

IMPORTANT LEGAL NOTICE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA – UNLIMITED JURISDICTION**

TIMOTHY CRUTCHER Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

BASIC CHEMICAL SOLUTIONS L.L.C., a
New Jersey company; and DOES 1 through 50,
inclusive

Defendants.

Case No. RG 08419665

CLASS ACTION

**NOTICE OF PENDENCY AND
SETTLEMENT OF CLASS ACTION**

TO: [Name and address of each class member to be inserted]

PLEASE READ THIS NOTICE CAREFULLY

You are entitled to money from this settlement. You have been identified as an employee of Basic Chemical Solutions, L.L.C., who worked as a Delivery Specialist at some time between November 10, 2004 through [Date of Preliminary Approval] (the “Class Period”).

Your estimated share, calculated based upon the number of workweeks you worked during the Class Period is \$_____. This is only an estimate and the actual amount of any settlement payment that you receive may be less or more than this estimate.

NO RETALIATION: BCS encourages Class Members to participate in the Settlement. BCS will not fire, punish, retaliate, or otherwise discriminate against any employee because he or she chooses to participate in this Settlement, chooses not to participate, or objects to the Settlement.

1. YOU ARE HEREBY NOTIFIED that the parties in the above-captioned class action lawsuit (“the Action”) have reached a proposed settlement (“the Settlement”) and the Settlement has been granted preliminary approval by the Court. If approved, the Settlement will resolve all claims in the Action. A settlement hearing will be held at [], on [], 2009 to determine whether the Settlement should be granted final approval.

WHY SHOULD I READ THIS NOTICE?

2. **Because your legal rights may be affected, it is extremely important that you read this Notice carefully.**

PURPOSE OF THIS NOTICE

3. The Court has ordered that this Notice be sent to you because it is believed that you are or were employed by BCS in California at some time between November 10, 2004 and [Date of Preliminary Approval] and that your job title was “Delivery Specialist.” You have been identified as a member of the class in this case. The purpose of this Notice is to describe the Action, to inform you of the terms of the Settlement, and to inform you of your potential rights and options in connection with the Settlement.

SUMMARY OF THE CASE

4. A former Delivery Specialist sued BCS, alleging, among other things, that all Delivery Specialists who worked for BCS in California during the Class Period are owed additional wages and penalties for not receiving proper meal and rest periods as required by California law. The lawsuit seeks damages for these unpaid wages, interest, penalties under California law, attorneys’ fees and expenses, and injunctive relief.

5. The Action includes claims under California Labor Code Sections 226.7 and 512 and related wage orders of the Industrial Welfare Commission, and California Business and Professions Code Sections 17200 et seq. for the alleged meal and rest period violations in the Action.

6. BCS denies any liability or wrongdoing of any kind in connection with the claims alleged, and contends that it has fully complied with all federal, state and local wage and hour laws, including but not limited to, the California Labor Code, California Business and Professions Code, and the applicable Industrial Welfare Commission Wage Orders.

7. The Court has not ruled on the merits of the case, i.e., whether BCS complied with the law. The Court only decided that it is appropriate under the law to settle the case and to certify this class for purposes of settling the case.

8. On [date of preliminary approval], the Court appointed the following attorneys (“Class Counsel”) to represent the Class in this Action:

Michael Hoffman, Esq.
Hoffman Employment Lawyers, LLP
100 Pine Street, Suite 1550
San Francisco, CA 94111
Telephone: 415.362.1111
Facsimile: 415.362.1112

9. On [date of preliminary approval], for purposes of the Settlement, the Court certified a Class consisting of all current and former BCS employees who are or were employed in California as Delivery Specialists at any time between November 10, 2004 and [date of preliminary approval].

10. If you are a member of the Class, you will be bound by the Settlement if it is approved, unless you make a written request for exclusion (“opt-out”) in the manner described below.

YOUR OPTIONS

11. If you are a Class Member, you have three options.

12. **IF YOU WANT TO PARTICIPATE** and receive your share of the money from the settlement, **you do not need to do anything**. If you do nothing, you will receive your share of the Settlement and be bound by the terms of the Settlement, including the Release set forth in paragraph 20. This means that you will receive money as part of the settlement, but give up your right to sue BCS about the issues covered in this suit. *As previously mentioned, BCS encourages Class Members to participate in the Settlement.*

13. **IF YOU DO NOT WANT TO PARTICIPATE (“opt out”)** from the Settlement Class, **you must write to the Claims Administrator and state you wish to be excluded from the settlement**. Your written exclusion must be postmarked no later than []. To opt out, your exclusion request must include your name, current address, and telephone number. Opt-out requests that do not include all required information, or that are not submitted on time, will be disregarded. Persons who submit valid and timely opt-out requests will not participate in the Settlement, will not be bound by either the Settlement or the Final Judgment, and will not receive any money under the Settlement. Mail your written exclusion to:

[Insert name/address of Claims Administrator]

14. **IF YOU BELIEVE THAT THE SETTLEMENT SHOULD NOT BE FINALLY APPROVED BY THE COURT FOR ANY REASON**, or if you object to the proposed award of a service award (“Service Payment”) to the Plaintiff or of attorneys’ fees and expenses of Class Counsel (“Fee and Expense Award”), for the Court to consider your objection(s), **you must file a written objection with the Court** stating the basis of your objection(s). Your written objection must be postmarked no later than []. All objections or other correspondence must state the name and number of the case, which is Crutcher v. Basic Chemical Solutions, L.L.C., Case No. RG08419665. You must also mail copies of your objection to Class Counsel and BCS counsel at the addresses listed in paragraph 31 below.

