

Rojas v. Pulmuone Foods USA, Inc. et al. (Case No. 21CV376481)
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA
NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Si desea una traducción al Español de este Aviso, por favor llame al administrador al 1(888) 413-0426

To: All persons who were employed by Defendants Pulmuone Foods USA, Inc., Nasoya Foods USA, LLC, and Pulmuone U.S.A., Inc. (“Defendants”) in any non-exempt hourly position in the State of California at any time during the period from February 26, 2017 up to April 13, 2023 (“Class Members”).

All persons who were employed by Defendants in any non-exempt hourly position in the State of California at any time during the period from February 26, 2020 up to April 13, 2023 (“PAGA Members”).

On April 13, 2023, the Honorable Theodore C. Zayner of the Santa Clara County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement (“Preliminary Approval”). **You have received this notice because Defendants’ records indicate that you fall within the definition of a “Class Member,” and are therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 1:30 p.m. on August 23, 2023 in Department 19 of the Santa Clara County Superior Court located at 161 N. First Street, San Jose, California 95113.

Class members may appear at the final approval hearing remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccourt.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.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit www.cptgroupcaseinfo.com/PulmuoneFoodsSettlement for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

On March 23, 2023 Plaintiff Martin Asencio Rojas (“Plaintiff”) filed a Second Amended Complaint against Defendants in the Santa Clara County Superior Court of California on behalf of himself and Class Members and PAGA Members. The term “Action” means this putative class action pending in Santa Clara County Superior Court, Case No. 21CV376481.

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and PAGA Members. Plaintiff alleged that Defendants 1) failed to pay overtime wages; 2) failed to pay minimum wages; 3) failed to provide meal periods; 4) failed to provide rest periods; 5) failed to provide accurate, itemized wage statements and maintain payroll records; 6) failed to timely pay all final wages; 7) failed to reimburse expenses; 8) engaged in unfair competition; 9) failed to timely pay wages during employment; 10) violations of the California Labor Code Private Attorneys General Act of 2004; and 11) failed to pay meal and rest period premiums.

After the exchange of extensive documentation and information, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On April 20, 2022, the parties participated in a mediation with Mr. Jeffrey Ross, Esq., an experienced and well-respected class action mediator. With Mr. Ross’ guidance, the parties were able to negotiate a complete settlement of Plaintiff’s claims.

Questions? Contact the Settlement Administrator toll free at 1(888) 413-0426

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, all parties avoid the risks and cost of a trial.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC and Daily Aljian LLP (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants expressly deny that they did anything wrong or that they violated the law, and Defendants further deny any liability whatsoever to Plaintiff, the Class Members, or the PAGA Members. Defendants have agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiff and Defendants have agreed to settle the underlying claims in exchange for a Gross Settlement Amount of \$511,868.08. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000.00 to Plaintiff for his services on behalf of the class, and for a release of all claims arising out of his employment with Defendants; (3) \$166,667.00 in attorneys’ fees and up to \$15,000.00 in litigation costs and expenses; (4) a \$51,868.08 settlement of claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), inclusive of a \$38,901.06 payment to the California Labor and Workforce Development Agency (“LWDA”) in connection with the PAGA, and a \$12,967.02 payment (“PAGA Fund”) to all PAGA Members; and (5) reasonable Settlement Administrator’s fees and expenses currently estimated at \$10,000.00. After deducting the above payments, a total of approximately \$258,333.00 will be allocated to Class Members who do not opt out of the Settlement Class (“Net Settlement Fund”). Additionally, all PAGA Members will receive a proportional share of the \$12,967.02 PAGA Fund, regardless of whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. The Settlement Administrator will calculate the total number of Workweeks worked by each Class Member from February 26, 2017 to April 13, 2023 (“Class Period”) and the aggregate total number of Workweeks worked by all Class Members during the Class Period using Defendants’ records. To determine each Class Member’s estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks, resulting in the “Workweek Value.” Each Class Member’s share of the Net Settlement Fund will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member’s share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendants’ records, you worked during the Class Period in a non-exempt position for a total of <<WorkWeeks>> Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$<<EstSettAmt>>.

