

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 1881CV02531

DAVID BORGES, on behalf of himself and
all others similarly situated,
Plaintiff,

vs.

J & M TOWING, INC.,
Defendant.

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

TO: All individuals whose passenger automobiles or motorcycles were towed by J & M Towing, Inc. purportedly in connection with a Trespass Tow, and who were charged an amount for a fuel surcharge.

**FINAL APPROVAL BY THE MIDDLESEX COUNTY SUPERIOR COURT
FOLLOWING A HEARING TO BE HELD ON September 17, 2019.**

*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 Middlesex County Superior Court in Woburn, 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 ARE AFFECTED EVEN IF YOU DO NOTHING.
PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OBJECT	You may submit a written objection to Class Counsel with reasons why you believe the Settlement should not be approved.	Deadline: Sept. 14, 2019
OBJECT AND ATTEND THE “FINAL APPROVAL HEARING”	<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 Final Approval Hearing. If you wish to be heard at the Final Approval Hearing, you must follow the procedures set forth herein.</p>	Hearing Date: Sept. 17, 2019
IF YOU CHOOSE TO DO NOTHING	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 September 4, 2018, Plaintiff, David Borges, filed the above-captioned class action litigation against J & M Towing, Inc. (“Defendant” or “J & M”) on behalf of all persons whose passenger automobiles or motorcycles were towed by Defendant purportedly under the authority of M.G.L. c. 266, § 120D and who were charged an amount for a fuel surcharge during the Class Period. Plaintiff alleged that Defendant violated Massachusetts law by charging for and collecting a fuel surcharge without first providing the Customer with the required fuel surcharge information (“Class Claims”). Defendant denied any wrongdoing.

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 company sued in this case is called the Defendant. 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 Defendant 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 Defendant should win. Instead, both sides have agreed to a Settlement, which permits them to avoid the cost of protracted litigation and provides relief on behalf of 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 whose passenger automobiles or motorcycles were towed by J & M purportedly under the authority of M.G.L. c. 266, § 120D and who were charged an amount for a fuel surcharge since September 4, 2014.

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, Defendant agrees to pay to a Designated Charity a Settlement Amount of \$585.26. This amount is the actual Fuel Surcharges collected by Defendant since 2014. All Settlement Amounts shall be distributed on behalf of Class members, to: Greater Boston Legal Services and Boston Children’s Hospital.

7. *Why is the Settlement Amount being paid to a Designated Charity?*

While all Class Members have claims, the value of these claims is uncertain and likely less than the cost of distributing notice and the funds. There are also significant difficulties in identifying class members, and therefore, 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 Designated 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 firm 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 Incentive Award for the Representative Plaintiff in the Amount of \$1,000.00 and an Award of Costs and Fees for Class Counsel in an amount not to exceed \$18,414.74. Consideration for the award, costs and attorneys’ fees shall be paid separate 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 a Trespass Tow 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, Middlesex County Superior Courthouse, 200 Trade Center, 2nd Floor, Woburn, Massachusetts.

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, you must do so in writing, mailed or faxed to the Court and Class Counsel:

**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 within 45 days of the publication of the Notice (Aug. 6th, 2019) but no later than 60 days from the entry of the Preliminary Approval Order in this Action (Sept. 14, 2019), and must 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, and to consider the application for a representative stipend and attorneys' fees and expenses.

13. When and where is the Final Approval Hearing?

On Sept. 17, 2019, 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 Middlesex County Superior Courthouse, Room 610**, 200 Trade Center, 2nd Floor, Woburn, 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 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; and/or
2. You may examine the Action's files during regular business hours of each business day at the Civil Clerk's Office, Middlesex County Superior Courthouse, 200 Trade Center, 2nd Floor, Woburn, 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, Middlesex County Superior Courthouse, 200 Trade Center, 2nd Floor, Woburn, Massachusetts or Class Counsel's Website.

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