

- c. “Releasees” refers to and includes Defendants, Nestlé’s present and former subsidiaries, divisions, parent companies, holding companies, stockholders, shareholders, officers, directors, employees, agents, servants, representatives, attorneys, insurers, affiliates, and the successors, heirs and assigns of any such entity or person, as well as any individual that could be included within the definition of “employer” under either the Fair Labor Standards Act (“FLSA”) and Arkansas Minimum Wage Act (“AMWA”) including but not limited to all officers, directors and managers of Nestlé in their personal capacities.
- d. The “Parties” refers collectively to Plaintiffs and Defendants.
- e. “Class Counsel” refers to Sanford Law Firm, PLLC.
- f. “Lawsuit” means *Joy McFarland, et al. v. Nestlé USA, Inc., et al.*, U.S. District Court for the Eastern District of Arkansas Case No. 3:16-cv-00100-JLH.
- g. “Claims Administrator” means Simpluris, Inc., 1485 S. Semoran Blvd., Suite 6-1401, Winter Park, FL 32792.
- h. “Effective Date” is defined as the later of: (i) the date when the time for appeal has expired; or (ii) the date of the final resolution of any appeal of the Settlement Agreement if an appeal has been filed and not dismissed.

2. This Settlement Agreement is made and entered into by and between the Plaintiff and the Defendants. This Settlement Agreement is subject to the terms and conditions hereof and to the approval of the Court. Plaintiff and Defendants hereby agree to fully and finally settle, compromise and resolve all claims that were or could have been brought in the Action, on the terms and conditions set forth in this Settlement Agreement.

3. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any Releasees. Each of the Parties hereto has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. In particular, and without limiting the generality of the foregoing, nothing in this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility or fault whatsoever by Defendants or Releasees, who expressly deny any liability, wrongdoing, impropriety, responsibility or fault whatsoever.

4. Class Counsel have conducted a thorough investigation into the facts of the Lawsuit, and have diligently pursued investigation and prosecution of Class Members’ claims against Defendants. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interest of the

Class in light of all known facts and circumstances, including the risk of significant delay, the risk of loss or limited recovery, and the defenses asserted by Defendants both on the merits and with respect to class certification. Defendants and Defendants' counsel also agree the settlement as stated in this Settlement Agreement is reasonable and fair.

5. The Settlement Agreement contains and constitutes a full and complete settlement and release (as defined below) by Plaintiff, which release includes in its effect Defendants and all Releasees.

6. Subject to Court approval of the Settlement Agreement, and on the terms and conditions set forth in this Settlement Agreement, Defendants will pay and promise as follows:

- a. Nestlé will put up a \$99,050 fund against which Class Members can make claims.
- b. Service award of \$2,500 to Joy McFarland. Service award shall be paid out of the \$99,050 fund.
- c. Nestlé will pay to each of the 1301 Class Members who submit timely claims using the agreed Claim Form and fulfills the conditions of the claims procedure specified in this Settlement Agreement, the amounts contained within Exhibit E to this Agreement. The formula the Parties used to determine each Class Member's share of the \$99,050 settlement proceeds was based on the number of workweeks worked by each Class Member between April 11, 2013 and January 20, 2017. The \$99,050 (minus the Named Plaintiff's service award) was divided by the total number of workweeks worked by the class members between April 11, 2013 and January 20, 2017. That number was then multiplied by the number of weeks worked by each Class Member during this time period to determine each Class Member's share. Of the amount paid to each such Class Members, 100% will be deemed wages and subject to normal payroll tax withholding and W-2 reporting. Nestlé shall be responsible for all employer-paid and due taxes on these wages, including FICA, FUTA and state unemployment, but shall not be liable for any other taxes.
- d. Subject to approval by the Court, Nestlé agrees to pay to Class Counsel the sum of \$49,450 as attorneys' fees and costs and expenses, in full and complete satisfaction of all claims by Plaintiff and her counsel for attorneys' fees, costs and expenses of any kind whatsoever. Class Counsel will apply to the Court for payment of said amounts, to be approved by the Court. Defendants and Defendants' counsel will not oppose such a request. The total attorneys' fees and costs actually paid will be as approved by the Court in its Final Order, subject to appellate rights. Class Counsel and Defendants agree that Defendants will make such payment to Sanford Law Firm, PLLC as directed by Class Counsel within 10 days after the deadline for appeal of the Court's final approval of the settlement. Nestlé will report the payments to Class

