

Fitzgerald v. P.L. Marketing, Inc., No. 2:17-cv-02251
United States District Court for the Western District of Tennessee

A federal court authorized this notice. This is not a solicitation from a lawyer.

- You are receiving this Notice because you joined this case by submitting a signed Consent to opt-in during the prior notice process, and a Settlement affects your rights.
- Your legal rights are affected whether you act or don't act. Read this notice carefully.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement after notice is issued to Kentucky and Ohio class members who did not previously opt-in to this case. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. Please be patient.
- This is not a lawsuit against you – this is a lawsuit you joined by filing a Consent to opt-in to the collective action. Your participation in this lawsuit and acceptance of money from the settlement will not affect your employment status in any way.

Your legal rights and options in this Settlement:	
Receive a payment	According to PLM's records, you have an opportunity to receive a settlement payment. If you do not exclude yourself and the settlement receives final approval, you will be issued a settlement check in the gross amount of \$XX minus applicable taxes and withholdings.
Exclude yourself	You may exclude yourself or "opt out" if you do not wish to participate in the settlement altogether. If you choose this option, you get no payment and will not release any claims against PLM.
Comment (including Object)	Write to tell the Court what you think about the settlement.
Go to the hearing	If you would like, you may ask to speak in Court about the fairness of the settlement. You do not need to do this to receive a payment.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case has only preliminarily approved the settlement, and still has to decide whether to grant final approval of the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. Please be patient.

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Basic Information

1. Why did I get this notice package?

The purpose of this Notice is to let you know that there has been a class and collective action settlement in the lawsuit pending in the United States District Court, Western District of Tennessee, entitled *Fitzgerald, et al v. P.L. Marketing, Inc.*, No. 2:17-cv-02251 (the “Lawsuit”). You are receiving this Notice because you filed a Consent to opt-in to this lawsuit during the prior notice process (making you a “FLSA Collective member”), and you are therefore eligible to receive a payment from the portions dedicated to settlement of federal Fair Labor Standards Act (“FLSA”) claims and, as applicable, Kentucky and Ohio state wage laws. As part of the overall \$1,575,000 gross settlement for the federal FLSA claims of the collective action members who joined the case, and the Kentucky and Ohio class actions covering those individuals who worked as salary-paid Set Team Members or Reset Team Members (“STMs”) during the applicable time periods (for Kentucky, from August 18, 2012 through December 4, 2016; for Ohio, from August 18, 2015 through December 4, 2016), you are eligible to be paid your pro rata share if you timely follow the proper procedures defined in this Notice.

The Court authorized that you be sent this notice because you have a right to know about a proposed settlement of the Lawsuit, and about your options, before the Court decides whether to grant final approval of the settlement. If the Court approves it and after any objections and appeals are resolved, a third-party Settlement Administrator appointed by the Court and paid from the settlement fund will make the payments that the settlement allows. You may keep informed of the progress of the settlement by consulting the Settlement Administrator’s case-specific website referenced below.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. If you wish to receive money from, comment upon (including object to), or exclude yourself from the settlement, you must do so following the procedures described below.

2. What is this lawsuit about?

In the Lawsuit, Plaintiffs claimed that PLM misclassified salary-paid Set Team Members or Reset Team Members (“STMs”) as exempt from the overtime pay requirements of federal, Kentucky and Ohio state law until those positions were reclassified to hourly-paid overtime eligible effective on the December 4, 2016 pay date. The Lawsuit also alleged that PLM misclassified salary-paid Set Team Leaders, Reset Team Leaders, or Surge Team Leaders (“STLs”) as exempt from the overtime pay requirements of federal law, and the Lawsuit included those collective action members who worked as salary-paid STLs in the conditionally certified FLSA collective action. The Kentucky and Ohio state law class action claims relate only to weeks worked as STMs, not STLs. The Lawsuit asked the Court to require PLM to pay overtime backpay, interest and/or liquidated damages, and other payments. PLM denies that it did anything wrong and contends that, among other things, that it has complied at all times with applicable federal and state law.

3. Why is this a class and collective action?

This is a collective action because the Court previously conditionally certified a collective action under the FLSA for the claims of the STMs and STLs. You joined that collective action by filing a Consent, making you a FLSA Collective member.

