

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Micciche v. Schneider Electric

United States District Court, Central District of California
Case No. 8:11-cv-01479-JVS-JCG

If you worked for American Power Corporation as a non-exempt hourly employee in California at any time before from June 12, 2007 through July 31, 2012, you may be entitled to receive a payment from a class action settlement.

This Notice is meant to inform you of a settlement reached in a pending class action case, entitled, *Micciche v. Schneider Electric and American Power Conversion*, case number 11-cv-01479-JVS -JCG (which will be referred to as the "Lawsuit"). The settlement of this class action covers claims asserted on behalf of all past and present non-exempt employees employed by American Power Corporation in the state of California at any time from June 12, 2007 until July 31, 2012 (This group of people will be referred to as the "Class"). American Power Corporation's ("APC") records reflect that you are part of the Class.

I. DESCRIPTION OF THE LAWSUIT

The Lawsuit commenced when a former employee, Tamara Michicce, filed a complaint on August 11, 2011. (Tamara Micciche is referred to as the "Named Plaintiff"). The Lawsuit brings claims for (a) failure to pay overtime compensation; (b) failure to provide meal periods; (c) failure to provide rest periods; (d) failure to provide itemized statements; (e) failure to pay wages twice monthly; (f) failure to pay wages for hours worked; (g) penalties under California's Private Attorneys General Act of 2004 ("PAGA"); (h) unfair business practices (California Business and Professions Code section 17200, *et seq.*); (i) failure to pay overtime based on proper calculation of the regular rate of pay; (j) failure properly to reimburse for business expenses as required under California Labor Code section 2802; and (k) failure to pay bonus wages. She brings these claims under California law and, where applicable, the Fair Labor Standards Act ("FLSA").

Defendants Schneider Electric USA, Inc. ("Schneider Electric") and American Power Conversion ("APC") answered the complaint and removed the case from the Orange County Superior Court to federal court on September 23, 2011. Throughout the proceedings Schneider Electric and APC (together, the "Company") have continued to deny all allegations, to contest vigorously the complaint and to believe strongly that their employees have been properly treated in accordance with the law. No determination has been made by the Court about the truth or validity of the factual or legal allegations made against the Company in this Lawsuit.

The Company and Named Plaintiff (the "Parties") have engaged in discovery, exchanged written documents and the deposition of Named Plaintiff has been taken. The Parties have participated in extensive settlement discussions, including an all-day mediation conference on April 18, 2012. As a result of the mediation session and arm's-length negotiations, the Parties have reached a proposed settlement. The settlement is supported both by the Named Plaintiff and by Class Counsel, and the Parties have since entered into a Stipulation of Settlement ("Settlement Agreement" or "Settlement"). The Court has preliminarily approved the Settlement Agreement.

II. THE CLASS

The Court has certified the following Class for purposes of settlement:

"All persons currently or formerly employed by American Power Corporation in the state of California who worked as non-exempt employees at any time from June 12, 2007 to July 31, 2012."

You are a Class Member if you fit within the definition of the Class stated above regardless of whether you are still employed by APC.

III. ATTORNEYS OF RECORD

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If you file any documents in the case, as discussed in section V.D and/or elsewhere in this Notice, copies of any documents you file with the Court should be served (meaning mailed or otherwise forwarded pursuant to the Federal Rules of Civil Procedure) on the Company's Counsel and Class Counsel.

IV. SUMMARY OF THE SETTLEMENT

The Settlement as preliminarily approved by the Court provides for the total and all inclusive settlement sum of no more than **One Million, Eighty-Five Thousand Dollars (\$1,085,000)** (the "Gross Settlement Amount"). The following amounts are to be paid first out of the Gross Settlement Amount:

- An amount up to Three Hundred Twenty-Five Thousand Five-Hundred Dollars (\$325,500.00) for Class Counsel's attorneys' fees, subject to Court approval,
- An amount of up to Twenty Thousand Dollars (\$20,000.00) in Class Counsel costs, subject to Court approval,
- An amount up to Ten Thousand Dollars (\$10,000.00) to Ms. Micciche as an enhancement for the risks, time and requirements associated with acting as Named Plaintiff,

- The costs of administering the Settlement, which Named Plaintiff warrants will be no more than Fifteen Thousand Dollars (\$15,000.00), and
- Five Thousand Dollars and Zero Cents (\$5,000.00) to the California Labor Workforce Development Agency (“LWDA”) for the PAGA Claims.