Counsel using an IRS Form 1099. The enforceability of this Agreement is not contingent on the amount of attorneys' fees or costs awarded. Without limiting the generality of the foregoing, any dispute regarding the amount of attorneys' fees or costs, and/or any appeal related thereto, shall not affect or delay the finality of this Agreement, and shall not affect or delay the entry of judgments in the Lawsuits.

- e. Any Class Members that opt out of the settlement or fail to submit a claim form will not be paid their assigned settlement shares as outlined in Exhibit E and Nestlé will retain all such funds.
7. The Parties agree to share equally in the payment of Mr. Dixon's fees and expenses.

MUTUAL FULL COOPERATION

8. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's approval of this Settlement Agreement and to obtain a final judgment in the Lawsuits upon completion of the terms and conditions of the Settlement Agreement as approved by the Court.

DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

9. Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an Order, substantially in the form attached as Exhibit C:
- a. Granting preliminary approval of the Settlement Agreement;
 - b. If the Court determines that a hearing is necessary, which the Parties do not believe is necessary, the Parties will cooperate to ensure that it takes place as expeditiously as possible;
 - c. Approving as to form and content the proposed Notice of Class Action Settlement and Settlement Hearing and Claim Form, attached as Exhibit A;
 - d. Approving as to form and content the proposed Opt Out Form, attached as Exhibit B;

- e. Directing the mailing and remailing of the Notice and Claim Form and opt out form by first class mail to the Class Members as set forth herein;
- f. Setting a deadline for objections;
- g. Setting a prompt date for the final approval hearing; and
- h. Setting a proposed deadline for the Court's entry of final judgment after the final fairness hearing for the Lawsuits.

DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL

10. Following approval by the Court of the Settlement, the Claims Administrator will issue the Notices of the Settlement and of the Claims Procedure.

11. Settlement Administration.

- a. Nestlé has selected Simpluris, Inc. as the Claims Administrator and shall pay all settlement administration costs and fees for Simpluris including the mailing and remailing of the Notice and Claim Form and Opt Out form to last known addresses or addresses. However, the Claims Administrator's responsibilities to communicate and handle the claims extend equally to all Parties and the Court.
- b. Nestlé will not be obligated at any stage to engage investigative services to locate Class Members, however the Claims Administrator shall update Class Members' last known mailing address through the National Change of Address program certified by the United States Postal Service and other standard skip trace methods.
- c. Communications by the Claims Administrator shall be made with the representatives of all Parties.

12. Notice to the Class Members.

- a. Approximately forty (40) days before the final fairness hearing, the Claims Administrator will send the Court-approved Notice of Class Action Settlement and the Claim Form and Opt Out Form, substantially in the form attached hereto as Exhibits B and C and as approved by the Court (together "Notice"), including with any modifications at the direction of the Court, to the Settlement Class, by first-class mail.
- b. Approximately ten (10) days before the final fairness hearing, the Claims Administrator will send another copy of the Court-approved Notice of Class Action Settlement and the Claim Form, substantially in the form attached hereto as Exhibit A and as approved by the Court (together "Notice"),

including with any modifications at the direction of the Court, to the Settlement Class other than those who have already filed consents, by first-class mail.

- c. Class Members will have sixty (60) days after the first Notice is first mailed to submit their Claim Form.
- d. Prior to the Final Fairness Hearing, Plaintiff's counsel will file all Claim Forms submitted to the Claims Administrator with the Court.

