

# NOTICE OF SETTLEMENT CONCERNING PEPSICO AND TROPICANA EMPLOYEE CLAIMS ARISING FROM THE KRONOS OUTAGE

*A Court has authorized this Notice. This is not a solicitation from a lawyer*

## **SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS AND COLLECTIVE ACTION SETTLEMENT**

The purpose of this Notice is to advise you of a settlement that has been reached in a class and collective action on behalf of all persons who were employed in the United States by PepsiCo, Inc. (“PepsiCo”), New Tiger LLC (“New Tiger”), and their various respective divisions and subsidiaries (collectively, “PepsiCo Companies”), pertaining to their inability to timely or accurately pay these employees for all hours worked during the seventeen pay periods between December 5, 2021 and April 8, 2022 due to their payroll provider, the Ultimate Kronos Group (“Kronos”) experiencing a cybersecurity incident that began on December 11, 2021 through February 12, 2022 (the “Kronos Outage”). The case is entitled *Stevens et al. v. PepsiCo, Inc. et al.*, Case No. 7-22-cv-00802-NSR, and is pending in the United States District Court for the Southern District of New York, White Plains Division (the “Court”), along with numerous other cases which were originally filed in other federal courts and have been consolidated with the *Stevens* case.

**Whether you act or not, your legal rights are affected by this proposed settlement. Your rights and options – and the deadlines to exercise them – are explained in this Notice. Please read this Notice carefully in its entirety.**

### **Summary of Your Legal Rights and Options in this Settlement**

<b>Do Nothing</b>	You will be paid your share of the settlement which will be calculated as described in Section 4 of this Notice
<b>Exclude Yourself</b>	Get no payment. This is the only option that allows you to pursue your own claims or be part of any other lawsuit against the Defendants that asserts any claims relating to or arising out of the Kronos Outage. To do so, you must act by February 6, 2023. See Section 6 of this Notice.
<b>Object</b>	So long as you have not excluded yourself, write to the Court about why you don’t like the settlement and do not want it approved. To do so, you must act by February 6, 2023. See Section 12 of this Notice.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the settlement, or any part of it, that will be held on April 4, 2023. See Sections 14 – 16 of this Notice.

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

The PepsiCo Companies’ records reflect that you were an employee of PepsiCo or New Tiger, or one of their various divisions or subsidiaries and were not timely or accurately paid for all hours worked during the seventeen pay periods between December 5, 2021 and April 8, 2022 due to the Kronos Outage.

The Court approved this Notice because you have a right to know about a proposed settlement of this lawsuit, which the Court has preliminarily approved, and about all of your options, before the Court decides whether to grant final approval of the settlement. If the Court approves and issues a final order approving the settlement and after appeals, if any, are resolved, the Settlement Administrator will make the payments to you that the settlement allows.

## **2. What is The Lawsuit About?**

This lawsuit is about the alleged failure of PepsiCo, New Tiger, and their various respective divisions and subsidiaries to timely or accurately pay their non-exempt employees in the United States for all hours worked during the pay periods between December 5, 2021 and April 8, 2022, due to the Kronos Outage under the federal Fair Labor Standards Act (“FLSA”) and applicable wage and hour-related state laws. The lawsuit also concerns claims for pertinent statutory penalties arising under various state laws during that same time period.

The persons suing in this lawsuit and in two other parallel lawsuits also part of the settlement —Emanuele Stevens, Moises Madriz, Rodney Ulloa, Ricardo Vidaud, Jorge Mendoza, Seth Marshall, Matthew White, Tyrell King, Kennetha Mitchell, DonEdward White, Jamal Winger, Allison Poulson, Rodney Irving-Millentree, Tracy Ellis, Thomas Parrish, Devin Drobisch, Joshua Smith, and Jacob Tschudy, Starr Montgomery, William Muller, and Jamaar Codrington—who are all non-exempt employees of PepsiCo, New Tiger or one of their respective divisions or subsidiaries, are called the Named Plaintiffs and the companies being sued—PepsiCo, New Tiger and all their respective divisions and subsidiaries listed in Exhibit A to this Notice—are called the Defendants. The Named Plaintiffs in this lawsuit have been appointed by the Court as “Class Representatives.”

