

IMPORTANT LEGAL NOTICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CORY WIGERSMA, individually and on behalf of all
others similarly situated,

Plaintiffs

v.

MOTION THEORY, INC., a California Corporation,
and DOE ONE through and including DOE ONE
HUNDRED,

Defendants.

CASE NO.: BC 531180
**NOTICE OF (1) PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (2) FINAL APPROVAL
HEARING; (3) RIGHT TO OBJECT OR
OPT OUT; AND (4) REQUIREMENT TO
RETURN A CLAIM FORM TO RECEIVE A
MONETARY PAYMENT FROM THE
SETTLEMENT
THIS NOTICE AFFECTS YOUR RIGHTS -
PLEASE READ IT CAREFULLY.**

TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES OF MOTION THEORY, INC. (“MOTION THEORY”) IN CALIFORNIA WHO, AT ANY TIME BETWEEN DECEMBER 19, 2010, AND JULY 31, 2014, WERE TENDERED A FINAL PAYCHECK (THE “FINAL PAYCHECK CLASS”) OR AT ANY TIME BETWEEN DECEMBER 19, 2012 AND JULY 31, 2014, WERE TENDERED A PAYCHECK (THE “PAYSTUB CLASS”):

YOU ARE HEREBY NOTIFIED that a proposed class settlement (the “Class Settlement”) of the above-captioned purported class action (“the Action”) filed in the Superior Court of the State of California, County of Los Angeles, Central District (“the Court”) has been reached by Plaintiff and Motion Theory (the “Parties”) and has been granted Preliminary Approval by the Court. The proposed Class Settlement will resolve all class claims in this Action. The Court has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the Class Settlement of this Action and your legal rights under the Class Settlement.

You must return the attached Claim Form, postmarked by March 27, 2015, to receive money from the Class Settlement. If you fail to submit a timely Claim Form, you will receive no payment under the Class Settlement, but you will be bound by its terms unless you request exclusion from the Class. An estimate of your Settlement Award can be found on the attached Claim Form.

SUMMARY OF CASE

1. Plaintiff Cory Wigersma (“Plaintiff”) filed a complaint against Motion Theory, Inc. (“Motion Theory”) on December 19, 2013, on behalf of himself and other employees in the Superior Court of California for the County of Los Angeles. The Action alleges, among other things, that the Class Members are owed additional compensation for overtime hours worked, as well as additional amounts for failing to provide final wages in a timely fashion, and failing to provide adequate pay statements to hourly workers employed by Motion Theory in California, and related penalties. The lawsuit seeks damages for lost wages, interest, penalties, injunctive relief, attorneys’ fees and expenses.

2. The Action includes claims under the California Labor Code, related Wage Orders of the Industrial Welfare Commission, and Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207 *et seq.*

3. After extensive investigation and an exchange of relevant information, the Parties agreed to enter into private mediation to try and resolve the claims. The Parties attended mediation on July 31, 2014, and thereafter reached the Class Settlement that is memorialized in the Settlement Agreement that is on file with the Court, and whose terms are generally summarized in this Notice.

4. You have received this Notice because Motion Theory’s records show you are or were employed as a Class Member and your rights may be affected by this Class Settlement.

POSITIONS OF THE PARTIES AND REASONS FOR SETTLEMENT

5. Motion Theory contends that all of its employees have been compensated in compliance with the law, and that its conduct was not willful with respect to any alleged failure to properly calculate or pay any wages (including but not limited to overtime wages or otherwise), provide certain breaks, or provide accurate itemized wage statements. Motion Theory has denied and continues to deny each of the claims and contentions Plaintiff alleges in the Action. Motion Theory denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, and believes that it has valid defenses to Plaintiff’s claims. Although Motion Theory believes it has meritorious defenses to the Action, Motion Theory has concluded that the further defense of this Action would be lengthy and expensive for all Parties. Motion Theory has, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Class Settlement to put to rest all claims that are or could have been asserted against it in the Action. Neither the proposed Class Settlement nor any action taken to carry out the proposed Class Settlement is, may be construed as, or may be used as an admission, concession or indication by or against Motion Theory of any fault, wrongdoing or liability whatsoever.