13. Objections; Opt-Outs; Binding Effect

- a. Any Class Member may object to and opt out of this settlement, provided that such objections are made in writing filed with the Court and served on counsel for the Parties no later than ten (10) days before the final fairness hearing. Such objection shall not be valid unless it includes the information specified in the Opt-Out Form, Exhibit B. No Class Member may be heard at the final settlement hearing who has not complied with this requirement. Any Class Member who fails to comply with this requirement will be deemed to have waived any right to object and any objection to the settlement.
- b. All Class Members will be bound by the final approval order, the judgment, and the releases set forth in this Agreement. However, no FLSA claims are released by Class Members who do not opt in nor file a claim under this Settlement. Unless they have timely asserted an objection to this Agreement, all Class Members shall be deemed to have waived all objections and opposition to its fairness, reasonableness and adequacy.
- c. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the Court that is consistent with the terms of this settlement, or discourage participation in the settlement claims process, however, Class Counsel may advise class members how to assert their right to object.
- d. Upon receipt, counsel for the Parties shall promptly exchange with one another and file with the Court copies of all objections and/or challenges to the Settlement Agreement or any part thereof.

14. Entry of Final Judgment.

Following final approval of this Settlement Agreement as specified herein, on a form supplied by the Defendants and agreed to by the Parties, which enters final judgment on the merits and with prejudice as to any individual or Class claims which are released by this Settlement Agreement, upon satisfaction of all payments and obligations hereunder.

POTENTIAL VOIDING OF THE SETTLEMENT AGREEMENT

15. A failure of the Court to approve any material condition of this Settlement Agreement which effects a fundamental change of the Parties' Settlement shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of the party adversely affected thereby. However, neither party may void the Settlement Agreement based on the Court's approval or non-approval of the amount of attorneys' fees or costs. The Court's failure to approve Class Counsel's fee and cost request shall not render the remainder of the Settlement Agreement unenforceable, but is itself subject to appellate rights.

16. If this Settlement Agreement is voided under the prior paragraphs, this Settlement Agreement shall have no force or effect; all negotiations, statements and proceedings related thereto shall be without prejudice to the rights of any party, all of whom shall be restored to their respective positions in the lawsuit prior to the settlement; and neither this Settlement Agreement nor any ancillary documents, actions or filings the Parties agreed to shall be admissible or offered into evidence in the lawsuit or any other action for any purpose.

SETTLEMENT AGREEMENT EFFECTIVE DATE, RELEASE AND PAYMENT PROCESSES

17. Upon the "Effective Date," (and except as to such rights or claims as may be created by this Settlement Agreement), each Class Member fully releases and discharges Defendants and Releasees from any and all claims, debts, penalties, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged or that reasonably arise out of the acts alleged in the Actions, which includes all claims for time worked but not recorded as worked ("off-the-clock" claims) for wages, and including associated liquidated damages, interest, and penalty claims that were asserted or could have been asserted in this lawsuit under state or federal law between April 11, 2013, until the Effective Date. This release includes all off-the-clock and donning and doffing related activities under the FLSA and AMWA plus all off-the-clock and donning and doffing related claims under state minimum wage laws, state wage payment and collection laws, state overtime statutes, state common law and unjust enrichment, and pursuant to wage contract claims for time before and after employees production shifts and before, during and after employees' unpaid breaks at the Jonesboro factory. Such off-the-clock claims include any claims derivative of wage claims being released, for the period through the Effective Date. Class Members do not release any claim wholly unrelated to the wage and hour subject matter, specifically including those covered by workers' compensation, unemployment compensation or discrimination law, or any other claims that cannot be released by law. This release extends only to job positions within the defined class, and not to job positions held by Class Members outside the defined Class.

18. Notwithstanding the foregoing, no FLSA claims are released by Class Members who do not opt in nor file a claim under this Settlement Agreement.

