides over this Lawsuit, which was filed with the Court in January 2015 by Named Plaintiffs Hector Garcia, Robert Cahigal, Brian Holliday, and Tina Diemer against Defendant PPG Industries, Inc. (“PPG” or “Defendant”).

The Lawsuit makes several claims. *First*, on behalf of all non-exempt PPG employees in California, the Named Plaintiffs allege that PPG failed to include the following mandatory information on its wage statements: the inclusive dates of the period for which the employee was being paid; the total hours worked in that period; the legal name and address of the employer; and the hourly rate(s) in effect during the pay period along with the number of hours worked at each rate. In addition, Named Plaintiffs allege that PPG required its employees to receive their pay via direct deposit, which they contend is impermissible under the California Labor Code (CLC).

Second, on behalf of all PPG employees who held the Territory Manager (TM) position in PPG’s Home Depot or Lowe’s business lines, whether in California or nationwide, Plaintiffs allege that PPG incorrectly calculated the applicable overtime rate by failing to include non-discretionary bonuses in TMs’ “regular rate of pay.” As a result, under the CLC and the federal Fair Labor Standards Act (FLSA), Plaintiffs allege that PPG failed to pay all overtime that was owed to TMs. In California, this includes derivative “waiting time” penalties for employees who were discharged.

And *third*, on behalf of all PPG employees who held the TM position in PPG’s Home Depot business line in California, Plaintiffs allege that PPG failed to reimburse any portion of the home internet costs of TMs, who were required to have and to use home internet to perform their daily work for PPG.

Additional details about these legal claims are set forth below. Based on these claims, the Named Plaintiffs seek compensation on behalf of themselves, TMs who were affected by the alleged failure to include non-discretionary bonuses in the regular rate of pay, and the California Rule 23 Class Members affected by the foregoing alleged violations. The compensation Plaintiffs seek includes alleged unpaid wages, penalties and reimbursement of business expenses, as well as other relief under the FLSA and California state law, including liquidated damages, interest, penalties, litigation costs and expenses, and attorney’s fees. Under the proposed settlement, individuals who have already affirmatively joined the lawsuit will not receive this Notice, even if they are technically also California Rule 23 Class Members. TMs outside of California who are eligible to participate in the settlement will receive a different Notice.

The Lawsuit has been settled. Based on PPG's records, you are a covered member of the California Rule 23 Class and are therefore eligible to participate in the settlement of the Lawsuit. You will automatically be included in the settlement unless you take affirmative steps to exclude yourself. **This Notice informs you of the steps you must take if you wish to exclude yourself from the settlement or object to the settlement.**

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.gbdhlegal.com/cases/garcia-v-ppg/. At this website, in addition to the settlement agreement, you can view the Complaint in this matter, and you will be able to view Class Counsel's motion for attorneys' fees, which will be posted 14 days prior to the deadline to opt out of the settlement. You may also obtain this information by contacting class counsel at 1-800-822-5000, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

2. What is the lawsuit about?

In this Lawsuit, Plaintiffs claim that Defendant failed to pay them for all supplemental overtime related to incentive compensation associated with work performed in 2012 through 2015 in violation of the FLSA and the California Labor Code. Specifically, they claim that Defendant did not correctly include bonus payments as part of each employee's regular rate of pay when calculating each employee's overtime rate. The Named Plaintiffs also assert various claims under the California Labor Code on behalf of Opt-in Plaintiffs who worked in California, and California Rule 23 Class Members, including claims that Defendant: (a) failed to provide accurate wage statements, (b) is liable for waiting time penalties for California Rule 23 Class Members that were employed in the State of California as a Territory Manager but terminated employment prior to January 22, 2015 and did not receive all supplemental overtime related to incentive compensation associated with work performed in 2012 through 2015, (c) improperly required mandatory direct deposit, (d) should have reimbursed Territory Managers who worked in the Home Depot business for home internet expenses necessary to perform their job duties and responsibilities; and (e) is liable for penalties under the California Labor Code Private Attorney General Act (PAGA).

PPG denies Plaintiffs' legal claims and contends that it complied with the FLSA and the CLC.

The Court has not decided who would win the Lawsuit. By reaching a settlement, Plaintiffs and PPG reached an amicable resolution of their dispute, and all parties avoided the costs and risks associated with further litigation.

