

NOTICE OF CLASS ACTION SETTLEMENT

Brooke, et al. v. Lusamerica Foods, Inc.
Santa Clara County Superior Court, Case No. 20CV361692

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

TO: All individuals employed by Lusamerica Foods, Inc. in the State of California as non-exempt employees and who were paid on an hourly, piece-rate, per-mile basis, or combination therein, at any point during the time period of January 14, 2016 to November 15, 2021 (“Class Member(s)”).

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING TO RECEIVE A PAYMENT	To receive your Settlement Payment, you do not need to do anything. Your estimated Settlement Payment will be automatically mailed to you after the Court grants final approval of the Settlement. [<i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your award</i>].
UPDATE YOUR ADDRESS	Update your personal information with the Settlement Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)
EXCLUDE YOURSELF	You may ask to exclude yourself from the Settlement (to opt out), if you do not wish to participate in the Settlement. See Paragraph 15. If you exclude yourself, you will not receive any payment for individual claims under the Settlement. This is the only option that allows you to pursue your own claims (in your own lawsuit) against the same Defendant about the legal claims in this case.
OBJECT	You may also object and tell the Court why you don't like the Settlement. See Paragraph 18. If the Court approves the Settlement despite your objection, you will still be bound by the terms of the Settlement, and a Settlement Payment will be mailed to you. Your objection may be submitted in writing, or you may appear at the time of the Final Approval Hearing to comment upon the Settlement.

- **OUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **LUSAMERICA FOODS, INC. SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE IN ANY WAY AGAINST ANY CLASS MEMBER FOR EXERCISING ANY OF THE RIGHTS AND OPTIONS DESCRIBED IN THIS NOTICE.**

BASIC INFORMATION

1. Why did I receive this Notice?

You received this notice because company records of Lusamerica Foods, Inc. (“Defendant” or “Lusamerica”) show you were employed by Lusamerica as a non-exempt hourly employee and were paid on an hourly, piece-rate, per-mile basis, or combination thereof at some point between January 14, 2016 and November 15, 2021.

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your rights, the benefits available, and how to get them.

2. What is this Lawsuit about?

This lawsuit, entitled *Brooke, et al. v. Lusamerica Foods, Inc.*, was filed on January 14, 2016 by Plaintiff Jeremiah Brooke (“Brooke”) on behalf of himself and all members of the Class in the Superior Court for the County of Santa Clara, Case No. 20CV361692, (*the “Lawsuit” or “Action”*). Plaintiff Juan Estrada (“Estrada”) filed a similar case on March 9, 2020 in the Superior Court for the County of Santa Clara Case No. 20CV366851. Plaintiff Estrada’s claims were consolidated into the Brooke lawsuit by way of an amended complaint. That is, all of Plaintiff Estrada’s claims are now included within this lawsuit.

The Plaintiffs have alleged in the Lawsuit that Lusamerica failed to pay Class Members all wages due for all hours worked, including all minimum and overtime wages, failed to provide legally compliant meal and rest breaks, and failed to reimburse all costs and expenses. Based on these alleged violations, Plaintiffs alleged derivative claims for issuing inaccurate wage statements and failure to timely pay all wages due upon separation from employment. On the basis of these allegations, Plaintiffs alleged that Lusamerica violated California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 and California’s Unfair Competition Law, Business & Professions Code sections 17200 *et seq.* Plaintiffs have claimed entitlement to civil penalties under the California Labor Code Private Attorneys General Act, California Labor Code sections 2698, *et seq.* (“PAGA”), (“the Lawsuit”).

Lusamerica has denied and continues to deny all the claims and contentions alleged in the Lawsuit and maintains it has fully complied with the law at all times. The Settlement is not an admission that Lusamerica did anything wrong or an indication any law was violated, and the Court has not ruled on whether Lusamerica violated the law.

3. What is a Class Action?

In a class action, a person called a Class Representative (here, Jeremiah Brooke and Juan Estrada) sue on behalf of themselves and other people who may have similar claims. The group of people with similar claims is called a “Class.” Each person covered by the Class definition is a “Class Member.” One court decides the issues for all Class Members. California Superior Court Judge Patricia M. Lucas is in charge of this class action.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant Lusamerica. Instead, both sides agreed to a settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of a trial, and members of the Class get compensation from the Settlement. Brooke and Estrada who were appointed the Class Representative by the Court, and their attorneys, believe the Settlement is best for all Class Members.