19. **Distribution of Settlement Payments to Class Members.**

- a. The Claims Administrator shall mail payments by check to Class Members within fourteen (14) calendar days of the Settlement Effective Date as defined above in paragraph 1.
- b. There shall be included language on the back of each check sent to all Class Members by the Claims Administrator stating “By accepting this payment, I waive any right to bring suit for back wages under the Fair Labor Standards Act, the Arkansas Minimum Wage act and all other applicable state laws for the off-the-clock claims through [*the Effective Date*] at issue in the case. I agree that, by accepting this payment, I have settled my claims for any unpaid wages, liquidated damages, interest, and associated penalties through [*the Effective Date*] for the matters released as more fully stated in the Settlement Agreement.”
- c. Class Members shall have one hundred twenty (120) calendar days after the date of mailing to cash their settlement checks.
- d. If any checks are returned as undeliverable, the Claims Administrator shall update Class Members’ last known mailing address through the National Change of Address program certified by the United States Postal Service and other standard skip trace methods and will re-send the check to the new address.
- e. If any Class Members do not cash their checks within 120 days after mailing of the checks by the Claims Administrator and their check is not returned, their checks will be void and a stop-payment will be placed. If any redistributed checks are again returned as undeliverable, their checks will be void and a stop-payment will be placed. In such event, those Class Members will be deemed to have waived irrevocably any right in or claim to a settlement share, but the Settlement Agreement nevertheless will be binding upon them.

PARTIES’ AUTHORITY

20. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

ENFORCEMENT ACTIONS

21. This Settlement Agreement is fully enforceable in the U.S. District Court for the Eastern District of Arkansas before the Honorable Leon J. Holmes or such judge as may be designated in his stead by the procedures of the Court, who shall retain jurisdiction to enforce this agreement.

NOTICES

22. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder by the Parties to this Settlement Agreement shall be in writing and shall be addressed as follows:

To Plaintiff:

Josh Sanford
Sanford Law Firm, PLLC
josh@sanfordlawfirm.com
One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Tel: (501) 221-0088
Fax: (888) 787-2040

To Defendants:

Eric R. Magnus
JACKSON LEWIS, P.C.
1155 Peachtree St., NE
Suite 1000
Atlanta, GA 30309
Tel: (404) 525-8200
Fax: (404) 525-1173
magnuse@jacksonlewis.com

CONSTRUCTION

23. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's length negotiations between the Parties and that the Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any party or his or its counsel participated in the drafting of this Settlement Agreement.

CAPTIONS AND INTERPRETATIONS

24. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

MODIFICATION

25. This Settlement Agreement may not be changed, altered, or modified except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

26. This Settlement Agreement constitutes the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, agreed to by the Parties in this matter, are merged herein. No rights hereunder may be waived except in writing.

NO PRIOR ASSIGNMENTS

27. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

CLASS COUNSEL SIGNATORIES

28. It is agreed that because the Class Members are so numerous, it is impossible or impractical and not required to have each Class Member execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Members.

PUBLICITY

29. Parties shall not issue any press release about the Settlement Agreement or its terms. The Parties shall respond to employees or media only with the acknowledgment that "the matter was amicably resolved."

COUNTERPARTS

30. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Signatures sent by facsimile machine or scanned signatures in Portable Document Format sent by email shall be deemed original signatures.

Dated: _____

Douglas Besman, on behalf of
Defendants Nestlé USA, Inc. and Nestlé Prepared
Foods Company

Dated: _____

Eric R. Magnus, Jackson Lewis, P.C., counsel for
Defendants Nestlé USA, Inc. and Nestlé Prepared
Foods Company

Dated: _____

Josh Sanford, Sanford Law Firm PLLC, as Class
Counsel on behalf of Plaintiff and Collective and
Class Action Classes

EXHIBIT A

CLAIM FORM

I. INSTRUCTIONS

1. You must sign and return this Claim Form by fax, e-mail or mail in order to be eligible to be paid money from this Settlement. Your Claim Form must be received or postmarked on or before the date above, or it will be rejected.
2. If you move, please send your new address to the address shown above. It is your responsibility to keep a current address on file at the address shown above.
3. If you sign and return this Claim Form and it is either received or postmarked on or before the date above, then provided the Court gives final approval to the settlement, you will be sent a check for the applicable amounts based on when and where you worked for Nestlé USA, Inc. or Nestlé Prepared Foods Company during the relevant time period as provided in the Settlement Agreement.
4. Submitting a claim will not impact your employment with Nestlé USA, Inc. or Nestlé Prepared Foods Company in any way.

