

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

TO: All current and former Drivers employed by USF whose regular job responsibilities include(d) driving trucks on routes within California (“Driver”) at any time during the period from April 9, 2006 to April 10, 2012 (“Class Period”).

This includes drivers based in Reno, Nevada and Phoenix, Arizona who drive regular routes in California.

This Notice was authorized by the Court. This is not a solicitation from a lawyer.

Description of Lawsuit for Which This Notice Is Being Sent

- Loretta Downs and D’Andre Parker (“Plaintiffs”), two Drivers who worked for U.S. Foodservice, Inc. (“USF”) in California, brought a lawsuit alleging, among other things, that USF violated meal and rest period requirements of law, failed to pay for all hours worked based on the application of automatic meal break deductions, failed to provide accurate itemized wage statements, and failed to pay all wages due to former Drivers on their separation of employment. Based on these claims, they alleged that USF owes them and other Drivers additional wages and penalties.
- USF strongly denies all the claims and contentions alleged in the lawsuit and maintains it has fully complied with the law.
- The parties have reached a settlement to avoid the costs and risks of litigation. **READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
RECEIVE PAYMENT UNDER THE SETTLEMENT AGREEMENT	<u>Drivers currently employed by USF who were hired by USF before October 2010 who wish to participate in the settlement:</u> You will receive payments automatically and <u>do not need to submit a Claim Form</u> or take any other action. <u>Former Drivers, Drivers hired since October 2010, and Drivers based in Nevada or Arizona who drove routes in California:</u> <u>You must submit a Claim Form</u> in order to receive a settlement payment. A Claim Form and instructions on how to submit it are enclosed with this Notice.
REQUEST EXCLUSION FROM THE SETTLEMENT	If you wish to be excluded from the settlement, you must submit a request for exclusion according to the instructions contained in this Notice. If you submit a request for exclusion, you will not be bound by the settlement and you will not receive any settlement payment.
DO NOTHING	<u>Drivers currently employed by USF who were hired by USF before October 2010 who do nothing will automatically receive a settlement payment.</u> You will forfeit your right to bring or participate in any similar action that may be filed against USF. <u>Former Drivers, Drivers hired since October 2010, and Drivers based in Nevada or Arizona who drove routes in California, who do nothing will not receive a settlement payment.</u> If you are in this group, you will also lose your right to bring or participate in any similar action that may be filed against USF.
OBJECT	You have the right to object to the terms of the settlement. If you wish to object, you must provide the Settlement Administrator a written objection stating why you do not agree with the settlement, according to the instructions contained in this Notice.

- **Your options are more fully explained in this Notice below. The deadline to submit a claim, submit an objection, or request exclusion is July 16, 2012.**

1. Why did I receive this Notice?

USF's records show that you may be entitled to share in the funds to be made available for settlement of a class action. You are not being sued and you will not be individually responsible for any of the attorneys' fees or costs of the litigation as the settlement requires those amounts to be paid from the Settlement Fund paid by USF. However, your rights may be affected by the Settlement Agreement described in this Notice. This Notice tells of your rights to share in the settlement and, if you do not wish to participate in the settlement, your ability to instead "opt out" of the settlement. It also tells you how to object to the settlement if you wish to do so.

The Plaintiffs and USF have entered into a Stipulation for Class Action Settlement and Release ("Settlement Agreement") that fully sets forth the details of the settlement. You may obtain a copy of the Settlement Agreement from either the Settlement Administrator or the Plaintiffs' counsel. (Details concerning where to get additional information, including a copy of the Settlement Agreement, are provided at the end of this Notice.) The proposed Settlement Agreement has been submitted to the Court, and has been preliminarily approved for settlement purposes only. The settlement class ("Settlement Class") preliminarily approved by the Court is defined as follows:

All current and former Drivers employed by USF whose regular job responsibilities include(d) driving trucks on routes within California during the Class Period at any time during the period from April 9, 2006 to April 10, 2012. This includes drivers based in Reno, Nevada and Phoenix, Arizona who drive regular routes in California.

You have received this Notice because records indicate that you are a member of the Settlement Class. The Court must approve the terms of the settlement described below as fair and reasonable to the Settlement Class. The settlement will affect all members of the Settlement Class who do not exclude themselves from the settlement. If the Court approves the settlement, a Settlement Administrator that has been appointed by the Court will make the settlement payments that the settlement requires. Those settlement payments are described in this Notice.