3. What does the settlement provide?

Defendant agreed to pay \$500,000 ("Maximum Gross Settlement Amount") to settle the Lawsuit. That amount will be used to pay: (a) the claims of Class Members; (b) Class Counsel's fees and litigation costs not to exceed \$171,665.97; (c) enhancement payments to the Named Plaintiffs not to exceed \$8,000; (d) payment to the State of California for civil penalties in the amount of \$2,250; and (e) the costs of administering the Settlement and claims process in an amount not to exceed \$28,500.

Class Counsel will ask the Court to award attorneys' fees in an amount up to \$166,665.97, plus a reasonable amount (not to exceed \$5,000) for litigation costs actually incurred in prosecuting the action on behalf of the Class. In addition, Class Counsel will ask the Court to authorize enhancement payments to the four named plaintiffs in the amount of \$2,000 each (\$8,000 in total) in recognition of their efforts to obtain this settlement on behalf of the Class Members. The actual amounts awarded as attorneys' fees, litigation costs, and enhancement payments will be determined and approved by the Court.

After deducting from the Maximum Gross Settlement Amount the attorneys' fees, litigation costs, enhancement awards, a Reserve Fund for erroneously excluded Class Members, and the costs of administering the Settlement, the remaining amount ("Settlement Payment Allocation") will be used to make settlement payments to each qualifying Class Member.

Your preliminary Individual Settlement Allocation is set forth on the first page of this Notice. The allocation will be subject to withholding in accordance with the terms of the settlement agreement. You should consult with your tax professional concerning the proper tax payment for this payment.

Settlement allocations are based on a uniform formula. With respect to supplemental overtime, the formula takes into account (a) the number of overtime hours that each TM was recorded as having worked during the relevant period; (b) the dollar amount of a supplemental overtime payment that PPG made each TM in January 2015 and February/March 2015; and (c) each TM's start and end dates at PPG.

For Home Depot TMs in California, their settlement allocation includes a payment of approximately \$10/month for unreimbursed business expenses such as home internet expenses attributable to the PPG-related business that each TM conducted using home internet. The remaining settlement funds are attributable to California law claims for penalties from

allegedly improper wage statements, waiting time penalties (*i.e.*, penalties for employees who were terminated without receiving all wages allegedly due), and for mandatory direct deposit. These funds were distributed pro rata among the California Class Members based on the number and type of statutory wage violations they experienced. Every California Class Member and FLSA Class Member with a claim is allocated a minimum of \$10.

This methodology allocates the settlement funds as fairly as possible to reflect the value of each claim. The methodology has been presented to the Court as part of the Settlement approval process. If you have questions about the calculation, you may contact Class Counsel at the phone number listed in Section 7.

4. Why is there a settlement?

The settlement is a compromise. The settlement allows the parties to avoid the costs and risks of further litigation and appeals, and it provides money to Class Members without significant delay. In reaching a settlement, Defendant denies that it violated any laws and states that it entered into the settlement agreement in order to amicably resolve this dispute on mutually agreeable terms.

5. What are my rights?

A. Participate in the Settlement and Receive a Payment. You will receive money from the Settlement (if the Settlement is approved by the Court) unless you request to be excluded. You do not have to take any affirmative step to choose this option.

If you do nothing, you will receive your Settlement Payment after the Court enters Final Approval of the Settlement, and any appeals have been resolved.

Defendant will not retaliate or take any adverse action against a Class Member for receiving a payment under the Settlement.

Upon approval of the settlement by the Court and that approval becoming final, you will receive the Settlement Payment and will be deemed to have released any and all claims that were asserted in the complaint or that could have been asserted in the action based upon the facts alleged in the complaint (including but not limited to claims arising under the California Labor Code), including but not limited to all claims, demands, and causes of action for unpaid regular and/or overtime wages, penalties, liquidated damages, costs, attorneys' fees, and any other relief (as defined in the settlement agreement) under California law, arising at any time up until September 15, 2015. With respect to your FLSA claims only, you will release those claims only if you sign your check, as the back of the check will indicate.

B. Exclude Yourself from the Settlement. If you do not wish to be a part of the Settlement, you must exclude yourself from the Settlement by sending a letter to the Claims Administrator stating that you wish to be excluded from the settlement in *Garcia et al. v. PPG Industries, Inc.* The letter must include your full name, your address and telephone number, must indicate that you do not wish to participate in the settlement, and must be personally signed by you.

If you exclude yourself, you will not receive a Settlement Payment and you will not be bound by the settlement.

To be valid, the exclusion request must be postmarked no later than June 18, 2016.

Class Counsel will ensure that all valid and timely exclusion letters are filed with the Court. You cannot exclude yourself by phone or by e-mail.

