

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

This is a Notice of Settlement for the Class and Collective Action Titled:

Benitez et al. v. Western Milling LLC, et al.
Federal Court for the Eastern District of California
Case No. 1:18-cv-01484-DAD-SKO

Please Read This Entire Notice Carefully. This Notice Involves Your Legal Rights.

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

A Court authorized this notice. This is not a solicitation from a lawyer.

You are receiving this notice because you are class or collective member in a class and collective action lawsuit against Perfection Pet Foods, LLC, Western Milling, LLC and Kruse Investment Company, Inc. (collectively “Defendants”). The Lawsuit alleges that Defendants failed to provide meal and rest breaks to non-exempt employees that worked at the Perfection Pet Foods, LLC (“PPF”) pet food plants and warehouse in Visalia, CA, and as a result, failed to them pay minimum wage and overtime wages, failed to provide them with accurate wage statements, and failed to timely pay them final wages upon termination. Defendants dispute the allegations. All Parties involved have strenuously fought for their positions during the course of the Lawsuit, and eventually reached a compromise or “settlement.” The Court has preliminarily approved this settlement, subject to a further hearing to consider any objections by those who do not opt out of the settlement. This Notice describes your rights and potential benefits under the settlement.

Why did I get this Notice? You received this Notice because you are a person who will receive a payment from a proposed settlement of a class and collective action lawsuit filed against the Defendants by three former workers at the pet food plants and warehouse, Steven Villarreal, Agustin Benitez, and Carlos Morales, that has been reached in the Lawsuit (*Benitez et al. v. Western Milling LLC, et al.*, Federal Court for the Eastern District of California, Case No. 1:18-cv-01484-DAD-SKO) (the “Settlement”).

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you can review the settlement agreement available by visiting Class Counsel’s website at [\[insert URL\]](#). If you want more information, you can also contact class counsel (whose contact information is at the end of this Notice).

Copies of the filings and documents related to the settlement are available for download and review at Class Counsel’s website [\[insert URL\]](#).

You are receiving this Notice because you are in the Class. You are in the Class because you worked as a non-exempt hourly employee at PPF’s pet food plants and/or warehouse on or after November 2, 2012 through [January 21, 2020](#) (the “Class Period”). This Notice describes your rights and potential benefits from a class and collective action settlement. You have the right to opt-out of the settlement, as described below.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING / RECEIVE A CHECK	If you do not exclude yourself, as described below, you will receive a settlement check. You have ninety (90) days from the date on your individual settlement check to cash the check. If you receive a settlement check, you <u>will release all claims asserted in the lawsuit</u> through the date the Court enters preliminary approval of the Settlement. If you do not cash your settlement check, the amount will transmitted to Valley Children’s Hospital.

OBJECT TO THE SETTLEMENT	You may object to the proposed Settlement by writing to the “Settlement Administrator” at the address listed below explaining why you disapprove of the proposed Settlement. If you object, you may also ask to speak to the Court about the fairness of the settlement at the Settlement Hearing. If you wish to appear at the Settlement Hearing, you must mail the Settlement Administrator at the address listed below a Notice of Intention to Appear. If your objection is overruled at the hearing, you will still be bound by the Settlement and receive a payment from the Settlement Fund.
OPT OUT OF THE SETTLEMENT	Alternatively, you may exclude yourself from the Settlement by requesting exclusion from the settlement. If you exclude yourself from the settlement, you will receive no payment, but will preserve whatever right you might otherwise have, if any, to pursue your claims in a separate lawsuit. This option could allow you to bring your own lawsuit or claim, or to be a part of another lawsuit against the Defendants for the same or similar claims brought in this lawsuit during the Class Period, including claims for unpaid wages and missed meal and rest breaks. To unconditionally exclude yourself from the Settlement, you must send a letter by mail to the “Settlement Administrator” address listed below that states that you wish to opt out of the class and collective action and the settlement of the case. This process is explained further below. <i>If you exclude yourself from the settlement, you will not be entitled to receive any payment from the settlement fund.</i>