2. What is the case about?

On April 9, 2010, Loretta Downs and D'Andre Parker, who were current or former Drivers, filed a class action in the Superior Court of California, County of Alameda. USF removed the case to Federal Court, which is now handling the settlement procedures. The Plaintiffs, individually and on behalf of all others similarly situated, alleged that USF violated meal and rest period laws, failed to pay wages due as a result of automatic lunch deductions, failed to provide accurate itemized wage statements, owes waiting time penalties pursuant to the California Labor Code and Wage Orders, engaged in unfair business practices in violation of Business & Professions Code §§ 17200 *et seq.*, and owes civil penalties pursuant to Labor Code § 2698 *et seq.* for violations of the California Labor Code (the "Lawsuit"). Later in the case, three other Plaintiffs – Kirk Ramirez, Raul Roman, and Jason Wolterding, Sr. – joined in the Lawsuit. USF strongly denies all the claims and contentions alleged in the Lawsuit and maintains it has fully complied with the law.

3. What Are My Options?

You may participate in the settlement, exclude yourself from it, or do nothing. In order to participate in the settlement, if you are not a currently employed Driver who was hired before October 2010, you must submit a Claim Form that is being sent to you along with this Notice. You also have a right to object to the settlement if you submit a Claim Form. The option you choose affects whether you receive a settlement payment and whether you give up certain rights. These options are also summarized in the chart on the first page of this Notice.

a. Can you receive a settlement payment?

Current Drivers hired by USF before October 2010

Current Drivers hired by USF before October 2010 who wish to receive a settlement payment do not need to take any action. You will automatically receive your settlement payment when and if the Court gives final approval to the Settlement Agreement.

Former Drivers, Drivers Hired After October 2010, or Drivers Based in Nevada or Arizona Who Drove Routes in California

Former Drivers, Drivers hired after October 2010, or Drivers based in Nevada or Arizona who drove routes in California and wish to receive payment, must submit a Claim Form on or before July 16, 2012. The Claim Form is attached to this Notice. You must complete, sign and date the Claim Form and return it, by First-Class U.S. Mail, to:

US Foods Settlement Administrator
c/o Rust Consulting, Inc.
PO Box 2396
Faribault, MN 55021-9096

The Claim Form must be postmarked no later than July 16, 2012. If your Claim Form is not postmarked by July 16, 2012, you will not receive any payment but you will be bound by the Release and all other terms of the Settlement. If the Claim Form is sent from within the United States, it must be sent through the United States Postal Service by First-Class Mail or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Claim Form. If you lose, misplace or need another Claim Form, you should contact the Settlement Administrator immediately and request that another Claim Form be sent to you. **You are responsible for maintaining a photocopy of your fully completed Claim Form and record of proof of mailing.**

California law protects Class Members from retaliation based on their decision to participate in a class action settlement. Your decision to participate or not participate in this settlement will not impact your employment with USF.

b. Can you request to be excluded from the settlement?

If you exclude yourself from the settlement, you will not receive a settlement payment and will not be subject to the terms of the Settlement Agreement.

You may exclude yourself from the proposed settlement by taking the following steps.

- (1) You must complete and mail a statement containing your name, address and telephone number and requesting exclusion from the Settlement Agreement to the US Foods Settlement Administrator, whose name and address is listed above. The Request for Exclusion must be mailed to the same address listed above.
- (2) The request must be postmarked by July 16, 2012.

You cannot both exclude yourself and obtain a settlement award or object to the settlement. If you exclude yourself from the settlement, you will not receive any settlement award, even if you also submit a Claim Form, unless you also rescind your Request for Exclusion by July 30, 2012.

c. What happens if I do nothing?

If you are a **current Driver hired by USF before October 2010** and you do nothing, and the settlement receives final approval from the Court, you will be included in the Settlement Class and you will automatically receive your settlement payment.

If you are a **former Driver, a Driver hired after October 2010, or a Driver based in Nevada or Arizona who drove routes in California**, and you do not timely submit a Claim Form or request exclusion from the settlement, and if the settlement receives final approval from the Court, you will receive no money from this settlement, and any legal claims you may have that are covered by the settlement will be permanently given up.

d. How do I object to the settlement?

