

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Yassine Baouch and Scott Larrow, et al. v. Werner Enterprises, Inc., et al.

Case No. 8:12-cv-408-LES-FG3

IMPORTANT NOTIFICATION TO POTENTIAL CLASS MEMBERS

Please read carefully. Your legal rights may be affected.

**TO:** Any and all over-the-road truck drivers employed by Defendants Werner Enterprises, Inc. and/or Drivers Management, LLC (collectively, "Werner"), who participated in Werner's Per Diem Program from November 27, 2008 to the present.

**RE:** LAWSUIT ASSERTING VIOLATIONS OF FEDERAL AND STATE WAGE LAWS AGAINST WERNER

**RESPONSE DUE:** January 22, 2015

- **Your legal rights may be affected whether you act or don't act.** Read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:**

<b>Submit a Consent Form</b>	By submitting a consent form, you will be electing to join the lawsuit as a collective action member and you may be entitled to recover damages under federal law if the Plaintiffs prevail on their federal claims. You will also remain a class member under state law and may be entitled to recover damages under state law if Plaintiffs prevail on their state claims. Federal law may provide a larger recovery than under state law, and hence, by submitting a Consent Form, you may be eligible to receive a larger amount of compensation should Plaintiffs prevail.
<b>Do Nothing</b>	By doing nothing, you will remain in the Lawsuit as a class action member under state law and you may be entitled to recover damages under state law if Plaintiffs prevail on their state law claims, but by not submitting a Consent Form you will not be entitled to recover any additional damages that may be available only under federal law if Plaintiffs prevail on their claims under federal law.
<b>Request Exclusion</b>	By excluding yourself, you will not participate in this lawsuit and will not be bound by, nor will you receive any compensation from, any monetary judgment or monetary settlement. You will retain the right to bring an individual lawsuit for damages regarding the claims alleged in this lawsuit. However, your rights may still be affected by any class-wide order for non-monetary relief that is entered by the Court.

These rights and options – and the deadlines to exercise them – are explained in this notice.

**THIS IS NOT AN ADVERTISEMENT. THIS IS BEING SENT TO YOU BY ORDER OF THE FEDERAL DISTRICT COURT IN OMAHA, NEBRASKA.**

## **I. INTRODUCTION.**

This Notice is being sent to you by Order and under supervision by the United States District Court for the District of Nebraska. The purpose of this Notice is: (1) to inform you of the existence of a class and collective action lawsuit filed against Werner; (2) to advise you of how your rights may be affected by this lawsuit; and (3) to instruct you on the procedure for joining or excluding yourself from this lawsuit, if you wish to do so. You have been sent this notice because Werner's employment records indicate that you may be an eligible class member.

## **II. DESCRIPTION OF THE LAWSUIT.**

Six over-the-road truck drivers, Yassine Baouch, Scott Larrow, Lance Edwards, Steve Neely, Mark Sohmer, and Joseph Horton ("Representative Plaintiffs") brought this lawsuit against Werner on behalf of themselves and all Werner truck drivers who were enrolled in Werner's Per Diem Program at any point from November 27, 2008 to the present. The Representative Plaintiffs contend that Werner violated federal and state law by including per diem amounts as wages for purposes of fulfilling minimum wage obligations. As a result, the Representative Plaintiffs contend that they were regularly paid under minimum wage.

Plaintiffs' state law claims in this lawsuit are limited to a four-year statute of limitations. Plaintiffs' federal claims are limited to a two-year statute of limitations or a three-year statute of limitations if Werner's conduct is determined to be willful. If you choose to remain in this lawsuit, and Plaintiffs prevail on their claims, you will only be eligible to recover for damages incurred between November 27, 2008 and the present. The Representative Plaintiffs have sued Werner to recover all wages due on behalf of the entire class. The Representative Plaintiffs are also seeking liquidated damages, attorney fees, and costs.

## **III. NO ADMISSION OF LIABILITY.**

Werner denies the allegations in the lawsuit. Werner asserts that it has at all relevant times paid drivers in accordance with applicable law and that per diem amounts are wages.

## **IV. THIS NOTICE IS NOT THE SAME AS PREVIOUS CLASS NOTICES YOU MAY HAVE RECEIVED RELATING TO THE STUDENT DRIVER PROGRAM.**

This notice is not the same as previous class notices that you may have already received. Certain members of the Class in this case are also eligible class members in Philip Petrone, et al. v. Werner Enterprises, Inc., Case Nos. 11-cv-401 & 12-cv-307 (D. Neb.). Eligible class members of *Petrone* were mailed class notices regarding that case last year. *Petrone* asserts that Werner violated federal and state law by failing to pay student drivers minimum wage. This notice informs you that you are an eligible class member of Yassine Baouch, et al. v. Werner Enterprises, Inc., et al., Case No. 8:12-cv-408 (D. Neb.), which asserts that Werner violated federal and state law by including per diem amounts as wages for purposes of fulfilling minimum wage obligations. You may participate in this action whether or not you are an eligible class member in *Petrone*, and whether or not you chose to participate in *Petrone*.

