

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA**

<p>EZEQUIEL OLIVARES ABARCA, <i>et al.</i></p> <p align="center">Plaintiffs,</p> <p align="center">v.</p> <p>WERNER ENTERPRISES, INC., <i>et al.</i></p> <p align="center">Defendants.</p>	<p><b>STIPULATION AND ORDER TO SEND COURT-SUPERVISED NOTICE</b></p> <p>Case No.: 8:14-CV-319 -JFB-MDN</p> <p>William Smith v. Werner Enterprises, Inc. et al., Case No. 8:15-cv-00287-JFB-MDN</p>
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The Plaintiffs Ezequiel Olivares Abarca, Alfredo Alesna, Jr., David Cagle, Stephen L. Davis, Frank Eads, William Smith, and Kenneth J. Surman (collectively “Plaintiffs”) and Defendants Werner Enterprises, Inc. and Drivers Management, LLC (collectively “Werner”), by and through undersigned counsel, hereby stipulate and agree as follows:

a. WHEREAS, this Court on March 20, 2018, entered an Order (hereinafter, the “Certification Order”) in the consolidated cases Abarca et al. v. Werner Enterprises, Inc. et al., Case No. 8:14-cv-319-JFB-MDN, and William Smith v. Werner Enterprises, Inc., et al., Case No. 8:15-cv-287-JFB-MDN, certifying a “Nebraska Class” defined as “[a]ll truck drivers who worked or work anywhere for Werner after the completion of training at any time since four years before the filing of his legal action until such time as there is a final disposition of this lawsuit” for alleged violations of Nebraska law (Doc. No. 190);

b. WHEREAS, the Court also certified a “California Class,” which is a subclass within the Nebraska Class and is defined in the Certification Order as “truck drivers who were or are California residents and who while working for Werner, picked up and/or dropped off a load in the state of California after the completion of training at any time since four years before the filing of this legal action until such time as there is a final disposition of this lawsuit” for alleged violations of California law (Doc. No. 190);

c. WHEREAS, the Certification Order requires that notice of the class action be disseminated to members of the Nebraska Class and members of the California Class (hereinafter, collectively, “Class Members”);

d. WHEREAS, Plaintiffs and Defendants (hereinafter, collectively, “Parties”) have conferred regarding the appropriate methods and form of notice and have reached an agreement on the notices to be distributed and the deadline by which Class Members must submit a request to be excluded from the Rule 23(b)(3) class (the “Opt Out Deadline”);

e. WHEREAS, the Parties concur that “qualified drivers” is a well-recognized term among Class Members, used to refer to truck drivers who worked or work for Werner in a capacity other than solely as a student driver in Werner’s student driver training program and that term should be used in the class notices as a shorthand for Class Members;

f. WHEREAS, Plaintiffs’ counsel have determined that Kurtzman Carson Consultants LLC (hereinafter “KCC”) is an experienced Claims Administrator (*see* website at <http://www.kccllc.com/>) and Plaintiffs propose that KCC should be appointed to serve as the Claims Administrator for the purposes of the class notice described herein and shall perform the duties of Claims Administrator;

g. WHEREAS, Werner did not have any role in screening or selecting who would serve as class action administrator for Plaintiffs and that decision was made solely by Plaintiffs’ counsel;

**NOW THEREFORE**, the Parties agree as follows:

1. For all Class Members, Werner shall provide to KCC, with a concurrent copy to Plaintiffs’ counsel, by no later than 14 days after entry of this Order: a list of Nebraska Class Members (the “Nebraska Class List”) in an electronic spreadsheet containing, in separate

columns, the first name, last name, home street address/city/state/zip code, Social Security Number, and, to the extent Werner has such information, the last known phone number(s) for each driver in the Nebraska class. The Nebraska Class List will contain a column identifying the drivers on that list who are also members of the California Class. The parties agree that the Nebraska Class List contains confidential information and KCC shall maintain the Nebraska Class List as confidential and use it only for purposes related to this legal action;

2. Upon receipt of the Nebraska Class List, KCC shall conduct a National Change of Address system (a.k.a. "NCOA") address verification and correct the addresses on the Nebraska Class List accordingly. No later than 14 days after receipt of the Nebraska Class List, KCC shall send the following, via First Class U.S. mail:

- a) To members of the California Class, a postcard with the content set forth in [Exhibit A](#) attached hereto;
- b) To members of the Nebraska Class who are not members of the California Class, a postcard with the content set forth in [Exhibit B](#) attached hereto;

