

EXHIBIT E

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFF SPOERLE, NICK LEE, KATHI  
SMITH, JASON KNUDTSON, on behalf of  
themselves and all others who consent to  
become Plaintiffs and similarly situated  
employees,

Plaintiffs,

Case No. 07-C-0300-C

vs.

KRAFT FOODS GLOBAL, INC.,  
OSCAR MAYER FOODS DIVISION,

Defendant.

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NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All current and former Kraft hourly employees employed at Kraft Food Global, Inc.'s Oscar Mayer plant in Madison, Wisconsin who were not paid regular or overtime pay for time spent donning and doffing required articles and walking to and from their work stations during the period since June 1, 2005, and who have not previously opted out of this class action ("the Settlement Class").

IMPORTANT LEGAL NOTICE -- READ CAREFULLY

I. WHAT IS THE PURPOSE OF THIS NOTICE?

This notice is to inform you that a settlement has been reached in a case brought on behalf of current and former Kraft Foods Global, Inc. ("Kraft") hourly employees to recover wages they believe they are owed. This notice describes the terms of the proposed settlement. It also tells you what you need to do if you wish to object to the Court that the settlement is unreasonable or unfair.

## II. WHAT IS THE CASE ABOUT?

You should already have received a previous notice in this case, explaining what the case is about. As that notice explained, this action was brought by four Kraft hourly employees on behalf of all current and former Kraft hourly employees to recover wages they believe are owed for time spent donning and doffing required articles (headgear, hairnets, beard nets, captive footwear, frocks and/or career clothing) and walking to and from their work stations at the beginning and end of their work shifts.

## III. WHO IS IN THE CLASS?

The Class covered by this notice includes all current and former Kraft hourly employees employed at Kraft's Oscar Mayer plant in Madison, Wisconsin who were not paid regular or overtime pay for time spent donning and doffing the required articles and walking to and from their work stations since June 1, 2005, and who did not opt out of this class action pursuant to the Class Action Notice mailed on June 2, 2008. To be eligible to participate in the Settlement, an individual must have worked in one of the Departments identified on the attached Exhibit 1 at some point since June 1, 2005. You may verify your eligibility by contacting Class Counsel (Kurt Kobelt) at the Lawton & Cates law firm (608) 882-6200. Individuals satisfying the class definition and eligible to participate in the Settlement are referred to in this Notice as "eligible Class Members."

## IV. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The proposed settlement resolves most but not all of the issues that were set to go to trial on July 28, 2008. The full settlement documents can be obtained from Class Counsel Lawton & Cates. See above for Kurt Kobelt's phone number. This Notice summarizes the terms of the settlement as follows:

### A. Agreement to Limit Claims and Defenses.

In exchange for Kraft's agreement to give up all but two of the defenses to Plaintiffs' claims that it asserted in the trial court, and to accept Plaintiffs' calculations (based on Kraft's payroll records and the work of Plaintiffs' expert and data consultant) of the wages and interest that eligible Class Members would have received if Kraft had paid them wages for the donning, doffing and walking time associated with the headgear, captive footwear, hair and beard nets, frocks and career clothing required to be worn by Kraft, Plaintiffs have agreed to forego all potential penalties and liquidated damages, as well as their claim that any of the alleged violations was "willful" under the FLSA.<sup>1</sup>

Thus, the settlement limits Kraft to its two remaining defenses (see below). Unless these defenses are sustained in their entirety by the trial court or a court of appeals, Kraft will

<sup>1</sup> The settlement also resolves the Plaintiffs' additional claim for violations of the recordkeeping requirements of the FLSA by Kraft's commitment, in the event that its FLSA defense is rejected, to modify its practices to ensure that those requirements are satisfied.

be required to pay damages to the eligible Class Members, calculated pursuant to the formula established by Plaintiffs' time measurement expert and damages consultant.

B. Payment of Wages for Donning and Doffing.

Plaintiffs assert both federal claims under the Fair Labor Standards Act (FLSA) and state law claims under the Wisconsin wage payment laws. As part of this proposed Settlement, Kraft has agreed to waive all but two of the defenses it had asserted in the course of the lawsuit: (1) the argument that Plaintiffs' claims under the FLSA are barred by the collective bargaining history; and (2) that Plaintiffs' state law claims are "preempted." (Preemption exists where federal laws supplant an area of regulation so as to deprive states of their authority to pass their own laws and any laws the state does pass are of no effect.)