In a class action, one or more people, called Class Representatives (in this case, former Kentucky Set Team Member Kenneth McCoy, and Ohio Set Team Member Alan Moore), bring a claim in court on

behalf of people who have similar claims as STMs. All these people with similar claims are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Samuel H. Mays, Jr., United States District Judge, is presiding over this class and collective action settlement.

4. Why is there a settlement?

The Court did not decide in favor of either party. Instead, both sides agreed to a settlement, which, if approved, brings the litigation to an end. That way, Plaintiffs and PLM avoid the cost, delay, and uncertainty of moving forward in litigation to trial and possible appeals, and the Class Members will get compensation. The Class Representatives and the attorneys for both sides think that the settlement is fair, reasonable, adequate and in the best interests of the members of the class and all parties.

The Settlement Benefits—What You Get

5. What does the settlement provide?

PLM has agreed to pay a \$1,575,000 Gross Settlement Fund (“Settlement Fund”) to fund the settlement of this action, which includes class and collective member payments (inclusive of back wages, damages, penalties and interest), attorney’s fees and costs, Service Payments, and Administrator costs (including mediation and expert costs, except that PLM shall separately pay the costs of the July 10, 2019 mediation). No amount of the Settlement Fund will revert to PLM under any circumstance. Separately from the Settlement Fund, PLM will pay the employer’s share of payroll taxes on the wage portion of Settlement Class payments.

6. How was my settlement payment calculated?

The amount of each FLSA Collective member’s individually allocated gross settlement payment was calculated based on the number of covered and eligible weeks worked in the covered positions, based on a settlement points system that assigned differently weighted points depending on whether the weeks worked were STM or STL weeks, whether the STM weeks were covered by the FLSA period for FLSA Collective members or were otherwise only covered by Kentucky or Ohio law. Weeks worked as salary-paid STMs paid as exempt were covered and eligible if worked during the earlier of (a) three years preceding the filing date of the FLSA Collective member’s Consent in the Action, or (b) three years preceding the August 18, 2017 Tolling Agreement effective date, through the pay date ending December 4, 2016;¹ weeks worked as salary-paid STLs paid as exempt were covered and eligible if worked during the earlier of (a) three years preceding the filing date of the FLSA Collective member’s Consent in the Action, or (b) three years preceding the August 18, 2017 Tolling Agreement effective date, through July 10, 2019 (the “final collective”). For full details on the methodology used to calculate your settlement payment, you may view the complete Settlement Agreement at www.rg2claims.com/plmarketing.html and/or contact the Settlement Administrator at 1-866-742-4955.

¹ Thus, if you worked as a Kentucky-based salaried STM paid as exempt from August 18, 2012 until the start of your FLSA Collective period defined above, you received the settlement points assigned to Kentucky state law class claims for the weeks within Kentucky’s longer five year limitations period that were outside the FLSA’s three year limitations period applicable to your claims. Because Ohio’s two year limitations period is less than the FLSA’s three year period, all Ohio state law weeks were covered by the FLSA period.

7. What will I get from the settlement?

Your total estimated individual share of the settlement is the gross amount of **\$XX** before employment taxes and withholdings. After final approval, you will be issued a check for your share of the settlement unless you excluded yourself from the settlement.

How You Get a Payment

8. How can I get a payment?

According to PLM's records, you worked covered weeks as a STM or STL within the FLSA period. You therefore have the opportunity to participate in the settlement and receive a payment. Unless you exclude yourself from the settlement in accordance with the exclusion procedure explained below, you will be issued your settlement payment.

You are a FLSA Collective Member because you previously filed a Consent to join the Lawsuit. If you worked as a Kentucky-based STM paid as salaried overtime-exempt from August 18, 2012 through the December 4, 2016 pay date, you are also a Kentucky Class Member in the "Kentucky class action." If you worked as an Ohio-based STM paid as salaried overtime-exempt from August 18, 2015 through the December 4, 2016 pay date, you are also an Ohio Class Member in the "Ohio class action."

9. When would I get my payment?

The Court will hold a hearing on June 4, 2020 in Courtroom 3, to decide whether to approve the settlement. If Judge Mays approves the settlement, and there are no appeals, we estimate that checks will be mailed after approximately June 14, 2020. However, because it is always possible for there to be unexpected delays or appeals, it is possible that the payments will be delayed by a year or more, or that an appeals court could determine that the payments cannot be made if any appeals are filed. Please be patient, and refer to the Settlement Administrator's website for status updates.

