

## **NOTICE OF CLASS ACTION**

**This Notice may affect your rights. Please read it carefully.**

***This is not a solicitation from a lawyer. A court has authorized this Notice.***

*Boreham v. Dana Motors, Ltd.*

New York State Supreme Court, Richmond County

Index No. 152690/2019

This Notice provides important information about a class action lawsuit filed by Shaunna Boreham (“Plaintiff”), on behalf of herself and other similarly situated automotive salespersons who worked for Dana Motor, Ltd between November 26, 2013 and November 26, 2019 (the Class Members”), against Dana Motors, Ltd. (“Dana Motors”) and James Cognetta (“Defendants”), captioned *Boreham v. Dana Motors, Ltd.* (the “Lawsuit”). You have been identified as a Class Member because Dana Motors’ records indicate you worked for it as an as an automotive salesperson during the identified period.

The purpose of this notice is to inform you that parties to this case have reached settlement of the claims in the Lawsuit, the terms of the settlement that may affect you, and procedures related to the settlement. This Notice also explains your rights to participate in or exclude yourself from the settlement.

### **A. Why You are Receiving this Notice**

On November 18, 2021, the Honorable Catherine M. DiDomenico, a judge in New York State Supreme Court, Richmond County. (the “Court”), on a stipulation of the parties, certified this case as a class action. On February 6, 2023, the Court preliminarily approved a settlement of the Lawsuit. According to Defendants’ records, you meet the definition of a Class Member, meaning you were employed at Dana Ford as an automotive salesperson during the Class Period, November 26, 2013 to November 26, 2019. Because you are a member of the Class, you have the right to participate in, object to, or exclude yourself from the settlement. This letter explains your legal rights and options with respect to the settlement.

### **B. Summary of the Claims**

Plaintiff alleges that Defendants owe money to individuals who were employed as automotive salespeople at Dana Motors (the “Class”) between November 26, 2013, and November 26, 2019 (the “Class Period”). The Lawsuit alleges that the Class was not always paid minimum wage and overtime, and that Defendants sometimes improperly deducted money from Class paychecks. The Lawsuit also claims that Defendants owe penalties for not giving the Class certain notices about pay.

Defendants deny all of Plaintiffs’ claims and maintain that they have complied with all relevant laws during the Class Period.

The Court has not decided whether Defendants have violated any laws or whether any Class Member is entitled to any money. However, the parties have nonetheless reached a settlement of their claims.

**C. Class Counsel**

The Plaintiff retained the following law firm to represent her in this litigation:

Kakalec Law PLLC  
195 Montague Street, 14<sup>th</sup> Floor  
Brooklyn, NY 11201  
Telephone: (212) 705-8730  
[Litigation@KakalecLaw.com](mailto:Litigation@KakalecLaw.com)

Since then, the Court has approved the Kakalec Law firm to represent all the members of the Class, including you. However, you, and all the members of the Class, have the right to retain your own counsel.

**D. The Terms of the Settlement**

Defendant has agreed to pay the Gross Settlement amount of \$1,425,500.00 in full and complete resolution of this Lawsuit.(the “Settlement Fund”)

Settlement Amount Payments to individual Class Members will be made from the “Net Settlement Amount” which is the money remaining in the Settlement Fund after the following payments have been deducted from it: a) attorneys’ fees and litigation costs (not to exceed 1/3 of the Gross Settlement, or \$465,000); b) the service award awarded to Plaintiff Shauna Boreham (not to exceed \$25,000), the individual claims of Shauna Boreham (not to exceed \$50,000); and c) the cost to administer the settlement (estimated at \$10,000). The Service Award to Shauna Boreham is to compensate her for her time and effort spent pursuing this case over the past years.

**E. Your Settlement Amount**

Your Individual Settlement Amount Payment will be paid from the Net Settlement Amount and it will be based on a formula that takes into consideration, (1) the deductions made from pay; (2) the damages under New York Labor Law § 195; and (3) overtime. However, not all class members are entitled to damages for each component.

The amount that you may receive is set forth in the attached Individual Settlement Allocation Form.

Your Individual Settlement Amount listed is free and clear of attorneys’ fees and litigation costs.

If the Court approves the settlement, and all other conditions of the settlement are satisfied, for tax purposes, certain of your settlement payment will be reported as wages, and you will receive an IRS Form W-2 for this portion of the payment. Tax withholdings for wage payments will be deducted from this amount. Another part of your settlement payment will constitute payment for alleged liquidated damages, interest, and penalties, and under-reimbursed expenses and will be reported on an IRS Form 1099; you will be responsible for any tax liability on this amount.

You will be responsible for the payment of any local, state, or federal taxes resulting from, or attributable to, any payments you receive under this settlement. If you have any tax-related questions, you should consult a tax professional.