5. Who are the Parties in this Lawsuit?

Plaintiff Brooke was employed by Lusamerica as a driver from approximately March 2016 to November 2019. Plaintiff Estrada was employed by Lusamerica in the warehouse as a packer from approximately January 2014 until July 2019. Lusamerica Foods, Inc. is the Defendant.

Class Members include all individuals employed by Lusamerica Foods, Inc. in the State of California as non-exempt employees and who were paid on an hourly, piece-rate, per-mile basis, or combination therein, at any point during the time period of January 14, 2016 to November 15, 2021.

6. Who are the Attorneys for Plaintiffs and the Class?

The Court appointed Cohelan Khoury & Singer and Moss Bollinger LLP as Class Counsel and found they are competent and experienced and will adequately represent the Class. Their addresses are:

COHELAN KHOURY & SINGER

Isam C. Khoury/Diana M. Khoury/Kristina De La Rosa
605 C Street, Suite 200
Santa Clara, California 92101
(619) 595-3001

MOSS BOLLINGER LLP

Dennis Moss/Jeremy Bollinger
15300 Ventura Blvd.
Sherman Oaks, California 91403
(310) 982-2984

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$700,000 to fully and finally resolve all claims in the Action (referred to as the "Gross Settlement Amount"). Out of this amount, Class Counsel will apply to the Court for: (1) attorneys' fees not to exceed \$245,000; (2) litigation costs not to exceed \$23,000.00; (3) Class Representative service payments not to exceed \$7,500.00 to each Plaintiff for their work and efforts in prosecuting the class action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, and a general release of all claims; (4) Settlement Administration expenses not to exceed \$15,000 and (5) a payment to the California Labor Workforce and Development Agency, under California Labor Code's Private Attorneys General Act of 2004 ("PAGA") in the sum of \$37,500.00 (75% of \$50,000) to cover the government's share of all applicable civil penalties implicated or raised by the allegations of the Action. The exact amount of attorneys' fees and litigation costs, Class Representative service payment, and Settlement Administration expenses will be determined by the Court at a Final Approval hearing. The remaining portion of the Settlement, the Net Settlement Amount, is estimated at \$364,500. A portion of the Net Settlement Amount allocated for PAGA penalties (\$12,500) will be allocated among PAGA Members as described in the next section. Because PAGA Members have no right to opt out of a PAGA Settlement, Class Members who submit valid and timely opt out requests will be issued a check representing only their share of the PAGA Payment. The remaining amount of the Net Settlement Amount will be apportioned and paid entirely to all Class Members who do not request to be excluded from (or "opt out" of) the Settlement. **A claim form is not required.** Any portion of the Net Settlement Amount which would otherwise have been paid to Class Members who opt out of the Settlement will be redistributed and paid to the Class Members who participate in the Settlement. In other words, other than the \$12,500 allocated as PAGA penalties, the entire amount of the Net Settlement Amount will be paid to Class Members who do not opt out of the Settlement.

8. How will Settlement Payments be Calculated?

Class Members who do not submit a timely written request for exclusion from the settlement ("Settlement Class Members") will receive a share of the Net Settlement Amount. The Net Settlement Amount will be paid to the Settlement Class Members based on their workweeks worked in Driver and Non-Driver positions. Class Members shall be allocated two (2) points of credit for each Work Week in which they worked as a Driver during the Class Period and one (1) point of credit for each Work Week in which they performed work in any other non-driver position during the Class Period. The number of points of all Class Members are added together, then divided by the number of points for each Class Member, to determine each Class Member's percentage share of the Net Settlement Amount. Each Class Member's percentage is then multiplied by the Net Settlement Amount to determine each Class Member's estimated individual settlement payment.

The portion of the PAGA Payment allocated to PAGA Members will be divided in a similar manner among PAGA Members based on the number of workweeks worked in Driver and Non-Driver positions. PAGA Members shall be allocated two (2) points of credit for each Work Week in which they worked as a Driver during the PAGA Period and one (1) point of credit for each Work Week in which they performed work in any other non-driver position during the PAGA Period. The number of points of all PAGA Members are added together, then divided by the number of points for each PAGA Member, to determine each PAGA Member's percentage share of the portion of the PAGA Payment allocated to PAGA Members. Each PAGA Member's percentage is then multiplied by the portion of the PAGA Payment allocated to PAGA Members to determine each PAGA Member's estimated individual settlement payment.