3. At least twenty four hours before mailing the class notices as described in Paragraphs 2(a) and (b), KCC shall activate a website for this legal action as identified in Exhibits A and B. The website will be accessible at [www.truckerclassaction.com](http://www.truckerclassaction.com) and will be maintained by KCC until two weeks after the Opt Out Deadline. The website will include the following:

- a) Plaintiffs' operative Complaint and Defendants' operative Answer,
- b) The Court's Certification Order,
- c) The long form notice to the California Class with the content set forth in [Exhibit C](#) attached hereto,

- d) The long form notice to the Nebraska Class with the content set forth in [Exhibit D](#) attached hereto, and
- e) Contact information for KCC and Plaintiffs' counsel, including email, phone number, fax number, and mailing address for further questions.

4. During the same time period when the website is active as described in Paragraph 3, KCC shall staff the phone line provided on the website (9 am. – 8 p.m., EST) to respond to Class Member inquiries, including by direction to the website or to Plaintiffs' counsel for answers to further questions, to report on receipt of a request for exclusion, to process requests for duplicate class notices, and to record updated Class Member contact information;

5. A Class Member may elect to be excluded from this Lawsuit by mailing, via first class U.S. mail, emailing, faxing, or otherwise causing to be delivered a request for exclusion to KCC in the manner described in the class notices (Exhibits A and B), or in some other manner that reasonably indicates the Class Member's intent to be excluded from this Lawsuit, on or before the later of sixty days days from the initial mailing of the class notice or thirty days after KCC's initial re-mailing of class notice if KCC's initial mailed class notice is returned undeliverable mail ("RUM");

6. To the extent there is any dispute regarding the validity of a Class Member's request for exclusion, the Court shall determine, upon motion by either Party, whether the request for exclusion is valid;

7. If a Class Member's initially mailed class notice is RUM to KCC, KCC promptly shall undertake a customary secondary address verification and re-mail, via first class U.S. mail, the class notice to any updated address identified. (A request for another copy of the class notice

is not RUM to KCC unless the initially mailed class notice is RUM to KCC itself.) A secondary address verification conducting a customary credit bureau search or search of the Social Security Administration's database using the Class Member's social security number provided on the Spreadsheet shall be deemed sufficient secondary address verification effort. KCC shall have no further responsibilities for address verification but shall provide replacement class notices on request by a Class Member or Plaintiffs' counsel;

8. KCC shall promptly email to counsel for Plaintiffs and counsel for Defendants any written responses to the class notices received from Class Members, other than notices that merely report corrected contact information; shall provide a declaration under penalty of perjury, reporting on the performance of KCC's responsibilities hereunder and summarizing any responses received from Class Members to counsel for Plaintiffs not less than 21 days after the Opt Out Deadline; shall concurrent with said declaration provide said counsel an updated Nebraska Class List with corrected information; shall respond to counsel's reasonable requests for information; and shall perform such other and further responsibilities consistent with its duties as the Claims Administrator;

9. Within 30 days after the Opt Out Deadline, Plaintiffs' Counsel shall file with the Court a list of all Class Members who timely requested exclusion from either Class (the "Opt Out List").

10. Werner retains all defenses, including without limitation, the defense that the statute of limitations bars, in whole or in part, the claims of any Class Member and the right to object to the fairness, reasonableness, and/or necessity of any and all costs incurred by Plaintiffs for the use of KCC's services.

It is so stipulated.

/s/ James M. Sitkin

James M. Sitkin, Esq.

**LAW OFFICES OF JAMES M. SITKIN**

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jsitkin@sitkinlegal.com

Counsel for Plaintiffs and Certified Classes

/s/ Elizabeth A. Culhane

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Elizabeth Culhane #23632

**FRASER STRYKER PC LLO**

500 Energy Plaza

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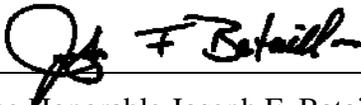
jjones@fraserstryker.com

eculhane@fraserstryker.com

Counsel for Defendants

DATED this 12th day of September, 2018.

SO ORDERED



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The Honorable Joseph F. Bataillon

Senior U.S. District Court Judge

*Abarca v Werner Enterprises Inc*  
Claims Administrator  
P.O. Box 404081  
Louisville, KY 40233-4081

2D

## LEGAL NOTICE



Postal Service: Please Do Not Mark Barcode

WAB--

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See other side for details

**WAB**



## **If you worked or work as a qualified driver for Werner at any time since June 4, 2010, you are part of a certified class in a case alleging violations of employment law.**

**This notice was authorized by the Court. Please read it carefully. Your legal rights may be affected.**

The purpose of this notice is to inform you that you may be part of a certified class in *Ezequiel Olivares Abarca, et al. v. Werner Enterprises, Inc., et al.*, Case No. 8:14-cv-00319-JFB-MDN (D. Neb.) (the “Lawsuit”).