#### **F. Your options**

You must decide whether to stay in the Class or opt out of it.

If you want to stay in the Class, you do not have to do anything. You will automatically receive a payment from the settlement and be bound by the terms of the parties' agreement.

If you wish to opt out of the Class, you must submit a Request to Opt Out (explained below).

##### **(1) Stay In the Class**

If you stay in the Class, you will receive the Individual Settlement Amount as identified in the attached Individual Settlement Allocation Form. You will also have the right to participate in future proceedings, and object to the settlement, as allowed by the Court. However, by staying in the Class, you give up any rights to sue Defendants separately about the same legal claims in this Lawsuit. You also will be legally bound by all of the orders and judgments entered by the Court in this lawsuit. You do not have to do anything to stay in the Class.

##### **(2) Opt Out of the Class**

If you opt out of the Class (by following the procedure explained below), you will give up the right to participate in any recovery or settlement that may occur. But, you will keep any rights you may currently have to sue for the legal claims at issue in this Lawsuit. You also will not be bound by the orders and judgments entered by the Court in this Lawsuit.

To opt out, you must submit a written "Request to Opt Out" to **Optime Administration, LLC, PO Box 3206, Brockton, MA 02304** by **APRIL 8, 2023**. Your Request to Opt Out must include:

- Your name, address, email address and telephone number;
- A statement confirming that you want to opt out of the Class;
- Your date of birth
- The case name and number: "*Boreham v. Dana Motors, Ltd.*, No. 152690/2019."

#### **G. Release of Claims**

Unless you exclude yourself from the settlement by opting out of the Class, upon final approval of the settlement by the Court you will be deemed to waive, release, and discharge Defendants, their former and present parent companies, subsidiaries, affiliates, officers, members, directors, shareholders, employees, managers, consultants, partners, attorneys, joint or co-venturers, independent contractors, heirs, agents, assigns, insurers, reinsurers of any of them, client-employers, joint employers, and other related persons and entities and their successors in interest, from all causes of action, claims, losses, damages, and wages that were asserted in the Action or which arise out of the factual allegations in the operative complaint including but not limited to: any of the claims, actions or causes of action which were alleged or stated, or the facts,

matters, transactions or occurrences referred to in the operative complaint, including but not limited to, any claims for failure to pay minimum wages, failure to pay overtime wages, failure to pay all wages earned every pay period, untimely payment of wages, failure to pay all wages owed upon termination or resignation, failure to reimburse, but not as to such claims that may not be waived under applicable state and federal including but not limited to claims arising from an industrial injury.

## **H. Final Class Settlement Approval Hearing**

The settlement is subject to Court approval and satisfaction of all conditions set forth in the Release and Settlement Agreement filed with the Court.

The Court has scheduled a Final Class Settlement Approval Hearing for June 7, 2023 at 2:30 p.m. in Court Room 209 of the Supreme Court of the State of New York, County of Richmond, 18 Richmond Terrace, Staten Island, NY 10301.

At the Final Class Settlement Approval Hearing, the Court will decide whether to grant final approval to the settlement. The Court will also rule on the application by Plaintiff for an award of costs and attorney's fees (not to exceed 1/3 of the settlement amount, or \$465,000), a service award to Plaintiff (not to exceed \$25,000), additional damages to Plaintiffs (not to exceed \$50,000), and administration costs (estimated at \$10,000).

You have the right to attend the Final Class Settlement Approval Hearing and, if you objected to the settlement, address the Court. You do not need to hire your own lawyer since Class Counsel is working for you. However, you may hire your own lawyer at your own expense to speak on your behalf at the Final Class Settlement Approval Hearing. If you hire a lawyer to speak for you in Court, your lawyer must file a Notice of Appearance.

If the Court approves the settlement, and if all conditions set forth in the Release and Settlement Agreement are satisfied, Defendants will deliver the settlement funds as set forth in the Release and Settlement Agreement for distribution to you and others.

## **I. Where To Get More Information**

In order to be able to send you other mailings regarding the Lawsuit, it is important for the Class Counsel and the Class Administrator to have your current address. You should contact the Class Counsel and the Class Administrator to report any change of your address after you receive this Notice.

If you want more information about the lawsuit, you can contact the attorney for the class at the address or telephone numbers listed above, or any other advisor of your choice.

You can also view and obtain copies of lawsuit related documents from a computer or smartphone at <https://www.kakaleclaw.com/boreham-v-dana-motors-ltd-class-action-settlement/>, or in the Court's file by going to the Clerk's office located at the New York State Supreme Court, Richmond County, 26 Central Avenue, Staten Island, NY 10301.

**PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS.**