After these deductions, the remaining balance, which is estimated to be Seven Hundred Nine Thousand, Five Hundred Dollars (\$709,500.00) (the “Net Settlement Amount”), will be allocated on a pro rata basis to each Class Member who submits a valid and timely claim form (anyone who properly submits a claim form will be referred to as a “Claimant”). An individual Claimant’s payment will be based on the number of weeks that Claimant worked from June 12, 2007 until July 31, 2012 (“Qualifying Workweeks”) in comparison to all weeks worked by all Class Members during that time (as determined from APC records).

The following formula will be used: a per-week rate of pay will be determined by dividing an amount equal to the Net Settlement Amount by the total, combined number of Qualifying Workweeks for all Class Members (“Weekly Rate”). Each Claimant’s Settlement payment shall equal the Weekly Rate multiplied by the number of Qualifying Workweeks reported for that Claimant from June 12, 2007 until July 31, 2012. (This will be referred to as the “Settlement Payment”.) **The total number of Qualifying Workweeks worked during the Class Period by all Class Members is currently calculated as equaling 67,364 Workweeks and your estimated payout is \$<MERGED_EstAmt>.**

Please note that this amount may change by increasing or decreasing due to a number of factors. For example, if the total amount of Settlement payments to Claimants is less than fifty percent (50%) of the Net Settlement Amount, then the Weekly Rate shall be proportionately increased so that exactly fifty percent (50%) of the Net Settlement Amount (as defined above) will be distributed under the terms of the Settlement to Claimants (“50% Threshold”).

Only those Class Member(s) who file a claim form will actually receive a Settlement Payment. In other words, if you fail to file a claim form and fail to opt out of the Settlement, you will waive the Settled Claims (as set forth below in Section VI), and you will not be entitled to receive any portion of the Settlement.

Settlement payments awarded to Claimants will not form the basis for additional contributions to or benefits under any benefit plans, policies or bonus programs that may exist and/or be offered to you through, by or in conjunction with the Company.

V. YOUR RIGHTS AS A CLASS MEMBER.

A. Submitting a Claim

To participate in the Settlement, the enclosed Claim Form must be completed and signed by you, and returned by **November 26, 2012** via First-Class US mail or express mail (*i.e.*, Federal Express). The claim form states the period of time that you were employed at by the Company from June 12, 2007 until July 31, 2012. Your individual Settlement payment will be based on the information shown on your claim form. If you agree with the number of Qualifying Workweeks you worked for APC as indicated in the claim form, and would like to participate in the Settlement, you need to mail in a claim form by **November 26, 2012**. Your Settlement payment in the form of a check or checks will be mailed to you provided that you file a claim form and the Court grants final approval of the Settlement and the Settlement is not successfully challenged. On the other hand, failure to sign and return the claim form by the above deadline will prevent you from receiving your share of the Settlement and will bar any Settled Claims you may have (as described in Section V.B, below), unless you opt out (as described in Section V.C, below).

Disputes by you over the basis or determination of your share of the Settlement or the accuracy of the records of APC of the weeks you worked will be referred to Class Counsel and the Company’s Counsel. All disputes over Workweeks and Settlement payments will be resolved and decided jointly by Class Counsel and the Company’s Counsel, whose joint decision will be final and binding unless the matter is brought before the Court. APC’s records shall control the dispute.

In order to challenge the information concerning your length of service with APC as being incorrect, a

challenge along with any documentation supporting your challenge and the dispute as to your length of service with APC must be submitted by you to the Claims Administrator no later than **November 26, 2012** at the following address:

Micciche v. Schneider, et al.
c/o Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
Telephone: 1 (888) 369-3780

Your Settlement payment may be increased or decreased as a result of this process. The Company's records will prevail over what you state, unless you provide persuasive documentation that proves that Company's records are in error.