**What is the Lawsuit about?** The Lawsuit claims that Werner violated California and/or Nebraska law by: (1) failing to pay minimum wage for all work time; (2) taking unlawful deductions from pay; (3) providing inadequate wage statements; and (4) failing to provide meal and rest breaks while drivers were in California. After the Lawsuit was filed, another case alleging similar claims under California law was filed and subsequently consolidated with the Lawsuit: *William Smith v. Werner Enterprises, Inc. et al.*, Case No. 8:15-cv-00287-JFB-MDN. The Court has not yet determined who wins the Lawsuit.

**Who is in the Class?** On March 20, 2018, the Court ordered that the Lawsuit may proceed as a class action on behalf of two classes: (1) Truck drivers who, while residing in California and working for Werner as qualified drivers, picked up or dropped off at least one load in California at any time since June 4, 2010 (only for work performed in California); and (2) truck drivers who worked or work as qualified drivers for Werner at any time since June 4, 2010.

### **What are my options?**

*Stay in the Class:* You do not have to do or pay anything to be part of the Class. If you remain in the Class, you will be bound by any judgment or settlement and may be entitled to compensation if Plaintiffs prevail or a settlement is reached. You will give up the right to participate in any other action based on the same conduct.

*Exclude yourself:* To exclude yourself, you must mail a request for exclusion to: *Abarca v Werner Enterprises Inc* Claims Administrator, P.O. Box 404081, Louisville, KY 40233-4081. To be valid, your request for exclusion should be postmarked by [opt out date]. The request should contain your name, phone number, address, email address, and signature; the name of the case; and a statement that you wish to be excluded from the Class. If you exclude yourself, you will not be eligible to receive any compensation if the Plaintiffs prevail on their claims, but you will also not be bound by the judgment or settlement in this case.

**How can I get more information?** To get a copy of the entire notice, you can visit [www.TruckerClassAction.com](http://www.TruckerClassAction.com), call toll-free 1-866 580-1708, or email [info@truckerclassaction.com](mailto:info@truckerclassaction.com).

*Abarca v Werner Enterprises Inc*  
Claims Administrator  
P.O. Box 404081  
Louisville, KY 40233-4081

2D

## LEGAL NOTICE



Postal Service: Please Do Not Mark Barcode

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See other side for details

# WAB



**If you worked or work as a qualified driver for Werner at any time since June 4, 2010, you are part of a certified class in a case alleging violations of Nebraska employment law.**

**This notice was authorized by the Court. Please read it carefully. Your legal rights may be affected.**

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**What is the Lawsuit about?** The Lawsuit claims that Werner violated the Nebraska Wage and Hour Act and the Nebraska Wage Payment and Collection Act in several ways: (1) Werner’s mileage-based pay system failed to compensate drivers for all hours worked; (2) Werner took unlawful deductions from drivers’ wages; and (3) the wage statements that Werner provided to drivers were inaccurate and inadequate. The Lawsuit seeks unpaid wages, penalties, and interest. The Court has not yet determined who wins the Lawsuit.

**Who is in the Class?** On March 20, 2018, the Court ordered that the Lawsuit may proceed as a class action on behalf of all truck drivers who worked or work as qualified drivers for Werner at any time since June 4, 2010.

**What are my options?**

*Stay in the Class:* You do not have to do or pay anything to be part of the Class. If you remain in the Class, you will be bound by any judgment or settlement and may be entitled to compensation if Plaintiffs prevail or a settlement is reached. You will give up the right to participate in any other action based on the same conduct.

*Exclude yourself:* To exclude yourself, you must mail a request for exclusion to: *Abarca v Werner Enterprises Inc* Claims Administrator, P.O. Box 404081, Louisville, KY 40233-4081. To be valid, your request for exclusion should be postmarked by **[opt out date]**. The request should contain your name, phone number, address, email address, and signature; the name of the case; and a statement that you wish to be excluded from the Class. If you exclude yourself, you will not be eligible to receive any compensation if the Plaintiffs prevail on their claims, but you will also not be bound by the judgment or settlement in this case.