What is this lawsuit about? Three former workers at the PPF pet food plants and warehouse in Visalia, CA brought the lawsuit alleging that Defendants failed to provide non-exempt employee with meal or rest breaks (and second meal periods and third rest periods for shifts of longer than ten hours), and as a result, failed to pay those workers all wages due, including minimum wages, overtime wages, failed to provide accurate wage statements, and failed to timely pay final wages. Plaintiffs also allege that the Class is entitled to penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) for these underlying violations. Defendants strenuously dispute the allegations, but have agreed to settle the lawsuit in order to avoid the burden, expense, inconvenience, and uncertainty of continued litigation.

What are the terms of the Settlement? To settle the lawsuit, Defendants have agreed to pay a Gross Settlement Amount of six-hundred fifty thousand dollars (\$650,000) to be divided between the 240 Class Members (including you) who do not opt out of the settlement (“Settlement Class Members”). The \$650,000 less deductions for (1) Class Counsel’s fees and expenses, (2) the payments to Steven Villarreal, Agustin Benitez, and Carlos Morales for being class representatives and prosecuting the claims on behalf of the Class Members, (3) all costs of administering the settlement up to a maximum of \$6,900, (4) the \$22,500 payment to the California Labor and Workforce Development Agency (“LWDA”), (5) amounts previously paid to class members who signed Individual Releases regarding these claims during the pendency of the Actions (totaling \$315,400), and (6) all other costs associated with the Settlement (“Net Settlement Amount”) will be split up between the Settlement Class Members proportionally, based on the number of weeks each Settlement Class Member worked as indicated by the personnel records that the Defendants maintain. This calculation method is explained in more detail below.

Payments. Class Members who do not opt out of the Settlement (*i.e.*, Settlement Class Members) will receive a payment that will be calculated based on the number of weeks the Settlement Class Member worked for the Defendants during the Class Period. The number of weeks worked will be calculated through the personnel records that Defendants maintain. Each Settlement Class Member’s share of the settlement proceeds will go up or down depending upon the number of weeks that Settlement Class Member worked when compared to the other Settlement Class Members. Per these calculations, the amount you are estimated to receive, if you do not exclude yourself from the Settlement, is set forth in the box marked “Estimated Settlement Payment.” Note, the Estimated Settlement Payment is a preliminary calculation. If one or more Settlement Class Members successfully challenge the Defendants’ records, the Estimated Settlement Payment for the other Settlement Class Members, including you, shall be modified accordingly. To accept this payment from the proposed Settlement, you do not need to do anything other than cash the check that will be sent after the Court finally approves the settlement.

Many members of the Settlement Class have already received some payments from PPF apart from this Settlement in exchange for a release of claims. Plaintiffs argue that those releases were improperly obtained and invalid, and that those individuals are entitled to a share of the settlement as well. The parties have agreed that the amount that these class members have already received from PPF will be deducted from the proceeds that they will receive from this Settlement, if any.

How do I challenge the number of weeks I worked during the Class Period? You may challenge the number of weeks worked identified in this Class Notice by submitting a written letter (postmarked by April 10, 2020) to the Settlement Administrator stating you wish to challenge the number of weeks worked on your Class Notice and providing the basis for and documentation in support of your challenge. You will bear the burden of proof and must submit documentary evidence sufficient to prove the number of weeks you claim you worked during the Class Period. This means that if you fail to provide written documentation supporting a different amount than

your Estimated Settlement Payment, your challenge will be denied. Defendants shall have the right to respond to your challenge. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The personnel records, including payroll records, of Defendants shall be considered by the Settlement Administrator as the presumptive best evidence of the number of **weeks** worked.

How much is my settlement payment? Under the settlement allocation formula you have worked **«MERGED_WW»** weeks and are projected to receive approximately the following amount:

Estimated Settlement Payment: \$**«MERGED_EstSettAmnt_CALC»**

[If the PCM received a payment from an Individual Release, but will still receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$**«MERGED_SeveranceOrISA_PaymentAmnt»**, which has been deducted from your share of the settlement.]