15. You may object, personally or through an attorney, to the Settlement or the proposed Service Award or Fee and Expense Award by mailing your objection as described in paragraph 14. You may also appear at the hearing scheduled for [], on [], 2009, at the Superior Court of the State of California for the County of Alameda located at 1221 Oak Street, Oakland, California 94612, to have your objection heard by the Court. If you want to object in person, you must first file a written objection, as described above. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before []. **If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object**, unless you have opted out of the Settlement in the manner described in paragraph 13, above.

16. If you do not object in the manner provided above, you are bound by the Settlement and waive your right to object, whether by appeal or otherwise.

17. Any member of the Class who is satisfied with the Settlement need not appear at the Settlement Hearing or submit any information to the Court, Class Counsel, or BCS’ Counsel. You are not required to attend the Final Approval Hearing or file an objection although you may do either or both.

SUMMARY OF SETTLEMENT TERMS

18. The Parties entered into a proposed Settlement Agreement and Mutual Release (“Settlement Agreement” or “Settlement”) on [], 2009. The Court granted preliminary approval of the Settlement on [date of preliminary approval]. The Court will hold a Final Approval Hearing on the Settlement at the Superior Court of the State of California for the County of Alameda located at 1221 Oak Street, Oakland, California 94612, on [], 2009, at which time the Court will determine whether to grant final approval of the Settlement.

The most important terms of the Settlement are summarized in this Notice. You may obtain a complete copy of the Settlement Agreement from Class Counsel, Defense Counsel, or from the Clerk of the Court. If you have any questions about the Settlement, please contact Class Counsel or Defense Counsel at the mailing address, telephone, or email address listed in paragraph 30, below.

19. **Settlement Amount.** The Agreement provides that BCS will pay \$375,000.00 (the “Maximum Payment”) to fully resolve the claims in this Action. After the following Court-approved deductions, the remaining amount will be distributed to Class Members who do not opt out from the Settlement Class, pursuant to a Court-approved plan based on the amounts of salary earned during the Class Period by Class Members employed by BCS as Delivery Specialists in California.

(a) Deductions. The following deductions will be made from the Maximum Payment:

(i) Administration Costs. The Court has tentatively approved the payment of costs incurred by the Parties to notify Class Members of the Settlement and process the Individual Settlement Payments.

(ii) Fee and Expense Award. The Court has appointed Hoffman Employment Lawyers LLP as Class Counsel. Class Counsel have been working on behalf of the Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The Settlement provides that Class Counsel may request from the Court payment not to exceed 30% (thirty percent) of the Maximum Payment and for expenses they have advanced in pursuing this action not to exceed \$7,500. Payment will be subject to the Court’s approval and will be deducted from the Maximum Payment. This amount covers any work Class Counsel does in the future. These attorneys’ fees are within the range of fees awarded to class counsel under similar circumstances in litigation of this type. **Class Members are not personally responsible for any legal fees or expenses.**

(iii) Service Payment. Class Counsel will also seek a service payment for the Plaintiff for acting as the representative plaintiff in this Action on behalf of the Class in the amount of \$5,000. If approved by the Court, this amount will be deducted from the Maximum Payment to compensate the Plaintiff for services provided on behalf of the class, including initiating this Action on behalf of the Class, reviewing documents and attending strategy sessions and other meetings with Class Counsel, and participating in the mediation that led to the Settlement.

(b) Payment to Class Members: Plan of Allocation. After the deductions described above are subtracted from the \$375,000.00 Maximum Payment, the balance or "Net Settlement Amount" will be distributed to the Class Members who do not opt out of the Settlement ("Settlement Class" or "Settlement Class Members"). Settlement Class Members will receive a proportionate share of the Net Settlement based on the number of weeks the class member worked during the Class Period. Each Settlement Class Member's Individual Settlement Payment will be based on the Net Workweek Value. The Net Workweek Value is determined by dividing the Net Settlement Amount by the total number of the workweeks worked by all of the Class Members during the Class Period. Your Individual Settlement Payment is based on the number of workweeks you worked as a Delivery Specialist during the Class Period multiplied by the Net Workweek Value. The number of workweeks you worked as a Class Member during the Class Period was determined based on a review of BCS records.

For example, if you were a Delivery Specialist from [DATE TO DATE], who worked [XX] weeks, multiplied by the Net Workweek Value, you would receive an estimated payment of \$ [AMOUNT].