B. Doing Nothing

You may elect to do nothing. If you do nothing, you will be bound by the terms of the Settlement Agreement and/or by any other final disposition of this Lawsuit. Specifically, you will be bound by the terms of the release as described below in Section VI and therefore be forever barred from pursuing any claims against the Company that were or might have been asserted in this Lawsuit. It is again emphasized that in order to receive any payment you must file a Claim Form as stated in section V.A above.

C. Excluding Yourself from the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself ("Opt Out") by drafting and forwarding a request for exclusion to the Claims Administrator via First-Class US Mail or express mail (*i.e.*, Federal Express) that provides your name, the last four numbers of your social security, the name of the Action and states that you request to opt out of the settlement, or words to that effect.

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Your notice of decision to Opt Out must be returned by mail to the Claims Administrator at the address listed above no later than **November 26, 2012**.

Any person who files a complete and timely Opt Out notice shall, upon receipt, no longer be a member of the Class, shall be barred from participating in any portion of the Settlement, shall be barred from objecting to the Settlement, and shall receive no benefits or payments from the Settlement. Any such person, at his/her own expense, may pursue any claims he/she may have against the Company and will retain his/her right to pursue my own claims against the Company, if any. Any person wishing to Opt Out has the option at his/her own expense to seek the advice of counsel with respect to the legal implications of opting out of the Settlement.

DO NOT SUBMIT BOTH THE CLAIM FORM AND OPT OUT REQUEST. If you submit both a Claim Form and an Opt Out Letter, the Claim Form will be accepted and the Opt Out Letter will be rejected.

D. Objecting to the Settlement.

Objections must be in writing and must state the basis of any and all objections. Objections must be filed with the Court at the address listed below, on or before **December 5, 2012**. At the same time you file the objections with the Court you must also mail-serve copies of your Objection to Class Counsel and the Company's Counsel, or otherwise serve copies of your Objection in a manner that is permitted by Federal Rules of Civil Procedure (and also serve the Counsel and the Settlement Administrator at the addresses listed in this Notice, in Section III). You will be deemed to have waived any objection and will be foreclosed from making any objection (by appeal or otherwise) if you fail to

timely file with the Court and serve on the Parties the written objection as set forth herein.

You may also appear in person at the final approval hearing of the Settlement to present your basis for objecting to the Settlement to the Court. The final approval hearing will be held on **January 7, 2013** at **1:30 p.m.** before the Honorable James V. Selna at the United States District Court, Central District of California, Southern Division, located at the Santa Ana Courthouse - 411 West Fourth Street, courtroom 10C, Santa Ana, CA 9270.

Objecting to the Settlement will NOT exclude you from the Class. To exclude yourself from the Class you must fill out and properly submit an Opt Out Request, as has been previously described in Section V.C.

VI. CLAIMS RELEASED BY THE SETTLEMENT.

Unless you timely file an Opt Out notice, you (and anyone acting on your behalf – such as dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest) shall fully and finally release and discharge all Released Parties of the Settled Claims only.

a. “Released Parties” include: (a) APC and APC’s former, present and successor parent companies, subsidiaries, related or affiliated companies and successors and assigns of all of these entities; (b) members, subsidiaries, related companies, divisions, and business concerns, past and present, and each of them, including Defendant APC’s divisions and successors and assigns of all of these entities, (c) the shareholders, officers, directors, agents, attorneys, insurers, partners, trustees, directors, servants and employees, past and present, and each of them and successors and assigns of all of these persons/entities; and (d) and any individual or entity which could be jointly liable with Defendant APC, including insurers.