Payments from PAGA Fund. The Settlement Administrator will calculate the total number of Pay Periods worked by each PAGA Member from February 26, 2020 to April 13, 2023 (“PAGA Period”) and the aggregate total number of Pay Periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of Pay Periods, resulting in the “PAGA Pay Period Value.” Each PAGA Member’s share of the PAGA Fund will be calculated by multiplying each individual PAGA Member’s total number of Pay Periods by the PAGA Pay Period Value. A Request for Exclusion does not exclude an PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

According to Defendants’ records, you worked during the PAGA Period in a non-exempt position for a total of <<PAGAPeriods>> Pay Periods. Accordingly, your estimated payment from the PAGA Fund is approximately \$<<EstPAGAAMt>>.

Your Estimated Payment. Based on the above, your estimated payment from the settlement is approximately \$<<TotalEstAmt>>. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before July 6, 2023 and must be sent to:

Rojas v. Pulmuone Foods USA, Inc. et al.
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax No. (949) 419-3446

If you dispute the information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. The PAGA Fund will be allocated as 100% to penalties. The Net Settlement Fund will be allocated as follows (the "Net Settlement Allocation"): (a) Forty Percent (40%) as penalties; (b) Forty Percent (40%) as interest; and (c) Twenty Percent (20%) as wages. The employer's portion of the payroll tax, if applicable, is paid on top of the Gross Settlement and not out of the Net Settlement Amount.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Released Class Claims: All claims asserted in the Action by Plaintiff and the Settlement Class or any other claims that could reasonably have been asserted in the Action based on the facts alleged, including but not limited to: (a) failure to pay overtime in violation of Labor Code §§ 510 and 1198; (b) failure to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198; (c) failure to provide meal periods in violation of Labor Code §§ 226.7, 512(a), 516, and 1198; (d) failure to authorize and permit rest periods in violation of Labor Code §§ 226.7, 516, and 1198; (e) failure to provide compliant wage statements and maintain payroll records in violation of Labor Code §§ 226(a), 1174(d), and 1198; (f) failure to provide timely wages upon termination in violation of Labor Code §§ 201 and 202; (g) failure to timely pay wages during employment in violation of Labor Code § 204; (h) failure to reimburse for business expenses in violation of Labor Code § 2802; and (i) a violation of California Business & Professions Code §§ 17200, *et seq.* based on the preceding claims for failure to provide overtime wages, minimum wages, meal and rest periods, accurate and complete wage statements, maintain accurate payroll records, timely pay all wages earned during employment and reimburse for business-related expenses; (j) a violation of California Business & Professions Code §§ 17200, *et seq.* for failure to pay overtime wages, minimum wages, meal and rest period premiums pursuant to Labor Code § 226.7, accurate and complete wage statements, maintain accurate payroll records, timely pay all wages earned during employment, and reimburse for business-related expenses; and (k) civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code §§2698 *et seq.*

Released PAGA Claims: All claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the facts alleged in Plaintiff's letter to the LWDA and the Released Class Claims during the PAGA Period.

Released Parties: The individuals released ("Released Parties") include Pulmuone Foods USA, Inc., Nasoya Foods USA, LLC, and Pulmuone U.S.A., Inc., their parents, subsidiaries, affiliates, insurers, related entities and divisions, and its and their respective past or present officers, directors, shareholders, current and former agents, principals, heirs, executors, administrators, employees, founders, members, representatives, accountants, auditors, consultants, insurers and reinsurers, respective successors, assigns, and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any.

Option 2 – Opt Out of the Settlement

Questions? Contact the Settlement Administrator toll free at 1(888) 413-0426

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

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c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax No. (949) 419-3446

The Request for Exclusion must be postmarked or faxed not later than July 6, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by July 6, 2023, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not Receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- If you are an PAGA Member, you will still release the Released PAGA Claims, and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at *Rojas v. Pulmuone Foods USA, Inc. et al.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

All written objections must be received by the administrator by not later than July 6, 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for August 23, 2023 at 1:30 p.m. in the Superior Court of the State of California, for the County of Santa Clara and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the Action and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: 1 (888) 342-3195

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1(888) 413-0426