Plaintiffs brought this lawsuit to ensure that all Defendants’ non-exempt employees in the United States who were impacted by the Kronos Outage were paid all wages owed and to also recover additional damages which each such employee may be entitled to under federal and state wage and hour laws.

Plaintiffs have brought this lawsuit on behalf of a collective to recover damages available under the federal labor laws (the “FLSA Collective”) and on behalf of a class to recover damages and/or penalties available under state labor laws (the “National Class”), consisting of all current and former employees of any Defendant in the United States during the seventeen weekly pay periods between December 5, 2021 and April 8, 2022 who were impacted by the Kronos Outage (together, the “FLSA Collective/National Class”). For purposes of the settlement, an employee has been impacted by the Kronos Outage if that employee received an inaccurate pay stub or inaccurate compensation at any time during the Class Period, regardless of whether that employee’s compensation paid during the the Kronos Outage as compared to compensation owed for the Kronos Outage timeperiod resulted in a net positive (overpayment), net neutral, or net negative (underpayment) to that employee.

Plaintiffs have also brought this lawsuit on behalf of a subclass consisting of those members of the National Class who worked for a Defendant in New York and a subclass consisting of those members of the National Class who worked for a Defendant in California to recover pertinent statutory penalties permissible under those state laws (together, the “State Law Subclasses”).

Defendants deny the Named Plaintiffs’ claims in this case, including Named Plaintiffs’ contention that (i) Defendants knowingly, willfully, or recklessly disregarded any of their wage payment obligations; and (ii) Defendants failed to appropriately compensate the collective/class members. Defendants also deny the claims of violation of other pertinent state laws of the FLSA Collective/National Class and State Law Subclasses.

## **3. Why is this a class and collective action?**

In a class action, one or more people called Class Representatives sue on behalf of all people who have similar claims. All these people are “Class Members,” and grouped together are a “Class.” A court has to determine if the case is appropriate for class treatment, and if the Court does, that one case will resolve the common issues for all Class Members, except for those who exclude themselves from the Class. The Defendants have agreed that this case should proceed as a class action for settlement purposes only.

Similarly, in a collective action, plaintiffs sue on behalf of employees of a company who are “similarly situated.” The difference from a class action is that in order to be part of any collective determined by a court to be appropriate, each similarly situated employee must affirmatively join the action by opting in, and is not a member of the collective until they do so. A collective action is the only way for a group of similarly situated employees to pursue claims under the federal labor laws.

The Court has preliminarily certified the National Class and State Law Subclasses and conditionally certified the FLSA Collective.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 4. What does the Settlement provide for me?

On May 6, 2022, in order to provide recompense most expeditiously to the members of the National Class, Defendants made payments of approximately \$23.9 million representing, pursuant to analysis undertaken by Defendants in conjunction with third-party consultant Ernst & Young and which has been shared with Plaintiffs' Counsel, the net unpaid compensation Defendants believe was owed to the members of the FLSA Collective/National Class (the "May 6 Payment").

With respect to the May 6 Payment, the Settlement provides that every member of the FLSA Collective/National Class will have an opportunity to dispute the accuracy of the amount of their individual May 6 Payment. Specifically, individual National Class members will have up to 90 days from the Court's preliminary approval of the Settlement to present any challenge. Named Plaintiffs' counsel (listed in Section 9 below) are available to aid you should you have questions or concerns about the amount of your payment, or, specifically, wish to challenge it. Should a Defendant and any FLSA Collective/National Class member fail to agree upon an amount of their net underpayment through the internal reconciliation process, the Parties have agreed to have such disputes with respect to their May 6 Payment be resolved by a neutral, whose fees will be paid for by the applicable Defendant, acceptable to both the National Class member and the applicable Defendant.

If the Settlement is given final approval by the Court ("Final Approval") and any appeals of such a determination are resolved in favor of the settlement Final Approval, in addition to the May 6 Payment, you will also receive a share of settlement amount of \$12,750,000.00 (the "Settlement Payment"), which Defendants have agreed to pay to settle this lawsuit.

