

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALFREDO JOSE HUERTA,)	
SEFERINO CARILLO GOMEZ)	
individually and on behalf of all)	
similarly situated persons)	
)	
Plaintiffs,)	
)	No. 11 CV 06800
vs.)	
)	
SIMON K'S, LTD. D/B/A SIMON'S)	Hon. Magistrate Judge Gilbert
RESTAURANT, SIMON KRINGAS,)	
CHRIST KRINGAS and)	
KATHERINA IOANOU)	
)	
Defendants.)	

CLASS ACTION SETTLEMENT AGREEMENT

Subject to the court's approval and entry of a final order and judgment approving the settlement agreement and dismissing with prejudice all claims encompassed by the settlement agreement, this class action settlement agreement (hereinafter "Settlement Agreement" or "Agreement") is made and entered into by and between Plaintiffs Alfredo Jose Huerta ("Huerta") and Seferino Carillo Gomez ("Gomez") ("Settlement Class Representatives") and all members of the "Settlement Class" or "Settlement Class Members" as described herein, and Defendants Simon K's, Ltd. d/b/a Simon's Restaurant, Simon Kringas, Christ Kringas and Katherina Ioanou¹ (collectively referred to as "Defendants" or "Simon's") (collectively, the "Parties").

RECITALS AND BACKGROUND

On September 27, 2011, Huerta and Gomez filed a class action Complaint in the United States District Court for the Northern District of Illinois, Case No. 11-cv-6800, bringing claims

¹ Katherina Ioanou's legal name is Katherina Kringas.

under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et. seq.*, the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, (“IMWL”) and the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.* (“IWPCA”), against Simon’s on behalf of themselves and all other similarly situated former and current, non-exempt, hourly servers, busboys, and dishwashers who worked at Simon’s at any time in the two (2), three (3) and/or ten (10) years prior to the filing of the Complaint; two (2) and three (3) years for claims under the FLSA and the IMWL, and ten (10) years for claims under IWPCA.

Specifically, with respect to Plaintiffs Huerta, Gomez and all similarly situated servers, busboys, and dishwashers employed by Defendants, Defendants are alleged to have violated the FLSA and the IMWL by (1) paying less than the minimum wage; (2) improperly applying the “tip credit” rate to hourly wages; and (3) failing to pay overtime.

Plaintiffs also allege violations under IWPCA, for Defendants’ improper deductions from the wages of Named Plaintiff Huerta, and all other similarly situated servers employed by Defendants, for the cost of meals.

Named Plaintiff Huerta also asserted an individual claim for retaliatory discharge in violation of the FLSA. Plaintiff Huerta’s retaliation claim has been independently resolved.

This Settlement encompasses all class-related matters raised or which could have been raised in the Complaint, Case No.11 CV 06800, hereinafter referred to as the “Litigation”.

On December 19, 2011, the Parties filed a Joint Motion to Stay All Deadlines Pending Settlement and Defendants agreed to provide limited time and payroll information to Plaintiffs’ Counsel (hereinafter referred to as “Class Counsel”) for analysis. After an initial analysis of time and payroll records by Class Counsel, the Parties exchanged settlement figures.

On May 22, 2012, this case was referred to Magistrate Judge Gilbert for mediation. Throughout the mediation process, Defendants expressed their financial inability to pay the large sums demanded by Plaintiffs and keep the restaurant in business. Magistrate Judge Gilbert oversaw the Defendants' production of confidential, Attorney Eyes Only, financial records relating to Defendants' ability to pay. On September 10, 2012, through the assistance of Magistrate Judge Gilbert, the Parties engaged in settlement negotiations, and, shortly thereafter, reached an agreement to compromise and settle the Litigation, without any admission of liability by Simon's, and subject to the Court's preliminary and final approval.

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all class claims and disputes that the Settlement Class Representatives raised in the Litigation on behalf of the Settlement Class or that are similar to, reasonably relate to, or reasonably could have arisen out of the same facts alleged in the Litigation, under state or federal law and expressly including all claims under the FLSA, IMWL, and the IWPCA, including but not limited to claims for unpaid wages, minimum wages, overtime, or any other, notice, wage, or recordkeeping-related damages or relief.

Class Counsel represents that they have conducted an independent investigation and evaluation of the facts of the Litigation, including, but not limited to, interviewing numerous class members and conducting a review of Defendants' time, payroll, and financial records. Class Counsel is of the opinion that the Settlement with Simon's is fair and reasonable, and that settlement is in the best interest of the Settlement Class Members in light of all known and disclosed facts and circumstances.

Defendants expressly deny any liability or wrongdoing of any kind associated with the claims in this Litigation and Plaintiffs' Complaint and deny Plaintiffs' entitlement to damages,

particularly for Plaintiffs' claims under the IWPCA. Plaintiffs and the Settlement Class submit that all their claims are valid and meritorious. By entering into this Settlement Agreement, Defendants do not admit any liability or wrongdoing and expressly deny the same. Nothing in the Settlement Agreement, the settlement proposals exchanged by the Parties, or any motions filed or Orders entered pursuant to the Settlement Agreement, may be construed or deemed as an admission by Defendants of any liability, culpability, negligence, or wrongdoing, and the Settlement Agreement, each of its provisions, its execution, and its implementation, including any motions filed or Orders entered, shall not in any respect be construed as, offered, or deemed admissible as evidence, or referred to in any arbitration or legal proceedings for any purpose, except in an action or proceeding to approve, interpret, or enforce the Settlement Agreement. Furthermore, neither the Settlement Agreement, any motions filed, settlement proposals exchanged by the Parties, or Orders entered pursuant to the Settlement Agreement, shall constitute an admission, finding, or evidence that any requirement for representative litigation or class certification has been satisfied in this Litigation or any other action, except for the limited settlement purposes pursuant to the terms of the Settlement Agreement.