Yes, I wish to be a part of this settlement and this case. My signature constitutes a full and complete release by me of Nestlé USA, Inc. and Nestlé Prepared Foods Company, and their present and former subsidiaries, divisions, parent companies, holding companies, stockholders, officers, directors, employees, agents, servants, representatives, attorneys, insurers, affiliates, successors and assigns, and any individual or entity which could be jointly liable with Nestlé USA, Inc. and Nestlé Prepared Foods Company, for all claims alleged in the *McFarland* Action against Nestlé USA, Inc. and Nestlé Prepared Foods Company, including all off-the-clock wage/hour claims under the Fair Labor Standards Act (“FLSA”) or Arkansas Minimum Wage Act (“AMWA”) plus all off-the-clock claims under state minimum wage laws, state wage payment and collection laws, state overtime statutes, under state common law and unjust enrichment, and pursuant to wage contract claims, including penalties under the FLSA and applicable state laws, interest, attorneys’ fees and costs, liquidated damages, punitive damages, or penalties under federal and state law. Such off-the-clock claims include any claims derivative of wage claims being released, for the period through the Effective Date of Settlement.

 (Sign your name here)

 (Date)

 Print Your Name Here

 Former Names (if any)

(____) _____
 Area Code Daytime Phone #

(____) _____
 Area Code Evening Phone #

 Email address (optional)

 Home address

Social Security Number (if available)

EXHIBIT B

Opt Out Form

OPT-OUT FORM

IF YOU WANT TO RECEIVE MONEY FROM THE SETTLEMENT, DO NOT SIGN THIS FORM.

I hereby declare as follows:

I am/was employed by Nestlé USA, Inc. and/or Nestlé Prepared Foods Company as a non-exempt employee at Nestlé’s Jonesboro, Arkansas factory at any time between April 11, 2013 and January 20, 2017.

I wish to be **excluded** from the Settlement Class described in the Notice of Proposed Class Action Settlement and I **do not** want to participate in the proposed settlement described therein. I understand that I will **NOT** receive any money from the settlement if I sign and return this form. I also understand that I will retain all rights under federal and state law regarding the claims that are the basis of this lawsuit as described in the Notice. I also understand that if I **do not** submit this form, I will release all rights under state law regarding the claims that are the basis of this lawsuit as described in the Notice.

I declare that the foregoing and the information provided below is true and correct.

Dated: _____

(Signature)

(Typed or Printed *Full Name*)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

THIS DOCUMENT MUST BE SENT VIA U.S. MAIL POSTMARKED NO LATER THAN _____ TO:

Simpluris, Inc.
1485 S. Semoran Blvd., Suite 6-1401
Winter Park, FL 32792
Fax: (714) 824-8591
Email: _____

Exhibit C

Order of Preliminary Approval

- All capitalized terms not otherwise defined in this Order shall have the same meaning ascribed to them in the Parties' Settlement Agreement;
- Simpluris, Inc. will serve as "Claims Administrator" in providing notice, objection, claim process and administration services under the Settlement Agreement, if preliminarily or finally determined to be fair;
- Approximately forty (40) days before the final fairness hearing (_____), the Claims Administrator shall send by first-class mail the Notice of Proposed Settlement (including Claim and Opt Out Forms) to all class members;
- Approximately ten (10) days before the final fairness hearing (_____), the Claims Administrator shall send by first-class mail a second Notice of Proposed Settlement (including Claim and Opt Out Forms) to all class members that have not yet filed consents to participate;
- Class members shall lodge objections/opt-outs or submit claims as set forth in the Notice of Proposed Settlement (including Claim Form), which were jointly proposed by the Parties and filed with the Court;

ORDERED that the form and content of the Notice of Proposed Settlement set forth in the Joint Motion for Preliminary Approval is adequate, proper, comports with Due Process and are hereby approved;

ORDERED that a final fairness hearing be held on _____ at the U.S. District Court for the Eastern District of Arkansas, 615 South Main St., Room 312, Jonesboro, Arkansas 72401.

ORDERED that counsel for the Parties shall file motion papers for final approval of all terms of the Settlement Agreement no later than fourteen (14) days before the final fairness hearing (_____); and it is

ORDERED that the *McFarland* action is stayed pending the Court's ruling on the settlement at the final approval hearing.