One day worked in a given week will be credited as a Work Week for purposes of these calculations. If at least one day in a Work Week was worked as a Driver, that entire work week will be designated as a Driver Workweek for purposes of these calculations.

9. How much will my Settlement Payment be?

Lusamerica's business and personnel records reflect that you were employed as a non-exempt employee in California sometime during the Class Period, and have __ Work Weeks employed during the Class Period and __ Work Weeks employed during the PAGA Period. Based on this information, you will *automatically* be mailed a Settlement Payment estimated at approximately \$xx.xx, less payroll taxes. The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other costs of suit.

HOW TO GET A SETTLEMENT PAYMENT

10. How can I get my Settlement Payment?

You do not need to do anything to receive your Settlement Payment. If the Court approves the Settlement at the scheduled Final Approval Hearing, your Settlement Payment will be mailed to the address this Notice was mailed to, unless you have updated your address with the Administrator. **It is your responsibility to keep the Administrator informed of any change in your mailing address, as your Settlement Payment will be mailed to the last known address it has on file for you.** A Change of Address form is enclosed with this Notice for your convenience. It is strongly recommended you retain a copy of any completed Change of Address form until you receive your entire Settlement Payment.

11. What if the number of Work Weeks Shown in this Notice is Wrong?

If you believe the number of Work Weeks shown in Paragraph 9 is wrong, send a letter addressed to the *Brooke, et al. v. Lusamerica* Class Action Administrator, c/o Phoenix Settlement Administrators, P. O. Box 7208, Orange, CA 92863, stating what you believe is correct. Your letter must be postmarked on or before **December 12, 2022**.

Include any documents or other information which supports what you believe to be the correct number of Work Weeks working in the position of a Class Member during the Class Period. The number of Work Weeks, as shown in Lusamerica's records, is presumed correct unless you provide actual records showing otherwise. The Administrator will resolve any work week disputes using Lusamerica's records and any information you provide. If the Parties disagree with the Administrator's determination, the Court will resolve the issue.

12. When can I expect to receive my Settlement Payment?

If no Class Member objects to the Settlement, and no appeal is sought, and the Court finally approves the Settlement, your share of the Settlement will be mailed to you approximately two months after the Court grants final approval of the Settlement.

13. What am I giving up to get my Settlement Payment?

You will give up or "release" the following claims described below:

Released Claims:

Participating Class Members (those who do not return a request to be excluded from the Settlement) will all claims and/or causes of action arising from or related to this case under any federal, state or local law or administrative order that were pled or could have been pled in this case based on the facts alleged in the operative class action complaint including but not limited to the failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to maintain records, the failure to provide accurate itemized wage statements, the failure to reimburse, and other claims whatsoever that were alleged in this case or which arise out of such facts actually pled in the complaint, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code § 17200 et seq., conversion, liquidated damages, punitive damages, penalties, statutory penalties, civil penalties under the Labor Code Private Attorneys General Act of 2004 for violations of Labor Code 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 2802.

Class Members who do not exclude themselves from the Settlement will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties. The Released Parties are defined as Lusamerica their respective parents, subsidiaries, predecessors, successors, and affiliates, and all of their respective shareholders, officers, directors, employees, administrators, fiduciaries, trustees, agents, and benefit plans.

14. Will I be Subject to Discipline based on Whether I Participate in the Settlement?

No. California law protects individuals and employees from retaliation based on their decision to participate or not participate in a class action settlement. Lusamerica is prohibited by law from retaliating in any way based on your decision to participate or not participate in the settlement. Your decision to participate, not participate, or object to this Settlement will not impact your employment with Lusamerica or Lusamerica's treatment of you as a former employee in any manner.

EXCLUDING YOURSELF FROM THE SETTLEMENT?

15. How do I get out of the Class Action?

If you wish to pursue your own separate lawsuit against Lusamerica for the claims alleged in the Action, or if you otherwise wish to not participate in the Settlement for whatever reason, you should exclude yourself from this case (that is, “opt out” of the Settlement). To opt out and exclude yourself from the Settlement, you must submit a timely written request for exclusion to either the Settlement Administrator or the Court. Your request for exclusion must include (a) the case name and case number; (b) your full name; and (c) your signature. The request for exclusion should state in substance:

“I wish to be excluded from the case entitled *Brooke, et al. vs. Lusamerica Foods, Inc.*, Case No. 20CV361692 in the Superior Court of California, County of Santa Clara and the Settlement. I understand by requesting to be excluded from the Action and Settlement, I will receive no money for my individual claims from the Settlement described in this Notice.”