**How can I get more information?** To get a copy of the entire notice, you can visit [www.TruckerClassAction.com](http://www.TruckerClassAction.com), call toll-free 1-866-580-1708, or email [info@truckerclassaction.com](mailto:info@truckerclassaction.com).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

**EZEQUIEL OLIVARES ABARCA et al. v. WERNER ENTERPRISES, INC., et al.**

Case No. 8:14-cv-00319-JFB-MDN

**William Smith v. Werner Enterprises, Inc., et al.**

Case No. 8:15-cv-00287-JFB-MDN;

**NOTICE OF PENDENCY OF CLASS ACTION**

**This notice was authorized by the Court. This is not a solicitation. You are not being sued.  
Please read carefully. Your legal rights may be affected.**

**INTRODUCTION**

The purpose of this notice is to: (1) inform you of the existence of a class action lawsuit filed against Werner Enterprises, Inc. and Drivers Management, LLC (collectively, “Werner”); and (2) advise you of how your rights may be affected by this lawsuit. This notice also provides instructions for how you can exclude yourself from the lawsuit if you do not wish to be a part of the class. **If you worked or work as a qualified driver for Werner at any time since June 4, 2010, you are part of a certified class in this case.**

**DESCRIPTION OF LAWSUIT**

This case (the “Lawsuit”) was originally filed on June 4, 2014 in the Superior Court of California, County of Alameda and was later removed to federal court and transferred to the District of Nebraska. The Plaintiffs in the Lawsuit are Ezequiel Olivares Abarca, Alfredo Alesna Jr., David Cagle, Stephen L. Davis, Frank Eads, William Smith, and Kenneth J. Surman. Plaintiffs have alleged that Werner violated both Nebraska and California Law in several ways: (1) Werner’s mileage-based pay system failed to compensate drivers for all hours worked; (2) Werner took unlawful deductions from drivers’ wages; and (3) the wage statements that Werner provided to drivers were inaccurate and inadequate. Plaintiffs also claim that, while drivers worked in California, they were not provided meal and rest breaks required under California law, and that Werner’s labor practices violate California’s unfair competition law. The Lawsuit seeks unpaid wages, penalties, and interest.

The Court has not ruled for or against any of the claims made in the case. The sole purpose of this notice is to inform you of the Lawsuit so that you may make an informed decision as to whether you wish to remain in or opt out of this class action.

**DEFINITION OF THE CLASS**

On March 20, 2018, the Court ordered that the Lawsuit may proceed as a class action on behalf of two classes:

- 1) All qualified truck drivers who, while residing in California and working for Werner, picked up or dropped off at least one load in California at any time since June 4, 2010. The claims on behalf of this class are only for work performed in California.
- 2) All truck drivers who worked or work as qualified drivers for Werner at any time since June 4, 2010.

**CLASS MEMBER RIGHTS**

**Join the Class:** You do not have to do or pay anything to be part of the class and you do not have to do anything at this time to confirm that you are a member of the class. Class Counsel, whose contact information is listed below, will represent the class in the Lawsuit at no out-of-pocket cost to you. If you wish, you may also hire your own counsel to represent you and participate in this Lawsuit on your behalf.

If you remain in the class, you will be bound by any judgment or settlement reached in this Lawsuit and may be entitled to compensation if Plaintiffs prevail or a settlement is reached on behalf of the class. You will also give up the right to bring or participate in any action based upon the same conduct that may be alleged in the Lawsuit against Werner.

**Exclude Yourself:** You have the right to exclude yourself from the class and this Lawsuit. If you wish to exclude yourself from the class and not participate in this Lawsuit, you must mail a request for exclusion to the Claims Administrator:



Abarca v Werner Enterprises Inc  
Claims Administrator  
P.O. Box 404081  
Louisville, KY 40233-4081

To be valid, your request should contain your name, phone number, address, email address, and signature; the name of the case; and a statement that you wish to exclude yourself from the class. You are not required to provide any reason for your decision. For your request to be valid, it must be postmarked no later than **[date]**. If you exclude yourself from the class, you will not be eligible to receive any compensation if Plaintiffs prevail on their claims, but you will also not be bound by the judgment or settlement in this case.

### **CLASS COUNSEL**

The Court has found that the lawyers listed below are adequate to represent the class in this Lawsuit. If you have any questions regarding this notice or the Lawsuit, please contact any of the following attorneys, who represent Plaintiff and the class:

David Borgen, Of Counsel  
dborgen@gbdhlegal.com  
James Kan  
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Fax: (619) 234-4048  
Website: <http://www.turleylawfirm.com>

### **EXAMINATION OF PAPERS**

This notice does not fully describe the Lawsuit. You may inspect the Court's files at the United States District Court for the District of Nebraska, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Suite 1152, Omaha, NE 68102, from 9:00 a.m. to 4:00 p.m., Monday through Friday (<https://www.ned.uscourts.gov>).