6. Counsel for the Plaintiff (“Class Counsel”) has extensively investigated and researched the facts and circumstances underlying the issues raised in the Action, and the law applicable thereto. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the Action against Motion Theory through trial and through any possible appeals, the uncertainty and the risk of the outcome of further litigation, including the risk that the Class might not be certified in light of Motion

Theory's opposition to certification, as well as the difficulties and delays generally inherent in such litigation, the burdens of proof necessary to establish liability for the claims, Motion Theory's defenses thereto, and the difficulties in establishing damages for the Class Members. Class Counsel has also taken into account the settlement negotiations conducted by the Parties. Class Counsel believes the proposed Class Settlement is fair, adequate, reasonable and in the best interests of the Class Members.

7. The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate under the law.

PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT

8. On December 30, 2014, the Court held a Preliminary Approval Hearing during which it preliminarily certified the Class for the purposes of the Class Settlement.

9. At the Preliminary Approval Hearing, the Court appointed the following attorneys as Class Counsel to represent the Class in this Action:

Alan Harris and David Garrett
Harris & Ruble
4771 Cromwell Avenue
Los Angeles, CA 90027
Tel: (323) 962-3777

SUMMARY OF SETTLEMENT TERMS

10. Class Settlement Amount. The Settlement Agreement provides that Motion Theory will pay up to \$1,000,000.00 (the "Total Maximum Settlement Amount") to fully resolve the claims in the Action.

(a) Deductions. The following deductions will be made from the Total Maximum Settlement Amount:

(i) Settlement Administration. The Court has tentatively approved a payment of up to \$40,000 to the Settlement Administrator, Gilardi & Co., LLC, for the costs incurred in notifying the Class and processing claims.

(ii) Attorneys' Fees and Expenses. Class Counsel will ask the Court to approve a Fee and Expense Award of up to \$300,000.00, plus reimbursement of the reasonable litigation expenses Class Counsel has incurred up to \$10,000. Class Counsel has been prosecuting the Action on behalf of the Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The Fee and Expense Award will constitute full compensation for all legal fees and expenses of Class Counsel in the Action, including any work they do in the future. Class Members are not personally responsible for any fees or expenses.

(iii) Incentive Award to Named Plaintiff. Class Counsel will also ask the Court to approve an Incentive Award in the amount of \$5,000.00 for Named Plaintiff Cory Wigersma for acting as the representative on behalf of the Class and spending time assisting with the lawsuit, which was not required of other Class Members.

(iv) PAGA Payment. A payment of \$20,000.00 shall be paid to California's Labor and Workforce Development Agency to pay the government portion of any penalties allocated under California Labor Code's Private Attorneys General Act of 2004 ("PAGA"), as amended, California Labor Code sections 2699, 2699.3, and 2699.5.

(b) Payment to Class Members: Plan of Allocation. The balance of the Total Maximum Settlement Amount after the deductions described above is the "Net Settlement Sum". The Net Settlement Sum is estimated to be \$625,000.00. Class members who do not opt out of participating in the Settlement ("Settlement Class Members") who submit timely Claim Forms ("Authorized Claimants") will receive a Settlement Award based on their relative number of weeks of employment as Class Members since December 19, 2010, as reflected by Motion Theory's corporate records, exclusive of leaves of absence ("Work Weeks"). Approximations and averages will be used to cover periods where data are missing or otherwise not available. Any portion of the Net Settlement Sum that is not claimed by Authorized Claimants shall be paid to Bet Tzedek Legal Services.

(c) Tax Matters. IRS Forms W-2 and 1099 (and the equivalent California forms) will be distributed to Authorized Claimants reflecting the payments they receive under the Class Settlement. For tax purposes, five percent (5%) of each Authorized Claimant's Settlement Award shall be treated as damages for unpaid wages and reported on a W-2, and ninety-five percent (95%) shall be treated as interest and penalties under the California Labor Code and reported on a Form 1099. Authorized Claimants should consult with their tax advisors concerning the tax consequences of the payments they receive under the Class Settlement. The usual and customary employee payroll deductions will be taken out of the amounts attributable to unpaid wages.

(d) Timing of Payments. In December of 2015, the Claims Administrator shall make an initial distribution of Settlement Funds to the Participating Class Members, less any other court-approved payments as indicated below (the "First Distribution"). In January of 2017, the Claims Administrator shall make a second distribution of Settlement Funds to the Participating Class Members, less any other court-approved payments as indicated below (the "Second Distribution"). In December of 2017, the Claims Administrator shall make a final distribution of Settlement Funds to the Participating Class Members, less any other court-approved payments as indicated below (the "Final Distribution").

The Settlement Funds shall be distributed as follows:

(i) From the Initial Deposit: Gilardi shall be paid 75% of the \$40,000 Administrative Fee.