The parties agree to terminate all discovery efforts in this matter and, for settlement purposes only, the Parties have agreed to seek certification of a Settlement Class pursuant to Federal Rule of Civil Procedure 23 and pursuant to Section 216(b) of the FLSA. The Parties have agreed to include within the Settlement Class all servers, busboys, and dishwashers who worked at Simon's from September 27, 2009 to September 27, 2012 ("Settlement Class Period").

Simon's represents that during the Settlement Class Period there were no more than ninety-one (91) Settlement Class Members. Simon's further represents that prior to the execution of this Settlement Agreement by the Parties, Simon's has provided Class Counsel with

a complete list of Settlement Class Members (Exhibit A) which to the extent known, for the Settlement Class Period, includes the Settlement Class Member names, the number of weeks actually worked by each Settlement Class Member and their job titles. Simon's further represents that they have provided Class Counsel the last known addresses, phone numbers, social security numbers, and copies of any photo identification available for each Settlement Class Member, where it is available. Plaintiffs' Counsel warrants that they are unaware of any additional class members not included on the list (Exhibit A).

This Settlement Agreement is contingent upon the approval and certification of the Settlement Class as defined in this Settlement Agreement.

It is the intention of the Parties that this Settlement Agreement constitutes a full and complete settlement and release of claims pursuant to the terms described herein.

DEFINITIONS

"Administrative Costs" shall mean the costs of Class Notice mailings and all costs and expenses incurred by the Settlement Administrator pursuant to its obligations under this Agreement, including the Settlement Administrator's fees and costs.

"Agreement" or **"Settlement Agreement"** shall mean this Class Action Settlement Agreement and all of the Exhibits attached hereto.

"CAFA Notice" refers to the notice to be sent by Defendants to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b). **"Class Counsel"** is Colleen McLaughlin, and Elissa J. Hobfoll, of the Law Offices of Colleen McLaughlin.

"Class Notice of Settlement and Final Approval Hearing" or **"Class Notice"** shall mean the Class Notice sent to all Settlement Class Members by the Settlement Administrator after the Court enters its Preliminary Approval Order advising the Settlement Class Members of

the terms of the Settlement Agreement, the date of Final Hearing, their right to object to the Settlement and the procedure for doing so, and their right to “opt-out” and the procedure for doing so.

“Class Representative Enhancement Payment” or “Enhancement Payment” refers to the sum Class Counsel deems payable to the Settlement Class Representatives for their participation in the Litigation as Settlement Class Representatives.

“Counsel for Simon’s” or “Defendants’ Counsel” is David L. Christlieb and Catherine S. Lindemann of Littler Mendelson, P.C.

“Effective Date of Settlement” means the date on which all appellate rights with respect to the Order and Final Judgment in the Litigation have expired or been exhausted such that the Order and Final Judgment in the Litigation have been sustained and are no longer subject to appeal or attack.

“Final Approval Hearing” means the hearing contemplated by the Parties to occur approximately ninety (90) days after the filing of the Parties’ Joint Motion for Entry of Preliminary Approval Order, at which the Court will approve, as final, the Settlement and make such other final rulings as are contemplated by this Settlement Agreement.

“Final Approval Order” refers to the order of the Court granting final approval of this Settlement Agreement on the terms provided herein or as the same may be modified by subsequent mutual agreement of the Parties.

“Final Judgment” refers to the judgment entered by the Court dismissing the Litigation with prejudice. The Parties shall submit an order of Final Judgment setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court deems appropriate.

“Final Settlement Class” refers to all Settlement Class Members who do not timely and validly exclude themselves from the Settlement Class in compliance with the Opt-Out and exclusion procedures set forth in this Settlement Agreement.

“Final Settlement Class Member” used in the singular or plural form refers to an individual member or collective members of the “Final Settlement Class”.

“Litigation” refers to the Complaint, Case No. 11-cv-06800, filed on September 27, 2011 in the U.S. District Court for the Northern District of Illinois, Eastern Division, entitled Alfredo Jose Huerta, *et al.* v. Simon K’s, Ltd. d/b/a Simon’s Restaurant, *et al.*

“Opt-Out” refers to a member of the Settlement Class who has timely filed a request for exclusion as specified herein.

“Opt-Out Period” refers to the period beginning with the date Class Notice is first mailed to Settlement Class Members and ending sixty (60) days after the date of first mailing.

“Parties” collectively refers to the Settlement Class Representatives, the Settlement Class and Simon’s.

“Preliminary Approval Order” refers to the order of the Court granting preliminary approval of this Settlement Agreement on the terms provided herein or as the same may be modified by subsequent mutual agreement of the Parties and/or by order of the Court.

“Released Claims” is to be construed collectively and individually to mean all of the claims of the Settlement Class Representatives and the Settlement Class during the Settlement Class Period for all unpaid wages allegedly due, and all related damages, including but not limited to all alleged penalties, under federal, state or common law including claims under the FLSA, the IMWL, and the IWPCA. The term “Released Claims” does not include Plaintiff Huerta’s individual retaliatory discharge claim under the FLSA and IMWL or any claim covered

by Workers' Compensation law, or any claim alleging discrimination, personal injury, harassment, fraud, negligence, theft, or conversion, except insofar as such claim is based on the failure to pay wages or to comply with overtime requirements, or any claims that arise after the Court's approval of the Settlement Agreement.

"Settlement Administration Period" refers to the date of preliminary approval of the Settlement Agreement through the date of Final Disbursement and the conclusion of the Settlement Administrator's duties hereunder.

"Settlement Administrator" or **"Administrator"** refers to FIRST CLASS, INC.

"Settlement Award" refers to the amount that each Final Settlement Class Member will be entitled to receive as and for "unpaid wages" pursuant to the terms of this Settlement Agreement.

"Settlement Class" means the Settlement Class Representatives and any and all current and former, non-exempt, hourly servers, busboys, and dishwashers who work or have worked at Simon's at any time during the Settlement Class Period, and who allegedly are/were not paid either minimum wage or overtime wages, and/or had deductions improperly taken from their wages.

"Settlement Class Member" or **"Settlement Class Members"** refers individually or collectively to a member or members of the Settlement Class.

"Settlement Class Period" refers to the period of time extending from September 27, 2009 to September 27, 2012.

"Settlement Class Representatives" refer to Alfredo Jose Huerta and Seferino Carrillo Gomez.

“**Settlement Fund**” refers to the total settlement amount to be paid by Defendants for (a) the Settlement Awards, less the applicable state and federal payroll tax deductions for each member of the Final Settlement Class, (b) Enhancement Payments, (c) payment of Class Counsel’s attorneys’ fees, costs, and (d) payment of administrative costs.

“**Simon’s**” means Simon K’s, Ltd. d/b/a Simon’s Restaurant, an Illinois corporation, Simon Kringas, Christ Kringas, and Katherina Ioanou.

“**Unclaimed Funds**” refers to Settlement Awards not claimed or cashed by any Final Class Member within the time periods set forth in this Agreement and those funds remaining of the Settlement Fund funds set aside for payment of Administrative Costs and available for Final Disbursement at the end of the Settlement Administration Period.

TERMS OF THE AGREEMENT

In consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

1. **Settlement Fund.** Simon’s agrees to pay to the Class Counsel, Settlement Class Representatives and the Final Settlement Class a total of One Hundred, Thirty-Five Thousand Dollars (\$135,000.00) (“Settlement Fund”), as allocated and set forth herein, subject to the Court’s approval. Under no circumstances will Defendants be liable or accountable for any amount in excess of One Hundred, Thirty-Five Thousand Dollars (\$135,000.00), regardless of whether for settlement administration costs, attorneys’ fees, costs and expenses, class settlement payments, and/or any other amount.

2. **Settlement Administration Costs.** Five thousand Seven Hundred and Four dollars (\$5,704.00) of the Settlement Fund will be set aside to pay the costs and expenses of the Settlement Administrator. The Settlement Administrator has provided a quote and represented that the Administration Costs will not exceed Five Thousand Dollars (\$5,000.00). Any difference

between the amount of \$5,704.00 and the actual final Administrative Costs will be added to the Cy Pres award referenced in Section 11(d) below. If, prior to the entry of the Final Approval order, the total estimated Administrative Costs are revised to exceed the \$5,704.00 set aside for administration, said costs and expenses will be deducted from the Settlement Fund and the Final Settlement Awards to each Final Settlement Class Member will be adjusted accordingly.

3. **Attorneys' Fees, Costs, and Expenses. Class Counsel, as prevailing party, will apply to the court for payment of no more than Sixty Four Thousand dollars (\$64,000.00) in fees and costs. Defendants agree not to oppose this application.** Plaintiffs represent that this amount reflects a significant compromise as it is substantially less than Class Counsel's fees based on their lodestar calculation (hours multiplied by the respective attorneys' hourly rate) as of September 20, 2012. In addition, Class Counsel have expend significant time preparing the first drafts of the instant Settlement Agreement, the Motion for Preliminary Approval, the Class Notice, and negotiating the final drafts for presentation to the court, dealing with the details of administration with the Settlement Administrator and Class Members without compensation.

The attorney fees award will be paid from the settlement fund and Class Counsel will provide Simon's with the appropriately completed W-9 form and Simon's will issue an IRS 1099 form directly to Class Counsel at the end of the year in which distribution of payment to Class Counsel takes place. In light of this Agreement, Class Counsel agrees to release Defendants and Released Persons from any and all claims for prevailing party attorneys' fees, expenses and costs relating to this Litigation.

4. **Class Representative Enhancement Payment.** Subject to the final approval of the Court, Settlement Class Representatives will receive from the Settlement Fund a total of eight thousand five hundred dollars (\$8,500.00) as an additional payment for their contributions

and services as Settlement Class Representatives. Plaintiff Huerta will receive \$7,000.00 and Gomez will receive \$1,500.00. These enhancement payments are based upon their individual participation and assistance to Class Counsel in the lawsuit. The payment to the Settlement Class Representatives will be payable as non-wage earnings and Simon's shall provide directly to each Settlement Class Representative an IRS 1099 form at the end of the year following distribution of payment. Simon's will prepare each Class Representative Enhancement Payment as a separate check, and these payments will be sent to the Settlement Class Representatives along with their Settlement Award check.