## V. YOUR RIGHTS AS A CLASS MEMBER.

**A. WHO IS IN THE CLASS?** The Class consists of: all current and former over-the-road truck drivers employed by Werner who participated in Werner's per diem program at any point from November 27, 2008, to the present.

**B. WHO REPRESENTS THE CLASS?** The certified Class Representatives are Plaintiffs Yassine Baouch, Scott Larrow, Steve Neely, Lance Edwards, Mark Sohmer, and Joseph Horton. Justin Swidler Esq. and Richard Swartz, Esq., of Swartz Swidler, LLC, 1101 Kings Hwy N., Ste. 402, Cherry Hill, NJ 08034 are certified class counsel. These attorneys will represent you as part of the class unless you choose to hire your own attorney or choose to represent yourself.

### C. WHAT ARE MY OPTIONS?

#### 1. File a Consent Form

If you wish seek damages under both federal and state law, you must complete the enclosed "Consent to Join Lawsuit" Form ("Consent Form"). You may return the Consent Form via mail in the pre-stamped and self-addressed envelope. Alternatively, you may also join the lawsuit by completing the enclosed Consent Form and faxing it to 856-942-0093; emailing a completed Consent Form to [truckingattorney@swartz-legal.com](mailto:truckingattorney@swartz-legal.com); or by completing the Consent Form online at <http://www.swartz-legal.com>. You are not required to file a Consent Form to participate in this action. Unless you request exclusion, you will remain a class member in this litigation and you may be entitled to recover damages under state law if Plaintiffs succeed on their state law claims. However, you will not be eligible to recover damages under federal law unless you complete and return a Consent Form. Under federal law, you may be entitled to additional damages that are not recoverable under state law.

#### 2. Do Nothing

If you do nothing, you will remain a class member in this litigation and you may be eligible to recover damages under state law if Plaintiffs prevail on their state law claims. You will lose the right to bring an individual lawsuit against Werner for the claims asserted in this lawsuit. You will not be eligible to recover additional damages that are only recoverable under federal law.

#### 3. Request Exclusion

If you wish to exclude yourself from this lawsuit, you must submit a request for exclusion by mailing a request to be excluded in the enclosed pre-stamped, self-addressed envelope. Your request should state your name, your address, and that you wish to be excluded from this lawsuit. In the alternative, you may request exclusion by faxing a request to 856-942-0093 or emailing a request to [truckingattorney@swartz-legal.com](mailto:truckingattorney@swartz-legal.com). By excluding yourself from the litigation, you will not participate in this lawsuit and will not be bound by, nor will you receive any compensation from, any monetary judgment or monetary settlement. You may still be bound by certain orders for non-monetary relief, if Plaintiffs prevail on their requests for non-monetary relief. However, you will retain the right to pursue an individual claim for money damages. The law imposes time limits on the date by which you must pursue an individual claim if you wish to do so. This lawsuit will not stop all of those deadlines from running so you should consult with an attorney if you wish to pursue a claim on your own.

**VI. NO RETALIATION PERMITTED.**

Werner will not retaliate against you for participating in this lawsuit. Under federal and state law, it is illegal for Werner to terminate you or otherwise retaliate against you for participating in this lawsuit.

**VII. NO OPINIONS EXPRESSED AS TO THE MERITS OF THIS CASE.**

This Notice is for the sole purpose of informing you of your rights as a member of the Class. The Court has expressed no opinion regarding the merits of Plaintiffs' claims or Werner's defenses, and individual claims may be subject to later dismissal if the Court ultimately finds that the claims lack merit or that they cannot be litigated on a class-wide basis.

**VII. QUESTIONS REGARDING THIS NOTICE.**

If you have any questions concerning this Notice, you can contact Justin L. Swidler, Esq. or Richard Swartz, Esq. of Swartz Swidler, LLC, the certified Class Counsel in this matter. Their phone number is (856) 942-0096 or toll free at 1-800-897-6315. You can also find more information regarding this Notice and the lawsuit at <http://www.swartz-legal.com>.

**VIII. LEGAL COUNSEL.**

The contact information for the certified Class Counsel is below. These attorneys will represent you as part of the class unless you choose to hire your own attorney.

Justin L. Swidler, Esq.  
Richard S. Swartz, Esq.  
Swartz Swidler, LLC  
1101 Kings Hwy N., Ste. 402  
Cherry Hill, NJ 08034

Website: <http://www.swartz-legal.com>  
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Email: [truckingattorney@swartz-legal.com](mailto:truckingattorney@swartz-legal.com)

The certified Class Counsel have taken this case on a contingency fee. They may be entitled to receive attorneys' fees and costs from Werner should there be a recovery or judgment in favor of the Class. If there is a recovery, the certified Class Counsel will receive a part of any settlement obtained or money judgment entered in favor of all members of the class or their fees will be paid separately by Werner. If there is no recovery or judgment in the Class's favor, the certified Class Counsel will not seek any attorney's fees or costs from any of the members of the Class.