Plaintiffs contend that (1) the FLSA's collective bargaining exception does not apply to the donning and doffing in this case, and (2) there is no preemption. If Plaintiffs are wrong, and the trial court (or a court of appeals) accepts both of Kraft's defenses, then all claims will be dismissed. If Plaintiffs are correct and the trial court (and the court of appeals) totally rejects Kraft's defenses, then Kraft will be obligated under the Settlement Agreement to distribute to eligible Class Members the unpaid donning and doffing wages and interest (an amount calculated to be more than \$2,184,347 for the period from June 2005 through April 2008, but will be updated wages and interest through the date all appeals are resolved).

If the trial court (or the appellate court(s)) uphold Kraft's defenses in part and rejects them in part, then the damages total could be reduced to eliminate compensation for activities that the trial court (or appellate court(s)) deems *not* compensable.

In the event that Plaintiffs' prevail in whole or in part, Kraft will be required to distribute the unpaid wages and interest (less applicable tax withholding and deductions (including FICA) from the wages and overtime portion of the awards as required by law) based on (1) the number of shifts worked by each eligible Class Member (as shown by Kraft's payroll records); multiplied by (2) the amount of time required for the donning and doffing at issue (as measured by Plaintiffs' time measurement expert); multiplied by (3) the appropriate straight time or overtime pay rate; plus, (4) interest calculated at the prime rate.

EXAMPLE: If an eligible Class Member spends 12 minutes per day donning and doffing required articles and walking to and from his/her workstation (at the beginning and end of his work shift), and works five days, the employee is entitled to 60 minutes additional pay for that week. If the employee's wage rate is \$15 per hour, and the employee works a 40 hour week, the 60 minutes are paid at the time-and-one-half overtime rate of \$22.50. If the employee works 38 hours, the 60 minutes are paid at the straight time rate of \$15 per hour.

Under the Settlement, each eligible Class Member's individual damages would be calculated after Kraft's defenses are resolved and all rights of appeal are exhausted. It would then be reduced proportionately by any attorneys' fees awarded from the Class recovery and increased proportionately by accrued interest, as described below, and paid subject to applicable tax withholding and deductions (including FICA) from the wages and overtime portion of the awards as required by law.

All eligible Class Members then employed by Kraft will be paid directly by Kraft without the need to file a claim. Eligible Class Members who are no longer employed by Kraft, but who provide Kraft with current address information, will be paid directly by Kraft within seven days of the date when the Class Members' current address information is provided. Plaintiffs and Class Counsel will have nine months to locate former employees for whom address information is not provided. Awards remaining in the fund after nine months will revert to Kraft.

C. Bonus Payment to Named Plaintiffs and Attorneys Fees and Expenses.

In addition to the Class Damages, the Settlement requires Kraft to pay modest bonus awards of \$1000 each to the Named Plaintiffs (Jeff Spoerle, Nick Lee, Kathi Smith and Jason Knudston) for the time and effort they spent in pursuing the lawsuit on behalf of the Class, as well as plaintiffs' attorneys' fees and litigation expenses.

Kraft's obligation to pay attorneys' fees will be limited to Plaintiffs' "lodestar" (that is, Plaintiffs' reasonable hours times their reasonable hourly rates as determined by the trial court). However, the Settlement also allows Plaintiffs' Counsel to request a supplemental fee (in addition to the fee paid by Kraft) based on a percentage of Plaintiffs' total recovery – provided that the sum of the lodestar fee to be paid by Kraft and the supplemental fee to be paid from the Class Damages is no greater than 25% of the Plaintiffs' total recovery. Class Counsel estimate that any such supplement will not exceed 10% of the Class recovery. Specific approval by the trial court will be required before any attorneys' fee is paid either directly by Kraft or by supplement out of the Class recovery.

D. Benefits Depend on Outcome of Reserved Defenses.

Finally, the Class recovery just described is not guaranteed. As previously indicated, it could be reduced if Kraft were to succeed on some but not all aspects of its defenses. If Kraft were to succeed in its entirety, the claims will be dismissed, no damages would be paid to the Class, and no fees to Class Counsel.

