



## **THE PROPOSED SETTLEMENT**

THE PARTIES HAVE AGREED TO THE TERMS OF THE SETTLEMENT DESCRIBED BELOW. IF THE SETTLEMENT IS FINALLY APPROVED, THE FOLLOWING BENEFITS WILL RESULT:

Defendants will pay the amount of \$475,000 (the "Gross Settlement Fund") as follows: (a) \$237,500 which has already been paid by Defendants, pending allocation and distribution to the Class and Class counsel; and (b) \$237,500 to be paid by Defendants no later than May 31, 2013. The Gross Settlement Fund shall be distributed as follows:

- (1) attorneys' fees of up to 33% of the Gross Settlement Fund, and reimbursement of litigation expenses incurred by Class Counsel in this Action, subject to Court approval;
- (2) that portion of the Gross Settlement Fund remaining after payment of the above-referenced fees and expenses (the "Claim Fund") will be available for distribution to all Class Members who timely submit valid claims forms pursuant to the Plan of allocation, as described below. **(A Claim Form is attached to this Notice).**

## **PLAN OF ALLOCATION**

### **NICA Fees**

Each Class Member shall first be entitled to receive 200% reimbursement of any fees he or she paid to NICA during the Class Period while working as a driver for Above All Transportation, Inc. ("Above All"), or ACC Transportation Inc. ("ACC").

### **Other Compensation**

Thereafter, the remainder of the available Claim Fund shall be distributed to those Class Members who drove on a full-time basis for Above All or ACC during the Class Period, as follows:

For every \$5,000 in compensation for rides attributable to and paid to a Class Member during each 12 month fiscal year during the Class Period by either or both of Above All or ACC combined, according to the books and records of each company, unless additional compensation is claimed and proven by any Class Member, one point will be credited to the Class Member.

(For 2006 only, a half point will be credited because the Class Period commences in July 2006.) For example, if Driver A had \$10,000 in rides for 2007, \$15,000 for 2008, and \$18,000 for 2009 and \$21,000 for 2010, then Driver A would be credited with 2 points for 2007, 3 points for 2008, 3 points for 2009 and 4 points for 2010, for a total of 12 points. Each Class Member will then receive a pro rata payment, which will be calculated by multiplying the total dollar amount available for distribution by each Class Member's individual fractional share (Class Member total points divided by total points for Entire Class).

All Class Members who did not exceed \$10,000 in rides during any 12 month fiscal year period will not be considered full-time employees.

### **PROOF OF CLAIMS**

Only Class Members who submit claims are eligible to receive a share of the Claim.

**(See Attached Claim Form.)**

### **RELEASE**

The Class will release, acquit, and forever discharge Above All, ACC, CDM Management LLC and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, managers, officers, directors, (including without limitation, Kevin Cronin, Michelle Cronin, and Theodore Dziok) partners, legal representatives, accountants, trustees, executors, administrators, alter egos, predecessors, successors, transferees, assigns and insurers from all actions, claims, demands, or causes of action which the Class has asserted or could have asserted which have arisen, or will arise, or are based upon, or relate to (i) the facts, events, allegations and contentions in the Complaint and/or (ii) misclassification of drivers as independent contractors at Above All or ACC at any time through June 30, 2011.

### **ATTORNEYS' FEES AND COSTS**

Class Counsel will apply to the Court for a payment of attorneys' fees of up to 33% of the Gross Settlement Fund, or \$158,333 and reimbursement of their expenses incurred in this Action.

### **FAIRNESS HEARING**

A hearing will be held on the fairness of the Settlement (the "Fairness Hearing") where the Court will determine whether to grant final approval of the Settlement, and will hear any objections or comments regarding the Settlement. The Fairness Hearing will take place on January 19, 2012 at

2:00 p.m. in the Suffolk County Superior Court, Three Pemberton Square, Boston, MA 02108, Courtroom 314.

### **YOUR OPTIONS**

IF YOU ARE A MEMBER OF THE CLASS AND WANT TO RECEIVE YOUR SHARE OF THE FUND, YOU MUST COMPLETE AND SUBMIT THE ATTACHED PROOF OF CLAIM BY February 29, 2012. OTHERWISE, YOU NEED NOT DO ANYTHING AT THIS TIME. UNLESS YOU TIMELY SUBMIT YOUR CLAIM, YOU WILL LOSE ALL LEGAL CLAIMS AND RIGHTS TO COMPENSATION IF THE SETTLEMENT IS APPROVED. If you want to discuss the Action, the Settlement, or your options, or if you would like to obtain additional copies of this notice of settlement and proof of claim form, please contact Peter A. Lagorio, Law Office of Peter A. Lagorio, 63 Atlantic Avenue, Boston, MA 02110, phone 617-367-4200, fax 617-227-3384, or email [plagorio@lagoriolaw.com](mailto:plagorio@lagoriolaw.com).

