

**NOTICE OF (1) PROPOSED CLASS AND COLLECTIVE ACTION
SETTLEMENT AND (2) FINAL SETTLEMENT APPROVAL HEARING**

Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.,
Case No. 2:12-CV-01689-CAS (PJW)

I. SUMMARY OF THE SETTLEMENT AND YOUR RIGHTS

Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully.

1. To Whom This Notice Is Directed

This Notice, which has been approved by the Court, is to notify Class Members (defined below) in the class action “*Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.*” currently pending in the United States District Court for the Central District of California, of the proposed Settlement of that case. The Court has granted preliminary approval to the Settlement. The Court has conditionally certified, for settlement purposes, the following class (the “Class” or “Class Members”):

All individuals employed by Defendant Bimbo Bakeries USA, Inc. in the position of “Route Sales Representative,” “Route Service Representative,” and “Vacation Relief,” or similarly titled position in California for one or more days between February 28, 2008 and the Preliminary Approval Date of October 7, 2014 or employed by Earthgrains Baking Companies, Inc. (Sara Lee) in any of those same or similarly titled positions in California for one or more days between October 30, 2012 and the Preliminary Approval Date of October 7, 2014.

According to the records of Bimbo Bakeries USA, Inc. (“BBUSA”), you are a member of the Class. The purpose of this Notice is to inform you about the proposed Settlement and to explain your rights and options with respect to the Action and the Settlement.

2. What Is a Class Action?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. In this case, Tyrone Smith, Greg Villanueva, and John Caudill (the “Class Representatives”) asserted claims on behalf of all the Class Members.

3. Important Options And Dates

You have several options:

- a. **Make A Claim:** To be eligible for a payment under the Settlement, you must fully complete and sign a Claim Form (which is attached to this Notice) and submit it to the Settlement Administrator by first-class mail, postmarked by January 22, 2015, or deliver it to the Settlement Administrator by that date, following the procedure described in Section V below. **IF YOU DO NOT DO THIS, YOU WILL RECEIVE NO MONEY FROM THIS SETTLEMENT.**
- b. **Object:** You may object to the Settlement in writing, postmarked by January 22, 2015, following the procedure described in Section V.7 below.
- c. **Request An Exclusion:** You may request exclusion from the Settlement, in which case you will no longer be a Class Member (and therefore you will receive no money under this Settlement and you will not have the right or the ability to object to the Settlement), and you will not release your claims. To request exclusion from the Settlement, you must follow the procedure described in Section V.6 below and submit it to the Settlement Administrator by first-class mail, postmarked by January 22, 2015, or fax it to the Settlement Administrator by that date.
- d. **If You Do Nothing:** **If you do nothing in response to this Notice, you will not be eligible to receive any proceeds under the Settlement, but you will be deemed to have released any Participating Class Members’ Released Claims as set forth in Section IV below.**

II. BACKGROUND OF THE ACTION

1. The Claims At Issue

On February 28, 2012, Tyrone Smith, Greg Villanueva, and John Caudill (the “Class Representatives”) commenced a lawsuit against BBUSA in the District Court for the Central District of California (the “Action”), where the Action is now pending. On

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August 17, 2012, after amending the complaint twice, the Class Representatives filed a Third Amended Complaint. The Third Amended Complaint primarily alleges that Defendant:

1. failed to properly pay their employees minimum and overtime wages in violation of the state and federal law;
2. failed to provide their employees with meal periods and rest periods as required by the California Labor Code.

The Third Amended Complaint also alleges that Defendant failed to furnish accurate itemized wage statements, and failed to timely pay wages to employees upon separation. The Class Representatives also allege that Defendant engaged in unfair business practices in violation of California Business and Professions Code section 17200 *et seq.* and asserted claims under the Private Attorneys General Act. The Class Representatives requested damages under the California Labor Code. The Class Representatives also sought penalties, attorneys' fees and costs.

The parties in the Action disagree as to the probable outcome of the Action with respect to liability and damages if it were not settled. While the Class Representatives and their attorneys were prepared to proceed with litigating the case described above, they recognize that litigating is a risky proposition and that they may not have prevailed on any or all of their claims. Likewise, while BBUSA was confident that no class action could be certified for trial purposes and that any conditionally certified collective action would be decertified, and that they have strong legal and factual arguments that would result in the dismissal of the Class Representatives' claims, they recognize the risks, distractions, and costs involved with litigation.

2. BBUSA's Denial of Liability

BBUSA denies all of the Class Representatives' allegations. Specifically, BBUSA denies that the Class Representatives or the Class Members were entitled to and/or not provided all meal or rest periods to the extent required by law, are owed any additional compensation for the hours they worked, have received inaccurate or deficient wage statements, or have not been timely paid all wages upon termination. Defendant also denies all allegations of unfair business practices.

