

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

YOU ARE NOT BEING SUED

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

CASE NAME AND DOCKET NUMBER: JULI WINTJEN V. DENNY'S, INC., et al.
DOCKET NO.: 2:19-CV-00069-CCW

PLEASE READ THIS NOTICE CAREFULLY, AS THE PROPOSED SETTLEMENT DESCRIBED HEREIN AFFECTS YOUR LEGAL RIGHTS RESULTING FROM YOUR EMPLOYMENT WITH DENNY'S, INC.

IF YOU WISH TO RECEIVE YOUR PORTION OF THE SETTLEMENT, EXCLUDE YOURSELF FROM THE SETTLEMENT, COMMENT IN FAVOR OF THE SETTLEMENT, OR OBJECT TO THE SETTLEMENT YOU MUST FOLLOW THE DIRECTIONS PROVIDED IN THIS NOTICE.

1. Why is this notice being sent?

This notice is to inform you of a partial settlement in the case *Wintjen v. Denny's, Inc., et al. Case No. 2:19-cv-00069*, pending in the United States District Court for the Western District of Pennsylvania ("Action"). All capitalized terms in this Class Notice ("Notice") are defined in the Settlement Agreement, which is available at www.rg2claims.com/dennys.html. If terms are insufficiently identified, discussed or defined in this Notice or if any terms of this Notice conflict with the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

This matter began with Plaintiff Juli Wintjen ("Wintjen") filing suit against Denny's, Inc. ("Denny's" or "Defendant") alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, and the Pennsylvania Minimum Wage Act ("PMWA"). The Lawsuit involves the claims of Plaintiffs Wintjen and Plaintiff Sarah Gower ("Gower") and the tipped employees – e.g., servers -- in Pennsylvania (collectively, "Tipped Employees") – they represent against Defendant. The settlement referenced in this Notice involves the federal FLSA claims of the FLSA Collective (a previously certified collective class) and a subclass of individuals asserting state claims pursuant to the PMWA, the ETCN Rule 23 Class. The ETCN Rule 23 Class is a subclass of a previously certified class action of individuals who Defendant asserts are identified on the ETCN List and received the ETCN Form, but for whom Defendant does not have a signed copy of said form for each member of the ETCN Rule 23 Subclass. The maximum Class Period at issue is between January 22, 2016 through August 1, 2019.

According to Defendant's records, you were a Tipped Employee and worked one or more days at an applicable Denny's Restaurant during the Class Period and either are on the ETCN List or previously filed a Consent to Sue form and thus are a member of the FLSA Collective. Plaintiffs allege that Defendant failed to properly pay Tipped Employees by failing to satisfy the notice requirements of the tip credit provisions in federal and state law. **Defendant continues to deny Plaintiffs' allegations in their entirety and assert that at all relevant times they provided proper notice of the tip credit and thus paid their Tipped Employees properly.**

After extensive negotiations, the Parties (Plaintiffs and Defendants) have reached a Settlement of the Action (the "Settlement Agreement"). The Court has granted preliminary approval of the Settlement and has scheduled a hearing on December 5, 2024 at 3:00 p.m. via telephonic conference to determine whether to grant final approval.

IF YOU ARE ONE OF THE INDIVIDUALS DESCRIBED IN THIS NOTICE WHO IS AFFECTED BY THE PROPOSED SETTLEMENT, UNLESS YOU EXCLUDE YOURSELF, YOU WILL GET MONEY FROM THIS SETTLEMENT. HOWEVER, IF YOU WISH TO EXCLUDE YOURSELF FROM THIS SETTLEMENT, AND RECEIVE NO MONEY, YOU MUST COMPLETE AND SUBMIT THE ENCLOSED "REQUEST FOR EXCLUSION" FORM (THE RED FORM) TO THE CLAIMS ADMINISTRATOR, RG/2 CLAIMS ADMINISTRATION LLC (THE "CLAIMS ADMINISTRATOR"), BY OCTOBER 10, 2024.

2. Who is affected by the proposed Settlement?

The Action was filed as a class and collective action. In a class action, one or more people called "class representatives" (here, initially, Plaintiff Wintjen) sued on behalf of people who allegedly have similar claims. This group is called a "class" and the persons included are called "class members." One court resolves the issues for all of the class members, except for those who exclude themselves from the class. A collective action serves a similar function, except that individuals must affirmatively opt into the collective for their claims to be included in the litigation.

Here, Plaintiff Gower is serving as Class Representative for the FLSA Collective and the ETCN Rule 23 Class, collectively referred to as the Partial Settlement Class. The FLSA Collective is defined as:

Plaintiff Gower and the individuals in the modified FLSA Collective Class as set forth in the Court's Order of July 13, 2023 and who do not affirmatively elect to withdraw their Consent to Sue form with the Court prior to the Bar Date. Excluded from the FLSA Collective is Plaintiff Wintjen.

The ETCN Rule 23 Class is defined as:

All Tipped Employees of Defendant identified on Exhibit A submitted to the Court on March 14, 2024, who were employed by Defendant at a Denny's Restaurant in Pennsylvania at any time from January 22, 2016, through August 1, 2019 to which Denny's did not pay the full state minimum wage because it claimed a tip credit for that employee pursuant to applicable state laws, including the PMWA. Excluded from this class are all Tipped Employees who submit a timely and valid Request for Exclusion.

Individuals who meet the above definition are automatically part of the ETCN Rule 23 Class if the individual does not timely request exclusion from the class.

The ETCN Rule 23 Class and FLSA Collective are collectively referred to herein as the "Partial Settlement Class."

3. What is this case about?

Plaintiffs claim that Defendants failed to properly pay Tipped Employees the applicable minimum wage for all hours worked. As set forth in the operative Complaint, Plaintiffs allege that Defendant failed to satisfy the notice requirements of the tip credit provisions in federal and Pennsylvania state law. Thus, Plaintiffs claim that Defendant should have paid Tipped Employees the full minimum wage for every hour worked – e.g., \$7.25 per hour in Pennsylvania. Defendant expressly denies any wrongdoing and denies all of Plaintiffs' claims.

The Parties in this Action disagree as to the probable outcome of the Action at trial, which was scheduled to begin April 29, 2024. While Plaintiffs were prepared to proceed with litigating the case described above, Plaintiffs recognize that litigating is a risky proposition and that they may not have prevailed on all of their claims at trial. Defendant expressly denies any wrongdoing or legal liability. Further, Defendant has indicated that it was prepared to litigate all of these claims through appeal. Indeed, the Rule 23 Class's claims (Plaintiff Wintjen and the members of the Modified PMWA Class who are not part of this partial settlement) that are not being settled by this agreement will remain subject to appeal to the Third Circuit, and Defendant has indicated that it intends to appeal any final judgment on those claims. Thus, had this matter not settled, there was the significant possibility that the Partial Settlement Class would have received nothing rather than what is set forth in the Settlement.

This Settlement is the result of good-faith, arms-length negotiations between the Plaintiffs and Defendants, through their respective attorneys, and with the assistance of a mediator. Both sides agree that, in light of the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Partial Settlement Class.

4. What are my options?

You have several options with regard to this Settlement. You can: 1) participate in the Settlement by doing nothing and receive your portion of the Settlement; 2) object to the Settlement; or 3) exclude yourself from the Settlement entirely by mailing the red Request for Exclusion form which will act as a notice of withdrawal of your Consent to Sue form if you are a member of the FLSA Collective.

If you previously submitted a Consent to Sue Form and now wish to exclude yourself from the Settlement (and thus not receive any money from this Settlement), please refer to Question 10 below regarding the procedure to withdraw your previously submitted Consent to Sue Form.

Details about each option and how each option will affect your rights under the law are explained below, specifically in Questions 8-13. Any action by you must be taken by the Bar Date **October 10, 2024**.

5. What are the terms of the proposed Settlement?

While it denies any liability whatsoever, under the Settlement Agreement, Defendant will pay a total of Four Hundred Thirty-Seven Thousand Five Hundred Dollars (\$437,500.00) to settle the claims of the FLSA Collective and ETCN Rule 23 Subclass ("Settlement Amount"). The Settlement Amount will be used to cover all payments to members of the Partial Settlement Class, fees and expenses incurred by the Claims Administrator in administering this Settlement, and any Service Payment to Plaintiff Gower (as awarded by the Court).

The Settlement Amount will be divided amongst the members of the Partial Settlement Class (less the deductions set forth above). The Claims Administrator will calculate Settlement Payments for members of the Partial Settlement Class. The methodology is briefly described below and is set forth in detail in the Settlement Agreement.

For purposes of this Notice, the Claims Administrator will calculate your "Estimated Class Payment" as follows: First, the Claims Administrator will credit to the Settlement Amount any Residual FLSA Amount resulting from unclaimed funds from a prior partial settlement and then deduct (i) the maximum Service Payment sought for Plaintiff Gower, (ii) the estimated

fees and expenses of the Claims Administrator, and (iii) the total back wages owed to all members of the FLSA Collective during the most recent 3 years and 1 week of the FLSA Collective Period. The resulting number will be referred to as the "Estimated Net Settlement Amount."

For each Tipped Employee, the Claims Administrator will multiply (i) the total hours worked by that individual under the "05-Server" job code during the applicable period and (ii) the difference between the full minimum wage in Pennsylvania and the hourly rate actually paid by Defendant to that Tipped Employee. The resulting amount will represent the back wages owed to each member of the Partial Settlement Class.

Those individuals who are only members of the FLSA Collective and who are owed back wages only for the most recent 3 years and 1 week of the FLSA Collective Period, shall recover 100% of their back wages.

The Claims Administrator will then total (i) the back wages owed for the remainder of the FLSA Collective Period (the time period 3 years and 8 days through 4 years and 1 week), and (ii) the back wages owed to all individuals who are members of the ETCN Rule 23 Subclass. The Estimated Net Settlement Amount will be divided by the amount of those totaled back wages owed to determine the Estimated Fractional Recovery Amount. The amount of back wages owed to each individual member of the Partial Settlement Class from the Estimated Net Settlement Amount shall then be multiplied by the Estimated Fractional Recovery Amount, resulting in the Estimated Individual Recovery Amount for each of those individuals.

If the Court grants final approval of the Settlement, your individual Settlement Payments will be calculated using a similar methodology, except that: (a) the Claims Administrator will begin the calculation by deducting from the Settlement only those costs and fees of the Claims Administrator and Service Payment awarded by the Court in its Final Approval Order; and (b) the calculation will exclude the hours worked by any individual who submits a timely and valid Request for Exclusion form.

Tipped Employees who are Partial Settlement Class Members and **DO NOT** exclude themselves from the Settlement by submitting a Request for Exclusion form (the red form) will receive 100% of their final pro-rata Settlement Payment.

Tipped Employees who **DO** exclude themselves from the Partial Settlement Class by submitting a Request for Exclusion form (the red form) fully exclude themselves from the Settlement and are no longer a member of the Partial Settlement Class. These individuals receive no payment and release no claims under the Settlement.

Thus, if a Tipped Employee wants to participate in this Settlement, and receive their Settlement Payment, they **MUST NOT** submit a Request for Exclusion form before the Bar Date **October 10, 2024**.

The Settlement Payment shall consist of two amounts: (a) 50% shall represent the wage portion of a Tipped Employee's back wages (which is subject to withholding taxes) and (b) 50% shall represent the liquidated damages, penalties, and interest portion of a Tipped Employee's back wages (which is not subject to withholding taxes).

Based on preliminary calculations, the total back wages owed to members of the Partial Settlement Class collectively is \$852,321.59. Assuming the Court approves all fees and expenses, a Tipped Employee who is a member of the ETCN Rule 23 Subclass and does not submit a Request for Exclusion form could expect to receive approximately 42.18% of their total back wages owed during the Class Period. Hence if a Tipped Employee was owed \$1,000.00 in back wages, they would receive \$421.81 under this proposed Settlement if they remain part of the Partial Settlement Class and do not submit a red Request for Exclusion form. The Claims Administrator has included with this Class Notice a separate document outlining the hours you worked as a Tipped Employee during the applicable time period and an estimate of the amount you will receive should the Settlement be approved and all potential Partial Settlement Class members elect to participate in this Settlement.

If Defendant's records indicate that your compensation is subject to additional withholdings (e.g., tax liens, wage garnishments), that will be indicated on the separate document as well. Pursuant to the Settlement Agreement, these withholdings will be deducted from your Settlement Payment. If you believe Defendant's records are in error, you can contact the Claims Administrator to dispute Defendant's records.

PLEASE NOTE that if you elect to submit a red Request for Exclusion form, your portion of your Settlement Payment will be redistributed to those who elect to remain in the Partial Settlement Class.

Your estimated recovery is based on the number of hours recorded in Defendants' timekeeping system. If you believe the number of hours recorded is in error, please submit the Dispute Form enclosed with this mailing and provide the Claims Administrator with a declaration detailing why you dispute the amount and any and all documents that support your claim. Submitting a Dispute Form will not impact your participation in the Settlement.

As part of the Settlement Amount, and in addition to any amount recoverable as a Partial Settlement Class Member, Defendant has agreed not to oppose Plaintiff Gower's request for a Court award of up to Two Thousand Five Hundred Dollars (\$2,500.00) in recognition of the risk that Plaintiff Gower took in serving as a class representative and efforts she expended in resolving the claims of the FLSA Collective and ETCN Rule 23 Subclass. The actual amount, if any, of the Service Payment will be decided by the Court after it considers risks that Plaintiff Gower incurred and the benefits she helped obtain for the

6. Who represents the Parties?

Plaintiffs and Partial Settlement Class Members:

Gerald D. Wells, III
CONNOLLY WELLS & GRAY, LLP
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
Telephone: 610-822-3702
Facsimile: 610-822-3800
Email: gwells@cwglaw.com

Gary Lynch
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburg, PA 15222
Telephone: 412-322-9243
Facsimile: 412-231-0246

Defendant:

Darren Ford
Faruki PLL
201 East Fifth Street, Suite 1420
Cincinnati, OH 45402
Email: dford@ficlaw.com

7. How will the attorneys for the class be paid?

Class Counsel, as defined in the Settlement Agreement, will request an award of fees from the Court for an amount that does not exceed their actual lodestar (hours multiplied by hourly rate), which will be paid separately by Defendant. In addition, and pursuant to the Settlement Agreement, Class Counsel will also seek separate payment from Defendant for out-of-pocket expenses which, pursuant to the Settlement Agreement, shall not exceed twenty-six thousand dollars (\$26,000.00). Class Counsel asserts that these fees resulted primarily from costs associated with damages calculations, deposition transcripts, and mediation fees. Any attorneys' fees, expenses, and costs awarded in conjunction with the Settlement shall be paid by Defendant and **shall not come from the Settlement Amount**. Any fees, expenses, and costs awarded by the Court in connection with this Settlement shall include and constitute satisfaction of the entire amount of attorneys' fees and costs awarded by the Court, and shall be distributed in accordance with the terms of the Settlement Agreement.

Class Counsel's Motion for Attorneys' Fees, Expenses, and Costs will be a public document filed with the Court. Once filed, Class Counsel's Motion will be available on the following website: www.rg2claims.com/dennys.html. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs are reasonable.

8. How do I participate in the Settlement and what happens if I do or do not participate?

If the Court approves the Settlement, all members of the Partial Settlement Class will receive a distribution amount calculated as described in Section 5. **Please note: you will only receive all of the funds you are entitled to under the Settlement if you DO NOT submit a red Request for Exclusion form and thereby elect to remove yourself from this Settlement.**

For those who have previously submitted a Consent to Sue form, and if the Court grants final approval of the Settlement, you will be deemed by the Court to have fully and irrevocably released and waived your federal wage claims against Defendant that were asserted in the Action from three years preceding the filing of your Consent to Sue form, as well as any claims arising from this Settlement or in relation to its effectuation. You will be unable to bring any claim against Defendant that is included in the Release of Claims listed in the Settlement Agreement.

If you have not previously submitted a Consent to Sue form and, thus, are only a member of the ETCN Rule 23 Class, and if the Court grants final approval of the Settlement, you will be deemed by the Court to have fully and irrevocably released and waived your PMWA state wage claims against Defendant that were asserted in the Action for the period from January 22, 2016 through August 1, 2019, as well as any claims arising from this Settlement or in relation to its effectuation. You will be unable to bring any claim against Defendant that is included in the Release of Claims listed in the Settlement Agreement.

If you submit the red Request for Exclusion form, and if the Court grants final approval of the Settlement, you will be deemed by the Court not to be a member of the Partial Settlement Class and you will not be bound by any of the Release of Claims set forth in the Settlement Agreement. You will also not receive any portion of the Settlement Amount.

If you are entitled to a distribution of the Settlement, you will receive your Settlement check after final approval and after the Settlement becomes effective and in accordance with the terms of the Settlement Agreement.

Please be advised that if you elect not to endorse and cash your Settlement Check within 180 days of the check date, that portion of your settlement proceeds will be reallocated consistent with the terms set forth in the Settlement Agreement, including potentially to a Court appointed *cy pres* recipient(s). A full explanation of how the Settlement Amount will be distributed is contained in the Settlement Agreement.

9. Must I act to participate in the Settlement?

No, to participate in this Settlement and receive your portion of the Settlement Amount, you need not do anything.

10. What if I previously submitted a Consent to Sue form?

In the Action, the Court previously granted certification to a limited group of Tipped Employees. In response to that notice mailing, dozens of individuals submitted Consent to Sue forms that were filed with the Court. As part of this Settlement, those individuals are already considered part of the FLSA Collective. Thus, if you worked in Pennsylvania and previously submitted a Consent to Sue form, you are already a member of the FLSA Collective and you do not need to do anything to receive your distribution. If you are uncertain as to whether you previously submitted a Consent to Sue form, you can contact Class Counsel (see Question 16 below) to inquire.

If you previously submitted a Consent to Sue form and wish to exclude yourself from this Settlement, you must affirmatively elect to withdraw your previously filed Consent to Sue form with the Court. You can formally withdraw your Consent to Sue form by submitting a Request for Exclusion form by **October 10, 2024** to the Claims Administrator. Please also note that if you elect to withdraw your Consent to Sue form, you will not receive the portion of the Settlement Amount and your statute of limitations will begin to run again.

11. What if I choose to object to the Settlement?

Partial Settlement Class members may choose to object to the fairness, reasonableness, or adequacy of the Settlement by submitting written objections to the Claims Administrator. You can object to the terms of the Settlement before final approval. However, if the Court approves the Settlement, you will still be bound by the terms of the Settlement, including the releases described above.

To object, you must submit a written objection, along with any supporting documents or materials, by **October 10, 2024** to the Claims Administrator. Counsel for the Parties will then be notified of your objection and file it with the Court. Any Partial Settlement Class Member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the Service Payment to Plaintiff Gower, the Notice and claims process, and any and all other aspects of the Settlement.

YOU CAN OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE SETTLEMENT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OR ANY OTHER OBJECTION YOU WILL STILL BE BOUND BY ANY APPLICABLE RELEASE OF CLAIMS SET FORTH IN THE SETTLEMENT AGREEMENT.

12. What if I choose to exclude myself from or "opt out" of the ETCN Rule 23 Subclass?

You may exclude yourself from the Partial Settlement Class by submitting the Request for Exclusion (enclosed as the red document in the Notice Packet). You may also exercise this option by sending a letter by mail to the Claims Administrator that states: "I request to be excluded from the ETCN Rule 23 Class in *Wintjen v. Denny's, Inc.*, No. 19-00069 (W.D. Pa.). I affirm that I was employed by Defendant as a Tipped Employee on one or more days between January 22, 2016 through August 1, 2019 and have been identified as part of the proposed ETCN Rule 23 Subclass." Any Tipped Employee who wishes to opt-out must also include his or her full name, address, and telephone number. Tipped Employees may not exclude themselves by telephone, fax, or email. If a fully completed and properly executed Request for Exclusion is not received by the Claims Administrator from a Partial Settlement Class Member and postmarked on or before **October 10, 2024** you will be considered part of the Partial Settlement Class.

If you timely complete and submit a red Request for Exclusion, you will not receive any money from the Settlement attributable to your claims. If you opt out, you will not be subject to the Release of Claims set forth in the Settlement Agreement. **Please note that unless you submit a Request for Exclusion, the release of claims contained in the Settlement Agreement will have the same force and effect upon you as if the Settlement Agreement were executed by you.**

13. What if I do nothing?

If you do nothing, and the Court approves the Settlement, you will receive your portion of the distribution attributable to your claims as a member of the Partial Settlement Class. You will also be bound by the Release of Claims regarding your claims set forth in the Settlement Agreement.

If you have previously submitted a Consent to Sue form and are NOT on the ETCN List, you will only receive your portion of the Settlement Amount attributable to your hours worked as a member of the FLSA Collective; your state law claims will not be affected by this Settlement and you will remain a member of the Rule 23 Class. In such an instance you will be bound only by the Release of Claims applicable to your federal claims.

All Tipped Employees are strongly encouraged to review this Notice and make a decision as to the extent to which you wish to participate in the Settlement.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at 3:00 p.m. on December 5, 2024, via telephonic conference at the United States District Court for the Western District of Pennsylvania, Joseph F. Weis, Jr. U.S. Courthouse. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are valid objections that comply with the requirements in Question 11 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff Gower.

15. Do I have to attend the Final Approval Hearing?

No. Class Counsel will appear on behalf of the Plaintiffs and members of the Partial Settlement Class, but you are welcome to come or have your own lawyer appear at your own expense.

16. Who can answer questions regarding the Settlement?

This Notice only summarizes the Settlement terms for the Action. For more information about the Settlement or if you have any questions regarding the Settlement, you may contact your class counsel, Connolly Wells & Gray, LLP at:

Gerald D. Wells, III
CONNOLLY WELLS & GRAY, LLP
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
Telephone: 610-822-3702
Email: gwells@cwglaw.com

The information contained in this Notice posted on a website: www.rg2claims.com/dennys.html

***Do not contact the Court directly about this matter.
The Court cannot provide you with legal advice or any opinion regarding the
Action or proposed Settlement.***