V. WHY DID I RECEIVE THIS NOTICE?

This notice has been sent to you because you are on the list of employees identified in Kraft's payroll records as having worked for Kraft as an hourly employee. You may be

eligible to participate in the Settlement and you may be one of the people whose rights will be affected if the Settlement is approved.

#### VI. HOW COULD THE SETTLEMENT AFFECT ME?

If you are an eligible Class Member, and you have not previously filed an opt-out form (exclusion request) and/or do not request to be excluded from this Settlement as provided below in Section X, and if this Settlement is approved, then you will be bound by this Settlement. This means that as long as the defenses reserved by Kraft are rejected by the trial court (and all appellate courts) in whole or in part, then you will receive payment for time you have spent donning, doffing and walking for the period from June 1, 2005 to the date of the final resolution of any appeals. On the other hand, if the trial court (or any appellate court(s)) rules in favor of Kraft on both defenses, then your claims will be dismissed. Additionally, whether Kraft's defenses are upheld or not, any and all claims that were, or could have been, asserted on your behalf in this case for, among other things, back pay, unpaid wages, interest, penalties, liquidated damages, attorneys' fees and costs, will be released and waived.

Alternatively, if you do not want to participate in the Settlement and instead want to preserve your right to bring your own lawsuit, then you may exclude yourself by following the steps described below in Section X. If you exclude yourself, you will not receive payment from the Settlement Fund or participate in other benefits of the settlement.

#### VII. WHAT OTHER BENEFITS DOES THE SETTLEMENT PROVIDE?

A. Retaliation: Kraft has promised not to retaliate, either directly or indirectly, against anyone who has cooperated or participated in bringing this lawsuit.

B. Future Changes: If Kraft loses in the Court of Appeals, Kraft has to modify its practices to ensure that employees are paid for the donning, doffing and walking time at issue in the future.

#### VIII. WHAT DO THE LAWYERS FOR THE CLASS THINK OF THE PROPOSED SETTLEMENT?

The lawyers for the Class believe that this proposed settlement is fair and reasonable and that it is in the best interests of the Class because it substantially increases the likelihood that eligible Class Members will recover payment for the donning, doffing and walking time at issue in this case.

Plaintiffs were scheduled to go to trial on July 28, 2008. At that trial, Kraft planned to present a significant number of defenses to the jury and to challenge the validity of Plaintiffs' proof (through a time-measurement expert and damages consultant) of (1) how much time was required to perform the donning and doffing and walking at issue and (2) the amount of the unpaid wages owed each eligible Class Member. While Plaintiffs

believe that their proof of damages was valid and that Kraft's defenses lacked merit, Kraft's challenges and defenses presented both risk and substantial ground for delay.

The proposed settlement does not resolve all of the claims in the case immediately, but it significantly reduces these risks and potential for delay. Kraft has given up all but two of their defenses, both of which Plaintiffs believe are not likely to succeed— and only one of which constitutes a defense to the state law claim: that the Wisconsin wage laws are preempted by federal law.

At the same time, Kraft has agreed not to challenge Plaintiffs' calculation of damages for the eligible Class Members and given up the right to pursue the following additional defenses:

- (1) the donning and doffing is preliminary or postliminary activities for which compensation is not required;
- (2) the donning and doffing is *de minimus* and therefore not required to be paid; and
- (3) the Class Members are barred from recovering payment for the donning and doffing time because of waiver, estoppel and laches.

In exchange, Plaintiffs have agreed to limit their claims to 100% of the unpaid wages plus interest back to June 1, 2005, giving up all claims for additional penalties or liquidated damages, and all claims for recordkeeping violations of the FLSA. Plaintiffs have also agreed to Kraft's reserving its right to argue the application of the collective bargaining defense to the FLSA claims and that the state law claims are preempted by federal law, and to appeal any adverse decisions made by the trial court in the course of litigating these defenses to a higher court.

Plaintiffs believe that this exchange is in the interests of the Class for several reasons:

- (1) the likelihood is strong that the defenses reserved by Kraft will be rejected by the trial court and any court of appeals that may hear the defenses; and
- (2) Kraft's agreement to give up other defenses that it would have argued to the jury if the case had gone to trial has significant value for the Class that outweighs Plaintiffs' agreement to waive additional penalties and damages for "willful" violations of the FLSA, for which proof at trial would have been extremely difficult in this case, and in that it avoids significant risks of loss and delay and thus provides significant benefit to the Class.

