

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Thomas Pazo, individually and on behalf of all
others individually situated,

Plaintiff,

vs.

Incredible Adventures, Inc., a California
Corporation, and DOES 1-10,

Defendant.

Case No.: CGC-16-555971

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL**

Complaint Filed: December 16, 2016

FAC Filed: August 25, 2017

TO: Plaintiff and all other individuals employed in California by Defendant in the positions of CEO (chief experience officers) and/or tour guides/drivers who provided transportation and guided tours in California from December 16, 2012 through August 29, 2018 (“Class Members”).

**YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ THIS
NOTICE CAREFULLY.**

The settlement involves claims against Incredible Adventures, Inc. (“Incredible Adventures” or the “Company”) alleging: (1) failure to provide paid rest periods to drivers and pay missed rest period premiums; (2) failure to provide complete wage statements; (3) failure to provide meal periods to drivers and pay missed meal period premiums; (4) failure to pay all wages due to former employees; (5) derivative UCL violations based on the foregoing; and (6) PAGA and other penalties based on the foregoing.

Your options under the settlement: (1) participate in the settlement by (a) doing nothing, in which case a check will be mailed to the mailing address on file (See section VII.A), (b) updating your address if you need your check to be mailed to an address other than the one on file (See section VIII), (c) disputing the information provided as a basis for calculating your claim amount (See section VII.D), and/or (d) objecting to the settlement (See section VII.C); and (2) elect not to participate in the settlement by opting out (See section VIII.B).

You can view the Settlement Agreement and other Court documents related to this case by visiting www.cptgroup.com/incredibleadventures.

NO ACTION NEEDS TO BE TAKEN TO BE MAILED MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above), received this Notice, and do not opt out you are included in the Settlement and do not need to take any further action to be mailed a payment once the Court grants final approval of the settlement. If you accept your settlement amount, you will release the claims described in Section VI below.

I. INTRODUCTION

This “NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL” (“NOTICE”) is to inform you that Incredible Adventures has agreed to settle a class action lawsuit on behalf of all Class Members which claimed, among other things, that the Company violated various wage and hour laws by failing to pay its drivers for rest breaks, and failed to provide its drivers with compliant duty-free meal breaks, failed to provide its driver with complete wage statements, as well as related penalty claims for failing to pay all wages due at separation from employment, and violating Section 17200 with respect to its drivers at any time during the period from December 16, 2012 through August 29, 2018. (the “Class Period”).

The Court has granted preliminary approval of the Settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

II. DESCRIPTION OF THE LAWSUIT

On August 25, 2017, Plaintiff Thomas Pazo filed his First Amended Complaint (“FAC”) against Incredible Adventures on behalf of the Class Members, in the matter of *Thomas Pazo v. Incredible Adventures, Inc.*, in San Francisco County Superior Court, Case No. CGC-16-555971, alleging the following Causes of Action: (1) failure to provide timely, duty-free rest periods to drivers and pay missed rest break premiums (Cal. Labor Code §§ 226.7; IWC Wage Order No. 9); (2) failure to provide complete and accurate wage statements (Cal. Labor Code § 226(a); (3) failure to provide timely, duty-free meal periods to drivers and pay missed meal period premiums (Cal. Labor Code § 226.7, 512; IWC Wage Order No. 9); (4) failure to pay all wages due to former employees (Cal. Labor Code § 201 – 203); (5) derivative UCL violations based on the foregoing (Cal. Bus. & Prof. Code §§ 17200-17204); and (6) PAGA and other penalties (Cal. Labor Code § 2699, *et seq.*, and 558) based on the foregoing.

Incredible Adventures has denied liability, has denied the allegations in the Complaint, and has raised various defenses to these claims. The Company contends, among other things, that it fully complied with California wage and hour laws, and Class Members regularly took off duty breaks that met the requirements under California law. Incredible Adventures also contended that employees are seasonal workers, that they did not willfully deprive Class Members of wages upon their separation of employment, that California law does not apply extraterritorially to employees when they performed work outside of California, that they could defeat Plaintiff’s motion for class certification, and that the California meal and rest break laws may be retroactively preempted by Congress by the Federal Aviation Administration Authorization Act. The Company wishes to settle this case to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability.

The Court has not ruled on the merits of Plaintiff’s claims, and by preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Incredible Adventures and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Action on the terms summarized in this Notice. After the Company provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed claims.

The Plaintiff and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Incredible Adventures, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

Under this settlement, the following settlement class will be certified under California law:

Plaintiff and all other individuals employed in California by Incredible Adventures in the positions of CEO (chief experience officers) and/or tour guides/drivers who provided transportation and guided tours in California from December 16, 2012 through August 29, 2018.

Plaintiff Thomas Pazo and his counsel, Craig Ackerman, Esq. and Jonathan Melmed, Esq. (“Class Counsel”), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

IF YOU ARE STILL EMPLOYED BY INCREDIBLE ADVENTURES, THIS SETTLEMENT WILL NOT AFFECT YOUR EMPLOYMENT.

California law strictly prohibits retaliation. Further, Incredible Adventures is prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

III TERMS OF THE SETTLEMENT

Incredible Adventures has agreed to pay \$150,000.00 (the “Settlement Amount”) to resolve any and all claims alleged in the First Amended Complaint, and all claims arising from the causes of actions, claims and facts alleged in the FAC, specifically including claims under Labor Code sections 201-203, 226(a), 226.7, 512, 558, IWC Wage Order No. 9, sections 11 and 12, and claims under Sections 17200-17204 of the California Business and Professions Code and Labor Code sections 2698-99 for PAGA penalties based in the foregoing alleged violations.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$16,500.00 will be paid from the Settlement Amount to pay the Settlement Administration Costs, although it is anticipated that such costs will not exceed \$15,000.

Attorneys’ Fees and Expenses. Class Counsel – which includes attorneys from two separate law firms – have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the parties have aggressively litigated many aspects of the case including settlement efforts and a mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will collectively ask for fees of twenty-five percent (\$37,500) of the Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit. Class Counsel also will ask for reimbursement of up to \$10,000.00 for the costs Class Counsel incurred in connection with the Lawsuit. Any attorney’s fees awarded by the Court will be split evenly between Class Counsel.

Service Payment to Named Plaintiff and Class Representative. Class Counsel will ask the Court to award Named Plaintiff and Class Representative Thomas Pazo a service payment in the amount of \$5,000.00 to compensate him for his service and extra work provided on behalf of the Class Members. The Class Representative may also receive a share of the Settlement as a Class Member.

Net Settlement Amount. After deducting the amounts above, the balance of the Settlement Amount will form the Net Settlement Amount for distribution to the Class Members.

You can view the Settlement Agreement and other Court documents related to this case by visiting www.cptgroup.com/incredibleadventures

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

The Individual Settlement Amount for each Class Participant (a Class Member that does not opt-out of the Settlement) will be calculated as follows. Compensable wage statements will be all wage statements issued to all Class Members during the Class Period. The dollars per wage statement issued will be calculated by dividing the total number of wage statements issued by the Net Settlement Amount to determine a wage statement value. The wage statement value will be multiplied by the number of wage statements each Class Member was issued during the Class Period to determine the Individual Settlement Amount for each Class Member.

If any Class Member opts-out of the Settlement, his/her share will be distributed to Class Participants. 20% of the Settlement Award distributed to each Claimant will be considered and reported as “wages” (W-2 reporting), and 80% of the Settlement Award will be distributed to each Claimant as “premiums, penalties, and interest” (Form 1099). The Company, or its proxies, shall take all usual and customary deductions from the Settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution; however, it will be reported on IRS Form 1099 as income. Class Participants are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Incredible Adventures and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The wage statements you were issued as a California employee for Defendant during the Class Period will be calculated based on the Company’s records. If you feel that you were not credited with the correct number of wage statements issued during the Class Period, you may submit evidence to the Settlement Administrator on or before November 26, 2018 with documentation to establish the number of wage statements you claim to have actually been issued during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited. The Administrator will make the final decision as to how many wage statements are credited, and report the outcome to the Class Participant.

V. THE PAYMENT PLAN

Incredible Adventures has agreed to pay the Gross Settlement Amount under a “Payment Plan” consisting of three separate payments over a period of time, as follows: the “First Payment” estimated to be approximately \$25,000.00 (i.e., 30% of the Net Settlement Amount, plus the employer’s portion of the payroll taxes on the 30% of the Net Settlement Amount), shall be made by the Company by the later of either November 1, 2018 or 35 calendar days of the court’s granting final approval to the Settlement (the “First Payment”). The “Second Payment” estimated to be approximately \$62,500.00 (i.e., 70% of the Net Settlement Amount, plus the employer’s portion of the payroll taxes on the 70% of the Net Settlement Amount, plus the service award, plus the \$2,000 PAGA payment), shall be made by the Company within 365 calendar days after payment of the First Payment and shall be for penalties, premiums, and interest. The “Third Payment” estimated to be \$62,500.00 (for fees, costs, and administration fees),

shall be made by the Company within 365 calendar days after payment of the Second Payment. The First, Second and Third Payment shall be collectively referred to as the “Payment Plan.”

As a result of the aforementioned Payment Plan payments will be delayed. While delayed payments are worth less than immediate payments, in order to ensure compensation for Defendant’s alleged Labor Code violations, delayed payments are necessary.

Settlement checks will be mailed to all Class Members who do not request to be excluded (i.e., opt-out) approximately 5 days after the First and Second Payments, respectively, in accord with the Payment Plan. In the event that the Court does not grant the maximum amounts of attorneys’ fees, attorney’s costs, and administration costs, Class Members will be mailed a third settlement check. Class Members will be mailed a third settlement check (if necessary) approximately 5 days after the Third Payment. You will be able to view the final approval order and final judgment once they are entered by visiting www.cptgroup.com/incredibleadventures

Once a settlement check has been issued to you, you will have 90 days to cash it. Any checks issued as part of the First Payment that have not been cashed after 90 days will be redistributed to those Class Members that cashed their settlement checks as part of the First Payment so long as at least \$5,000 remains not cashed from those settlement checks from the First Payment. If less than \$5,000 remains from not cashed checks from the First Payment, any funds associated with those checks shall be disbursed in accordance with Section 384 of the California Code of Civil Procedure, which governs unclaimed class member funds. The unclaimed funds, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, will be distributed to the cy pres beneficiary, Bet Tzedek Legal Services – The House of Justice, a non-profit organization that provides free legal care to low-income individuals. Please note, the court may select a different cy pres beneficiary at the final approval hearing

Any Class Participants who do not cash their settlement checks from the First Payment on time will not receive any money from the settlement. The Second and, if necessary, Third Payments will only be sent to Class Participants who cashed their settlement checks from the First Payment.

Residual funds from the Second and, if necessary, Third Payments will be distributed pursuant to California Code of Civil Procedure Section 384 to the cy pres beneficiary identified above.

VI. THE RELEASE OF CLAIMS

If the Court grants final approval of the Settlement, the Court will enter judgment, the Settlement will bind all Class Members who have not opted out, and the judgment will bar all Class Members from bringing any claims released in the Settlement. The release is described below.

The settlement includes a release by Class Members (other than those who submitted a timely request to be excluded) of Incredible Adventures, Inc., and all of their affiliated entities, owners, managers, parents and subsidiaries from all claims alleged in the First Amended Complaint, and all claims arising from the causes of actions, claims and facts alleged in the FAC, specifically including claims under Labor Code sections 201-203, 226(a), 226.7, 512, 558, IWC Wage Order No. 9, sections 11 and 12, and claims under Sections 17200-17204 of the California Business and Professions Code and Labor Code sections 2698-99 for PAGA penalties based on the foregoing alleged violations. In addition, the Class Representative agrees to a general release of all claims against the Company during the Class Period, and agrees to waive his rights under Civil Code section 1542.

The Settlement does not release any person, party or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes

of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code §51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

If Defendant either fails to make all the requirement payments and/or goes into bankruptcy before the Final Payment is made, the release contemplated by the Settlement Agreement would not be in effect.