b. “Settled Claims” means any and all claims for relief, whether suspected or unsuspected, which you have had, now have, or may have in the future against the Released Parties (defined above) or any of them for any acts occurring during the Class Period, that are either or both: (1) alleged in the Complaint or (2) arise out of the facts, matters, transactions or occurrences referred to in the Complaint that reasonably could have been alleged as separate claims, causes of action, lawsuits or other theories of relief, whether under federal law, state law or common law (including as violations of the FLSA, California’s Labor Code, the Wage Orders, applicable regulations, and Business and Professions Code section 17200 or under California’s Private Attorney General Act [“PAGA”]). “Settled Claims” specifically includes, but is not limited, to off-the-clock claims, all claims related to the calculation of the regular rate of pay, overtime and double time claims, any claims for unpaid wages, unpaid premium pay, missed meal periods, missed rest periods, expense reimbursement claims (including for long distance calls), claims based on rounding of time, failure to include bonuses in the regular rate of pay, and any claims related to the payment of a bonus or bonuses or similar relief or other compensation or benefits, including 401(k) benefits or matching benefits and any and all claims pursuant to or derived from ERISA, 29 U.S.C. § 1001, *et seq.*, that arise from any alleged failure to pay wages, including any claims for benefits under any benefit plans subject to ERISA that arise from any such failure, retirement or deferred compensation benefits claimed on account of unpaid overtime, attorneys’ fees and costs, whether known or unknown, from June 12, 2007 up to and including July 31, 2012. “Settled Claims” includes all types of relief available for the above referenced theories of recovery, including, without limitations, damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, liquidated damages, punitive damages, waiting time penalties, reporting time pay, debts, interest, injunctive, equitable or declaratory relief, chargebacks, and liquidated damages. “Settled Claims” also includes an express waiver of all benefits under section 1542 of the California Civil Code as to Settled Claims only, as well as under any other federal or state statutes or common law principles of similar effect. The judgment will provide that it covers and bars all Settled Claims you have against the Released Parties. In addition, you forever agree that you shall not institute, nor accept back pay, wages, overtime pay, meal and rest period pay, liquidated damages, punitive damages, penalties of any nature, attorneys’ fees and costs, or any other compensation, reimbursement or other relief from any other suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against the Released Parties, for Settled Claims.

Unless you timely file an Opt Out Request, you waive your rights as to the Settled Claims under Section 1542 of the California Civil Code. Section 1542 states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at

the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

VII. TAXATION OF SETTLEMENT SUMS

There may be tax consequences to you if you receive an Individual Settlement Payment. Under the Settlement, the Parties have determined that all Settlement Payments will be allocated to each Claimant as follows: (i) thirty-four percent (34%) wages; (ii) thirty-three percent (33%) penalties; and (iii) thirty-three percent (33%) interest. No withholding shall be made from the Settlement payments for the portion allocated as interest and penalties.

An IRS Form W-2 will be issued to you by the Settlement Administrator for payments made pursuant to the amount allocated to wages and an IRS Form 1099 will be issued to you by the Settlement Administrator for the amounts allocated to penalties and interest.

The Company offers no tax advice regarding this Lawsuit. You may consider contacting an accountant and/or tax attorney to determine the appropriate amount of taxes that should be paid on your Settlement allocation.

VIII. FINAL SETTLEMENT APPROVAL HEARING

A hearing will be held on **January 7, 2013**, before Judge Selna (see address in section V.D) to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. If the Court grants final approval then the case will be dismissed with prejudice and the amounts described above in section IV, among other sections, will be distributed after the time to appeal or otherwise challenge the Settlement has lapsed. The hearing may be continued (moved to another date) without further notice to you.

If the Court does not grant final approval, the conditional Settlement will be voided, no money will be paid, and the case will revert to litigation.

You may enter an appearance through an attorney of your choosing if you so desire.

IX. NO RETALIATION OR UNDUE INFLUENCE

Your participation in, exclusion from or objection to the Settlement will not be held against you in any way with regard to your current or future employment with the Company.

X. TO FIND OUT MORE ABOUT THE SETTLEMENT

This Notice provides only a summary of the most pertinent terms and conditions of the Settlement. The complete terms of the Settlement are stated in the Stipulation of Settlement that has been tentatively approved by the Court. The Joint Stipulation, pleadings and all other records of this litigation may be examined and copied any time during regular office hours in the Clerk's Office of Court located at the address listed in Section V.D.

If you have any questions about the Settlement, you may contact the Settlement Administrator, previously identified in section V.C. The Administrator's Toll Free telephone number is 1 (888) 369-3780. You may also contact the Class Counsel, previously listed in Section III.

If you move after receiving this notice, or if it was incorrectly addressed, please provide your correct address to the attorneys listed above and to the Settlement Administrator at the address and telephone number listed above.

DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THE SETTLEMENT OR CLAIM PROCESS.