**IX. HOW WILL THE LAWYERS WHO REPRESENTED THE CLASS BE COMPENSATED UNDER THE SETTLEMENT?**

The federal and state wage laws give the Class a right to recover attorneys' fees and litigation costs from Kraft if they ultimately prevail. The Settlement Agreement provides that Kraft will be liable in such event to pay an amount equal to the attorneys' reasonable rates times the reasonable number of hours spent in pursuing the Class Claims (Plaintiffs' "lodestar"). The Settlement Agreement also allows Plaintiffs' Counsel to request a supplemental fee to be paid from the Class recovery (in addition to the lodestar fee paid by Kraft) based on a percentage of Plaintiffs' total recovery. This supplemental fee is permitted only if the sum of the "lodestar" fee to be paid by Kraft and the supplemental fee to be paid from the Class Damages is no greater than 25% of the Plaintiffs' total recovery.

Class Counsel estimate that, if the maximum "lodestar" fee is awarded by the trial court, then any supplement to be awarded separately from the Settlement Fund would reduce each eligible Class Members' settlement award by less than 10% of his or her individual damages plus interest. Whether to award this supplemental fee will be for the trial court to decide.

**X. WHAT SHOULD I DO IF I DO NOT WANT TO BE PART OF THE SETTLEMENT?**

If you do not want to be part of the settlement, you need to fill out the attached "Request for Exclusion" form. (If you filed an Exclusion Form with the Court after you received the first notice, you do not need to file another one.)

Send the exclusion form to the Clerk of the Court at this address:

Clerk of Court  
United States District Court for the Western District of Wisconsin  
U.S. Courthouse  
120 N. Henry Street, Room 320  
P.O. Box 432  
Madison, WI 53703-2559

You should also send a copy of the exclusion form to Plaintiffs' counsel at the following address:

Kurt C. Kobelt  
Lawton & Cates, S.C.  
10 E. Doty St., Suite 400  
Madison, WI 53703-2964

and Kraft's counsel at the following address:

Daniel A. Kaplan  
Foley & Lardner LLP  
150 E. Gilman Street  
Madison, WI 53703-1481

Your form must be received by the Clerk of the Court no later than November 6, 2008.

If you return the exclusion form, or if you have already filed an exclusion form, you will not receive money from the Settlement Fund.

XI. WHAT SHOULD I DO IF I WANT TO PARTICIPATE IN THE CLASS ACTION BUT OBJECT TO THE SETTLEMENT AGREEMENT?

If you are a Class Member and you have not already excluded yourself and do not exclude yourself under Section X above, and you disagree with the Settlement or any of its specific terms, including its provision permitting Kraft to pursue its defense to appeal and/or its provision for attorneys' fees to Class Counsel, then you may file an objection with the trial court explaining why you believe the Settlement should not be approved. You must object in writing and file the objection with the Clerk of Court at the address listed below:

Clerk of Court  
United States District Court for the Western District of Wisconsin  
U.S. Courthouse  
120 N. Henry Street, Room 320  
P.O. Box 432  
Madison, WI 53703-2559

You must also serve your written objection on Plaintiffs' counsel at the following address:

Kurt C. Kobelt  
Lawton & Cates, S.C.  
10 E. Doty St., Suite 400  
Madison, WI 53703-2964

and Kraft's counsel at the following address:

Daniel A. Kaplan  
Foley & Lardner LLP  
150 E. Gilman Street  
Madison, WI 53703-1481

Objections must be received by the Clerk of Court no later than November 6, 2008



You can also appear in Court on Feb. 11, 2009 to state your objection to the judge. However, you must first submit your written objection by the above deadline.

XI. CAN I HIRE MY OWN LAWYER?

Yes, you can hire your own lawyer to represent you, but you do not have to. If you are an eligible Class Member and you have not opted out, then the lawyers for the Class will represent you.

XII. WHEN WILL THE COURT REVIEW THE PROPOSED SETTLEMENT?

Judge Barbara Crabb of the United States District Court for the West District of Wisconsin, granted preliminary approval of the Settlement on <sup>ern</sup> September 22, 2008. Before the Court decides whether to grant final approval to the Settlement, it will hold a fairness hearing on Feb. 11, 2009, at 9:00 am at the U.S. Courthouse, 120 N. Henry St., Room 320, Madison, Wisconsin. The Court will consider and rule on any objections to the Settlement at this hearing, and decide whether the proposed settlement is reasonable and fair.