Defendants have also agreed to pay all costs of Settlement Administration.

#### Calculation of Individual Settlement Payments

The settlement provides that the Net Settlement Fund (as defined in Section 11 below) will be allocated among the following groups:

1. FLSA Collective/National Class Members who were net underpaid by at least \$1 (65.3 % of the Net Settlement Fund);
2. FLSA Collective/National Class Members who were net overpaid or net neutral (the phrase "net neutral" includes those individuals who were net underpaid between \$.01 and \$.99) (9% of the Net Settlement Fund);
3. California State Law Subclass Members (18.7 % of the Net Settlement Fund);
4. New York State Law Subclass Members (7% of the Net Settlement Fund).

GROUP 1 - Each individual FLSA Collective/National Class member in group (1) will receive payment representing their pro-rata share of the amount allocated to group (1), which share shall be determined by dividing the amount of their net underpayment by \$23,896,550.00, which is the amount of all net underpayments. This group includes all those individuals who received a May 6 Payment.

GROUP 2 - Each individual FLSA Collective/National Class member in group (2) will receive payment of \$25.00. Members in group (2) did not incur any net underpayment of wages but did suffer the inconvenience of inaccurate wage statements. This group includes those individuals who did not receive a May 6 Payment.

GROUP 3 - Each individual State Law Subclass member in group (3) will receive payment as a member of FLSA Collective/National Class group (1) or group (2) as applicable, in addition to their applicable share of the amount allocated to group (3). The applicable share of the individual State Law Subclass members in group (3) shall be determined as follows: (i) group (3) members who were underpaid at least once during the Kronos Outage will receive a pro-rata share determined by dividing the number of underpaid pay periods experienced by the employee by the number of unpaid pay periods by all members of group (3) who were underpaid at least once during the Kronos Outage; (ii) for all remaining members of group (3), as they did not suffer any underpayment of wages but did suffer the inconvenience of inaccurate wage statements, they will receive payment of \$25.00.

GROUP 4 - Each individual State Law Subclass member in group (4) will receive payment as a member of FLSA Collective/National Class group (1) or group (2), as applicable, in addition to their applicable share of the amount allocated to group (4). The applicable share of the individual State Law Subclass members in group (4) shall be determined as follows: (i) group (4) members who were underpaid at least once during the Kronos Outage will receive a pro-rata share determined by dividing the number of underpaid pay periods experienced by the employee by the number of unpaid pay periods by all members of group (4) who were underpaid at least once during the Kronos Outage; (ii) for all remaining members of group (4), as they did not suffer any underpayment of wages but did suffer the inconvenience of inaccurate wage statements, they will receive payment of \$25.00.

If you are unsure of which Group you are in, you can contact the Settlement Administrator.

## **5. What am I giving up to get a payment or stay in the Class?**

You will be releasing certain claims.

a. Upon the Final Approval of the Settlement, all FLSA Collective/National Class Members and State Law Subclass Members who cash the checks sent to them by the Settlement Administrator shall be deemed to be members of the Collective and will fully, forever, irrevocably and unconditionally release, remise, and discharge Defendants from any and all claims under the Federal Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, relating to or arising out the Kronos Outage, including, without limitations, all FLSA claims for unpaid wages (whether minimum wages, hourly wages, or overtime wages), failure to timely pay wages, failure to record hours worked, paystub requirements, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amounts.

b. Upon Final Approval of the Settlement, all National Class Members, including those State Law Subclass Members who are or were employed in New York and California, who do not submit a timely and valid request for exclusion from this lawsuit shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge Defendants from any and all claims under state laws relating to or arising out the Kronos Outage, including, without limitations, all state and local claims for unpaid wages (whether minimum wages, hourly wages, or overtime), failure to timely pay wages, failure to record hours worked, paystub requirements, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amounts.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment or other benefits from this settlement and you want to keep the right to sue or continue to sue any Defendant on your own about any of the subjects or issues listed in the paragraph above, then you must take steps to exclude yourself – sometimes referred to as “opting out” of the class.