Importantly, if you ask to be excluded from the settlement, you will not receive any settlement payment, and you cannot object to the settlement. If you exclude yourself, you will not be legally bound by the settlement or the release of legal claims against Defendant.

C. Participate in the Settlement but Object to its Terms. If you choose to participate in the settlement, you may object to its terms if you did not previously file a consent to join this Lawsuit. The Court will consider your objections in deciding whether to approve the settlement. If you choose to exclude yourself from the settlement altogether (option B, above), you cannot object to its terms.

If you choose to file an objection, you can ask the Court to deny approval of the settlement, but you cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you choose to object to the proposed settlement, you should do so in writing. If you file an objection in writing, then you may also appear before the Court at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Garcia et al. v. PPG Industries, Inc.*, Case Number 3:15-cv-00319-WHO), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked **on or before sixty (60) days** after the initial mailing of the Notice by the Claims Administrator.

If you do not make a timely objection, you will be deemed to have waived any and all objections to the settlement and will be foreclosed from making any objections (whether by appeal or otherwise) to the settlement.

6. What do I give up by receiving a settlement payment?

As explained in Section 5, you have the option to request exclusion from this lawsuit. If you do not request exclusion from this lawsuit by following the procedure described in Section 5, you will receive the Settlement Payment described above, but you will also be bound by the Settlement and the Release as set forth in the Settlement Agreement and Final Approval Orders.

If you currently have a pending legal claim or lawsuit against PPG Industries, Inc., or if you anticipate filing a future legal claim or lawsuit based on wage-related events that already have taken place, you should promptly consult with your attorney about this settlement and the impact of this release on your current or anticipated legal claims or lawsuits.

7. Do I have a lawyer in this case?

The Court has designated the following lawyers to serve as “Class Counsel” and to represent the interests of Plaintiffs and the Class Members:

Laura L. Ho
Byron Goldstein
William C. Jhaveri-Weeks
Goldstein, Borgen, Dardarian & Ho
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Phone: (510) 763-9800
Website: www.gbdhlegal.com

Bruce Fox
Andrew Horowitz
Obermayer Rebmann Maxwell and Hippel LLP
BNY Mellon Center
500 Grant Street, Suite 5240
Pittsburgh, PA 15219
Phone: (412) 566-1500
Website: www.obermayer.com

However, nothing prohibits you from speaking with other lawyers about the Lawsuit or this Notice.

The above lawyers represent your legal interests and will answer your questions in strict confidence. If you call, please identify yourself as a “Class Member” in the “Garcia v. PPG Industries, Inc.” lawsuit and ask to speak with one of the above attorneys.

8. How do the Plaintiff’s attorneys get paid?

The lawyers identified in Section 7 above have worked on the lawsuit without receiving any payments for their time or out-of-pocket expenses. Under the settlement, these lawyers will ask the Court for attorneys’ fees of \$166,665.97 plus out-of-pocket costs totaling no more than \$5,000. The actual amount awarded will be determined by the Court.

You will not pay any additional lawyer’s fees or expenses out of your individual share of the settlement proceeds.

9. When and where will the Court decide whether to approve the settlement?

The Court will hold a hearing to decide whether to approve the settlement. You are not required or expected to attend that hearing. However, you are welcome to attend.

At the hearing, the Court will consider whether the settlement (including the requested attorneys’ fees) is fair and reasonable. The Court will consider all written objections to the settlement and will hear from any Class Members who have filed written objections to the settlement.

The Court will hold the hearing on **July 20, 2016 at 2:00 p.m.** at the United States District Court for the Northern District of California located at Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 2 on the 17th floor. This date, however, shall be subject to adjournment by the Court without further notice other than that which may be posted by the Court. If you plan to attend, please confirm the date with Class Counsel listed in Section 7 above.

10. How do I obtain more information?

This Notice summarizes the most important aspects of the settlement. You can obtain a copy of the entire settlement agreement as well as the underlying Court pleadings by visiting the website mentioned above (www.gbdhlegal.com/cases/garcia-v-ppg/), or by calling the attorneys listed in Section 7 above or the Claims Administrator identified below:

Garcia et al. v. PPG Industries, Inc. Claims Administrator
P.O. Box 40007, College Station, TX 77842-4007
1-866-627-2106

11. What if my name or address changes?

It is your responsibility to inform the Claims Administrator of your correct address. Please mail any change of address information to *Garcia et al. v. PPG Industries, Inc.* Claims Administrator, **P.O. Box 40007, College Station, TX 77842-4007**, or call **1-866-627-2106**.

OTHER THAN TO FILE AN OBJECTION, PLEASE
DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE