

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,

V.

SIMON K'S, LTD. D/B/A SIMON'S
RESTAURANT, SIMON KRINGAS,
CHRIST KRINGAS and KATHERINA IOANOU

Defendants.

11 CV 6800

Magistrate Judge Jeffrey T. Gilbert

**NOTICE OF CLASS ACTION
SETTLEMENT AND HEARING**

Class Notice of Settlement and Final Approval Hearing

**BECAUSE YOU ARE A CURRENT OR FORMER SIMON'S EMPLOYEE
YOU ARE ENTITLED TO RECEIVE A PAYMENT FROM THIS SETTLEMENT**

**If the Settlement is approved by the Court, you will receive a payment.
If you wish to receive this settlement money or object to the settlement,
it is very important that you read this Notice carefully.**

ABOUT THE LAWSUIT: This lawsuit was filed on September 27, 2011 and claims that servers, busboys and dishwashers who worked at Simon's were not paid the minimum wage, not paid for all hours worked, and not paid properly for overtime hours worked in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et. seq.*, and the Illinois Minimum Wage law ("IMWL"), 820 ILCS 105/1 *et. seq.* The lawsuit also claims that Simon's made improper deductions from wages in violation of the Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115/1 *et. seq.*. The lawsuit specifically alleges that Simon's:

- Improperly applied the "tip credit" rate because it did not operate a legitimate tip pool;
- Did not pay employees at a rate of time and a half for all hours worked over forty in a workweek;
- Improperly deducted the cost of meals from employee wages regardless of whether meals were actually provided; and
- Improperly deducted time from employees' recorded hours worked

Simon's denies all liability or wrongdoing associated with the claims of the Lawsuit. But, in order to avoid the costs, the uncertainties and risks of further litigation, including but not limited to the risk that the Class or portions thereof will not become certified, and to assure that the benefits reflected herein are obtained for the Settlement Class, the Parties reached what Class Counsel believes to be a fair and reasonable settlement which is in the best interests of the Settlement Class Members. The Court has made no ruling on the merits of the Lawsuit. You are receiving this Notice because the Court has determined that the settlement is potentially fair, preliminarily approved the terms of the Settlement Agreement, and has conditionally certified the case as a class action.

If you are a Class Member and you choose to participate in the Settlement, you will be bound by all of the provisions of the Settlement Agreement between the Parties, including a full release of claims that will prevent

you from separately suing Simon K's Restaurant, its employees, or any other related persons or entities for the matters being settled in this case.

SUMMARY OF TERMS OF SETTLEMENT: Simon's will pay a total sum of One Hundred Thirty Five Thousand Dollars (\$135,000.00) ("Settlement Fund") to resolve all claims for wages, Class Representative payments, attorneys' fees, expenses and costs incurred by Class Counsel arising out of this Lawsuit, as well as pay all administrative costs of settlement. The total Settlement Fund will be distributed as set forth below:

- a. **Payments To Settlement Class Members.** The Settlement Class is made up of all non-exempt servers, busboys, and dishwashers who worked at any time from September 27, 2009 to September 27, 2012 ("the Class Period") and who do not "opt out" of the Lawsuit as set forth below. After the deductions for attorneys' fees and expenses, and the Class Representative Payments described below, the remainder of the Settlement Fund will be divided among the Final Settlement Class based upon the number of weeks each employee actually worked during the Class Period. Final Settlement Class members are expected to receive approximately \$12.00 for each week they worked during the Class Period. This amount may be lower to the extent that the costs of settlement administration are higher than expected. The amount each Final Settlement Class Member will receive is based upon Simon's employment records. One hundred percent (100%) of each individual's Settlement Award shall be deemed wages for which withholdings will be made for the Settlement Class Member's share of employment taxes.
- b. **Attorneys' Fees, Expenses and Costs.** You will not be required to separately pay Class Counsel for their representation of you in this Lawsuit. Class Counsel will petition the Court for their attorneys' fees, costs and expenses, in the amount of Sixty Four Thousand Dollars (\$64,000.00), to be paid from the Settlement Fund.
- c. **Administrative 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, including costs of Class Notice mailings and all costs and expenses associated with finding class members, etc.
- d. **Cy Pres.** At the end of the class Notice period any Unclaimed Funds and funds remaining from the costs of administration will be provided to two local legal aid organizations, Prairie State Legal Services (DuPage Branch) and the DuPage Legal Aid Foundation.
- e. **Other Payments.** A total of Eight Thousand Five hundred dollars (\$8,500.00) of the Settlement Fund will be paid to Settlement Class Representatives. Alfredo Huerta will receive \$7,000.00 and Seferino Carillo Gomez will receive \$1,500.00, as an additional payment for their time and effort in assisting in the Lawsuit.

RELEASE: Once the Court enters its Final Approval Order, all Class Members who have not opted out will be deemed by Court order to have released and forever discharged Simon's, from any and all demands, rights, liabilities, penalties, damages, liquidated damages and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted related to their wage and overtime claims arising under state or federal law from September 27, 2009 to September 27, 2012. The release referred to above specifically does not include any claim covered by Workers' Compensation law, any claims that arise after the Court's approval of the Settlement Agreement, 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. The complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Final Settlement Class Members. An English and Spanish language copy of the Settlement Agreement may be obtained from the Settlement Administrator or Class Counsel.

YOUR RIGHT TO "OPT OUT": If you want to participate in the Settlement, you do not need to respond to this Notice. You will automatically be considered a Final Settlement Class Member unless you request to be

excluded from the Settlement. If you choose to participate in the Settlement, you will be bound by all the terms set forth in the Settlement, including a full release of claims that will prevent you (or anyone suing on your behalf) from separately suing Simon's for the matters being settled in this Lawsuit.

If you do not want to remain a member of the Settlement Class, you can request exclusion from the Settlement Class (i.e., opt out). You can opt out of the Settlement Class by mailing the completed, signed "Opt Out" form enclosed with this notice to First Class, Inc.-J12036/Huerta, 5410 W. Roosevelt Rd. Ste 222, Chicago, IL 60644-1490 such that it is postmarked no later than April 30, 2013, which is 60 days from the date this Notice was mailed. This request must be signed by you. If you opt out of the Settlement Class, you will no longer be a member of the Settlement Class, you will be barred from participating in this Settlement, and you will receive no benefit from this Settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have, if any, against Simon's, and you will be free to pursue them on an individual basis.

If you do not opt out as described above, you will receive a check for your share of the Settlement Fund. Each check will include the following endorsement:

*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.*

Your signature on your Settlement Award check will indicate your willingness to opt-in as a plaintiff in the lawsuit and your acceptance of the terms set forth in the above endorsement language.

YOUR RIGHT TO OBJECT: This Settlement is conditioned upon the Court entering an Order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class. Before entering the Final Approval Order, a hearing is held so that the Court can determine if the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class. Unless you have "opted out," you are *automatically* considered a Final Settlement Class Member, so if the Court approves the Settlement, you will receive your Settlement Award check. Accepting a Settlement Award check means that you consent to 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). However, you may object to or comment on all or part of the proposed Settlement by following the procedure below.

If you choose to object to or comment on the Settlement, **you must do so in writing** to the Settlement Administrator. Your objections or comments must be **postmarked no later than April 30, 2013** and must include:

- A prominent reference to the case name and number;
- Your full name, address, and telephone number;
- The approximate dates you were employed by Simon's between September 27, 2009 and the present;
- Your signature; and
- Any supporting papers on which your objections or comments are based.

If you wish to speak at the Final Approval Hearing, you must also state in your objections or comments that you intend to appear and speak at the Hearing. If you do not include this statement, you will not be entitled to speak at the Hearing. You can enter an appearance in the lawsuit through your own legal counsel. If you do, you will be responsible for your own attorneys' fees and costs. If you submit an objection and wish to preserve your appellate rights, you must either appear in person, through your counsel or as otherwise permitted by the Court, at the Final Approval Hearing. If you do not raise your objections according to the above procedure, you will waive all objections and have no right to appeal any aspect of the proposed Settlement.

If you object and the proposed Settlement is approved, you will still be bound by the final judgment and your

claims will be released.

FAIRNESS HEARING ON PROPOSED SETTLEMENT: The Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, costs of administration, the enhancement payment, and Class Counsel’s attorneys’ fees and costs will be held on June 5, 2013, at 9:30 am. in the Everett McKinley Dirksen U.S. Courthouse, District Court for the Northern District of Illinois, Eastern Division, Cook County, Illinois 60604, in the courtroom of the Honorable Jeffrey T. Gilbert, Courtroom 1386, 219 S. Dearborn St, Chicago, IL 60604. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, you may contact the Settlement Administrator or Class Counsel to confirm the date and time. If the Settlement is not approved, the Lawsuit will continue to be prepared for trial or other judicial resolution.

You are not required to attend the Hearing or file an objection, but you may do either or both.

ADDITIONAL INFORMATION: This Notice only summarizes the Lawsuit, the Settlement and related matters. For more information, you may inspect the Court files at the Everett McKinley Dirksen U.S. Courthouse, District Court for the Northern District of Illinois, Eastern Division, Cook County, Illinois, from 9:00 a.m. to 4:30 p.m., Monday through Friday. A copy of the complaint, the Proposed Settlement Agreement and other papers filed in this case can be found for review at www.cmmclaw.com. Any questions regarding this Notice or lawsuit may be directed to the Settlement Administrator at the below address and telephone number.

CHANGE OF ADDRESS: If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Action and the Settlement to be sent to a different address, you should supply your current preferred address to the Settlement Administrator and to Class Counsel.

PLEASE NOTE THAT SIMON’S MAY NOT TAKE ANY ACTION AGAINST YOU FOR BEING PART OF THIS CLASS ACTION SETTLEMENT

<u>The Settlement Administrator is:</u> First Class, Inc. 5410 W. Roosevelt Rd. Ste 222 Chicago, IL 60644-1490 Phone: 855-545-2937 Fax: (773) 378-1018 info@firstclassinc.com	<u>Attorneys for the Settlement Class (“Class Counsel”) are:</u> LAW OFFICES OF COLLEEN M. McLAUGHLIN Colleen McLaughlin and Elissa J. Hobfoll 1751 S. Naperville Road - Suite 209 Wheaton, IL 60189 Telephone: (630) 221-0305
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PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Nothing contained in this Notice or in the Settlement Agreement is intended to be or should be interpreted as providing tax advice. Settlement Class Members should consult with their tax advisors concerning the tax consequences of any payment they receive.

Dated: February 28, 2013

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

OPT-OUT FORM

I have read the attached Notice of Class Action Settlement And Final Approval Hearing (“Class Settlement”), and understand that it explains my rights to either stay in the Class Settlement, or to exclude myself from the Class Settlement. After reading the Notice, I do not wish to be a part of the Class Settlement. I understand that by opting out of the Class Settlement that I will give up any right I may have to receive any money through this lawsuit. By signing below, I acknowledge that I am voluntarily excluding myself from the Class Settlement.

Name (please print)

Signature

Social Security No. or Permanent
Residence No.

Telephone Number

Cell Phone Number

Address

IF YOU WISH TO OPT-OUT, THIS FORM MUST BE MAILED BY FIRST CLASS U.S. MAIL BY APRIL 30, 2013, TO:

**First Class, Inc.-J12036/Huerta
Simon's Class Action Administrator
5410 W. Roosevelt Rd. Ste 222
Chicago, IL 60644-1490**