III. SUMMARY OF THE SETTLEMENT

This Settlement is the result of good-faith, arms-length negotiations between the Class Representatives and BBUSA, through their respective attorneys, which included months of discussions, several depositions, the formal and informal exchange of thousands of pages of documents and data, negotiations through counsel experienced in these types of cases, and a mediation presided over by an experienced mediator. The Settlement represents a compromise regarding disputed claims, considering the risks and uncertainties of continued litigation. The Class Representatives and their counsel have determined that the Settlement is fair, reasonable and adequate and is in the best interests of the Class Members.

The attorneys for the Putative Class in the Action ("Class Counsel") are:

Marcus J. Bradley Kiley L. Grombacher	MARLIN & SALTZMAN, LLP 29229 Canwood Street, Suite 208 Agoura Hills, CA 91301 (818) 991-8080 (Telephone)
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Paul T. Cullen	THE CULLEN LAW FIRM, APC 29229 Canwood Street, Suite 208 Agoura Hills, CA 91301 (818) 360-2529 (Telephone)
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The attorneys for BBUSA are:

Michael J. Puma	MORGAN, LEWIS & BOCKIUS LLP 1701 Market St. Philadelphia, PA 19103-2921 (215) 963-5305 (Telephone)
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John S. Battenfeld	MORGAN, LEWIS & BOCKIUS LLP 300 South Grand Ave., Suite 2200 Los Angeles, CA 90071-3132 (213) 612-2500 (Telephone)
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1. The Settlement Agreement And The Court's Final Approval Hearing

The parties have presented the Settlement to the Court for its review. On October 7, 2014, the Court granted preliminary approval of the proposed Settlement. The Court will decide whether to give final approval to the proposed Settlement, including the proposed enhancement payments for the Class Representatives and proposed Class Counsel's Attorneys' Fees and Costs Payment, at a hearing scheduled for January 26, 2015 ("Final Approval Hearing"). See Section VI below for details. Money will be paid to Class Members under the Settlement only if and after the Settlement is granted final approval.

2. Summary Of Terms Of The Proposed Settlement

Subject to Court approval, the terms of the Settlement are as follows:

- a. BBUSA will pay up to \$1,472,500 (the "Settlement Amount") to pay: (i) the timely and proper claims of Class Members; (ii) Class Counsel's fees and litigation costs; (iii) enhancement payments to Class Representatives for their service to the Class in securing the Settlement; (iv) any approved payment to the Labor Workforce Development Agency ("LWDA"); and (v) the costs of administering the Settlement.
- b. After deduction from the Settlement Amount of the amounts described above in Paragraph a (leaving as the remainder the "Net Settlement Amount"), a Settlement Administrator approved by the Court will make a settlement payment to each Class Member who submits a timely, proper and fully complete Claim Form (enclosed with this Notice) ("Claimants"). These payments will be based on a formula that accounts for each Settlement Class Member's Compensable Work Weeks for the period of time in which he or she was employed by BBUSA in the positions of "Route Sales Representative," "Route Service Representative," "Vacation Relief" or similarly titled position in California between February 28, 2008 and October 7, 2014.
- c. A portion of each payment made pursuant to this Settlement to a Claimant will be subject to required wage withholdings and deductions; therefore, the net payable amount will be less than the gross amount of the Settlement Share. Neither Class Counsel nor BBUSA make any representations concerning tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice.
- d. Class Counsel will ask the Court to award attorneys' fees of up to \$441,150 and attorney costs not to exceed \$40,000. In addition, Class Counsel will ask the Court to authorize an enhanced award of up to \$7,500 (\$22,500 total) to each of the three Class Representatives for their service to the Class, including direct participation in Class Counsel's fact investigation, providing sworn testimony in some instances, and the settlement negotiations. The Parties will ask the Court to award \$7,500 to the LWDA in connection with the release of PAGA claims. The Parties further currently estimate the Settlement Administration costs to be at or about \$40,000, but this is only an estimate and is subject to change.