10. What am I giving up to get a payment or stay in the Class?

According to PLM's records, you performed work as a salary-paid STM or STL within the FLSA period. Unless you exclude yourself, you will remain as part of the Class and Collective and receive your settlement payment. This means that you cannot sue, continue to sue, or be part of any other lawsuit against PLM over the specific federal FLSA and state-law wage and hour issues in this Lawsuit for covered weeks worked as a salary-paid STM or STL. If you do not exclude yourself from the settlement, it means that all of the Court's orders will apply to you and legally bind you. In other words, you agree to the Released Claims below, which describes the legal claims that you give up if you get settlement benefits.

FLSA Release: Members of the FLSA Collective release the PLM Releasees from all wage and hour claims under state and federal law arising out of the allegations stated in the Complaint as amended for weeks worked as STMs through the December 4, 2016, pay date paid as salaried exempt, or as STLs paid as salaried exempt; as tied to the factual predicate alleged in the Complaint as amended, arising through July 10, 2019.

Released State Law Claims: (1) Kentucky Class Members who do not exclude themselves (opt out) from the settlement shall release the PLM Releasees from state law wage and hour claims arising out of the allegations stated in the Complaint as amended for weeks worked as Set/Reset/Surge Team Members paid as salaried exempt through the December 4, 2016 pay date under applicable state wage and hour law within the respective August 18, 2012 through December 4, 2016 Kentucky Period, arising through July

10, 2019; and (2) Ohio Class Members who do not exclude themselves (opt out) from the settlement shall release the PLM Releasees from state law wage and hour claims arising out of the allegations stated in the Complaint as amended for weeks worked as Set/Reset/Surge Team Members paid as salaried exempt through the December 4, 2016 pay date under applicable state wage and hour law within the respective August 18, 2015 through December 4, 2016 Ohio Period, arising through July 10, 2019.

The parties agree that no other claims not specifically stated herein are being released, and the parties agree that there shall be no res judicata, collateral estoppel, claim splitting, or other claim preclusion effect resulting from a settlement participant's involvement in the litigation and the settlement as to any claims not specifically released. Except as stated in the preceding sentence, this Agreement does not otherwise restrict or impair in any way any other defenses PLM may have against any such non-released claims.

"Releasees" means PLM and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors, attorneys, owners and shareholders thereof.

Excluding Yourself From the Settlement

If you do not want a payment from this settlement, and you want to keep the right to sue or continue to sue PLM separately from the Litigation for the legal claim specifically described in the Released Claims above, then you must submit a timely and compliant request for exclusion to opt-out of this settlement pursuant to the opt-out procedures in this Notice. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately, because you may have to exclude yourself from this Class to continue your own lawsuit. This is called excluding yourself from – or opting out of – the settlement Class.

11. How do I opt out of the settlement?

To exclude yourself from (opt out of) the settlement and its payment and not release any claims, you must send a letter saying that you want to be excluded from *Fitzgerald v. P.L. Marketing, Inc.*, No. 2:17-cv-02251 (W.D. Tenn.), and that you understand that you will not receive money from it. You must include your name, address, telephone number, and your signature, as well as your employee ID number or the last four digits of your Social Security number for identity verification purposes. You must submit your exclusion (or opt-out) request, postmarked no later than April 20, 2020, (or received by the Settlement Administrator by that date if sent by e-mail) to:

Fitzgerald v. PLM Settlement Administrator
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Email: info@rg2claims.com

You cannot exclude yourself (opt out) by phone. If you submit a timely request to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) PLM in the future, though your claim period may expire or be reduced by the continued running of the applicable statute of limitations on your claims.

12. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive money. But you may sue, continue to sue, or be part of a different lawsuit against PLM for the legal claim specifically described in the Released Claims above.

The Lawyers and Class Representatives Representing You

13. Do I have a lawyer in this case?

By filing your Consent to join the Lawsuit, you retained the following attorneys representing you and the other FLSA Collective Members in the Lawsuit: C. Andrew Head and Bethany Hilbert of Head Law Firm, LLC (collectively “Class Counsel”). They have also been appointed as Class Counsel for the Kentucky and Ohio class actions.

You will not be charged for these lawyers’ work in securing the settlement benefits for you and the other Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will Class Counsel and the Named Plaintiffs be paid?