Any member of the Class has the right to object to the Settlement and/or Class Counsel's application for fees and reimbursement of expenses. If you object, you must file your objection with the Court, serve a copy of your objection on Class Counsel listed above, as well as counsel for the Defendants; Victor Bass, Esq., Burns & Levinson LLP, 125 Summer Street, Boston, MA 02110, and Bill Jacob, Esq. 805 Turnpike Street, Suite 201, North Andover, MA 01845. Your objections will be considered at the above-described Fairness Hearing. If you wish to appear at the Fairness Hearing and be heard, you may do so at your own expense. Any objection must include (i) your name, address and telephone number; (ii) a statement that you are a member of the Class and proof of past or present employment with Above All or ACC; (iii) a statement of your objections to any matters to be presented at the Fairness Hearing and the grounds therefore; and (iv) all documents or writings you desire the Court to consider. Your objection must be received by the Clerk of the Court on or before January 12, 2012.

### **INQUIRIES**

Questions concerning this Notice, the Action, the Settlement, the Proof of Claim or any related matters can be directed to Class Counsel referenced above. PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT. THE CLERK OF THE COURT CANNOT ANSWER QUESTIONS CONCERNING THE ACTION OR THE SETTLEMENT.

Dated: December 8, 2011

BY ORDER OF THE COURT

**PLEASE SEE CLAIM FORM BELOW**

**DEADLINE FOR SUBMISSION: February 29, 2012**

You are receiving this Claim Form because you may be eligible to receive compensation under the terms of the Settlement reached in this lawsuit. You must complete and submit this form in order to receive a distribution from the Settlement Fund described in the Class Notice.

As described in the Notice above and in more detail below, if you are a member of the Class and you complete and timely submit this form, you will be eligible to receive a cash distribution from the Settlement Fund. If you do not do so, you will not receive any cash distribution from the Settlement Fund.

**CLAIM FORM**

Call Attorney Peter Lagorio at 617-367-4200 or go to [www.lagoriolaw.com](http://www.lagoriolaw.com) for more information.

THIS DOCUMENT MUST BE POSTMARKED ON OR BEFORE FEBRUARY 29, 2012  
PLEASE MAIL THE CLAIM FORM VIA U.S. MAIL TO:

Above All Driver Settlement  
c/o Law Office of Peter A. Lagorio  
63 Atlantic Avenue  
Boston, MA 02110

[The undersigned hereby agrees to the terms of the Settlement including, but not limited to, the Plan of Allocation and the Release set forth above.](#)

\_\_\_\_\_  
Name Social Security Number

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Signature Date

1. I worked as a chauffeur or driver and drove passenger rides as follows:

ON BEHALF OF (circle one or both): ABOVE ALL ACC

FROM: (Approximate Start Date) \_\_\_\_\_

TO: (Approximate End Date, If Any) \_\_\_\_\_

**PLEASE ENCLOSE COPIES OF 1099 FORMS, W-2 FORMS OR OTHER PROOF OF EARNINGS WITH ABOVE ALL OR ACC DURING ALL YEARS YOU WORKED AT EITHER COMPANY FOR THE PERIOD 2006 THROUGH 2010.**

2. I paid fees to NICA while I was a driver for Above All or ACC during the Class Period in the total amount of \$ \_\_\_\_\_.

**PLEASE INSERT TOTAL AMOUNT PAID AND ENCLOSE COPIES OF ALL DOCUMENTS IN YOUR POSSESSION THAT REFLECT THAT AMOUNT PAID IN NICA FEES BY YOU.**

3. I certify under pains and penalties of perjury that, to the best of my knowledge, the information on this Claim Form is true and correct, that any supporting documentation being filed with this Claim Form is true and correct, and that this is the only claim that I am filing with respect to this action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TO BE ELIGIBLE TO RECEIVE PAYMENT FROM THE SETTLEMENT FUND, YOU MUST RETURN THIS DOCUMENT POSTMARKED ON OR BEFORE FEBRUARY 29, 2012.