5. **Calculation of Settlement Award to Settlement Class Members.** After accounting for the payment of Attorneys' fees, costs, expenses, any administrative costs (including any costs over and above the \$5,794.00 as referenced in paragraph 2, above) , and the Class Representative Enhancement Payment, the Settlement Award to each Final Settlement Class Member will be calculated, subject to Court approval, by dividing the remaining portion of the Settlement Fund by the total number of weeks worked by each Final Settlement Class Member during the Settlement Class Period (the "Weekly Amount"). Each Final Settlement Class Member's Settlement Award shall then be calculated by multiplying his/her weeks worked by the Weekly Amount. Plaintiffs calculate that, so long as there are no unexpected costs of administration, the Weekly Amount shall be approximately \$12.00. The Settlement Award will be payable as W-2 wages, subject to all applicable state and federal withholdings and no other deductions.

6. **Responsibility for Taxes.** The Parties agree that one hundred percent (100%) of the Settlement Award distributed to each Final Settlement Class Member, with the exception of the Enhancement Payments specified in paragraph 4, above, will be considered W-2 wages and

will be subject to normal payroll withholdings. Defendants shall not deduct from the Settlement Award checks any amounts required to be paid as the employer's share of payroll taxes nor make any additional deductions. Defendants shall be responsible for paying the employer's portion of payroll taxes due on all payments to the Final Settlement Class and shall be responsible for reporting and paying all amounts properly withheld from the Settlement Award to the appropriate tax and government entities, based on and using each respective Settlement Class Member's current or last used W-2 allocations. The Parties agree that, other than Defendants' share of mandated employer payroll taxes, Defendants are in no way liable for any taxes, penalties, interests, or other costs that Class Counsel, Settlement Class Representatives, the Final Settlement Class, or others may be required to pay as a result of or related to the receipt of allocations from the Settlement Fund. Likewise, the Settlement Class is in no way liable for any taxes, penalties, interest or other costs of Defendants.

7. **Time and Method of Payment.** Immediately upon the Court's preliminary approval of the settlement, Defendants will pay \$5,704.00 to the Settlement Administrator for its services and costs. Not more than fourteen (14) calendar days after the Effective Date of Settlement, Defendants will transmit to the Settlement Administrator for distribution checks for (a) the Settlement Award, less the applicable state and federal payroll tax deductions for each member of the Final Settlement Class; (b) Enhancement Payments for the Class Representatives; and (c) the initial payment of Attorneys' fees and cost. Within ten (10) calendar days following the receipt of these checks from Defendants, the Settlement Administrator will send out the checks by first class mail to all recipients for whom addresses have been confirmed, as set forth below. Thereafter, the Settlement Administrator will distribute, at least on a monthly basis, and until thirty (30) days prior to the scheduled close of the Settlement Administration Period,

Settlement Award checks to those remaining Final Settlement Class Members for whom it has subsequently been able to confirm an address.

8. **Undisclosed Or Newly Discovered Class Members.** In the event that, no later than twenty-one (21) days prior to the scheduled expiration of the Settlement Administration Period, an individual identifies him or herself as someone who meets the definition as a member of the Settlement Class, but was not included in the list of Settlement Class Members attached as Exhibit A, subject to Simon's confirmation, the individual's work week history, shall be provided to Class Counsel and the Settlement Administrator by Simon's. If there is a dispute as to whether the individual is a Settlement Class Member, then the dispute shall be referred to the Court, who shall have final authority to determine whether the individual is a proper Settlement Class Member. The burden of proving Settlement Class Member status shall be on the individual claiming that status, and will require a proof by a preponderance of admissible evidence. If the individual is a proper Settlement Class Member, with the agreement of Class Counsel, Defendants shall calculate the individual's Settlement Award utilizing the settlement formula set forth herein and provide the Settlement Award check to the Settlement Administrator for disbursement and pay all said Settlement Class Member's tax withholding, employer taxes, and issue any required tax forms. Payments to Undisclosed or Newly Discovered Class Members will be paid directly by Defendants and will not be deducted from the Settlement Fund.

9. **Missing Class Members.** Subsequent to the entry of the Preliminary Approval Order, the Settlement Administrator will attempt to locate as many of the Settlement Class Members whose addresses have not been found as possible. For all Settlement Class Members whose contact information is deemed incorrect or unreliable by the Settlement Administrator, the

Settlement Administration will conduct one electronic search based on social security number, last known address or such other identifiers as may be available to Settlement Administrator.

10. **Deceased or Disabled Class Members.** Upon presentation of letters of administration, guardianship, powers of attorney, or other evidence deemed sufficient by the Settlement Administrator to establish personal representation or next of kin with respect to a deceased, disabled or incompetent Final Settlement Class Member, the Settlement Administrator shall treat the personal representative as the Final Settlement Class Member and disburse to that individual the Class Member's Settlement Award. If deemed necessary by the Settlement Administrator, Defendants will reissue a new Settlement Award check in the appropriate name.

11. **Determining the Amount of and Final Disbursement of the Settlement Fund at the End of the Settlement Administration Period.**

a. All individual checks to Final Settlement Class Members prepared by Defendant and issued pursuant to this Agreement shall be void if not negotiated within sixty (60) days of the date of issuance or within fourteen (14) days prior to the scheduled date for the close of the Settlement Administration Period to Final Distribution, whichever is earlier, and shall contain an appropriate legend to that effect.

b. The Settlement Administrator shall not have any obligation to make payments to any Final Settlement Class Member with an undeliverable address, or to any Final Settlement Class Member whose check is returned by the United States Postal Service as undeliverable; provided however that attempts will be made to locate missing Settlement Class Members as set forth above.

c. One hundred twenty (120) days from the date the Settlement Award checks were first mailed by the Settlement Administrator, or such earlier time as the Parties may agree upon, but in no event before September 5, 2013, the Settlement

Administrator will prepare an accounting of all Unclaimed Funds for the Parties, and return all undistributed Settlement Award checks to Defendants.

d. **Cy Pres.** Within ten (10) days of receipt of the accounting from the Settlement Administrator, Defendants will issue two checks, made payable to Prairie State Legal Services (DuPage Branch) and DuPage Legal Assistance Foundation, each in the amount of one-half the total gross settlement amount (not including withholding) of all undistributed/uncashed Settlement Award checks to Final Settlement Class Members, and any remainder of the funds set aside for Settlement Administration which was not spent on actual settlement administration. Defendant will send these checks to Class Counsel for distribution to these local Legal Aid agencies.

12. **Release of Claims.** Upon final approval by the Court of the Settlement Agreement, and except as to such rights or claims as may be created by the Settlement Agreement, all Settlement Class Members will be deemed by the Court to have fully released and discharged Simon's and all past, present and future direct and indirect parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of its past, present, and future officers, directors, members, trustees, agents, employees, attorneys, contractors, representatives, divisions, units, branches, and any other persons or entities acting on their behalf or in their interest, from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged in the Litigation, including but not limited to any claims under state or federal law for unpaid wages, unpaid overtime, liquidated damages, punitive damages, unlawful deductions from wages, miscalculation of wage rates,

failure to provide meal or rest periods, record-keeping violations, unjust enrichment, breach of implied or express contracts, unjust enrichment and promissory estoppels, up to and including the date of preliminary Court approval of this Settlement Agreement. This Release specifically excludes Plaintiff Huerta's individual claims for retaliatory discharge under the FLSA and IMWL, claims covered by Workers' Compensation law, and claims alleging discrimination, personal injury, harassment, fraud, negligence, theft, or conversion, except insofar as such claim is based on the failure to pay wages or to comply with overtime requirements, or any claims that arise after the Court's preliminary approval of the Settlement Agreement.

13. Members of the Final Settlement Class who do not opt-out of this settlement and accept their respective Settlement Award check thereby opt-in to the Litigation under the Fair Labor Standards Act, 29 U.S.C. § 216(B).

14. **Restrictive Endorsement.** In addition to the Released Claims set forth above in Paragraph 12, the Settlement Award checks prepared by Defendant will include an endorsement that will read as follows:

I have read and understand the Class Notice, and I understand that by accepting this Settlement Award I hereby opt-in to *Huerta et al. v. Simon's et al.*, Case No. 11-cv-6800 (N.D. Ill.) pursuant to 29 U.S.C. § 216(B) and give up all rights under the Fair Labor Standards Act and any other federal or state wage law for recovery of back wages due to me from Simon's Restaurant from September 27, 2009 to September 27, 2012.

15. **Changes to Simon's Procedures.** The Parties agree that the following changes have been or will be made to Simon's Restaurant's procedures no later than December 1, 2012.

- a. Meal break deduction from recorded time worked
 - i. All non-exempt employees, who work more than five (5) hours in a day/shift, will be entitled to a meal break of at least thirty (30) minutes.
 - ii. If no thirty (30) minute meal break is actually taken by employee, no deduction from employees recorded time can be made.
 - iii. Employees will either be required to punch in and out for meal breaks on the Point of Sale (POS) system, or meal break time must otherwise be recorded in writing on the day that the meal break is taken by the employee.

- iv. Employee must be completely relieved of all duties during the thirty (30) minute meal break.
 - v. Simon's Restaurant will determine what (if any) policy to put into place in order to address the coverage of employee duties while they are on break and relieved of duties. Said policy will apply equally to all employees.
- b. Tip Credit Rate/Tip Pool
- i. Simon's Restaurant will explain the tip credit rate to all employees who are properly classified as tipped employees under the FLSA and IMWL.
 - ii. Employees who are properly classified as tipped employees under the FLSA and IMWL must agree to be paid at the tip credit rate as a term of employment.
 - i. Simon's Restaurant will obtain written approval from employees who are properly classified as tipped employees under the FLSA and IMWL to apply the tip credit rate to their method of compensation
 - iii. Simon's Restaurant will record in writing, and maintain records of, all tips collected from servers and the method under which the tip collection was calculated. Written record will include:
 - i. Server name
 - ii. Collection formula
 - iii. Amount collected
 - iv. Simon's Restaurant will record in writing, and maintain records of all tips collected from servers and distributed to busboys. Written record will include:
 - i. Busboy name
 - ii. Amount distributed
- c. Amendments to an employee's Recorded Time
- i. Simon's Restaurant will provide all reasons for amendments (deductions or additions) to an employee's recorded work hours to the employee in writing.
- d. Written employment policies
- i. Simon's Restaurant will make all employee notifications related to employee compensation policies and practices available in writing in both Spanish and English.

CLASS PROCEDURES

16. **Submission of Settlement Agreement to Court for Approval.** Within five (5) days of the Parties agreeing to all terms, but no later than February 11, 2013, the Parties will file with the Court this Settlement Agreement along with their Joint Motion for Preliminary Approval of Settlement and proposed Class Notice of Settlement and Final Approval Hearing for

the Court's preliminary approval. The Joint Motion for Preliminary Approval will request entry of a preliminary order substantially in the following form:

- a. Certifying the class for purposes of settlement.
- b. Preliminarily approving the Settlement;
- c. Appointing Class Counsel;
- d. Appointing the Settlement Class Representatives for the Settlement Class;
- e. Appointing the Settlement Administrator;
- f. Preliminarily approving costs of the Settlement Administrator;
- g. Approving as to form and content the proposed Class Notice attached as Exhibit B;
- h. Approving as to form and content the formula for the Settlement Awards to be issued to each member of the Final Settlement Class, as set forth in paragraph 5, above.;
- i. Directing the mailing of the Class Notices, objection instructions, and opt-out instructions by first class mail to the Settlement Class Representatives and Settlement Class; and
- j. Scheduling a Final Approval Hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class Members.

17. **Notice to Settlement Class of Settlement and Final Approval Hearing.**

- a. Within fourteen (14) days of the entry of the Preliminary Approval Order and the approval of the Class Notice, the Settlement Administrator will mail, by first class mail, a copy of the Class Notice, in both Spanish and English (Exhibit B), to the

most recent address known or reasonably determinable for each member of the Settlement Class.

b. The day following the entry of the Preliminary Approval Order by the Court, Simon's will post a copy of the Class Notice, in English and in Spanish, in a location where the Class Notice will be clearly visible to all employees at Simon's, but not to its customers.

c. The day following the entry of the Preliminary Approval Order, the Settlement Administrator will cause to be published a notice to potential Settlement Class Members as set forth in Exhibit C, in Hoy, a Spanish language newspaper. The notice shall appear in the publication once a week for a period of four (4) weeks. The cost of this notice is considered included within Settlement Administrator costs.

d. Within three (3) days of the entry of the Preliminary Approval Order, the Parties will provide to the Settlement Administrator the composite list of all Settlement Class Members, all contact information available, and the Settlement Awards to be issued to each Settlement Class Member. The Settlement Administrator will keep this information strictly confidential and use it for the sole purposes described herein.

18. **Notice Content.** The envelope containing the Class Notice shall bear the return address for the "Simon's Restaurant Settlement Administrator" and shall state in bold type, in English and Spanish, "**THE ENCLOSED NOTICE TELLS YOU ABOUT YOUR RIGHTS TO SETTLEMENT MONEY.**" The Class Notice will request each Settlement Class Member to contact the Settlement Administrator if they want their Settlement Award sent to an address other than the address to which the Notice was sent. The Class Notice sent out by the Settlement

Administrator shall notify the Settlement Class Members of their right to (1) opt-out and (2) object to the Settlement Agreement and the procedures to do so.

19. **Opt-Out Procedure.** The Class Notice sent out by the Settlement Administrator shall notify the Settlement Class Members of their right to opt-out of the Settlement Class and that they may do so by mailing to the court the completed and signed opt-out form attached to the Class Notice containing the statement “I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the Settlement Fund created under the Settlement Agreement.” Any such Opt-Out written statement must be postmarked not more than sixty (60) calendar days after the first mailing of the Class Notice to the Settlement Class Member. Persons who are eligible to and do submit valid and timely requests to opt-out of the Settlement Class will not participate in the Settlement Class and will not be bound by the terms of the Settlement Agreement, if it is approved, or the Final Judgment in this Litigation.

20. **Attempts to Locate Class Members Prior to Final Hearing.** If a Class Notice to a Settlement Class Member is returned as undeliverable, the Settlement Administrator shall attempt to trace the individual as set forth herein. The Class Notice shall then be re-sent to the most likely address obtained from the search results. If a new address cannot be found, the name and last known address of such Settlement Class Member shall be provided to Class Counsel and Counsel for Simon’s, as well as to the Court at the Final Approval Hearing.

21. **Submissions By Class Counsel Prior to Final Approval Hearing.** At least five (5) calendar days prior to the Final Approval Hearing, Class Counsel will submit to the Court and Simon’s the Settlement Administrator’s declaration, in writing, that the Class Notice to the Settlement Class has been disseminated in accordance with the Court’s order and provide a summary of the delivery of said Class Notice to the Settlement Class Members and its efforts to

locate missing class members and any “opt out” forms and objections to the Settlement received by the Settlement Administrator. Class Counsel will also submit to the Court and Simon’s a revised Exhibit A that will provide the names of all Final Settlement Class Members and the amount of each Settlement Award based on the previously approved formula.

22. **Submissions By the Parties Prior to Final Approval Hearing.** At least five (5) calendar days prior to the Final Approval Hearing, the Parties will jointly submit a proposed Final Approval Order:

- a. Approving the Settlement Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions.
- b. Retaining jurisdiction for purposes of enforcement.
- c. Providing for the dismissal of the Litigation with prejudice so as to permanently bar all Settlement Class Members from prosecuting against Simon’s for any matters, claims, debts, liabilities, obligations, penalties, or cause of action released by this Settlement Agreement and that the promises, agreements, obligations, undertakings, representations, certifications, and warranties set out herein shall survive the closing of this Settlement Agreement, the releases contained herein, and the dismissal to be entered in the Litigation.

23. **Objection to Settlement Procedure and Final Approval Hearing.** Any Settlement Class Member who desires to appear at the Final Approval Hearing to assert any objection to the Settlement Agreement must sign and deliver a notice of intent to appear at the Final Approval Hearing to the Clerk of the Court and to the Settlement Administrator no later than seven (7) days before the Final Hearing. No Settlement Class Member will be allowed to appear and object at the Final Approval Hearing unless he has timely submitted such notice. No

objection will be timely if postmarked less than seven (7) calendar days prior to the Final Approval Hearing.

24. Within ten (10) days after the proposed settlement is filed with the Court, counsel for Defendants shall send the appropriate CAFA Notice(s) regarding settlement of the lawsuit.

APPOINTMENT OF SETTLEMENT ADMINISTRATOR

25. The Parties nominate FIRST CLASS, INC., as Settlement Administrator, subject to approval by the Court. Neither Class Counsel nor the Settlement Class Representatives have any interest in or connection to FIRST CLASS, INC., nor will they receive any benefit as a result of selecting FIRST CLASS, INC. for this service. FIRST CLASS, INC.'s costs are estimated to be approximately Thirty-five hundred dollars (\$3,500.00). Any and all Settlement Administration charges will be paid out of the Settlement Fund.

RESPONSIBILITIES OF THE SETTLEMENT ADMINISTRATOR

26. The Settlement Administrator and/or Class Counsel shall be responsible for:

a. Preparing, monitoring and maintaining a toll-free phone number to be accessible to Settlement Class Members and a Spanish speaking administrator to receive phone calls and otherwise communicate with the Spanish speaking Settlement Class Members;

b. Printing and disseminating, by first class mail, the Class Notice of Settlement and Final Approval Hearing in both English and Spanish as substantially set forth in Exhibits B;

c. Arranging for the placement of the Notice to Class advertisement (Exhibit C) in the Spanish language newspaper, Hoy, once a week for four weeks.

d. Ascertaining current address and addressee information for each Settlement Class Member, specifically for those Class Members to whom Notice is

returned as undeliverable and the re-mailing of Class Notices and Settlement Awards to the current address;

e. To the extent the Settlement Administrator is unable to locate a Settlement Class Member, the Settlement Administrator may perform one skip trace to locate such Settlement Class Member, and/or use other reasonable efforts to locate and deliver the Class Notice and Settlement Award upon such Settlement Class Member;

f. Promptly furnishing to Counsel for the Parties, copies of any communications from Settlement Class Members which the Settlement Administrator receives;

g. Providing the Parties with an updated address list for Settlement Class Members, reflecting any updated addresses discovered by the Settlement Administrator over the course of administering the Class Notice and Settlement Awards;

h. Maintaining adequate records of its activities, including the dates of the mailing of Class Notices, returned mail and other communications, and attempted written or electronic communications with Settlement Class Members;

i. Confirming in writing the substance of its activities and its completion of the administration of the Settlement;

j. Receiving from Defendants, the Settlement Award checks for each Final Settlement Class Member, Enhancement Payment checks for each Settlement Class Representative and mailing the checks to the appropriate individuals (Settlement Administrator may attempt to mail Settlement Awards to those Final Settlement Class Members to whom the Class Notice was sent and not returned as undeliverable);

k. Receiving from Defendants the checks for Class Counsel's fees and costs and distributing same to Class Counsel;

l. Returning all undistributed checks to Simon's at the scheduled close of the Settlement Administration Period and providing both Parties with a final accounting of all Settlement Administration fees, costs and expenses incurred by the Settlement Administrator;

m. Timely responding to communications from the Parties or their Attorneys;

n. Under no circumstances shall the Settlement Administrator alter the content or substantively alter the format of the Class Notice;

o. Upon request, the Settlement Administrator will apprise each Settlement Class Member of the number of weeks worked upon which his/her Settlement Award is based and the amount he/she will receive as calculated in Exhibit A;

p. The Settlement Administrator will keep all social security numbers strictly confidential and use it for the sole purposes described herein; and

q. The Settlement Administrator shall perform such other tasks as the Parties mutually agree.

TERMINATING THE SETTLEMENT AGREEMENT

27. Any Party may terminate the Settlement Agreement if the Court declines to enter, Final Approval Order or judgment in the form submitted by the Parties. Class Counsel reserves the right to appeal the Court's ruling on attorney fees and costs. In no event shall the Settlement Agreement be terminated because of Class Counsel's disagreement with the award of fees/costs. Defendants may attempt to withdraw from and terminate this Settlement Agreement, pursuant to Court approval, should more than fifty percent (50%) of the Settlement Class Members opt-out of the Settlement Class, by providing notice to the Class Counsel and to the Court within seven

(7) calendar days after the Settlement Administrator provides the Parties with a list of the Opt-Out members.

28. The Parties agree not to encourage any Settlement Class Member or group of Settlement Class Members to opt-out of the Settlement.

EFFECT OF TERMINATION

29. If the Settlement Agreement is terminated, it shall have no force or effect, and no Party shall be bound by any of its terms.

30. Simon's shall have no obligation to make any payments to any Party, Settlement Class Representatives, Settlement Class Member or Class Counsel, except that in the event that Simon's terminates the Settlement Agreement, as provided in Paragraph 27 above, Simon's shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Settlement Agreement is terminated.

31. The Preliminary Approval Order, Final Approval Order and Final Judgment shall be vacated.

32. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Litigation prior to the Settlement.

33. Pursuant to Rule 408 of the Federal Rules of Evidence, neither this Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Litigation or any other action for any purpose whatsoever.

PARTIES' AUTHORITY

34. The signatories represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to its terms and conditions.

MUTUAL FULL COOPERATION

35. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement. The Parties to this Settlement Agreement 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. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

NO ADMISSION OF LIABILITY

36. Defendants expressly deny any liability or wrongdoing of any kind associated with the claims in the Litigation. Defendants contend they have complied with applicable federal and state law at all times. By entering into the Settlement Agreement, Defendants do not admit any liability or wrongdoing and expressly denies the same; it is expressly understood and agreed that the Settlement Agreement is being entered into by Defendants solely for the purpose of avoiding the costs and disruption of ongoing litigation and to settle all outstanding claims and is not an admission of any liability or fault.

37. Nothing in the Settlement Agreement, settlement proposals exchanged by the Parties or any motions filed or orders entered pursuant to the Settlement Agreement, are to be construed as or deemed to be an admission by Defendants of any liability, culpability, negligence, or wrongdoing, and the Settlement Agreement, each of its provisions, its execution, and its implementation, including any motions filed or orders entered, shall not in any respect be construed as, offered, or deemed admissible in any arbitration or legal proceedings for any purpose except in an action or proceeding to approve, interpret, or enforce the Settlement Agreement.

BREACH OF THIS AGREEMENT

38. In the event of a breach of this Agreement, the non-prevailing party will be responsible for all reasonable costs incurred including filing costs, reasonable attorneys' fees, and all other related expenses incurred.

39. The Party alleging breach of this Agreement shall send notice of the alleged breach to the other Party in writing as specified below and allow that Party fourteen (14) days to cure the alleged breach before resorting to litigation. If the breach is cured within that time, no costs, fees or other expenses will be assessed against the breaching Party.

NOTICES

40. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be: (1) in writing; (2) deemed given on the third business day after mailing; and (3) sent via United States mail, electronic mail or facsimile, addressed as follows:

TO THE SETTLEMENT CLASS MEMBERS:

Colleen McLaughlin
Elissa J. Hobfoll
Law Offices of Colleen McLaughlin
1751 S. Naperville Road, Suite 209
Wheaton, IL 60187
630.221.0305 p | 630.221.0706 f
colleen@cmmclaw.com
elissa@cmmclaw.com

TO DEFENDANTS:

David Christlieb
Catherine Lindemann
Littler Mendelson, P.C.
321 North Clark Street, Suite 1000
Chicago, IL 60654
312.372.5520 p | 312.372.7880 f

TO SETTLEMENT ADMINISTRATOR:

FIRST CLASS, Inc.
5410 W. Roosevelt Rd. Ste 222
Chicago, IL 60644-1479
O (773) 378-1009
F (773) 378-1018
info@firstclassinc.com

CONSTRUCTION AND INTERPRETATION

41. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

42. Paragraph titles 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 of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

43. This Settlement Agreement shall be subject to and governed by the laws of the State of Illinois and subject to the continuing jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division.

MODIFICATION

44. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties, 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 counsel for the Parties.

ENTIRE AGREEMENT

45. This Settlement Agreement contains the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement (including settlement of

the Litigation), 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, with respect to such matters are extinguished. No rights hereunder may be waived or modified except in a writing signed by all Parties.

46. All Final Settlement Class Members will be bound by the terms and conditions of this Settlement Agreement, the Final Approval Order, the judgment, and the releases set forth herein and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the settlement.

BINDING ON ASSIGNS

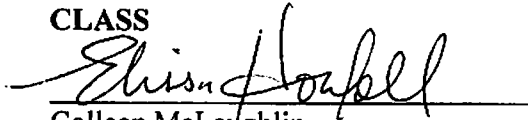
47. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns. The Final Settlement Class Members represent and warrant that nothing which would otherwise be released herein has been assigned, transferred, or hypothecated or purportedly assigned, transferred, or hypothecated. Upon the Effective Date of this Settlement Agreement, or upon such earlier date as a Settlement Payment has been issued to the individual releasing party, Final Settlement Class Members shall be deemed to have given this warranty.

COUNTERPARTS

48. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered in person, by facsimile or email, 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.

IN WITNESS WHEREOF, the undersigned have duly executed this SETTLEMENT AGREEMENT as of the date indicated below:

**ON BEHALF OF SETTLEMENT
CLASS**



Colleen McLaughlin
Elissa Hobfoll
Law Offices of Colleen M. McLaughlin
1751 S. Naperville Road, Suite 209
Wheaton, IL 60189

DATED: 2.7.13

**ON BEHALF OF SIMON K'S
RESTAURANT**

Simon Kringas
General Manager, Simon K's Restaurant

DATED: _____

Simon Kringas

DATED: _____

Chris Kringas

DATED: _____

Katherina Kringas

DATED: _____

ON BEHALF OF SETTLEMENT CLASS

Elissa Hobfoll

Colleen McLaughlin
Elissa Hobfoll
Law Offices of Colleen M. McLaughlin
1751 S. Naperville Road, Suite 209
Wheaton, IL 60189

DATED: 2-7-13

ON BEHALF OF SIMON K'S RESTAURANT

Simon Kringas

Simon Kringas
General Manager, Simon K's Restaurant

DATED: 2-9-13

Simon Kringas
Simon Kringas

DATED: 2-9-13

Chris Kringas

Chris Kringas

DATED: 2-9-13

Katherina Kringas

Katherina Kringas

DATED: 2-9-13