

Overton v. Armour-Eckrich Meats, LLC, et al.
San Bernardino Superior Court No. CIVDS 1501325

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation. This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected whether you act or not.*

If you worked as a relief sales representatives or direct store delivery employee at Armour-Eckrich Meats LLC at any time between January 30, 2011 and December 9, 2016, then you may be eligible to recover money under the terms of a proposed class action settlement.

PLEASE READ THIS NOTICE CAREFULLY AS IT SETS FORTH YOUR RIGHTS AND OPTIONS FOR YOU TO CONSIDER.

I. What is the purpose of this Notice?

The purpose of this Notice is to let you know that there is a proposed class action lawsuit pending in the San Bernardino Superior Court, and you are a member of the proposed class (“the Class”) in that lawsuit. The lawsuit is a proposed class action filed against Armour-Eckrich Meats LLC, John Morrell & Co., and Smithfield Foods, Inc., concerning employees who worked as relief sales representatives or direct store delivery employees between January 30, 2011 and December 9, 2016 (“Class Period”).

The case was filed by Plaintiff Gregory Overton (“Plaintiff”) against Defendants (San Bernardino Superior Court No. CIVDS 1501325) (the “Lawsuit”). The lawsuit alleges the following causes of action against Defendants: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Permit Rest Breaks; (5) Improper Deductions from Earned Wages; (6) Failure to Timely Pay Wages Upon Separation of Employment; (7) Failure to Furnish Accurate Wage Statements; (8) Violation of California Business and Professions Code §§ 17200, *et seq.*; and (9) Remedies under Private Attorney General Act (“PAGA”).

Defendants have denied and continue to deny Plaintiff’s claims, contending that the members of the class were properly paid, received compliant meal and rest periods, and were issued accurate itemized wage statements, at all times relevant to the Lawsuit.

The Parties to the lawsuit have agreed to settle this matter as a result of arms²-length negotiations. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances. The Court has not ruled on the merits of Plaintiff’s claims or Defendants’ defenses.

On May 18 2017, the Court approved the Parties’ Motion for a Court Order:

- 1) Granting Preliminary Court approval of the proposed settlement;
- 2) Certifying the Settlement Class;
- 3) Granting Court approval of this Notice, including the schedule and procedure for exclusion or objection set forth herein; and
- 4) Scheduling a Final Approval Hearing for final Court approval of the proposed Settlement.

II. Why does Plaintiff seek approval of the Settlement?

Plaintiff seeks approval of the Settlement because the Plaintiff and Class Counsel believe the Settlement to be fair, reasonable, adequate, and in the best interests of the members of the Class and all Parties.

III. What is the Defendants’ Position on the Settlement?

Defendants view this Settlement as a compromise. Defendants deny that any of their practices at issue in this lawsuit were, or are, unlawful and, thus, are not admitting to any of Plaintiff’s allegations.

IV. Why did I get this Notice?

You received this Notice because Defendants’ records identify you as a member of the Class, which means that you are, or were, employed by Defendants during the Class Period, and worked as an hourly employee during that time.

V. Who are the Parties in this Class Action?

The lawsuit was brought against Armour-Eckrich Meats LLC, John Morrell & Co., and Smithfield Foods, Inc., which are Defendants in this Lawsuit. Plaintiff, Gregory Overton, is a former employee of Defendants who brought this lawsuit on behalf of himself and on behalf of all similarly situated current and former employees.

VI. Who are the Attorneys for Parties?

Counsel for the Class

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Samuel A. Wong (SBN 218672)
Jessica L. Campbell (SBN 280626)
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Counsel for Defendants

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VII. What is the Proposed Settlement?

The proposed settlement is as follows:

Defendants have agreed to pay a total of \$200,000 (the "Settlement Amount") to settle this case. This sum includes amounts subject to Court approval including: payment of expenses and fees of the Claims Administrator which is anticipated to be no more than \$5,500.00; attorneys' fees of up to 35 % of the Settlement Amount (*i.e.*, \$70,000.00); \$2,000.00 to be paid to the State of California under PAGA; and costs expended by Class Counsel, as approved by the Court (not to exceed \$10,000.00). Plaintiff will also seek a service payment of \$7,500.00 to the class representative (Gregory Overton) for his efforts in the litigation. The remainder of the Settlement Amount after payment of these expenses will distributed to the 53 class members.