## **6. How do I opt-out of the class?**

To exclude yourself from the National Class and/or the State Law Subclasses, you must send a letter to the Settlement Administrator listed below, by mail (first-class postage pre-paid) saying that you want to be excluded from the National Class and/or the State Law Subclasses in *Stevens et al. v. PepsiCo, Inc. et al.*, Case No. 7-22-cv-00802, Case No. 7:22-CV-00802-NSR. Be sure to include your name, address, and signature. You must mail your exclusion request so that it is postmarked no later than February 6, 2023 to:

**PepsiCo Kronos Class/Collective Action Settlement**  
**c/o Settlement Administrator**  
Attn: Exclusion Request  
P.O. Box 58220  
Philadelphia, PA 19102

## **7. If I don't exclude myself, can I sue any Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue any Defendant for the released claims described in Section 5.b. If you cash your check, you give up any right to sue any Defendant for the released claims described in 5.a above. If you have a pending lawsuit concerning the Kronos Outage, speak to your lawyer in that case immediately. You must exclude yourself from the National Class—or the State Law Subclasses if you worked in New York or California during the Kronos outage time period—to continue your own lawsuit.

## **8. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, you will not receive any money from this settlement or any other benefits that this settlement provides.

### **THE LAWYERS REPRESENTING YOU**

## **9. Do I have a lawyer in this case?**

The Court has appointed the law firms of Klafter Lesser LLP, Scott & Winters Law Firm, LLC, Parmet PC, and Morgan & Morgan, P.A. to represent you and other FLSA Collective/National Class Members and State Law Subclass Members. These lawyers have been appointed by the Court as “Class Counsel.” You will not be charged individually for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## **10. How will the lawyers be paid?**

As provided by the Settlement, Class Counsel will ask the Court to approve a payment out of the Settlement Payment for their attorney's fees and litigation expenses in an amount not to exceed twenty percent of the Settlement payment plus the May 6 Payment. The attorneys' fees would pay Class Counsel for investigating the facts, filing actions in multiple states, litigating the case, negotiating the settlement, filing legal papers with the Court, and overseeing future implementation of the settlement, including fielding inquiries from FLSA Collective/National Class Members and State Law Subclass Members. Class Counsel has not been paid for their time or expenses since this case was originally filed and would not have received any attorneys' fees or expenses had this lawsuit not been favorably resolved.

## **11. What other payments will be made from the Settlement Payment?**

As is also provided by the Settlement, Class Counsel may also petition the Court for an award of service payments to the Named Plaintiffs listed in section 2, above, in an amount not to exceed \$5,000 each for their service in stepping forward to commence the lawsuits that are subject to this Settlement against their employers (the “Service Payments”).

The Settlement also allocates, as required by California law, an amount to be paid from the California State Law Subclass funds for civil penalties, 75% of which must be paid to the California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Private Attorney General Act. The parties have agreed that thirty thousand dollars (\$30,000.00) will be allocated to such California civil penalties. Accordingly, if the Settlement is approved and becomes final, 75% of this amount (\$22,500) will be paid out of the California Subclass allocation to the LWDA, and 25% of said amount (\$7,500) shall remain for distribution to the California State Law Subclass.

The Settlement Payment, less any amounts awarded by the Court for Class Counsel's attorneys' fees and costs and for Service Payments to the Named Plaintiffs, and less the payment to the LWDA shall be the “Net Settlement Fund.”

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the Settlement or some part of it.