### **NOTICE IN ACCORDANCE WITH LOCAL CIVIL RULE 23.1(b)**

All documents sent to the Court by any Class Member, including any letter or document expressing a Class Member's desire to be excluded from the class and any objection to a proposed settlement, voluntary dismissal, or compromise, are filed electronically by the clerk and therefore will be available for public review.

**PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS ACTION.**



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA  
**EZEQUIEL OLIVARES ABARCA, et al. v. WERNER ENTERPRISES, INC., et al.**  
Case No. 8:14-cv-00319-JFB-MDN

**William Smith v. Werner Enterprises, Inc., et al.**  
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**INTRODUCTION**

The purpose of this notice is to: (1) inform you of the existence of a class action lawsuit filed against Werner Enterprises, Inc. and Drivers Management, LLC (collectively, "Werner"); and (2) advise you of how your rights may be affected by this lawsuit. This notice also provides instructions for how you can exclude yourself from the lawsuit if you do not wish to be a part of the class. **If you worked or work as a qualified driver for Werner at any time since June 4, 2010, you are part of a certified class in this case.**

**DESCRIPTION OF LAWSUIT**

This case (the "Lawsuit") was originally filed on June 4, 2014 in the Superior Court of California, County of Alameda and was later removed to federal court and transferred to the District of Nebraska. The Plaintiffs in the Lawsuit are Ezequiel Olivares Abarca, Alfredo Alesna, Jr., David Cagle, Stephen L. Davis, Frank Eads, William Smith and Kenneth J. Surman. Plaintiffs have alleged that Werner violated the Nebraska Wage and Hour Act and the Nebraska Wage Payment and Collection Act in several ways: (1) Werner's mileage-based pay system failed to compensate drivers for all hours worked; (2) Werner took unlawful deductions from drivers' wages; and (3) the wage statements that Werner provided to drivers were inaccurate and inadequate. The Lawsuit seeks unpaid wages, penalties, and interest.

The Court has made no ruling for or against any of the claims being made in the case. The sole purpose of this notice is to inform you of the Lawsuit so that you may make an informed decision as to whether you wish to remain in or opt out of this class action.

**DEFINITION OF THE CLASS**

On March 20, 2018, the Court ordered that the Lawsuit may proceed as a class action on behalf of all truck drivers who worked or work as qualified drivers for Werner at any time since June 4, 2010.

**CLASS MEMBER RIGHTS**

**Join the Class:** You do not have to do or pay anything to be part of the class and you do not have to do anything at this time to confirm that you are a member of the class. Class Counsel, whose contact information is listed below, will represent the class in the Lawsuit at no out-of-pocket cost to you. If you wish, you may also hire your own counsel to represent you and participate in this Lawsuit on your behalf.

If you remain in the class, you will be bound by any judgment or settlement reached in this Lawsuit and may be entitled to compensation if Plaintiffs prevail or a settlement is reached on behalf of the class. You will also give up the right to bring or participate in any action based upon the same conduct that may be alleged in the Lawsuit against Werner.

**Exclude Yourself:** You have the right to exclude yourself from the class and this Lawsuit. If you wish to exclude yourself from the class and not participate in this Lawsuit, you must mail a request for exclusion to the Claims Administrator:

*Abarca v Werner Enterprises Inc*  
Claims Administrator  
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Louisville, KY 40233-4081

To be valid, your request should contain your name, phone number, address, email address, and signature; the name of the case; and a statement that you wish to exclude yourself from the class. You are not required to provide any reason for your decision. For your request to be valid, it must be postmarked no later than **[date]**. If you exclude yourself

from the class, you will not be eligible to receive any compensation if the Plaintiffs prevail on their claims, but you will also not be bound by the judgment or settlement in this case.

**CLASS COUNSEL**

The Court has found that the lawyers listed below are adequate to represent the class in this Lawsuit. If you have any questions regarding this notice or the Lawsuit, please contact any of the following attorneys, who represent Plaintiff and the class:

David Borgen, Of Counsel  
dborgen@gbdhlegal.com  
James Kan  
jkan@gbdhlegal.com  
Raymond A. Wendell  
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**PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS ACTION.**