(ii) From the First Distribution: Class Counsel shall be paid 75% of its court-approved Costs (not to exceed \$7,500), with the remaining balance of the First Distribution to be distributed to Participating Class Members pursuant to the Stipulation.

- (iii) From the Second Distribution: Class Counsel shall be paid be 25% of its court-approved attorney fees (not to exceed \$75,000), with the remaining balance of the Second Distribution to be distributed to Participating Class Members pursuant to the Stipulation.
- (iv) From the Final Distribution:
 - Gilardi shall be paid 25% of the Administrative Fee.
 - Class Counsel shall be paid 25% of its court-approved Costs.
 - The LWDA shall be paid \$20,000.
 - Plaintiff shall be paid the \$5,000 Enhancement Award.
 - Class Counsel shall be paid the remaining balance of its fees.
 - Any amount of the Final Distribution remaining after the above-referenced payments are made shall be distributed to Participating Class Members pursuant to the Stipulation.

11. **Class Release.** If approved by the Court, the Class Settlement will bar any Class Member who does not timely opt out of the Class Settlement from bringing certain claims against Motion Theory described below. The Settlement Agreement contains the following provisions regarding the release of claims by Class Members:

Upon entry of the final approval order and judgment, each Class Member who has not submitted a valid request for exclusion releases Defendant and its present and former affiliates, parent companies, and subsidiaries, and their respective shareholders, officers, partners, directors, employees, agents, trustees, representatives, attorneys, accountants, insurers, predecessors, successors and assigns and each and all of their respective shareholders, officers, partners, directors, employees, agents, trustees, representatives, attorneys, accountants, insurers, past, present, and future, and all persons acting under, by, through or in concert with any of them (all of the foregoing are referred to as the "Releasees"), from any and all claims, causes of action, damages, penalties, interest, fines, debts, liens, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law or equity, whether known or unknown, suspected or unsuspected that existed or came into existence between four years prior to the filing of the Complaint through the date of Preliminary Approval of the Settlement, inclusive, that were or could have been asserted based on the facts and claims pleaded in the Lawsuit, including but not limited to (1) all statutes/ordinances referenced in the Lawsuit and corresponding provisions of the California Industrial Welfare Commission Wage Orders, including but not limited to (i) Labor Code Sections 203, 204, 226, 510, 558, 1194 and 2968 *et seq.*, as related to the above claims, (ii) all related provisions allegedly relating to the claims in the First Amended Complaint for continuing wages, failure to pay wages, minimum wages, overtime, failure to provide allegedly required wage statements, civil penalties, interest, costs and attorneys' fees; (2) any of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act were or could have been asserted based on the facts and claims pleaded in the Lawsuit; and (3) any cause of action or claim under Business and Professions Code Sections 17200, *et seq.* arising from items (1) and (2) above. In addition each Class Member who opts in to the case will extinguish any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* The claims described above are referred to herein as the "Released Claims."

12. **Condition of Class Settlement.** This Class Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Class Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

PROCEDURE FOR SEEKING MONETARY RECOVERY

13. **If you want to participate in the Class Settlement and receive money under the Class Settlement, you must sign and date the enclosed Claim Form and mail the completed Claim Form postmarked by March 27, 2015, to the Settlement Administrator at the following address.**

Wigersma v. Motion Theory

c/o Gilardi & Co. LLC

P.O. Box 8060

San Rafael, CA 94912-8060

Telephone: 877-298-6120

Website: www.MotionTheorySettlement.com

A copy of your Claim Form is enclosed. (If you need an extra copy, contact the Settlement Administrator at the address or telephone number above.) If any information provided on the Claim Form is incorrect, please make corrections. For example, if your address is incorrect, please indicate your correct address. Also, please provide your telephone number and any other requested information if it is not already filled in. If you wish to have confirmation that the Settlement Administrator has received your Claim Form, please send your Claim Form to the Settlement Administrator by certified U.S. Mail with a return-receipt request.

The Claim Form lists your total number of Work Weeks as a Class Member during the Class Period. If you believe the number of Work Weeks listed on the Claim Form is incorrect, you may send the Claim Form, a letter, and supporting documentation and information to the Settlement Administrator indicating what you believe is correct. The Settlement Administrator will resolve any dispute regarding the dates you worked as a Class Member, based on Motion Theory's records and any documents and information that you provide. Please be advised that the number of Work Weeks is presumed to be correct unless the documents you submit are company records from Motion Theory. Your Settlement Award may increase or decrease depending on any disputes submitted by you or any other Class Members.