[If the PCM received a payment from an Individual Release, and will NOT receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$**«MERGED_SeveranceOrISA_PaymentAmnt»**. The amount that you previously received has been deducted from the amount you would receive under this agreement. The amount you previously received is **greater** than the amount that you would receive under this agreement, and reduces the amount you are currently owed to \$0.00.]

The amount above will be reduced for any requested or required withholdings, including state and federal taxes, income withholding orders, garnishments, or levies. Thirty-three percent (33%) of the above payment will be treated as wages, subject to payroll taxes, and reported on a W-2. Thirty-three percent (33%) of the above payment will be treated as interest and thirty-four percent (34%) will be treated as non-wage damages, including penalties. Payroll tax withholdings will not be withheld from the non-wage portion of any payment, which portion will be reported on a Form 1099 if required by law. Neither Class Counsel nor the Defendants make any representations concerning the tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

Who is included in the Settlement? You are included in the Settlement because you worked at least **one shift of more than five hours** as a non-exempt hourly employee at a PPF pet food plant and/or warehouse during the Class Period.

HOW YOU GET A PAYMENT

How do I get my payment? To receive your settlement payment, you do not need to do anything other than cash the check that will be promptly sent after the Court finally approves the settlement. If you choose to exclude yourself, follow the procedure set forth below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

How do I exclude myself? If you don't want to be included in the Settlement, you must exclude yourself from this Settlement. To exclude yourself from the Settlement, you must send a letter by mail that says that you wish to opt out of the class and collective settlement of the Actions. You must sign the letter and include your full name, address, and last four digits of your Social Security Number/Tax Identification Number. The letter must be dated and signed, postmarked on or before **April 10, 2020**, and sent to and received at the following address:

Benitez et al. v. Western Milling LLC, et al.
P.O. Box 26170
Santa Ana, CA 92799

If your letter requesting to opt out of this Settlement does not contain all of the requisite information above or it is postmarked after **April 10, 2020**, it will still be submitted to the Court, but your right to be excluded from the Settlement may be waived absent good cause found by the Court. If you properly request to opt out of the settlement, you will not be legally bound by anything that happens in the Actions. You also will not be eligible to receive any settlement payment, and you will not be allowed to object to the settlement.

If you do not opt out of the settlement yourself, you will be sent your individual settlement payment in the form of a settlement check. You will have ninety (90) days from the date on your individual settlement check to cash the check. If you do not cash your settlement check, it will be transmitted to Valley Childrens' Hospital. If you do not opt out of the settlement and then receive a settlement check, you **will release all claims asserted in the Actions** through the date the Court enters preliminary approval of the Settlement, whether or not you cash the check. If there is ever any subsequent dispute over whether you actually received the check, the burden shall be on Defendants to prove that you received it. Defendants shall further be entitled to a presumption that you can challenge that you received the check if Defendants show it was sent to an address provided by you as correct.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case? The Court has decided that the lawyers at the law firms of HOYER & HICKS and UNITED EMPLOYEES LAW GROUP, P.C. are qualified to represent you and the other Settlement Class Members. These law firms and their lawyers are called “Class Counsel.” The contact information for Class Counsel is:

Richard A. Hoyer
rhoyer@hoyerlaw.com
Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Walter L. Haines
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, P.C.
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Tel.: (562) 256-1047
Fax: (562) 256-1006

How will the lawyers be paid? Class Counsel have pursued the lawsuit on a contingent fee basis and have not yet received any payment of fees or any reimbursement of their out-of-pocket expenses related to the recovery on behalf of the Settlement Class Members. As part of the settlement, subject to Court approval, Class Counsel will ask the Court to award payment of their fees (in an amount not to exceed \$216,666.67) and costs, based on the number of hours they invested into the case and other factors. The fees or costs that Class Counsel seek or that the Arbitrator awards will come from the Gross Settlement Amount. In other words, the \$650,000 Gross Settlement Amount will be reduced depending on the amount of attorneys’ fees and costs that the Court awards. Court-approved fees will compensate Class Counsel for investigating the law and facts, litigating the case, and negotiating the settlement.