Counsel for the Parties are hereby authorized to jointly use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice, and other exhibits that they jointly agree are reasonable or necessary.

Honorable Leon Holmes
United States District Judge

Exhibit D

Notice

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
ARKANSAS**

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

NOTICE OF CLASS ACTION SETTLEMENT AND SETTLEMENT HEARING

You are receiving this Notice because you are or were a Nestlé Employee and are part of a group of Employees at the Jonesboro factory, called a “Class,” who brought a lawsuit against Nestlé. This “Lawsuit” claims that, in violation of federal and Arkansas law, Nestlé employees were not paid all time spent changing into and out of required work clothes, personal protective equipment (“PPE”) and sanitary equipment (“donning and doffing time”). Nestlé has and continues to deny any allegations of improper pay practices but has agreed to resolve this matter to avoid the disruption and expense associated with further litigation.

The Employees in the Class are:

All current or former hourly-paid production and maintenance employees who work or worked at the Nestlé processing factory located in Jonesboro, Arkansas, at any time between April 11, 2013 and January 20, 2017.

You should only file a consent to participate if you performed donning and doffing (clothes changing) activities outside of the time you were clocked in. This is because all employees that performed their clothes changing activities while punched in have already been paid for this time.

A proposed Settlement has been reached in this Lawsuit that affects your rights. The purpose of this Notice is to inform you of the settlement terms and your rights and options in connection with the Settlement. If the Settlement is finally approved, it will resolve all claims in the Lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS	
FILL OUT THE CLAIM FORM	<p>Fill out the settlement Claim Form to receive money. Agree to the release of certain claims against Nestlé.</p> <p>If you wish to participate in the settlement and receive a money award, and agree to be bound by the class action settlement and release described above, you must complete and return the attached Claim and Release Form, which must be faxed, e-mailed or mailed to Simpluris, Inc., 1485 S. Semoran Blvd., Suite 6-1401, Winter Park, FL 32792 [insert fax number and email address]. The Claim and Release Form must be received or post-marked on or before _____, 2017.</p>

OBJECT TO THE SETTLEMENT	<p>State your objection to the settlement. Get no money from it.</p> <p>If you believe the Settlement should not be approved by the Court for any reason, or you simply do not want to participate, you may state your objections to the Court and/or file the Opt Out Form. If you wish to do so, you must submit the Opt Out Form to the Claims Administrator and/or mail a letter to counsel for the Parties stating why you object to the Settlement on or before ____, 2017. Counsel for the parties will promptly exchange with one another and file with the Court copies of all objections.</p>
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WHAT THIS NOTICE CONTAINS

- Why did I get this notice?[insert page #s]
- What is this lawsuit about?[insert page #s]
- What are the settlement terms?[insert page #s]
- When is the final approval hearing?[insert page #s]
- What if I have objections to the settlement?[insert page #s]
- What if my address changes[insert page #s]
- Where do I find more information?[insert page #s]
- Who do I contact if I have questions?[insert page #s]
- Time Sensitive Claim Form[insert page #s]

Why did I get this Notice?

You are part of a group of Employees that worked at the Jonesboro factory, called a Class, that were the subject of this Lawsuit. On _____, 2017, the Court overseeing this case preliminarily approved a Settlement and ordered that this Notice be sent to all Employees in the Class. This Notice explains what you can get from the Settlement and what rights are affected.

You are entitled to participate in this settlement regardless of your immigration status. Your immigration status will not be the subject of this lawsuit, nor will it affect your right to recovery. You have right to participate in this settlement if you fulfill the conditions detailed in the mailing regardless of your immigration status.

Nestlé will not and cannot retaliate against you for participation or non-participation in the settlement.

If you are receiving this Notice, you are entitled to submit a Claim Form and receive a payment under the Settlement.

What is this Lawsuit about?

This Lawsuit alleges that, in violation of federal and Arkansas law, Nestlé employees have not been paid all wages to which they were entitled under the law. The Named Plaintiff alleges that employees work off-the-clock, both pre- and post-shift and during meal breaks. The Lawsuit asks for damages from Nestlé for the alleged unpaid overtime wages, liquidated damages and other applicable penalties, and attorneys' fees and expenses.

