

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
BUSINESS LITIGATION SESSION  
CA No. SUCV2017-0386-BLS1

EVAN TOPHAM, on behalf of himself and  
all others similarly situated,  
Plaintiff,

vs.

ROBERT'S TOWING INC. d/b/a  
ROBERTS TOWING,  
Defendant.

**LEGAL NOTICE**  
**PENDENCY AND PROPOSED SETTLEMENT**  
**OF CLASS ACTION AND HEARING ON PROPOSED SETTLEMENT**

**TO: All individuals and/or business entities who were persons whose passenger automobiles or motorcycles were towed by Roberts purportedly under the authority of either M.G.L. c. 266, § 120D or M.G.L. c. 159B, § 6B and who were charged an amount for a fuel surcharge and/or other amount as a fuel surcharge when Roberts did not record fuel surcharge information on the tow slip provided to the Customer or the Customers' tow did not exceed five (5) miles between February 6, 2011 and December 6, 2017.**

**FINAL APPROVAL BY THE SUFFOLK COUNTY SUPERIOR COURT FOLLOWING  
A HEARING TO BE HELD ON FEBRUARY 21, 2018.**

*This Notice Provides Information About the Proposed Settlement and How It  
May Affect the Rights and Obligations of Class Members If It Is Approved*

A settlement (the "Settlement") has been proposed in a class action lawsuit ("Action") pending in Suffolk County Superior Court in Boston, Massachusetts. The caption for the Action appears above.

The terms of the proposed settlement are set forth in a written settlement agreement (the "Settlement Agreement") that contemplates certification of the settlement class for the Action (collectively, hereinafter referred to as the "Settlement Class"). If the Court gives final approval to the Settlement Agreement, distributions will be issued in accordance with the terms of the Settlement Agreement without further action being required.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>OBJECT</b>	You may submit a written objection to Class Counsel with reasons why you believe the Settlement should not be approved.	<b>Deadline:</b> <b>February 9, 2018</b>
<b>OBJECT AND ATTEND THE “FINAL APPROVAL HEARING”</b>	<p>The Court will hold a “Final Approval Hearing” whether to grant final approval to the Settlement, whether to approve legal fees and expenses requested by Class Counsel, and whether to approve an incentive award to the Plaintiff for his services in connection with the Action.</p> <p>If you file a timely written objection, you may be entitled to speak and present evidence at the at the Final Approval Hearing. If you wish to be heard at the Final Approval Hearing, you must follow the procedures set forth herein.</p>	<b>Hearing Date:</b> <b>February 21, 2018</b>
<b>IF YOU CHOOSE TO DO NOTHING</b>	Upon final approval of the settlement agreement, funds will be distributed in accordance with the terms of the Settlement Agreement without the need for any action on your part.	

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of the Action has preliminarily approved the Settlement Agreement and must decide whether to give final approval to the Settlement Agreement. The relief provided, and agreed upon, will be provided only if the Court gives final approval to the Settlement Agreement and, if there are any appeals, after the appeals are resolved in favor of the Settlement Agreement.

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**BACKGROUND INFORMATION**

***1. What is this Notice?***

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can view a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), please see **Section 15** below.

***2. What is the Action about?***

On February 6, 2017, Plaintiff, Evan Topham filed the above-captioned class action litigation against Robert’s Towing Inc. (“Defendant”) on behalf of all those persons who, during the Class Period, were persons whose passenger automobiles or motorcycles were towed by Roberts purportedly under the authority of either M.G.L. c. 266, § 120D or M.G.L. c. 159B, § 6B and who were charged an amount for a fuel surcharge and/or other amount as a fuel surcharge when Roberts did not record fuel surcharge information on the tow slip provided to the Customer or the Customers’ tow did not exceed five (5) miles. Specifically, Plaintiff has alleged that Defendants violated Massachusetts law by charging for and collecting a fuel surcharge without first providing the Customer with the required information (“Class Claims”).

**THE ISSUANCE OF THIS NOTICE IS NOT AN EXPRESSION OF THE COURT’S OPINION ON THE MERITS OR THE LACK OF MERITS OF THE CLAIMS IN THE ACTION.**

For information about how to learn about what has happened in the Action to date, please see **Section 15** below.

**3. *Why is this a class action?***

In a class action lawsuit, one or more people called a “Representative Plaintiff(s)” sues on behalf of other people who may have similar claims. The companies sued in this case are called the Defendants. The purpose of a class action is to bring forward all similar claims in one judicial proceeding. As part of the proposed Settlement, the Representative Plaintiff and the Defendants will be asking the Court to certify the Action as class actions solely for purposes of settlement (the “Settlement Class”).

**4. *Why is there a Settlement?***

The Court has not decided that the Representative Plaintiff or Defendants should win. Instead, both sides have agreed to a Settlement, which permits them to avoid the cost of protracted litigation, and provides relief to the Settlement Class now rather than years from now, if at all.

**5. *How do I know if I am part of the Settlement?***

You may be a member of the class if you are an individual and/or business entities who were persons whose passenger automobiles or motorcycles were towed by Roberts purportedly under the authority of either M.G.L. c. 266, § 120D or M.G.L. c. 159B, § 6B and who were charged an amount for a fuel surcharge and/or other amount as a fuel surcharge when Roberts did not record fuel surcharge information on the tow slip provided to the Customer or the Customers’ tow did not exceed five (5) miles between February 6, 2011 and December 6, 2017.

If you are still not sure whether you are a Class Member, you can contact Plaintiff’s Counsel for help. The address and phone number are as follows:

Forrest, LaMothe, Mazow,  
McCullough, Yasi & Yasi, P.C.  
2 Salem Green, Suite 2  
Salem, MA 01970  
(877)559-8890

**THE PROPOSED SETTLEMENT**

**6. *What relief does the Settlement Provide?***

**Monetary Relief.** As part of the proposed Settlement, Defendants agree to pay to a non-profit organization, a Settlement Amount equal to \$200,000.00. All Settlement Amounts shall be paid to the following non-profit organization: Greater Boston Legal Services, 197 Friend Street, Boston, Massachusetts.

