

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Virginia Van Dusen, et al.

Plaintiffs

No. CV-10-899-PHX-JWS

v.

Swift Transportation Co., Inc,
Interstate Leasing, Inc., Jerry Moyes,
Chad Killebrew

NOTICE OF CLASS ACTION
AND SETTLEMENT

Defendants

To: [Name]
[Address]
[City, State, Zip]

*A Federal Court has authorized this Notice.
This is not a solicitation from a lawyer.*

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

This Notice Is Being Sent To: All persons who leased one or more trucks from Interstate Equipment Leasing, LLC and contracted to drive for Swift Transportation Co. of Arizona, LLC at any time between December 22, 1999 and January 1, 2019 and who did not previously file a consent to sue form in this case.

The purpose of this Notice is to inform you of the existence of the Settlement of the above lawsuit, the terms of that Settlement that may affect you, and to instruct you on the procedure for taking part in the Settlement if you wish to receive money from the Settlement or how to withdraw from or object to the Settlement. Company records indicate you may be entitled to receive money under the Settlement.

YOUR ESTIMATED INDIVIDUAL SETTLEMENT AWARD IS \$[Award Amount]

This amount is an estimate only and could be more or less. Please read this Notice for more information.

Please do not telephone the Court or the Court Clerk's office to inquire about this Settlement or the claim process.

WHAT IS THIS LAWSUIT ABOUT?

Two drivers filed this lawsuit in 2009 on behalf of themselves and other drivers who leased trucks from Interstate Equipment Leasing, LLC (formerly known as Interstate Equipment Leasing, Inc.) (“IEL”) and signed contractor agreements to drive those trucks for Swift Transportation Co. of Arizona, LLC (formerly known as Swift Transportation Co., Inc.) (“Swift”). Three other drivers later joined this lawsuit as “Named Plaintiffs.”

The Named Plaintiffs alleged that Swift, IEL, Chad Killebrew, and Jerry Moyes (hereafter collectively referred to as “Defendants”) improperly classified them as independent contractors, failed to pay them at least the federal and applicable state minimum wage, violated their rights under the forced labor statute and were unjustly enriched by misclassifying drivers as independent contractors. Defendants dispute the Named Plaintiffs’ claims and allegations, deny they violated any of these laws, and vigorously defended the lawsuit. The Named Plaintiffs filed their claims as a putative class and collective action on behalf of themselves and other drivers who leased trucks from IEL and contracted to drive those trucks for Swift.

After nearly ten years of litigation, the Named Plaintiffs and Defendants have reached a settlement agreement that is designed to settle the claims of the Named Plaintiffs and all other individuals who, on or before January 1, 2019, leased one or more trucks from IEL and contracted to drive those leased trucks for Swift (hereafter collectively referred to as “Drivers”). Defendants maintain their denial of the claims and allegations made by the Named Plaintiffs, but assert they settled the lawsuit in order to avoid the cost and disruption of further litigation.

WHAT ARE THE TERMS OF THE SETTLEMENT?

The following is a summary of the terms of the proposed settlement. The specific and complete terms are available for review on the settlement website SwiftMisClass.com or you can request a copy of the complete Settlement Agreement from the Claims Administrator. The Claims Administrator’s contact information is set forth at the end of this notice.

Settlement Fund: The settlement requires Defendants to create a settlement fund of \$100,000,000.00. This Settlement Fund shall be used to pay the claims of the Named Plaintiffs and the approximately 20,000 Drivers who leased trucks from IEL and contracted to drive them for Swift between December 22, 1999 and January 1, 2019.

Deductions from the Settlement Funds: Before the Settlement Fund is divided among the Drivers, the Court may allow the following amounts to be deducted from the Fund: (1) up to 29% of the fund to pay the attorneys’ fees of the Lawyers for the Class for their work in litigating the case and obtaining the Settlement Agreement. These attorneys have pursued this case on behalf of the Named Plaintiffs and the other Swift drivers for over nine years including four appeals without receiving any compensation for

their services. They did so with the understanding that they would receive a portion of the settlement fund established through their efforts; (2) up to \$750,000 to reimburse the attorneys for the substantial costs they have incurred litigating the case over the past nine years and for the costs of administering the Settlement Fund including the cost of sending this notice and sending the money to participating drivers if the settlement is approved; (3) up to \$50,000 as a Service Award to each of the five Named Plaintiffs to compensate them for the risks they took and the time they spent pursuing this case over the past nine years to generate the Settlement Fund. The service awards to these individuals are in addition to their regular share of the Settlement Fund. The total of all deductions from the Settlement Fund will not exceed 30%.

Individual Awards: After the above deductions from the Settlement Fund, the remaining money, (no less than \$70,000,000) will be allocated to all the Drivers based on a formula that takes into account a number of factors including miles driven, number of trips, expenses, weekly earnings, if and when the Driver filed a consent to join the lawsuit, and when during the period of December 22, 1999 and January 1, 2019, the Driver worked for Swift. The same formula applies to all Drivers. The formula is set forth in detail in the Settlement Agreement, which is available at SwiftMisClass.com.