IV. RELEASE OF CLAIMS

Each Class Member who does not timely and properly request exclusion from the Settlement as set forth below (the "Participating Class Members") is deemed to have fully and finally released and discharged BBUSA and all of its past, present and future parents, subsidiaries, affiliates, successors and predecessors, including Earthgrains Baking Companies, Inc., and each of their directors, officers, employees, insurers, lawyers, and agents (the "Released Parties"), from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description, whether known or unknown, whether anticipated or unanticipated, arising prior to the date the Final Approval Order becomes Final, which arise under state or local law or regulation and: (a) were pled in the Action at any time; and/or (b) could have been pled based upon the factual allegations in the Action, including all claims are based on any of the following: (i) alleged failure to pay any type of overtime wages, (ii) alleged failure to pay any type of earned or minimum wages, (iii) alleged failure to provide meal periods, (iv) alleged failure to provide rest breaks, (v) alleged failure to provide itemized or accurate wage statements, (vi) alleged failure to timely pay wages due, before or after the end of employment, (vii) to the extent related to the claims in this Action, any statutory, constitutional, regulatory, contractual or common law claims for wages, damages, litigation costs, unfair business practices, unfair competition (including, without limitation, claims arising under California Bus. & Prof. Code sections 17200 *et seq.* and the Declaratory Judgment Act); and (c) this release includes any and all of the following based on any of the matters released by the foregoing (a) and (b) above: penalties, including those arising under PAGA, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief ("Participating Class Members' Released Claims"). In addition, each Claimant will also release the Released Parties from any and all claims, obligations, causes of action, actions, demands, rights, and liabilities, whether known or unknown, whether anticipated or unanticipated, arising prior to the date the Final Approval Order becomes Final that were asserted or could have been

asserted pursuant to the FLSA based upon the factual allegations in the Action, including all claims based on any of the following: (i) alleged failure to pay wages, (ii) alleged failure to pay overtime wages, (iii) alleged failure to pay straight time wages, (iv) alleged failure to pay minimum wages, and (v) alleged unpaid meal periods, and this release includes any and all of the following based on any of the matters provided for above in this paragraph: penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief ("Claimants' Released Claims").

In addition, the Class Representatives expressly waive and relinquish, to the fullest extent permitted by law, the applicable provisions, rights and benefits they may otherwise have had relating to their Released Claims pursuant to Section 1542 of the California Civil Code, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

V. HOW TO RECEIVE MONEY FROM THE SETTLEMENT

In order to be eligible to receive a payment under the Settlement, you must fully complete, sign, and mail, fax or e-mail the enclosed Claim Form to the Settlement Administrator at the address listed below or you may download the Claim Form at www.GCGinc.com/cases/BimboBakeriesUSA and return it to the Settlement Administrator. A pre-paid business envelope has been enclosed. Your Claim Form must be postmarked no later than January 22, 2015.

The Settlement Administrator is:
Smith, et al. v. Bimbo Bakeries USA, Inc.
c/o GCG
P.O. Box 35100
Seattle, WA 98124-1100
Telephone: 888-404-8013
Facsimile: 206-876-5201
E-mail: BimboBakeriesUSALitigation@gcginc.com

If you need another Claim Form, contact the Settlement Administrator. **If you do not submit a Claim Form, you will not receive any money from the Settlement.**

1. How Will My Settlement Share Be Calculated?

After deducting from the Maximum Settlement Amount for approved attorneys' fees, litigation costs, enhancement payments to the Class Representatives, a payment of \$10,000 to the LWDA, and the costs of administering the Settlement, from the remaining amount (the "Net Settlement Amount") a Settlement Administrator approved by the Court will make a settlement payment to each Class Member who submits a timely, proper and fully complete Claim Form (enclosed with this Notice). These payments will be based on a formula that accounts for each Class Member's Compensable Work Weeks as set forth in Section III.2.b. of this Notice. Unclaimed amounts will be distributed to Claimants on a pro rata basis.

2. When Will My Share of the Settlement Be Distributed To Me?

Within twenty (20) days after the Court's order granting final approval of the Settlement becomes final and non-appealable, the Settlement Administrator will mail the Settlement Share checks to all Claimants who are eligible and submitted valid and timely Claim Forms.

3. Settlement Share Checks Not Cashed Within Three Months Will Be Forfeited

If any Claimant who submitted a timely and valid Claim Form does not cash the check for his or her Settlement Share within 90 days after issuance, he or she will not receive any proceeds under the Settlement and the Settlement Share proceeds will be submitted to the California Unclaimed Property office.

4. Tax Consequences

50% of each Settlement Share paid to a Plaintiff or Claimant shall be payment for wages and reported on Form W-2s, and the remaining 50% of each settlement share paid to a Plaintiff or Claimant shall be payment for interest/penalties and reported on Form 1099s. BBUSA's share of employment taxes on the wage portion of the settlement payments shall be paid by it above and beyond the Settlement Fund as described above, and the Plaintiffs and Claimants are responsible for the employee's share of

employment taxes and all income taxes. The Settlement Administrator will report all payments to government authorities including the IRS as required by law, and shall make all legally required deductions, withholdings and/or employment tax payments out of the Settlement Fund.

5. Non-Retaliation

BBUSA understands and acknowledges that it has a legal obligation not to retaliate against any Class Member who elects to participate in the Settlement.

6. To Request Exclusion From the Settlement

If you do not want to participate in the Settlement, you have the right to be excluded from the Class. If you wish to be excluded from the Class, you must make a written request for exclusion that includes: (1) your full name (and former names, if any), current address, telephone number, last four digits of your Social Security number, and the dates of your employment with BBUSA; (2) the following statement: "I want to be excluded from the Plaintiff Class in *Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.*"; and (3) your signature. The request for exclusion must be submitted in your own name and signed by you personally; no individual may request that other persons be excluded from the Class. In order to be valid, your completed request for exclusion must be postmarked (or received, if via fax) no later than January 22, 2015.