(c) Unclaimed Funds. If any of the Maximum Payment is not used, or if any of the settlement payments are returned or remain uncashed within 120 days after distribution to the Settlement Class Members, any unused, returned or unclaimed funds from the Maximum Payment will be distributed to Arriba Juntos, a non-profit charitable organization that promotes economic self-sufficiency through occupational training and employment opportunities for low income residents of San Francisco, California.

(d) Tax Matters. IRS Forms W-2 and 1099 (and the equivalent California forms) will be distributed to Settlement Class Members reflecting the payments each Class Member receives under the Settlement. For tax purposes:

i) one third (33 1/3%) of the amounts distributed to each Settlement Class Member shall be treated as wages for which payroll deduction will be made for state and federal withholding taxes or any other applicable payroll deductions;

ii) one third (33 1/3%) of each Settlement Class Member's Payment distributed shall be treated as a payment of interest.

iii) one third (33 1/3%) of each Settlement Class Member's Payment represents the payment of penalties under the California Labor Code.

Interest and penalties paid under this Settlement are not subject to federal, state and local payroll withholding taxes. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

20. Release. If approved by the Court, the Settlement Agreement will bind all members of the Settlement Class and will prevent any Class Member who does not timely opt out of the Settlement from bringing certain claims (“Released Claims”) against BCS. “Released Claims” means all known and unknown claims, demands, rights, liabilities, and causes of action that were or might have been asserted for violation of any state or federal wage and hour law, whether for economic damages, non-economic damages, restitution, penalties, interest or other monies arising out of, relating to, or in connection with:

- (a) any facts which are or could be the basis of any claim that BCS failed to provide meal or rest periods to Settlement Class Members, failed to provide accurate wage statements and/or engaged in unfair business practices with regard to Settlement Class Members, at any time on or before Final Approval (whether such claims are based on California or federal wage and hour law, contract law, or other law); and/or
- (b) any and all applicable wage and hour claims, whether known or unknown, arising from or related to the allegations in the Complaint from November 10, 2004 through the date of final approval of settlement, including statutory, constitutional, contractual or common law claims for money damages, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, equitable relief based on the following categories of wage and hour allegations and claims reasonably related to: (a) any and all claims for the failure to provide meal or rest periods; (b) any and all claims for the failure to promptly pay all wages due and owing at the time of an employee’s termination or discharge in violation of Labor Code section 203 due to the alleged failure to pay additional wages owed due to alleged meal and rest period violations; (c) any and all claims for the failure to issue properly itemized wage statements in violation of Labor Code section 226(a) due to alleged meal and rest period violations; (d) any and all claims for unfair business practices for alleged meal and rest period violations pursuant to Business and Professions Code section 17200 et seq.; and (e) any and all claims for attorneys’ fees, costs and interest relating to the claims alleged in the Complaint.
- (c) “Released Claims” include all unknown claims encompassed by California Civil Code Section 1542. By entering into this Agreement and accepting the Individual Settlement Payments provided by BCS pursuant to the Settlement, Plaintiff and all Settlement Class Members expressly waive and relinquish to the fullest extent possible the provisions, rights and benefits of California Civil Code Section 1542 and any other similar statute for the alleged meal and rest period violations set forth in the Action. Section 1542 provides:

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.

After Court approval, the Settlement will fully release and forever discharge BCS from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, attorneys' fees, obligations, or liabilities of any nature, type or description related in any way to the Released Claims. Furthermore, Plaintiff and all Settlement Class Members cannot sue or otherwise make a claim against BCS that in any way relates to, arises out of, or is connected with the Released Claims. The Individual Settlement Payments will be paid to Settlement Class Members specifically in exchange for the release of BCS by the Settlement Class Members with regard to the Released Claims and for the agreement by the Settlement Class Members not to sue concerning the Released Claims.

21. Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Settlement Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

CHANGE OF ADDRESS

24. If you move after receiving this Notice, if the Notice was misaddressed or if for any reason you want your payment or future correspondence concerning this Action and the Settlement to be sent to a different address, you should send your current preferred address to the Claims Administrator, listed above in paragraph 13.

REMINDER AS TO PARTICIPATION REQUIREMENTS

26. If you wish to participate in the Settlement of this Class Action, you do not need to take any action at this time. If you do nothing, you will receive your share of the Settlement and be bound by the terms of the Settlement, including the provisions regarding Released Claims.

ADDITIONAL INFORMATION

27. If you want a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Superior Court of the State of California County of Alameda located at 1221 Oak Street, Oakland, California 94612, during regular business hours of the Court. You may also obtain copies of this Notice and the Settlement Agreement from Class Counsel.

28. All inquiries by Class Members regarding this Notice and/or the Settlement, including the amounts estimated to be payable to Class Members if the Settlement is approved, should be directed to Class Counsel or BCS' Counsel:

Class Counsel:

Michael Hoffman, Esq.
mhoffman@employment-lawyers.com
Hoffman Employment Lawyers, LLP
100 Pine Street, Suite 1550
San Francisco, CA 94111
Telephone: 415.362.1111
Facsimile: 415.362.1112

BCS' Counsel:

JoAnna L. Brooks
brooksj@jacksonlewis.com
Jackson Lewis LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
Tel.: 415-394-9400

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