Other Terms: The Court must approve the settlement as fair, reasonable, and adequate before it can go into effect. If approved, any Drivers who do not opt-out of the settlement will be deemed to have released any and all claims they may have against Defendants arising out of work performed pursuant to an independent contractor agreement entered into with Swift or any affiliated entity and utilizing equipment leased from IEL based on or relating to the allegations made in the lawsuit and which arose between December 22, 1999 and January 1, 2019. The time period applicable to Drivers' released claims may be limited to December 22, 1999 through September 8, 2017 if Defendants exercise certain rights under the settlement. In addition, Defendants will release all claims they have against Drivers who do not exclude themselves from the settlement arising out of their leases with IEL or contracts with Swift which arose between December 22, 1999 and January 1, 2019. Defendants' release does not apply to any claims arising after January 1, 2019. Defendants will, upon request, inform HireRight that any previously reported lease or contract defaults that are released by the settlement have been rescinded.

Defendants may have the right to cancel the settlement under certain conditions, but if that should happen, the Plaintiffs' attorneys will continue to pursue the claims in the pending lawsuit on your behalf if you submitted a claim form.

WHAT IS MY AWARD ESTIMATED TO BE?

Based on the information provided by Defendants, you are one of the Drivers eligible to participate in the Settlement Fund monies. After deductions for the amounts described above, your award—that is, your share of the Settlement Fund—is estimated to be approximately: \$[Award Amount].

15% of your award will be treated as wages and will have employment taxes and withholding taxes deducted. The remaining 85% of your award will be paid to you without tax being deducted or withheld although you should consult an accountant or tax advisor as to your responsibility for taxes on this money. Your individual settlement award may be somewhat more or less than the estimated amount above depending on a number of factors including the number of Drivers who file claims, the deductions from the Settlement Fund approved by the Court, and whether errors in the calculations are discovered.

If you want to know more about how your award was calculated, you can contact the Claims Administrator or visit SwiftMisClass.com.

WHEN WILL I GET PAID?

If the settlement is approved, monies owed to Drivers will be mailed an estimated 30 days after the Court's approval becomes final. The entire process for giving this notice, obtaining Court approval and receiving payment is estimated to take approximately six months from the date of this notice. If you want to find out whether the settlement has been approved, you can contact the Claims Administrator or consult the website at SwiftMisClass.com.

PLEASE BE PATIENT

WHAT ARE MY OPTIONS?

You can respond to this notice in one of three ways: (1) you can choose to receive your share of the settlement money in exchange for submitting a claim form and giving up your claims; (2) you can choose to affirmatively exclude yourself from the settlement, receive no money, and not give up your claims; or (3) you can choose to do nothing, in which case you will not receive any money but you will be deemed to have given up your claims. The effects of your choice are described in more detail below.

1. To Receive Your Settlement Award: If you want to receive your share of the Settlement Fund, you must fill out, sign, and mail or email the enclosed **"Claim Form and Consent to Sue"** and **W-4 Form** to the Claims Administrator at the address below, or complete the forms on the settlement website, no later than the 14th day of December, 2019. Any Claim Form electronically submitted or post-marked after the 14th day of December, 2019 will be considered late. Late claim forms may be considered invalid. If you file a timely claim form and the court approves the settlement, you will receive a check for your share of the Settlement Fund. In exchange for that money, you agree to give up (release) all claims or potential claims you may have against Defendants and related entities arising prior to January 1, 2019 relating to your lease(s) with IEL and your contractor agreement(s) with Swift, as described in the Settlement Agreement. The complete language describing the claims you will be giving up and the parties covered by the release is available from the Claims Administrator or at SwiftMisClass.com. **If you want to receive your money, it is extremely**

important that you keep the Claims Administrator informed of any changes in your address so the Claims Administrator can mail your check to you. Fill out and send in the enclosed Change of Information Form, or complete the form on the settlement website, if this notice was not mailed to your current address.

2. To Exclude Yourself From the Settlement: If you do not want to participate in the settlement and do not want to give up (release) all claims or potential claims you have against Defendants, **you must affirmatively ask to be excluded** from the Settlement by writing or emailing the Claims Administrator and stating: “I wish to be excluded from the settlement in the *Van Dusen, et al. v. Swift Transportation Co., Inc., et al.* matter,” or words substantially to this effect. You should provide your name, address, telephone number and the last four numbers of your social security number on the letter and you must sign the request for exclusion for it to be effective. Your request to be excluded must be mailed or emailed to the Claims Administrator at the address below no later than the 14th day of December, 2019. Any request to be excluded that is post-marked or emailed after that date will not be valid. If you ask to be excluded, you will not be bound by the settlement and you will remain free to pursue whatever claims you may have against Defendants.