**7. *Why is the Settlement Amount being paid to Greater Boston Legal Service?***

While all Class Members have claims, the value of these claims is uncertain and may be less than the cost of distributing funds. The parties estimate the damages of the Class could range from \$0.00 to \$6.00. There are also significant difficulties in identifying class members and in distributing

individual settlement amounts. The Parties have therefore agreed that the most sensible resolution is for the entire Settlement Amount to be paid to an appropriate charity.

### **THE LAWYERS IN THE ACTION AND THE REPRESENTATIVE PLAINTIFF**

#### **8. *Do I have a lawyer in the Action?***

The Court has ordered that the law firms of Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C. (“Class Counsel”) are to represent the interests of all Class Members. You will not be separately charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **9. *How will the lawyers be paid and how will the Representative Plaintiff receive compensation for bringing the Action?***

In accordance with the terms of the Settlement Agreement, Plaintiff will apply to the Court for an award of Costs and Fees which Defendant has agreed not to oppose in an amount not to exceed 33% of the Settlement Amount. Consideration for the award, costs and attorneys’ fees shall be paid from the Settlement Amount described above. The Court will be asked to act on this application at the Final Approval hearing. The Court will ultimately make the final decision as to the amount to be paid to Class Counsel and to the Class Representative at the final approval hearing.

### **DISMISSAL OF THE ACTION AND RELEASE OF ALL CLAIMS**

#### **10. *What am I giving up under the Settlement?***

If the Court approves the proposed Settlement Agreement, you will be releasing your claims against Defendant for the practice described herein. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendant with respect to an involuntary tow or overcharge or any other claims that are the subject of the Action. For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement Agreement, you may refer to the papers on file with the Court or contact Plaintiff’s Counsel. You or your attorney may examine the Court’s files during regular business hours of each business day at the Civil Clerk’s Office, Suffolk County Superior Courthouse, 12<sup>th</sup> Floor, Three Pemberton Square, Boston, Massachusetts 01970.

### **HOW TO OBJECT TO THE SETTLEMENT**

#### **11. *How do I tell the Court that I do not like the Settlement?***

At the date, time, and location stated in **Section 13** below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Plaintiff’s application for an award of attorneys’ fees and costs as well as an incentive award to the Representative Plaintiff.

If you wish to present objections to the Settlement or the Agreement at the Final Approval Hearing must do so in writing, mailed or faxed to:

**Forrest, LaMothe, Mazow,  
McCullough, Yasi & Yasi, P.C.  
2 Salem Green, Suite 2,  
Salem, MA 01970  
Phone: 877-599-8890/Fax: (617) 517-3271**

Any Objections must be mailed or faxed by February 9<sup>th</sup>, 2018, and must be contain:

1. A heading which refers to the Action;
2. The name, address, telephone number and signature of the Class Member filing the objection;
3. A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, BBO number, address and phone number;
4. A statement of the legal and factual bases for each objection, and if through counsel, a legal memorandum supporting each objection;
5. A description of any evidence the objector intends to offer at the Final Approval Hearing, if the objector intends to speak at the hearing; and
6. Documentary proof of membership in the Settlement Class.

The objection, to be effective, must be sent by the objector or a legally authorized representative only on an individual basis and not as part of a group, class or subclass.

Any Settlement Class Member who fails to timely file such a written statement of his/her or its intention to object shall be foreclosed from making any objection to this Settlement Agreement or to the Fee and Expense Application, except as permitted by the Court.

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.**

If you file and serve an Objection, you may appear at the Final Approval Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear.

## **FINAL APPROVAL HEARING**

### ***12. What is the Final Approval Hearing?***

The Court has preliminarily approved the Settlement Agreement and will hold a hearing to decide whether to give final approval to the Settlement Agreement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement Agreement should be approved as fair, reasonable, adequate, and in the best interest of the Settlement Class; to consider the application for a representative stipend and attorneys' fees and expenses.

### ***13. When and where is the Final Approval Hearing?***

On February 21, 2018, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the proposed Settlement. The hearing will take place at: **The Suffolk County Superior Courthouse, Room 1309**, 3 Pemberton Square, Boston, Massachusetts.

The hearing may be postponed to a different date or time or location without notice. Please check with the Court or Plaintiff's Counsel for any updates about the Settlement generally or the Final Approval Hearing specifically. If the date or time of the Final Approval Hearing changes, the new date and/or time will be posted on the Court's Online Docket, which can be found at: <https://www.masscourts.org/eservices/home.page.3>.

**14. *May I speak at the hearing?***

At that hearing, the Court will entertain any Objections concerning the Settlement and other issues as described herein.

You may attend, but you do not have to. You may speak at the Final Approval Hearing only if you have timely served and filed an Objection in accordance with the terms set forth herein.

**GETTING MORE INFORMATION**

**15. *How do I get more information?***

For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement Agreement, you may:

1. View the pleadings, settlement documentation and long-form notice on Class Counsel's Website: [www.forrestlamoth.com](http://www.forrestlamoth.com); and/or
2. You may examine the Action's files during regular business hours of each business day at the Civil Clerk's Office, Suffolk County Superior Courthouse, 12<sup>th</sup> Floor, 3 Pemberton Square, Boston, Massachusetts.

This description of the Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit the Civil Clerk's Office, Suffolk County Superior Courthouse, 12<sup>th</sup> Floor, 3 Pemberton Square, Boston, Massachusetts or Class Counsel's Website.

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**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**