XIII. WHAT WILL HAPPEN IF THE COURT DOES NOT APPROVE THE SETTLEMENT?

If the trial court does not approve the Settlement Agreement, the lawsuit will go forward as if the parties had never settled. There can be no assurance, if the Settlement Agreement is not approved, that the Class will recover more than is provided in the Settlement Agreement, or indeed, anything at all.

XIV. YOUR RIGHT NOT TO BE RETALIATED AGAINST.

The law prohibits anyone from taking any action against you because you participate in the settlement or choose not to participate. As described above, the Settlement Agreement also prohibits retaliation.

XV. FOR FURTHER INFORMATION, INCLUDING A COPY OF THE COMPLETE SETTLEMENT AGREEMENT.

This notice is a general description only and does not cover all of the details of the case or the settlement. If you have any questions, or if you want a copy of the complete Settlement Agreement and other settlement papers, you may contact the lawyers who brought this lawsuit. They are:

Kurt C. Kobelt  
Lawton & Cates, S.C.  
10 E. Doty St., Suite 400  
Madison, WI 53703-2964

Sarah Siskind  
Miner Barnhill & Galland  
44 East Mifflin Suite 803  
Madison, WI 53703

You may also contact Mr. Kobelt at (608) 282-6200. Please do not contact the Judge, the Clerk of Court, or Kraft's counsel, Daniel Kaplan, with your questions.

The pleadings and other papers filed in this action are available for inspection at the office of the Clerk of Court.

IMPORTANT: OBJECTIONS TO THE SETTLEMENT AND REQUESTS FOR EXCLUSION MUST BE RECEIVED BY THE COURT BY November 6, 2008.

Dated: September 23, 2008

BY THE COURT:

Barbara B. Crabb  
Honorable Barbara J. Crabb  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFF SPOERLE, et al., ,

Plaintiffs,

vs.

Case No. 07-C-0300-C

KRAFT FOODS GLOBAL, INC.,  
OSCAR MAYER FOODS DIVISION,

Defendant.

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REQUEST FOR EXCLUSION

I do not want to be a member of the class represented by the Plaintiffs in this case and do not want to participate in the proposed Settlement Agreement.

YOUR NAME (printed): \_\_\_\_\_

YOUR ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YOUR PHONE NUMBER: \_\_\_\_\_

YOUR SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

THIS EXCLUSION FORM MUST BE RECEIVED BY THE CLERK OF THE COURT BY \_\_\_\_\_ AT THE FOLLOWING ADDRESS:

Clerk of Court  
United States District Court for the Western District of Wisconsin  
U.S. Courthouse  
120 N. Henry Street, Room 320  
P.O. Box 432  
Madison, WI 53703-2559

Number	Department Name/Description
226	Freezer
237	Canadian Stamp
242	Mini Prep
243	Sausage
244	CLSP
246	Saran Tube
247	J-Con
251	KSI
253	Dry Sausage
255	Prince
256	J-Con II (Open 3/2008; Closed 7/2008)
259	Curing (Closed 4th Quarter, 2006)
260	Classics & Bulk Pack
261	Smoked Meats (Closed 5/4/07)
262	Processed Meats (Closed 5/4/07)
265	Hard Salami
266	Stay Fresh Bacon (Closed 1/25/07)
267	Variety Pack
268	Pi2
269	Ham Slice (Closed 4th Quarter 2006)
271	Originally Rigid (Closed before 2005) - Trucking Labor Job (Since 2005)
272	105 Line
273	150 Line
279	Alkar
280	Microwave Bacon (Closed 3/28/07)
281	Spin Tech
284	Square Rigid (Closed before 2005)
294	Round Turkey Slice
298	Spice
302	Plastics - Forming (Closed 3/30/07)
303	Plastics - Gluing (Closed 3/30/07)
314	Warehouse
710	Raw Receiving
714	Variable Sanitation (Persons that work in 714 - Corp Sanitation are not included in the Plaintiffs' Class)
716	Mechanical
716	Mechanical - Production Mechanics
717	Powerhouse
718	Waste Treatment
728	Distribution