3. If You Do Nothing: If you chose to do nothing, neither file a claim form nor request to be excluded, then you will be covered by the settlement and will be deemed to have given up (released) all of your claims or potential claims against Defendants and related entities arising out of your lease(s) with IEL and your contractor agreement(s) with Swift as described in the Settlement Agreement, but you will receive no monies from the Settlement Fund.

If you do not elect to exclude yourself from the settlement, you also have the right to (a) object to the terms of the settlement if you do not believe they are fair; and/or (b) contest the calculation of your individual award if you believe it is incorrect, if you chose to submit a claim form. Each of these choices is explained below.

a. To File Objections To The Settlement: If you think that any of the terms of the settlement are unfair, you may mail or email a written objection to the Claims Administrator identifying the specific term(s) that you think are unfair and why. Your letter should include your name, address, telephone number and the last four digits of your social security number. To be considered, the objection must be mailed or emailed to the Claims Administrator at the address below no later than December 14, 2019. You may also appear personally or through an attorney at a hearing scheduled for January 22, 2020, at 10:00 a.m. at the federal courthouse located at 401 W. Washington St., Phoenix, AZ 85003-2118 to object. If the Court rejects your objection, you will still be bound by the terms of the settlement.

b. To Contest The Calculation Of Your Award: Your award is based on Defendants' records of the days you worked and the amounts you were paid. If you believe those records are in error, you may submit evidence to contest those records by mailing or e-mailing what you think is the correct information and any evidence you have to show Defendants' records are in error to the Claims Administrator at the address below. You should submit your information as soon as possible, but no later than October 15, 2019.

DECEASED DRIVERS

If the Driver to whom this Notice is addressed is no longer alive, his or her court appointed estate representative, or, in the absence of a court appointed representative, the surviving spouse, or, in the absence of a surviving spouse, the surviving children, or in the absence of a surviving spouse or children, the surviving parents has/have the same rights with respect to the settlement that the Driver would have had if he or she were still alive. The estate representative, surviving spouse, surviving children, or surviving parents may choose to claim his or her Settlement Award by filling out the "Consent to Sue and Claim Form" and the "Change of Information Form" enclosed with this notice and may object to the settlement terms or contest the calculation. Alternatively, the estate representative, surviving spouse, surviving children, or surviving parents may request to be excluded from the Settlement by writing to the Claims Administrator and complying with the procedure for seeking exclusion set forth in the section immediately above. Whichever the estate representative, surviving spouse, surviving children, or surviving parents does/do, it must be done in the manner and within the time limits explained above.

NO RETALIATION

Whether you decide to submit a claim to participate in this settlement, opt-out of the settlement, or do nothing, you are free to make your choice without fear of retaliation. Defendants will not retaliate against you in any way based on your choice.

DO I HAVE A LAWYER REPRESENTING ME?

The Lawyers for the Class identified below have been appointed by the Court to represent you and you may contact them if you have questions. You also have the right to hire your own attorney, at your own expense, to represent you in this case and make an appearance.

WHEN WILL THE COURT MAKE A FINAL DECISION ABOUT THE SETTLEMENT?

The Court will hold a hearing on January 22, 2020 to consider whether the settlement is fair, reasonable and adequate for all of the affected Drivers. The Court will consider any timely objections that Drivers file and make a decision whether to approve

the settlement. The hearing will be held at 10:00 a.m. at the federal courthouse located at 401 W. Washington St., Phoenix, AZ 85003-2118. Even if you file a timely objection, you do NOT need to attend the hearing. However, you have the right to attend if you want to speak in favor of or against the settlement at the hearing. You also have a right to have your own lawyer represent you at the hearing at your own expense if you so desire.

Please note that the date for the hearing may change without further notice. Please check with the Claims Administrator in advance if you are planning to attend.

THE SETTLEMENT WEBSITE

The parties have established a settlement website which will provide copies of the settlement, various forms available with respect to the settlement, and information regarding the calculation of your settlement award.

SwiftMisClass.com

THE CLAIMS ADMINISTRATOR

The Claims Administrator retained by the parties to send notices, track addresses, answer questions, and receive claims, exclusions and objections, is:

Settlement Services, Inc.
Post Office Box 10908
Tallahassee, FL 32302-2908
(844) 330-6991
claims@ssiclaims.com

THE LAWYERS FOR THE CLASS

The lawyers for the Class are:

Getman, Sweeney & Dunn, PLLC
260 Fair St.
Kingston, NY 12401
(845) 943-6234
getmansweeney.com

These lawyers are assisted by Susan Martin of Martin & Bonnett, PLLC and Edward Tuddenham.

WHERE CAN YOU OBTAIN FURTHER INFORMATION?

This notice provides only a summary of the settlement agreement. If you would like to see a copy of the settlement agreement or obtain general settlement information, or forms, you may obtain all relevant documents at the settlement website

SwiftMisClass.com, or you may contact the Claims Administrator, or the lawyers for the class.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR DEFENDANTS' ATTORNEYS WITH QUESTIONS. THEY CANNOT ANSWER QUESTIONS.