It must be mailed to: *Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.*, c/o GCG, P.O. Box 35100, Seattle, WA 98124-1100.

If you properly submit a timely written request to be excluded from the Settlement, you will not be eligible to receive any of the benefits under the Settlement and you will not have standing to object to the Settlement. You will, however, retain whatever legal rights you may have against BBUSA with regard to the claims released by the Settlement.

7. How to Object to the Settlement (If Desired)

If you have not timely submitted a written request to be excluded from the Settlement, you may object to the Settlement, including Class Counsel's Motion For Attorneys' Fees And Costs which will be filed with the Court and also made available on the Settlement Administrator's website twenty (20) days prior to the objection deadline, by submitting a written notice of objection. However, if the Court grants final approval to the Settlement, you will still be bound by the Settlement. You may object to the Settlement, either personally or through an attorney at your own expense, by filing a written objection with the Court and mailing a copy of your written objection to Class Counsel, Counsel for BBUSA, and the Settlement Administrator at their respective addresses.

All objections must be signed and set forth your name, address, telephone number, and the name of the Action: *Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.*, Case No. 12-CV-01689-CAS (PJW). To be valid, any objections to the Settlement must be mailed to Class Counsel, Counsel for BBUSA, and the Settlement Administrator, with a postmark date no later than January 22, 2015, at the addresses listed above. If you submit a timely and valid objection, you may appear either personally or through an attorney, at your own expense, at the Final Approval Hearing, as discussed below. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing.

Any Class Member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the enhancement awards to the Plaintiffs, the claims process, and any and all other aspects of the Settlement. If you comment through an attorney, you will be solely responsible for the fees and costs of your own attorney. If you object to the Settlement, but wish to receive your individual settlement payment if the Settlement is approved, you must comply with the Claim Form submission requirements described herein. If the Court approves the Settlement despite any comments or objections, and you have not properly submitted a Claim Form, you will not receive any money from the Settlement.

Regardless of whether you file an objection, in order to be eligible to receive any money under the Settlement, you must timely submit a properly completed Claim Form.

Likewise, regardless of whether you file an objection, you will be deemed to have released all of the Released Claims as set forth above unless you properly request exclusion from the Settlement as set forth above.

VI. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of allocation for the Settlement Shares, Class Counsel's request for attorneys' fees and costs, and the enhancement payments to the Class Representatives on January 26, 2015 at 10:00 a.m. in Courtroom 5 of the United States District Court for the Central District of California, located at 312 North Spring Street, Los Angeles, California 90012-4701. The Final Approval Hearing may be continued without further notice to Class Members. **It is not necessary for you to appear at this hearing.** You may appear at the hearing if you wish, if you have given notice of any objections to the Settlement under the procedures set forth above.

VII. ADDITIONAL INFORMATION

1. No Cost To You

The Settlement does not require you to pay money out of pocket. However, you are responsible for all taxes owed on your paid Settlement Share. The Settlement Administrator will be responsible for submitting BBUSA's share of any payroll taxes paid in the Settlement, which BBUSA will provide above and beyond the Settlement Payment.

2. No Tax Advice

Any perceived tax advice in this Notice was not intended or written to be used, and it cannot be used by any recipient, for the purpose of avoiding any tax obligations or penalties that may be imposed on any person. This Notice imposes no limitation on the disclosure of the tax treatment or tax structure of any transaction. Class Counsel cannot give you tax advice.

3. This Notice Provides Only A Summary

This Notice only summarizes the Action, the Settlement, and other related matters. For more information, you may review the Court's files, including the detailed Joint Stipulation of Class and Collective Action Settlement and Release, which will be on file with the Clerk of the Court. The pleadings and other records in this Action including the Joint Stipulation of Class and Collective Action Settlement and Release, may be examined at the Office of the Clerk of Court, United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012-4701, or online through the Public Access to Court Electronic Resources System, known as "PACER," at <https://ecf.cacd.uscourts.gov/cgi-bin/login.pl>

You may also contact the Settlement Administrator at *Tyrone Smith et al. v. Bimbo Bakeries USA, Inc. et al.*, c/o GCG, P.O. Box 35100, Seattle, WA 98124-1100. Do not telephone the Court for information regarding this Settlement or the claim process.

4. If You Have Questions

Any questions regarding this Notice, the Claim Form, or how to opt-out of or object to the Settlement should be directed to the Settlement Administrator at the above address and telephone number. If you have further questions about the Settlement, you may also contact Class Counsel at the above address and telephone number listed in this Notice. If your address changes, or is different from the one on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.