14. If you are a Class Member and you do not exclude yourself from the Class Settlement in the manner described in paragraph 16 below, you will be bound by all of the provisions of the Class Settlement, including a release of claims that will prevent you from separately suing any of the Released Parties for the Class Released Claims.

15. **Any Class Member who does not submit a timely Claim Form will not receive any payment from the Class Settlement. If you do nothing, that is, if you do not mail a timely Claim Form and do not request exclusion from the Class, you will not be entitled to a Settlement Award but will be bound by the terms of the Class Settlement, including the Class Release described in paragraph 11 above.**

PROCEDURE FOR EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

16. Class Members may exclude themselves (“opt-out”) from the Settlement Class by submitting a written exclusion request to the Settlement Administrator at the address listed in paragraph 13, above, postmarked on or before March 27, 2015. To opt out, your written statement must include your name (and former names, if any), current address, telephone number, and last four digits of your social security number. Opt-out requests that do not include all required information, or that are not submitted timely, will be disregarded. Persons who submit valid and timely opt-out requests will not participate in the Class Settlement and will not be bound by either the Class Settlement or the Final Approval Order and Judgment. Do not submit both a claim form and an opt-out request. If you submit both a claim form and an opt-out request, the opt-out request will be disregarded.

PROCEDURE FOR OBJECTING TO THE CLASS SETTLEMENT

17. If you are a Settlement Class Member and believe that the Class Settlement should not be finally approved by the Court for any reason, you must file with the Claims Administrator a written objection stating the basis of your objection. The objection must be postmarked on or before March 27, 2015. You must also at the same time mail copies of your objection to both Class Counsel and Motion Theory’ Counsel at the addresses below.

Class Counsel

Alan Harris and David Garrett
HARRIS & RUBLE
4771 Cromwell Avenue
Los Angeles, CA 90027
Tel: (323) 962-3777

Motion Theory’s Counsel

Jennifer Komsky and Alfred Landegger
LANDEGGER BARON LAW GROUP
15760 Ventura Blvd., Suite 1200
Encino, California 91436
Tel: 818.986.7561

18. You may also appear at the Final Approval Hearing scheduled for 10:00 a.m. on April 27, 2015, in Dept. 323 of the Superior Court of the State of California, County of Los Angeles, Central District, at 600 S. Commonwealth Avenue, Los Angeles, CA 90005, to have your objection heard by the Court. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Class Settlement must file a notice of appearance with the Court and serve counsel for all Parties on or before March 27, 2015. All objections or other correspondence must state the name and number of the case, which is Wigersma v. Motion Theory, Inc., Case No. BC 531180. If you object to the Class Settlement, you will remain a Member of the Settlement Class, and if the Court approves the Class Settlement, you will be bound by the terms of the Class Settlement in the same way as Settlement Class Members who do not object.

19. Any Member of the Settlement Class who is satisfied with the Class Settlement need not appear at the Settlement Hearing.

HEARING ON THE CLASS SETTLEMENT

20. **You are not required to attend the Final Approval Hearing.**

21. The Final Approval Hearing on the adequacy, reasonableness and fairness of the Class Settlement will be held at 10:00 a.m. on April 27, 2015, in Dept. 323 of the Superior Court of the State of California, County of Los Angeles, Central District, at 600 S. Commonwealth Avenue, Los Angeles, CA 90005. The Hearing date may be changed without further notice; however, you can contact the Clerk of the Court to find out if the Hearing date has changed.

CHANGE OF ADDRESS

22. If you move after receiving this Class Notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Action and the Class Settlement to be sent to a different address, you should send your current preferred address to the Settlement Administrator.

ADDITIONAL INFORMATION

23. This Class Notice is only a summary of the Action and the Class Settlement. For a more detailed statement of the matters involved in the Action and the Class Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Superior Court of the State of California, County of Los Angeles, Central District, at 600 S. Commonwealth Avenue, Los Angeles, CA 90005, during regular business hours of each court day.

24. All inquiries by Class Members regarding this Class Notice and/or the Class Settlement should be directed to the Settlement Administrator or Class Counsel (see contact information above).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, MOTION THEORY OR MOTION THEORY’S ATTORNEYS WITH INQUIRIES.

DATED: December 30, 2014

BY ORDER OF THE COURT
HON. ELIHU M. BERLE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT