

Notice of Proposed Collective Action Settlement

Frisbie, v. Feast American Diners, LLC, et al.

United States District Court for the Western District of New York,

Civil Action No.: 6:17-06270

If you are or were employed at a Denny's Restaurant by Feast American Diners, LLC. / Feast Foods, LLC as an Assistant Restaurant Manager, a collective action lawsuit may affect your rights.

- Former Assistant Restaurant Managers (“Assistant Managers”) have sued Feast Foods, Inc. and Feast American Diners, LLC. (collectively referred to as “Feast”) alleging that Feast violated the Fair Labor Standards Act (“FLSA”) by failing to pay them overtime in any workweek in which they worked more than 40 hours. Feast denies these claims.
- The parties have negotiated a Settlement Agreement to resolve the case.
- The Court has concluded that the Settlement Agreement falls “within the range of possible approval” and therefore is preliminarily approved as being sufficient to warrant sending this notice.
- The Court has authorized the dissemination of notice to all persons employed by Feast as an Assistant Restaurant Manager at any time between April 28, 2014 to January 18, 2019 to determine whether they would like to opt-in to the case and participate in the settlement of claims against Feast.
- The Court has not found that Feast did anything wrong and the Court has not yet decided whether it will finally approve the settlement. Rather, the Court has conditionally approved a settlement and Feast’s records show that you may be entitled to receive an award under the settlement.
- Your legal rights are affected, and you have a choice to make now (flip page):

YOUR LEGAL RIGHTS AND OPTIONS IN THESE LAWSUITS

- (1) **OPT-IN TO THE FEAST CASE.** To participate in the Feast case, you must sign and return the opt-in form included in this notice by September 2, 2021. By opting in to the Feast case you will receive money under the Settlement Agreement. In exchange, you will be giving up some of your rights that you have to separately sue Feast for wage and hour claims.
 - (2) **DO NOTHING AND RECEIVE NO MONEY FROM THE CASE AGAINST FEAST.** By doing nothing, you will not receive money from the settlement against Feast but would keep your right to sue Feast in a separate case for such claims. If you do nothing, you will automatically be excluded and you will not receive any money from that Settlement, you will not have any rights under the Settlement Agreement, and you will not have the right to object to the Settlement Agreement in the Feast case.
 - (3) **OBJECT** –If you want to object to the settlement in the Feast case, you will first have to opt-in to the case by signing and returning the opt-in form included in this notice by [45 days after the date notice is mailed]. Once you have done that, you may object to the settlement and/or request for attorney fees and expenses in the Feast case by following the instructions set forth below.
- Your options are further explained in this notice. To protect your legal rights, you must act before **September 2, 2021**.

Read On to Answer Any Questions.

BASIC INFORMATION

1. Why did I get this notice?

Feast's records indicate you worked as an Assistant Manager at one of its Denny's restaurants at any time between April 28, 2014 to January 18, 2019 and are therefore eligible to participate in the case and settlement against Feast, which the Court has also conditionally approved. You have legal rights and options you may exercise. The lawsuit is known as *Frisbie v. Feast American Diners, LLC, et al.*, Civil Action No. 6:17-cv-6270.

2. What are these cases about?

The cases involve Plaintiff's claims that Feast improperly classified Assistant Managers, who worked at one of its Denny's restaurants, as exempt from overtime under the FLSA. Plaintiff claims that he is entitled to receive additional overtime compensation in all weeks in which he worked more than 40 hours.

Feast denies that it engaged in any wrongful conduct or that it violated the law in any way. Feast contends that the claims asserted in the case has no merit and that it would prevail. The parties

have agreed to resolve this matter in order to avoid the uncertainty and high cost of litigation.

3. What is a FLSA collective action and who is involved?

In an FLSA collective action lawsuit, one or more people (in this case John Frisbie) initiate a suit on behalf of other people who they believe have similar claims. The people who join the case all together are known as a “Collective” or “Collective Members.” The employees who sued -- and all the Collective Members like them -- are called the Plaintiffs. The companies they sued (in this case Feast) are called the Defendants. The court resolves the issues for everyone in the Collective – except for those people who choose to exclude themselves from the Collective.

In the Feast case, the court had not yet decided whether it could proceed as a collective action and so now, as part of the settlement, you and others have to decide whether you would like to join the case against Feast and participate in the Feast settlement.

THE SETTLEMENT

4. What has Feast agreed to pay?

Feast has agreed to pay money to settle the Litigation. The money that Feast has offered to pay is called the “Settlement Fund.”

For Feast, if you sign and submit the opt-in form in this mailing, you would be eligible to participate in the settlement and receive a share of the Settlement Funds based upon the total number of weeks you worked as an Assistant Manager for Feast at one of its Denny’s restaurants at any time between April 28, 2014 to January 18, 2019.

5. What can I receive?

For Feast, the maximum potential amount available to pay all claims of the Plaintiff and Collective Action Members is \$120,000 less (i) the Collective Counsel’s attorneys’ fees and costs in a total amount not to exceed \$47,750.44; (ii) an enhanced payment to the Representative Plaintiff, John Frisbie, and FLSA Collective Action Member Rebecca Russell, who appeared for deposition in the Litigation, not to exceed \$2,000 to each; and (iii) all costs of claims administration associated with the settlement to RG/2 Claims Administration LLC (“Claims Administrator”), not to exceed \$7,500. The parties agreed upon a formula to calculate settlement payments to each Collective Member based upon the total number of weeks worked as an Assistant Manager for Feast at one of its Denny’s Restaurants.

If you opt-in to the Feast case by signing and submitting the opt-in form included in this mailing and the Judge approves the settlement, you will receive approximately \$[EstimatedAward].

6. How is my number of Overtime Hours Worked calculated?

Weeks worked in the Assistant Manager position for Feast at one of its Denny’s Restaurants at any time between April 28, 2014 to January 18, 2019, have been considered in computing Overtime Hours Worked for each Collective Member. The weeks worked for each Collective Member will be determined based on Feast’s records.

7. Does the Representative Plaintiff and Anyone Else receive any additional payments?

In addition to the Settlement Fund paid pursuant to the formula set forth above, Counsel for the Collective will request that the Court authorize a payment to the Representative Plaintiff and to FLSA Collective Member, Rebecca Russell, in recognition of their service in the Litigation.

In the Feast case, the amount Counsel will request is \$2,000 to each Plaintiff Frisbie and Ms. Russell. Feast has agreed not to object to these payments.

CLAIMING SETTLEMENT FUNDS

8. How do I receive my portion of the Settlement Funds?

In the Feast case, you will need to sign and return the enclosed opt-in form by September 2, 2021 to be eligible to receive your portion of the Settlement Funds.

9. Can I contact the Claims Administrator by telephone?

For more complete details about the Litigation and the proposed settlement, you may **TELEPHONE** the Claims Administrator, toll free, at (866) 742-4955.

10. What if my address changes before the Settlement Funds are distributed?

If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your current address to the Claims Administrator by letter or telephone to ensure that you receive future communications about the Litigation. If the Claims Administrator does not have your correct address, you might not receive notice of important developments in the Litigation and you might not receive your share of the Settlement Funds.

YOUR RELEASE OF CLAIMS

Your legal rights may be affected if the Court certifies the Collective.

11. Are my legal rights affected if I accept money from the settlement?

If you join the Feast case, and participate in the settlement, you will not be able to separately sue Feast to recover additional money or benefits for FLSA claims.

12. What claims are included in the term Settled Claims?

In the Feast case, all following claims are included in the term Settled Claims:

Any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Feast arising under the FLSA, 29 U.S.C. § 201 *et seq.*

13. Do I have a lawyer in this case?

The Court decided that the following law firms represent the putative Collective in the Feast case

and are qualified to do so:

Klafter Olsen & Lesser LLP
Seth R. Lesser
Fran L. Rudich
Christopher M. Timmell
Two International Drive, Ste. 350
Rye Brook, NY 10573
(914) 934-9200

Merriman Legando Williams & Klang, LLC
Drew T. Legando
1360 West 9th Street, Suite 200
Cleveland, OH 44113
(216) 522-9000

Migliaccio & Rathod
Nicholas A. Migliaccio
Jason S. Rathod
412 H Street, N.E., Suite 302
Washington, D.C. 20002
(202) 470-3520

These law firms, “Collective Counsel,” are experienced in handling FLSA Collective Action cases.

14. Should I get my own lawyer?

You do not need to hire your own lawyer because Collective Counsel are working on your behalf. If you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Collective Counsel to speak for you.

15. How will Collective Counsel and the Claims Administrator be paid?

In the Feast case, at the Final Approval Hearing, or at such other time as the Court may direct, Collective Counsel intends to apply to the Court for an award of attorneys’ fees plus costs together in an amount not to exceed \$47,750.44 to be paid out of the Settlement Fund.

The parties also have agreed that RG/2 Claims Administration LLC will serve as the Claims Administrator of the settlement. The fees and costs of the Claims Administrator will be subtracted from the Settlement Funds, as discussed in Section 5 of this Notice. The Claims Administrator has provided Collective Counsel with an estimate that its fees and costs in the Feast settlement will not exceed \$7,500.

ALTERNATIVES

You have alternatives to accepting the Settlement Funds.

16. May I choose not to participate in the settlement(s)?

If you wish to not participate in the Feast settlement, you do not need to do anything. Just do not sign and return the opt-in form enclosed in this mailing.

17. How May I oppose the settlement?

In the Feast case, you also may **OPPOSE OR OBJECT** to the proposed settlement or any aspect of it that you think is unfair. To do so, you first will need to sign and return the enclosed opt-in form by September 2, 2021. **The Court will hold a hearing on September 8, 2021 at 3:00 p.m. at United States District Court for the Western District of New York, U.S. Courthouse, 100 State Street, Rochester, NY 14614 to determine whether the proposed settlement of the Litigation should be approved.** The hearing may be held remotely in which case instructions for participation by those eligible will be posted on the website for the United States District Court for the Western District of New York under the Calendar tab at <https://www.nywd.uscourts.gov/>. Each Collective Member who wishes to object to the fairness, reasonableness or adequacy of the proposed settlement(s), or to the award of Attorneys' Fees and Expenses or to the service awards, shall provide to Collective Counsel, so as to be postmarked no later than September 2, 2021, a written statement of the objection, as well as the specific reasons, if any, for each objection, including any legal support you wish to bring to the Court's attention and any evidence you wish the Court to consider in support of any objections. You must also file the objection with the Court by September 2, 2021. If you also intend to appear at the hearing, you must also include notice of your intent to appear with your objection.

18. What does my objection need to include?

All written objections must be signed by the Collective Member and must include: (1) the Collective Member's name, address, and telephone number; (2) a statement of the objection(s) and any supporting evidence and legal support the Collective Member wishes the Court to consider; and (3) the case name and number.

GETTING MORE INFORMATION

19. Are more details available?

Yes, if you believe that you need more details in order to make a decision, you have several alternatives discussed below.

20. Can I examine the Court's file?

Yes, you may **EXAMINE THE COURT'S FILE** in the clerk's office at the United States District Court for the Western District of New York, U.S. Courthouse, 100 State Street, Rochester, NY 14614.

21. Can I speak to Collective Counsel?

Yes, for more complete details about the Litigation and the proposed settlement, or if you want to review the Settlement Agreement, you may **WRITE** to, **EMAIL** or **TELEPHONE** the Collective Counsel:

Klafter Olsen & Lesser LLP
Two International Drive, Ste. 350
Rye Brook, NY 10573
(914) 934-9200
seth@klafterolsen.com

Merriman Legando Williams & Klang, LLC
1360 West 9th Street, Suite 200
Cleveland, OH 44113
(216) 522-9000
drew@merrimanlegal.com

Migliaccio & Rathod
Nicholas A. Migliaccio
Jason S. Rathod
412 H Street, N.E., Suite 302
Washington, D.C. 20002
(202) 470-3520
nmigliaccio@classlawdc.com

22. Can I speak to the Claims Administrator?

Yes, for more complete details about the Litigation and the proposed settlement, you may **TELEPHONE** the Claims Administrator, toll free, at (866) 742-4955.

PLEASE DO NOT CONTACT THE JUDGE

**CONSENT TO JOIN COLLECTIVE ACTION LAWSUIT
UNDER SECTION 16(b) OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(b).**

1. I consent to be a party plaintiff in the lawsuit and settlement against Feast American Diners, LLC. / Feast Foods, LLC (“Feast”) in order to seek redress for alleged violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I designate Drew Legando and other attorneys of Merriman Legando Williams & Klang, LLC, 1360 W. 9th St, Suite 200, Cleveland, Ohio 44113; Nicholas Migliaccio and Jason S. Rathod of Migliaccio & Rathod LLP, 412 H Street N.E., Suite 302, Washington DC 20002; and Seth R. Lesser and other attorneys of Klaftra Olsen & Lesser LLP, Two International Dr., Suite 350, Rye Brooke, NY 10573, to represent me in this case.

Full Legal Name (please PRINT clearly)

Signature

Date

Street Address (with apartment number, if applicable)

City, State, Zip Code

Home Phone Number

Cell Phone Number

Email Address

(we will use this as our primary method to contact you)

Note: Once you have filled out and signed the form, please return it in the self-addressed stamped envelope included within this mailing.