If you are satisfied with the proposed settlement, you do not need to express your views or appear at the hearing at which the Court will consider final approval of the settlement. However, if you wish to object to the proposed settlement you must take the following steps (your failure to do so will be deemed a waiver of your objections and you will not be permitted to appear at the hearing at which the Court will consider whether to grant final approval):

- (1) You must mail a written statement (a written letter is acceptable) to the Settlement Administrator listed above. The Settlement Administrator will send a copy of your objection to all parties involved in the case and to the Court.
- (2) The written statement **MUST** include: (i) a statement advising if you plan to address the Court at the hearing; (ii) a statement of your objections; and (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda. You may appear personally, or through your own counsel, paid for at your expense.
- (3) The written statement must be postmarked by July 16, 2012.

If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for August 31, 2012 before the Honorable Edward Chen, United States District Court Judge, Northern District, Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. For your objections to be considered, you must not also exclude yourself from the settlement.

4. How much can I expect to receive if I submit a claim?

a. Summary of settlement

The gross sum that USF will pay in connection with the settlement is Three Million Dollars (\$3,000,000) (“Gross Settlement Amount”). From the Gross Settlement Amount, payments will be made to Class Counsel for attorneys’ fees and costs, to the Settlement Administrator for administration costs, to the California Labor and Workforce Development Commission for certain penalties owed to the State, and to a Reserve Fund established to provide for payments to certain Class Members who, through no fault of their own, cannot be located or fail to respond in a timely manner, and certain additional awards to the Plaintiffs for their representation of the Class. The amounts of those various payments are described in this Notice below. After deduction of those amounts, the remainder – the “Net Settlement Fund” – of approximately \$1,965,500, will be distributed to participating members of the Settlement Class. The maximum dollar amount that an individual Class Member can receive, assuming 100% participation, is estimated to be \$4,151. The average amount that individual Class Members will receive, assuming 100% participation, is estimated to be \$2,037.

Your individual settlement award will be based on the number of compensable workweeks you worked as a Driver for USF during the Class Period (“Compensable Workweeks”), as a pro-rata percentage of the total hours worked by all USF Drivers during the Class Period. Compensable Workweeks of Nevada/Arizona Drivers shall include only those weeks when they regularly drove routes primarily in California.

The Settlement Administrator will pay settlement payments automatically to each Class Member who is a current USF Driver hired by USF before October 2010 and who does not choose to opt out of the class.

The Settlement Administrator will make settlement payments to each Class Member who is a former USF Driver, a Driver hired after October 2010, or a Driver based in Nevada or Arizona who drove routes in California and who submits a valid and timely Claim Form. All Claim Forms must be signed and completed in their entirety to be considered valid.

The enclosed Estimated Payment Form lists the amount you can expect to receive if you participate in the settlement based on USF’s records of your Compensable Workweeks as a Driver during the Class Period. You have a right to challenge your Compensable Workweeks information by following the instructions on that enclosed form. The estimated payment amount may be reduced or increased, however, based upon the information contained in the Estimated Payment Form, Claim Forms returned, such as challenges to hours worked, decisions of the Court regarding such challenges, the number of Claimants, the number of request[s] for exclusion submitted, whether additional class members are identified or come forward, the potential reallocation of some of the unclaimed funds to Claimants and the terms of the Court’s final approval order.

(1) Applicable Tax Withholding:

Settlement payments to Class Members are allocated for tax purposes as follows: (1) 60% of each payment shall be deemed wages; and (2) 40% of the payment shall be treated as penalties and interest. In accordance with applicable tax laws, required tax withholdings will be taken out of each Claimant’s payment and remitted to the appropriate taxing authorities. Portions of any payments deemed to be wages will be subject to withholding for income taxes and the employee-paid portion of various employment-related taxes, including Social Security, FUTA, FICA, and Medicare taxes, and will be reported with an IRS Form W-2. USF will pay the employer’s share of such taxes as required by applicable law. Portions of any payment deemed to be non-wage payments not subject to withholding will be reported with an IRS Form 1099. Each Settlement Class member receiving a payment will receive appropriate documentation of deductions and withholdings. Settlement Class members shall be responsible for the tax consequences of all payments received by them, for filing returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. The parties to the case cannot provide and will not provide any advice regarding tax obligations. You should seek tax advice as to any amounts you receive pursuant to the settlement from your own tax advisor.

(2) Claimed Settlement Amount; Unclaimed Amounts:

The Net Settlement Fund shall be divided into two separate funds: a) 85% of the Net Settlement Fund shall be used to make Individual Settlement Payments to Class Members who are currently employed with USF, as of the date of Preliminary Approval, and who were among the 830 drivers identified by USF in October 2010 (“830 Drivers Group”); b) 15% of the Net Settlement Amount shall be used to create a reversionary fund, from which Individual Settlement Payments will be made to Participating Class Members (1) whose employment with USF ended prior to the date of Preliminary Approval and who were among the 830 drivers identified by USF in October 2010 (“Former Drivers”); (2) who were not among the 830 drivers identified by USF in October 2010 (“Newly Identified Drivers”); and (3) who are or were based in Reno, Nevada or Phoenix, Arizona and regularly drive or drove routes in California (“Nevada/Arizona Drivers”). Compensable Workweeks of Nevada/Arizona Drivers shall include only those weeks when they regularly drove routes primarily in California. For former Drivers, Newly Identified Drivers, or Nevada/Arizona Drivers to receive payments, they must submit a Claim Form, and any amounts remaining that are not claimed will revert to USF.

b. Additional payments to the Named Plaintiffs

The Court will also be asked to award an incentive payment (also called an enhancement) to the Named Plaintiffs of \$35,000 (\$10,000 each to Downs, Parker, and Ramirez, and \$2,500 each to Roman and Wolterding). The incentive payments will be paid from the Gross Settlement Amount, which will reduce any payment made to you as a Settlement Class Member. This incentive payment is sought to compensate the Named Plaintiffs for their risk incurred and efforts in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against the Released Parties, which is more broad than the release applicable to the Class Members who are not Named Plaintiffs. In exchange for this additional payment, the Named Plaintiffs are also giving up other rights in connection with their employment at USF.

c. Attorneys’ Fees and Costs for Class Counsel

You do not need to pay individually any portion of either Class Counsel’s or USF’s attorneys’ fees and costs. All payments for Class Counsel’s attorneys’ fees and costs will be deducted from the Gross Settlement Amount, which will reduce any payment made to you as a Settlement Class Member. Class Counsel will apply to the court for approval of their attorneys’ fees and costs. The attorneys for the Class will ask for reimbursement of their costs and will ask for fees of up to 30% of the Settlement Amount remaining after costs have been deducted (*i.e.*, the attorneys will request attorneys’ fees up to \$900,000). The actual amount awarded will be determined by the Court to ensure that the amount of attorneys’ fees and costs is reasonable. The attorneys for the Class will also seek reimbursement of up to \$15,000.00 from the Gross Settlement Amount for their litigation costs incurred in bringing and mediating this case.

d. Settlement Administration Costs

Costs incurred by the Settlement Administrator in connection with providing Notice to the Class, receiving and determining challenges to estimated settlement payment amounts, receiving and forwarding to the Court and the parties opt-out and objection letters received, if any, and calculating and distributing payments due to Class Members and others entitled to settlement payment under the terms of the Settlement Agreement as approved by the Court, will be paid from the Gross Settlement Amount up to a maximum of \$27,000.

e. Penalty Payment to State

A payment of \$7,500 of penalties due under the Settlement Agreement will be paid to the California Labor and Workforce Development Commission.

f. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval to the Settlement Agreement based on its finding that the settlement is reasonable, fair and adequate for the Class. The amounts of those payments may be adjusted by the Court.

5. What Will I Give Up if I Do Not Exclude Myself From the Settlement?

The settlement relates to the time that you worked as a Driver for USF during the Class Period. If the proposed settlement is approved, all Class Members who have not requested exclusion will have released the “Released Parties” from the “Released Claims” and will be permanently barred from suing or otherwise making a claim against any of the Released Parties that is in any way related to the Released Claims.

The Released Claims include all claims, asserted or unasserted, by Class Members arising before or during the Class Period, whether in the nature of claims for damages, liquidated damages, punitive damages, unpaid wages and/or overtime pay, premium pay, pay for non-compliant meal or rest periods, waiting-time penalties, wage statement penalties, interest, attorneys’ fees, costs or injunctive relief or other penalties or remedies that were or could have been asserted out of, relating to, or in connection with any type of actual or alleged violation of any wage and hour laws asserted in the Action, the Complaint, or the First Amended Complaint or that arise from the same factual predicate of the Action, the Complaint, the Amended Complaint, whether known or unknown, including but not limited to claims for unpaid wages, overtime, non-compliant meal periods, non-compliant rest periods, waiting time penalties, and wage statement penalties. The Released Claims include all claims that were or could have been alleged in this Action, the Complaint, or the First Amended Complaint, including but not limited to claims for (i) failure to provide timely meal and rest periods and/or pay missed meal and rest premium pay in violation of California Labor Code sections 226.7, 512 and IWC Wage Order No. 7 or any other law, rule or ordinance; (ii) failure to pay wages when due and/or made illegal deductions from wages in violation of California Labor Code sections 1194, 1194.2, 204, 218, 1197, 1198, and 221 or any other law, rule or ordinance; (iii) failure to pay compensation due upon termination in violation of California Labor Code sections 201, 202 and 203 or any other law, rule or ordinance; (iv) failure to provide accurate itemized wage statements in violation of California Labor Code sections 226, 226.3, or any other law, rule or ordinance; (v) failure to comply with California Business & Professions Code sections 17200 et seq.; (vi) penalties pursuant to Labor Code section 2699 et. seq., and any claims for interest or penalties arising therefrom; (vii) any claims that could have been brought under the California Labor Code, including, without limitation, Sections 210, 216, 218.5, 225.5, 558, and 1197.1, (viii) any claims that could have been brought under the Fair Labor Standards Act or similar federal or state governmental agencies regulating wage and hour or labor and employment laws, and (ix) any claims that could have been brought under the Industrial Welfare Commission Wage Orders.

Settlement Class Members who do not exclude themselves from the settlement will be deemed to have fully and finally released USF, its present and former parent companies, subsidiary companies, related or affiliated companies, predecessors, fiduciaries, shareholders, partners, owners, officers, directors, employees, agents, managers, including their office, branch, district, and division managers and their assistant managers, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with USF or any of them (“Released Parties”), from the Released Claims.

6. Will I be subject to discipline based on whether I receive payment or submit a claim?

No. Whether you are a current or former USF Driver, your decision as to whether or not to submit a Claim Form or receive payment as part of the settlement will in no way affect your employment with USF. **USF is prohibited by law from retaliating in any way based on your decision whether or not to participate in the settlement.**

7. What if I disagree with the stated number of Compensable Workweeks?

The enclosed Estimated Payment Form contains information on how each Class member’s estimated settlement payment amount was calculated based on the number of Compensable Workweeks a Driver worked during the Class Period, and contains a form and instructions for disputing that information, if desired.

All challenges must be submitted by July 16, 2012. All Compensable Workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator’s decision will be final and binding.

8. Where can I get additional information?

This Notice only summarizes this lawsuit, the settlement, and related matters. For more information, you may find and review the Settlement Agreement and this Notice which are posted on the websites of the Settlement Administrator, [*www.DownsUSF.com*], or of the Class Counsel firm Goldstein, Demchak, Baller, Borgen & Dardarian, [*www.gdblegal.com*]. You may also inspect the Court files at the Clerk of the Court, United States District Court Judge, Northern District, San Francisco Courthouse, Courtroom 5, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, from 10:00 a.m. to 4:00 p.m., Monday through Friday, excluding any holidays or other days the Court may be closed. If you have questions about the settlement, you may also contact Class Counsel as follows:

ACKERMANN & TILAJEF, P.C.

Craig J. Ackerman, Esq.
Tatiana Hernandez, Esq.
1180 S. Beverly Drive, Suite 610
Los Angeles, CA 90035
Telephone: 1-310-277-0614
Facsimile: 1-310-277-0635
cja@laborgators.com
tatiana@laborgators.com

**GOLDSTEIN, DEMCHAK, BALLER,
BORGAN & DARDARIAN**

Morris J. Baller, Esq.
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Telephone: 1-510-763-9800
Facsimile: 1-510-835-1417
mballer@gdblegal.com

HAMMONDLAW, P.C.

Julian Hammond, Esq.
1180 South Beverly Drive, Suite 601
Los Angeles, CA 90035
Telephone: 1-310-601-6766
Facsimile: 1-310-295-2385
Hammond.julian@gmail.com

You may also contact the Settlement Administrator as follows:

**US Foods Settlement Administrator
c/o Rust Consulting, Inc.
PO Box 2396
Faribault, MN 55021-9096
Toll-free telephone number: 1-866-403-0689**

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE CLERK
(OTHER THAN TO INSPECT THE COURT FILES) FOR INFORMATION REGARDING THIS
SETTLEMENT OR THE CLAIM PROCESS.