Nestlé states that it paid its employees all compensation it owed to them and that it has complied with federal and state law. Nestlé denies any liability or wrongdoing of any kind.

Judge Leon Holmes of the United States District Court for the Eastern District of Arkansas is overseeing this lawsuit. The lawsuit is known as *Joy McFarland, et al. v. Nestlé USA, Inc., et al.*, U.S. District Court for the Eastern District of Arkansas Case No. 3:16-cv-00100- JLH.

What are the Settlement terms?

The Settlement Agreement requires that Nestlé create a \$99,050 Settlement fund to pay each eligible Employee who submits a Claim Form on time, using the Claim Form attached to this Notice. Each Employee's share of the settlement was calculated using a formula that will take into account each Employee's length of employment between April 11, 2013 and January 20, 2017. In addition, Nestlé has agreed to pay a service award of \$2,500 to Named Plaintiff Joy McFarland. This service award will be paid out of the \$99,050 fund.

How can I make my claim?

You must fill out the Claim and Release Form that is attached to this Notice and return it by fax, e-mail or mail to Simpluris, Inc., 1485 S. Semoran Blvd., Suite 6-1401, Winter Park, FL 32792 [insert email address and fax and toll free number]. The Claim and Release Form must be received or post-marked on or before _____, 2017.

A check for your share of the Settlement will be sent to you at your most current address available at the time of payment, so it is important that you tell Simpluris if you move or your address has changed.

How long do I have to cash my check?

Your Settlement check will have a date on it. The settlement checks will be valid for one hundred twenty (120) days, unless the check is returned due to a bad address, in which case, the check will be reissued. You will have 120 days from that date to cash your check.

If you lose your check or it is damaged in the mail, contact Simpluris, the Claims Administrator. You may be able to have it reissued, provided you ask within the 120 day time period.

If you do not cash your check within 120 days of the date it was issued, your money will go back to Nestlé.

Will I owe any taxes?

The amount you receive will be wage income and subject to normal payroll tax withholding and W-2 reporting. These deductions will be taken out of your settlement check. If you have questions about the tax consequences of the payment to you, you should consult with an accountant or other tax advisor.

What rights am I giving up by submitting a claim form?

You will give up any right to file a separate lawsuit alleging the same or similar claims as this Lawsuit. Even if you do not file a claim form, because you are a member of a certified class for settlement purposes, you give up your right to file a case under Arkansas state law that claims that Nestlé did not correctly pay you any wages or overtime from April 11, 2013 until the Effective Date of this settlement. If you do not file a claim form, you will retain all rights under federal law in any future action claiming that Nestlé did not correctly pay you any wages or overtime from April 11, 2013 until the Effective Date of this settlement. In order to retain your Arkansas state law claims that Nestlé did not correctly pay you any wages or overtime from April 11, 2013 until the Effective Date of this settlement, you must submit the Opt Out Form.

If you submit a claim form, You also agree to fully release and discharge Nestlé from any and all claims, debts, penalties, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged or that reasonably arise out of the acts alleged in the Lawsuit, which includes all claims for time worked but not recorded as worked ("off-the-clock" claims) for wages, and including associated liquidated damages, interest, and penalty claims that were asserted or could have been asserted in these Lawsuits under state or federal law between April 11, 2013 through the Effective Date of the settlement. This release includes all off-the-clock and donning and doffing related activities under the Fair Labor Standards Act ("FLSA") and Arkansas Minimum Wage Act ("AMWA"), plus all off-the-clock and donning and doffing related claims under state minimum wage laws, state wage payment and collection laws, state overtime statutes, state common law and unjust enrichment, and pursuant to wage contract claims for time before and after employees production shifts and before, during and after employees' unpaid breaks. Such off-the-clock claims include any claims derivative of wage claims being released, for the period through the Effective Date of the settlement.

You are not releasing or waiving any claim wholly unrelated to wage and hour claims, such as those covered by workers' compensation law, state or federal discrimination laws, or state or federal unemployment compensation laws. Further, you are not releasing or waiving any claim(s) relating to job positions not at issue in the Class.