The following is a summary of the Settlement provisions. The specific and complete terms of the proposed Settlement are stated in the Settlement Agreement, a copy of which has been filed with the Clerk of the Court. You may view and obtain a copy of the Settlement Agreement at www.Simpluris.com.

Settlement Payment. Defendants have agreed to pay the Settlement Amount through the Claims Administrator in accordance with the terms of the Settlement Agreement, after the Effective Date of the Settlement, as defined in the Settlement Agreement. Settlement payments to Class Members who do not opt-out of the Settlement will be distributed approximately 20 calendar days after the effective date of the Settlement.

After the deduction of the Court-approved expenses, fees, costs, and service payment, from the gross settlement amount, the remaining sum ("Net Settlement Fund") will be available to pay all members of the Class who do not exclude themselves from the Settlement their allocated shares of the Net Settlement Fund.

Each Class Member's allocation of the Net Settlement Fund will be calculated as follows. The Claims Administrator will be provided with specific workweek information by Defendants for all Class Members. The Claims Administrator will then calculate the total number of workweeks worked by all Class Members during the Class Period to get the "Total Class Workweeks." The Settlement Administration will then divide the Net Settlement Fund by the Total Class Workweeks. This will yield the amount to be paid to each Class Member for each workweek worked, or the "Settlement Amount Per Workweek." Each Class Member's share of the Net Settlement Fund will then be calculated by multiplying the Settlement Amount Per Workweek by the number of weeks worked by that Class Member during the Class Period, based on Defendants' records. Class Members will be paid based on the number of workweeks they worked as calculated by the Claims Administrator. **However**, for any Class Member whose total work time with Defendants was less than a full workweek, that Class Member will be paid a pro-rata portion of the Settlement Amount Per Workweek. For example, a Class Member who worked only one day during a single workweek, during the Class Period, will be paid 1/5 of the Settlement Amount Per Workweek.

Your estimated settlement payment is \$«MERGED_EstSettAmnt_CALC» based on Defendants' records showing you worked «MERGED_WW_CALC» workweeks during the Class Period.

VIII. What are my rights with regard to this matter?

You have **three** options. Each option has its own consequences, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, follow.

A. Option One. Participate in the Settlement as a Class Member, which requires you to do nothing at this time.

If you are a Class Member, and you do not exclude yourself from the Class, the Claims Administrator will send you a check at a later date, provided that the Court grants final approval of the Settlement and the Settlement becomes effective.

Note, however, that by not excluding yourself, you will be bound by the Settlement and will be barred from separately pursuing the claims released by the Settlement.

B. Option Two. You can exclude yourself (“opt out”) from the Settlement Class.

If you do not wish to participate in or be bound by the Settlement, you must notify the Claims Administrator in writing of your wish to be excluded by sending a Request for Exclusion to the Claims Administrator that includes the following statement:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE OVERTON v. ARMOUR-ECKRICH MEATS LLC, ET AL. CLASS ACTION LAWSUIT, SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVDS 1501325. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT.”

The Request for Exclusion must contain your full name, current home (or mailing) address, and signature. The Request for Exclusion must be returned by mail to the Claims Administrator, Simpluris, Inc., at the address provided below. **In order to be valid, your request to be excluded from the settlement must be post-marked on or before July 27, 2017.**

If you submit a timely and valid Request for Exclusion, you will neither receive any money from the Settlement, nor will you be considered to have released your claims alleged in the class action. If you request exclusion from the Settlement, you may not pursue any recovery under the Settlement. You may, however, pursue other remedies, separate and apart from the Class Action Settlement that may be available to you.

If you want money from the Settlement, do **not** submit a Request for Exclusion.

C. Option Three. You may object to the Settlement.

If you are a Class Member, and you do not exclude yourself from the Settlement (opt out), you may object to the Settlement before final approval of the settlement by the Court. If you choose to object to the Settlement, you may enter an appearance by representing yourself, or through an attorney that you hire and pay for yourself.

In order to object to the Settlement, or any portion of it, you must file with the Court and serve the attorneys for the Class and for the Defendants with your objection in writing on or before July 27, 2017, in order for your objection to be considered. You or your attorney who you hire and pay for yourself may appear at the final approval hearing. If the Court approves the Settlement despite any objections, you will receive your share of the Settlement proceeds and will be bound by the Release (as discussed below).

IX. How much money will I get if I do not request to be excluded?

As mentioned above, Defendants have agreed to pay a gross settlement amount of \$200,000.00 in consideration for this Settlement and a release of all claims asserted in the lawsuit by the Class. From this sum, amounts will be deducted, including but not limited to expenses and fees of the Claims Administrator, a service payment to the Class Representative, and attorneys’ fees and expenses, to establish the Net Settlement Fund. Enclosed with this Notice you will find a Notice of Settlement Payment. This represents the Administrator’s best estimate of your share of the Net Settlement if all deductions described above are approved by the Court. It is an estimate only, and may vary depending upon the Court’s rulings.

X. Release

Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, unless you choose to opt out of the settlement as described herein, you will fully and completely release Defendants, their present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and their respective present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, from any and all claims and/or causes of action arising from the Lawsuit under any federal, state or local law or administrative order that were plead in this case or could have been plead based on the facts alleged in the FAC or which arise out of such facts, whether known or unknown, including but not limited to the failure to pay wages due to failure to pay overtime, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the failure to maintain accurate records, the failure to pay wages upon separation of employment, all related claims for restitution and other equitable relief under Business and Professions Code section 17200, *et seq.*, conversion, liquidated damages, waiting-time penalties, penalties under the Private Attorney General Act, for the period of January 30, 2011 through the date of December 9, 2016 (“Released Claims”).

XI. Additional important information

As described above, Defendants will provide the Claims Administrator with information related to your employment with Defendants, including the dates you worked for Defendants. It is important that the Claims Administrator has your correct information. The enclosed "Notice of Settlement Payment" sets forth the dates of employment on record with Defendants, and your anticipated estimate settlement payment amount. In the event that you believe the information set forth on the Notice of Settlement payment is incorrect, it is your responsibility to **ensure that the Claims Administrator has the correct information**. It also is your responsibility to **keep a current address on file** with the Claims Administrator to ensure that you receive your settlement payment, should the Court order final approval of the settlement. Follow the instructions on the Notice of Settlement Payment in order to provide the Claims Administrator with corrected information.

XII. Settlement Approval Hearing

The Court will hold a Settlement Approval Hearing on September 6, 2017 at 8:30 a.m., in Department S27 of the San Bernardino Superior Court, located at 655 West 2nd Street, San Bernardino, CA, at which time the Court will determine: (1) whether the settlement should be approved as fair, reasonable, and adequate; (2) whether the application of Class Counsel for an award of attorneys' fees and expenses should be approved and, if so, in what amount; (3) whether the application for service payment for the Class Representative should be approved and, if so, in what amount; and (4) whether a proposed Final Approval Order and Judgment should be entered by the Court. If objections have been received, the Court will consider them at that time.

You Are Not Required To Attend The Settlement Approval Hearing.

You are welcome to attend the Final Approval Hearing, at your own expense. You may request permission to speak to the Court at the Settlement Approval Hearing. You may hire your own attorney at your own expense to speak at the Settlement Approval Hearing. If you want to speak at the Settlement Approval Hearing, you must ask the Court for permission. To do so, send a letter to the Court (at the address set forth above in this Section of the Notice) with a copy to the Claims Administrator (at the address set forth in Section XIII of this Notice), requesting permission to speak at the Settlement Approval Hearing. Such letter should be signed and should contain a brief statement of the position that you wish to put before the Court at the Settlement Approval Hearing and the basis for that position. The Court may, or may not, grant the request.

XIII. Who can I contact if I have further questions?

If you have questions, you may call the Claims Administrator toll free, at 888-369-3780. Ask about the *Overton v. Armour-Eckrich Meats, LLC*. Class Action Settlement. The contact information for the court-appointed Claims Administrator for this Class Action Settlement is as follows:

Overton v. Armour-Eckrich Meats, LLC
ATTENTION: Claims Administrator
San Bernardino Superior Court No. CIVDS 1501325
c/o Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799
(888) 369-3780

You may also call Class Counsel listed in Section VI above. They can be reached as follows:

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