Class Counsel will ask the Court to approve payment from the settlement fund of attorneys’ fees of one third (1/3) of the Settlement Fund (which is \$525,000), in addition to reimbursement of expert witness fees incurred to date by third party expert David Breshears of Hemming Morse, LLP not to exceed \$26,000, payment of the \$6,750 capped amount of expenses for original notice administration billed by RG/2 Claims, payment of the expenses for settlement administration as approved by the Court (estimated not to exceed \$23,000), and other reasonable litigation costs and expenses incurred by Class Counsel not to exceed Fifteen Thousand Dollars (\$15,000), to be paid by deduction from the Settlement Fund. In addition, Class Counsel will apply to the Court for approval of service payments to the Named Plaintiff Torey Fitzgerald of \$7,500, Kentucky Class Representative Plaintiff Kenneth McCoy of \$2,500, and Ohio Class Representative Plaintiff Alan Moore of \$2,500, to be paid from the Settlement Fund. These service payments are being requested in recognition of the time, effort, and risk incurred by the Plaintiffs in securing this settlement for you and the other class and collective action settlement participants.

Commenting on (Including Objecting to) the Settlement

You can tell the Court what you think about the settlement.

15. How do I tell the Court that I like or don’t like the settlement?

If you’re a Settlement Class Member and you do not exclude yourself from the settlement, you can comment on (including objecting to) the settlement. You can give reasons why you think the Court should or should not approve it.

The Court cannot order a larger settlement; it can only approve or deny the settlement. If the Court denies approval, there will be no settlement at this time, no settlement payments will be sent out, and the Lawsuit will continue. If that is what you want to happen, you should object.

You may comment on and object to the proposed settlement in writing. You may also appear 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 comments and objections and supporting papers must (a) clearly identify the case name and number (*Fitzgerald v. P.L. Marketing, Inc.*, No. 2:17-cv-02251 (W.D. Tenn.)), (b) in the case of an objection, state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection, (c) be submitted to the Court either by mailing them to the Court Clerk, United States District Court for the Western District of Tennessee, Clifford Davis and Odell Horton Federal Building, 167 North Main Street,

Memphis, Tennessee 38103, or by filing them in the Civil Clerk's office of the United States Courthouse located at the address listed above, with a copy served on the Settlement Administrator, and (d) be filed or postmarked on or before May 14, 2020.

16. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Fairness Hearing

The Court will hold a fairness hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to.

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

The Court will hold a fairness hearing at 1:30 p.m. on June 4, 2020, in Courtroom 3 at the United States District Court for the Western District of Tennessee, Clifford Davis and Odell Horton Federal Building, 167 North Main Street, Memphis, Tennessee 38103, before the Honorable Samuel H. Mays, Jr., United States District Judge. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Mays will listen to people who have asked to speak at the hearing, if any. The Court may also decide how much to pay Class Counsel, and/or any service payment or payment of litigation or settlement administration costs or expenses from the Settlement Fund. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The fairness hearing may be postponed without further notice to the Class. If you plan to attend the hearing, you should check the Court's Proceedings Calendar at <https://www.tnwd.uscourts.gov/calendars/Mays/default.htm> to confirm that the hearing date has not been changed.

18. Do I have to come to the hearing?

No. Class Counsel represents you and will answer questions Judge Mays may have. But you are welcome to come at your own expense. If you send a comment (including an objection), you do not have to come to Court to talk about it. As long as you mailed it on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter to the Settlement Administrator at the address listed in section 11, saying that it is your "Notice of Intention to Appear at the Fairness Hearing in *Fitzgerald v. P.L. Marketing, Inc.*" You must include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked or emailed no later than May 14, 2020. This requirement may be excused upon a showing of good cause.

You cannot speak at the hearing if you excluded yourself, because the case no longer affects you.

If You Do Nothing

20. What happens if I do nothing at all?

According to PLM's records, you performed salary-paid STM or STL work covered by the federal FLSA period and filed a Consent to join the Lawsuit. If you do nothing, you will receive your settlement payment.

You are not required to take any action or not take any action. It is your choice.

Getting More Information

21. Are there more details about the settlement?

This Notice is intended to be a summary of the terms of the Settlement. You may also obtain this information by contacting the Settlement Administrator at 1-866-742-4955, Class Counsel at Head Law Firm, LLC (312) 690-7765, or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.tnwd.uscourts.gov/cmecf-links.php>.

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

Issued by order of the United States District Court for the Western District of Tennessee.

Dated: March 5, 2020