## 12. How do I tell the Court that I don't like the Settlement?

If you are a National Class Member or a State Law Subclass Member and are not seeking to opt-out, you can object to the Settlement, or any part of it, including Class Counsel's applications for attorneys' fees and expenses or the Service Payments (the "Applications"). You should state why you think the Court should not approve the settlement, the Applications, or any part of them. The Court will consider your views. To object, you must send your objection or a letter saying you object to the settlement as directed herein. You must include your name, address, email address (if available), telephone number, signature, and the reasons you object to the settlement and/or any Application and state that your objection relates to *Stevens et al. v. PepsiCo, Inc. et al.*, Case No. 7-22-cv-00802, Case No. 7:22-CV-00802-NSR. You must mail your objection to the following counsel so that it is postmarked no later than February 6, 2023, and file it electronically or mail it to the Court so that it is postmarked no later than February 6, 2023, at the following addresses:

<u>On Behalf of the Class Representatives:</u>	<u>On Behalf of Defendants:</u>	<u>The Court:</u>
Klafter Lesser LLP Seth R. Lesser, Esq 2 International Drive, Suite 350 Rye Brook, New York 10573	Alison R. Ashmore Dykema Gossett LLP 1717 Main Street, Suite 4200 Dallas, TX 75228	The Hon. Nelson S. Román Federal Courthouse Clerk of the Court 300 Quarropas Street White Plains, NY 10601-4150

## 13. What's the difference between objecting and excluding?

Objecting is telling the Court that you don't like something about the Settlement or Applications, and that you, for that reason, want the Settlement or Applications or some part of them not to be approved or to be modified in some way. You can object only if you stay in the class. Excluding yourself means you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement and Class Counsels' application for attorneys' fees, expenses and the Service Payments. You may attend and you may ask to speak, but you don't have to do so.

## 14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing on April 4, 2023 at 2:00 P.M. via AT&T Teleconference. To access the teleconference, please follow these directions: (1) Dial the Meeting Number: (877)336-1839; (2) Enter the Access Code: 1231334#; and (3) Press pund to enter the the teleconference as a guest. At this Fairness Hearing, the Court will consider whether the Settlement is fair and meets the tests for class action and collective action settlements. The Court will also consider whether the Applications should be approved. If there are objections to any of these matters, the Court will consider them. The Court also will listen to people who have asked to speak at the hearing. At, or following the hearing, the Court will decide whether to approve the settlement and the Applications. We do not know how long these decisions will take. If the Court approves the settlement and the Applications, there may be appeals. It is always uncertain whether there will be an appeal and, if so, when it will be resolved. Please be patient.

The Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the National Class or members of the State Law Subclasses other than those who are Objectors. If it is adjourned, the new date and time will be posted on [www.PepsicoFLSASettlement.com](http://www.PepsicoFLSASettlement.com).

## 15. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you file an objection, you don't have to come to Court to talk about it, but you may. As long as you properly mailed (or electronically filed) your written objection on time, the Court will consider it. You may also pay your own lawyer to attend if you wish.

## 16. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter stating that it is your “Notice of Intention to Appear in *Stevens et al. v. PepsiCo, Inc. et al.*, Case No. 7-22-cv-00802, Case No. 7:22-CV-00802-NSR.” Your Notice of Intention to Appear must be filed or mailed so it is postmarked no later than February 6, 2023 and be sent to the Clerk’s Office and the Counsel at the addresses in Section 12 above. You cannot speak at the hearing if you exclude yourself from the class.

## IF YOU DO NOTHING

## 17. What happens if I do nothing at all?

If you do nothing, you will be a part of this settlement (if the Court approves it) and will receive a settlement payment (provided you update your address, if necessary); your claims arising due to the Kronos Outage will be released as stated in Section 5 above; and Class Counsel’s assistance in any dispute with any Defendant concerning the accuracy of the May 6 Payment.

## GETTING MORE INFORMATION

## 18. Are there more details about the settlement?

This Notice summarizes the proposed Settlement. The pleadings and other records in this lawsuit, including a copy of the Settlement Agreement, are available for review at the following website: [www.PepsicoFLSASettlement.com](http://www.PepsicoFLSASettlement.com). They may also be examined during regular office hours at the Office of the Clerk at The Hon. Nelson S. Román’s Federal Courthouse, 300 Quarropas Street White Plains, NY 10601.

You may also contact the Settlement Administrator as follows:

**PepsiCo Kronos Class/Collective Action Settlement**  
**c/o Settlement Administrator**  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103  
Phone: (833)400-1404

Please **do not** contact the Court.

Dated December 23, 2022

BY THE COURT

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