Class Counsel will also ask the Court to approve a “service payment” of up to \$10,000 each to Mr. Villarreal, Mr. Benitez, and Mr. Morales, for their active participation in the Actions before the settlement and in recognition of the risks they took and their service to the Class. This also will also come from the Gross Settlement Amount. Other costs incidental to the Settlement, including but not limited to a maximum of \$6,900 for settlement administration, will also come from the Gross Settlement Amount. A \$22,500 payment will also be made from the Gross Settlement Amount to the California Labor Workforce and Development Agency for penalties that the State could have sought against Defendants for the Claims alleged in the case. Mr. Villarreal will also receive up to \$10,000 in exchange for a release of separate claims he brought against Defendants in the Actions.

Class Counsel’s motion for attorneys’ fees and service payment will be filed with the Court by [insert date] and will be available for your review. You may obtain a copy by contacting class counsel (whose contact information is at the end of this Notice, or at their website at [insert URL]).

OBJECTING TO THE SETTLEMENT

How do I object to the Settlement? As a Settlement Class Member, you may object to the proposed settlement, but must do so in writing. You may also appear at the Settlement Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator identified at the address below and postmarked on or before April 10, 2020. You must give all reasons why you think the Court should not approve it. The Court will consider your views. You must sign the objection and include your full name, address, last four digits of your Social Security Number/Tax Identification Number, and telephone number(s). If your written objection does not contain all of the requisite information above or it is postmarked after April 10, 2020, it will still be submitted to the Court, but your right to object to the Settlement may be waived absent good cause found by the Court.

Benitez et al. v. Western Milling LLC, et al.
P.O. Box 26170
Santa Ana, CA 92799

If your objection is overruled at the Settlement Hearing, you will still receive a settlement check and be bound by the Settlement.

THE COURT’S SETTLEMENT HEARING

What is the Settlement Hearing? The Court will hold a Settlement Hearing to decide whether to approve the Settlement. You are not required to attend the Settlement Hearing, and will still receive a payment even if you do not attend the Settlement Hearing. If you wish, you may attend and you may ask to speak. If you wish to bring anything to the Court’s attention about the Settlement, you must provide it in writing in your objection letter mentioned above, which must be mailed to the “Settlement Administrator” at the address above by April 10, 2020.

When and where will the Court decide whether to approve the settlement? The Court will hold a Settlement Hearing on **May 20, 2020** at **9:30 a.m.**, at **2500 Tulare Street, Fresno, CA 93721, Courtroom 7, 6th Floor.**

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are challenges or objections, the Court will consider them. The Court will listen to any people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Do I have to come to the hearing? No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. However, if you submit an objection, you may come to the hearing to talk about it. However, as long as you submitted a timely, valid written objection to the Settlement Administrator, the Court will consider it. You may also pay another lawyer to attend, but it is not necessary.

May I speak at the hearing? If you submit an objection to the Settlement and Notice of Intention to Appear, you may ask the Court for permission to speak at the Settlement Hearing. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you opt out of the settlement.

GETTING MORE INFORMATION

Are there more details about the settlement? This Notice summarizes the proposed terms of the Settlement. More details are contained in the parties' Settlement Agreement. You can get a copy of the Settlement Agreement by sending a request, in writing, to:

Richard A. Hoyer
rhoyer@hoyerlaw.com
Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Class Counsel have also posted documents related to the case and the Settlement on their website for download, at **[insert URL]**.

How can I get more information about the Settlement? If you have other questions about the Settlement, you can contact Class Counsel at the addresses and/or telephone numbers above.

DATED: **February 10, 2020**