VII. WHAT ARE YOUR OPTIONS?

A. Do Nothing and Receive Your Portion of the Settlement

Unless you opt out, you are included as a Class Participant and will receive a settlement payment at your last known address and do not have to take any further action to receive your settlement payment once the Court grants final approval of the settlement. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment (See Section VIII for instruction on how to update your address). The estimated amount of your settlement payment if you do nothing is included on the attached Share Form. The time lapse between settlement approval and payment will be over one year.

B. Opt-Out and Be Excluded from the Class and the Settlement

If you **do not** wish to take part in the Settlement, you may exclude yourself (i.e., opt-out) by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than November 26, 2018, with your name, address, telephone number, and signature. The Request for Exclusion **must be signed** and should include the following language:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE PAZO V. INCREDIBLE ADVENTURES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the Request for Exclusion directly to the Settlement Administrator at the following address **by no later than November 26, 2018**:

Pazo v. Incredible Adventures
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

Any person who submits a timely Request for Exclusion from the Class Action Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. If you want confirmation of receipt of your Opt-Out, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

In the event that, prior to November 26, 2018, any Class Notice mailed to a Settlement Class Member is returned as having not been delivered, the Settlement Administrator shall seek a correct address for such Settlement Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Settlement Class Member(s) shall have an additional 14 days in which to Opt-Out.

C. Object to the Settlement

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you should submit to the Settlement Administrator a written objection stating your name, address, telephone number, dates of employment with Incredible Adventures, reasonably identify the Action, and each specific reason in support of your objection. You do not need to include legal arguments for their objections to be considered. Objections should be in writing and must be mailed to the Settlement Administrator, Pazo v. Incredible Adventures, Inc., c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA, 92606, **postmarked no later than November 26, 2018** in order to ensure that your objection will be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.** While you have a right to appear at the Final Approval Hearing, if you have not submitted an objection in writing in the manner specified above, the Court may, in its discretion, decline to consider your objection.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any member of the Settlement Class who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

In the event that, prior to November 26, 2018, any Class Notice mailed to a Settlement Class Member is returned as having not been delivered, the Settlement Administrator shall seek a correct address for such Settlement Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Settlement Class Member(s) shall have an additional 14 days in which to object.

D. Dispute Your Portion of the Settlement

You also have the right to dispute your portion of the Settlement. If you feel that you were not credited with the correct number of wage statements issued during the Class Period, you may submit evidence to the Settlement Administrator on or before November 26, 2018 with documentation to establish the number of wage statements you claim to have actually been issued during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited. The Administrator will make the final decision as to how many wage statements are credited, and report the outcome to you.

In the event that, prior to November 26, 2018, any Class Notice mailed to a Settlement Class Member is returned as having not been delivered, the Settlement Administrator shall seek a correct address for such Settlement Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Settlement Class

Member(s) shall have an additional 14 days in which to dispute their settlement share(s).

E. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for January 18 2019, at 9:00 a.m. in Department 304 of the San Francisco County Superior Court, Civic Center Courthouse located at 400 McAllister Street, San Francisco, CA 94102. You have the right to appear either in person or through your own attorney at this hearing. You do not need to submit a notice of intent to appear at the hearing, but you are encouraged to inform the Settlement Administrator in advanced if you do intend to appear. All objections or other correspondence must reasonably identify the action, which is *Thomas Pazo v. Incredible Adventures, Inc.*, Case No. CGC-16-555971.

VIII. UPDATE FOR YOUR CHANGE OF ADDRESS

If you move after receiving this Notice or if it was misaddressed, please complete the Change of Address portion of the Share Form and mail it to the Settlement Administrator, Pazo v. Incredible Adventures, Inc., c/o CPT Group, Inc. at 50 Corporate Park, Irvine, CA, 92606, as soon as possible. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

IX. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT APPROVED

If the Stipulation is not approved by the Court, or if any of its conditions are not satisfied, the conditional settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

X. QUESTIONS OR COMMENTS?

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: Pazo v. Incredible Adventures, Inc., c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA, 92606, or by e-mail at incredibleadventures@cptgroup.com You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

Craig Ackerman
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