Your request for exclusion letter must be submitted to the Court or mailed to the Settlement Administrator postmarked no later than **December 12, 2022** (45 days of the initial mailing) in the envelope provided or in a separate envelope addressed to:

Brooke, et al. v. Lusamerica Foods, Inc.
c/o Phoenix Settlement Administrators
P. O. Box 7208
Orange, California 92863

16. If I do not exclude myself, can I sue Lusamerica for the same thing later?

No. Unless you exclude yourself from the Lawsuit, you give up any right to sue Lusamerica for the claims raised in this Lawsuit and which this Settlement resolves. ***If you have a claim or lawsuit already filed against Lusamerica, you must speak to your lawyer in that case immediately.*** You may need to opt out of this Lawsuit to continue your own lawsuit. Remember, the deadline to postmark a valid request for exclusion is **December 12, 2022**.

17. If I exclude myself from the Class Action Lawsuit and Settlement, can I still get a Settlement Payment?

Yes and No. Class Members who choose to exclude themselves from the settlement will retain their individual claims but still release their claims under the Private Attorneys General Act of 2004 (“PAGA”). If you exclude yourself from the Class Action, you will not receive any money from this Settlement for any individual claims. However, you will receive your portion of the \$12,500.00 allocated for PAGA penalties, which is based on the number of Work Weeks worked during the PAGA period. Your share of the PAGA penalties is estimated to be \$____. The portion Settlement Payment you would have been entitled to receive will be redistributed to those Class Members who did not exclude themselves. No portion of the Settlement Payment will go back to Lusamerica as a result of any person excluding themselves from the Lawsuit.

OBJECTING TO THE SETTLEMENT

18. How do I object if I don’t think the Settlement is fair?

If you don’t think the Settlement is fair, you can object to the Settlement and tell the Court you don’t agree with the Settlement or some part of it by submitting a written objection to the Settlement Administrator or appearing at the Final Approval hearing in person to make an oral objection whether or not any notice of appearance has been provided. The Court will consider your views. If making an oral objection, see the next section for instructions on appearing at the Final Approval hearing. If submitting a written objection, you must state what your objection(s) are to the Settlement and include the case name and number: *Brooke, et al. vs. Lusamerica Foods, Inc.*, Case No. 20CV361692. Be sure to include your full name, current address and telephone number, and the specific reasons you object to the Settlement. Mail your written objection to the address listed below, on or before **December 12, 2022**.

Brooke, et al. v. Lusamerica Foods, Inc.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing in Department 3 of the Superior Court for the State of California, County of Santa Clara, located at the 191 North First St, San Jose, CA 95113 on March 1, 2023 at 1:30 p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's service payment, and the Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing.

Class members may appear at the final approval hearing remotely using the Microsoft Teams link for Department 3 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class Members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. You may also hire and pay your own lawyer to attend.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing.

THE COURT'S FINAL FAIRNESS HEARING

22. Who may I contact if I have questions about the Settlement?

This Notice is a summary of the basic terms of the Settlement. For more information, you may review the Settlement pleadings in this case, including the Settlement Agreement, at any time during regular business hours in the Superior Court of California, County of Santa Clara located at the 191 North First St, San Jose, CA 95113. You may also examine case records online on the Santa Clara County Superior Court's website, <https://portal.scsccourt.org/search>. The documents filed in this case are listed in the Register of Actions, some may be available to view at a charge.

You may also contact the attorneys for the Plaintiffs and the Class, whose contact information is included in Paragraph 6 above for more information or if you have specific questions. You may also contact the Administrator by calling toll free Telephone: 1-(800) 523-5773, or writing to: Administrator,

Brooke, et al. v. Lusamerica Foods, Inc.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR ANY
OF LUSAMERICA'S MANAGERS OR ATTORNEYS FOR INFORMATION.**

ADDITIONAL IMPORTANT INFORMATION

- A. It is your responsibility to ensure that the Administrator has your current mailing address and telephone number on file. It is the address to which your Settlement Payment will be mailed.

Settlement Payment checks must be cashed soon after receipt. Proceeds of checks which remain uncashed 180 days after the date of issuance will be transmitted to Bet Tzedek Free Legal Services for the benefit of the Bet Tzedek Employment Rights Clinic, a non-profit organization that advocates for workers' rights. If you lose or misplace a check, you should contact the Administrator immediately to request a replacement.