Your release of claims will be only effective if the Court grants final approval of the Settlement.

Do I have to pay any attorneys or other costs?

No. Your settlement share, and the \$99,050 fund for employees, will not be increased or reduced by the amounts, if any, awarded to the attorneys in the lawsuits.

As part of the settlement, the Court appointed the law firm of The Sanford Law Firm, PLLC as the attorneys for the Class in this case. ("Class Counsel").

Under the Settlement, Nestlé is required to pay Class Counsel in this case. The Settlement provides that Class Counsel may request that the Court award them up to \$49,450 in attorneys' fees and costs and expenses that they expended in prosecuting this Lawsuit on behalf of the Class.

Any payments to the attorneys must be approved by the Court. To date, Class Counsel has been prosecuting the lawsuits, without being paid, while advancing the costs and expenses of litigation on behalf of the Class.

The Settlement is being administered by Simpluris, Inc., 1485 S. Semoran Blvd., Suite 6-1401, Winter Park, FL 32792. Nestlé will pay the costs of the Claims Administrator.

When is the final approval hearing?

The Final Approval Hearing will be held on _____, 2017 at _____ p.m. in Courtroom ___ at the United States District Courthouse for the Eastern District of Arkansas, 615 South Main St., Room 312, Jonesboro, Arkansas 72401. At that hearing, the Court will determine if the Settlement is fair, reasonable, adequate, and in the best interests of the groups of Nestlé employees defined in the beginning of this Notice. The Court may postpone the hearing or change its location without further notice to you.

You are not required to attend the Final Approval Hearing, although you may do so. If you are satisfied with the Settlement there is no need for you to appear.

What if I have objections to the Settlement?

If you have objections to the settlement, you must state them in writing and mail them to the counsel for the Parties at the following addresses for filing with the Court, on or before _____:

<p>Class Counsel: Josh Sanford Sanford Law Firm, PLLC josh@sanfordlawfirm.com One Financial Center 650 South Shackleford, Suite 411 Little Rock, Arkansas 72211 Tel: (501) 221-0088 Fax: (888) 787-2040</p>	<p>Defense Counsel: Eric R. Magnus Jackson Lewis, P.C. 1155 Peachtree Street Suite 1000 Atlanta, GA 30306 magnuse@jacksonlewis.com Tel: (404) 525-8200 Fax: (404) 525-1173</p>
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All objections or other correspondence must state the name and number of the Lawsuit, which is *Joy McFarland, et al. v. Nestlé USA, Inc., et al.*, Case No. 3:16-cv-00100- JLH. If you do not follow the procedures for objecting described above, you will be deemed to have waived any objection to the Settlement.

If you send a statement in writing of your objection, you may also come to the Court for the Approval Hearing to have your objections heard by the Court orally. Any attorney who will be representing anyone at the Final Approval Hearing must file a notice of appearance with the Court on or before 14 days prior to the Hearing.

Where do I find more information?

This Notice is only a summary of the Case and the Settlement. For a more detailed statement of the Case or Settlement, you may refer to the pleadings, the Settlement Agreement, and the other papers filed in the Case, which may be inspected at the Office of the Clerk of the U.S. District Court for the Eastern District of Arkansas, 615 South Main St., Room 312, Jonesboro, Arkansas 72401, during regular business hours of each court day. You also may obtain copies of this Notice and/or the Settlement Agreement or further information regarding the Settlement from the Claims Administrator [toll free number], or Class Counsel at (501) 221-0088.

Who do I contact if I have further questions?

All questions or inquiries regarding this Notice and/or Settlement, including the amounts estimated to be payable to you if the Settlement is approved, should be directed to the Claims Administrator Simpluris, Inc., 1485 S. Semoran Blvd., Suite 6-1401, Winter Park, FL 32792 [toll free number].

If you have a question for Class Counsel, you can contact Josh Sanford at josh@sanfordlawfirm.com or (501) 221-0088 or write to The Sanford Law Firm, PLLC, 650 South Shackleford, Suite 411, Little Rock, Arkansas 72211.

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY INQUIRIES.

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