

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MICHELLE MILLER, et al., on behalf of themselves and all others similarly situated and as private attorneys general on behalf of the general public,

Plaintiffs,

v.

RUTH'S CHRIS STEAK HOUSE, et al.,

Defendants.

LEAD CASE NO. 03CC00435
The Honorable Jonathan H. Cannon

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: ALL CURRENT AND FORMER HOURLY EMPLOYEES OF RUTH'S CHRIS STEAK HOUSE IN CALIFORNIA FROM OCTOBER 1, 1999 THROUGH AUGUST 11, 2005.

THIS NOTICE MAY AFFECT YOUR RIGHTS -- PLEASE READ IT CAREFULLY

I. WHY SHOULD I READ THIS NOTICE

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in a class action lawsuit pending in the Orange County Superior Court in the State of California (the "Court"). This Notice is provided by Order of the Orange County Superior Court.

The class action lawsuit alleges that Ruth's Chris Steak House (Ruth's Chris): (a) Failed to pay wages (accrued vacation time) in violation of *Labor Code* sections 201, 227.3; (b) Failed to provide rest periods and meal breaks in violation of *Labor Code* section 226.7 and IWC Wage Order 5-2001 ¶¶10, 11; and (c) Engaged in unlawful business practices in violation of *Business & Professions Code* sections 17200, *et seq.*

Ruth's Chris denies that any of these allegations are true, and the settlement does not constitute an admission of liability by any of the Ruth's Chris. The Court has not yet ruled, one way or the other, on the merits of plaintiffs' claims.

This Notice summarizes essential information concerning the settlement and your potential rights under the settlement. This notice is designed to advise you of how you can either participate in the settlement or how you exclude yourself from the settlement.

II. SUMMARY OF CLAIMS AND ALLEGATIONS

The initial class action complaint in this matter was filed on November 1, 2003. The essence of this lawsuit is that Ruth's Chris trained its managers to deny meal and rest break periods to its non-exempt employees at all eight of its locations in California. The affected employees include all waiters, bartenders, hosts, servers, and several other categories of hourly paid employees. Approximately eighteen hundred employees allege they have been deprived of meal and rest breaks during their tenures as employees of Ruth's Chris. In addition, despite having a delineated and established vacation policy, Ruth's Chris it is alleged that Ruth's Chris failed to pay its hourly paid employees for accrued vacation time upon termination of employment.

An additional class action lawsuit was filed in the Los Angeles Superior Court entitled *Harrington v. Ruth's Chris Steak House* (Case No. BC324571). The settlement between Ruth's Chris and the proposed class encompasses the claims in both the *Miller* and *Harrington* lawsuits.

The claims in the lawsuits are as follows: (1) Failure to pay wages (accrued vacation time) in violation of *Labor Code* sections 201, 227.3; (2) Failure to provide rest periods and meal breaks in violation of *Labor Code* section 226.7 and IWC Wage Order 5-2001 ¶¶10, 11; and (3) Unlawful business practices in violation of *Business & Professions Code* sections 17200, *et seq.* Three subclasses of employees are alleged:

Sub-Class I ("Meal and Rest Class"): Every non-exempt employee who was employed by Ruth's Chris at any time in California on or after October 1, 2000 and the date of preliminary approval.

Sub-Class II ("Vacation Pay Class"): Every person who was employed by Ruth's Chris in California at any time between October 1, 1999 and the date of preliminary approval, who worked in California for at least one anniversary year while averaging thirty (30) or more hours per workweek and who terminated employment with Ruth's Chris without receiving payment for earned, but unused, vacation time.

Sub-Class III ("Uniforms and Tools Class"): All members of Sub-Class I who receive payments under this Agreement for the rest period and meal period claims. Such individuals will be eligible to receive additional payments, described below, for allegedly being required to pay the cost of uniforms or tools.

III. WHAT IS A CLASS ACTION

A class action is a type of lawsuit in which one or a few named plaintiffs bring suit on behalf of all the members of a similarly situated group to recover damages for all members of the group without the necessity of each member filing an individual lawsuit or appearing as an individual plaintiff. Class actions are useful in courts where the claims raise basic issues of law or facts that are common to all members of the class, thereby making it fair to bind all class members to the orders and the judgment in the case, without the necessity of hearing essentially the same claims over and over. Use of the class action eliminates the necessity of filing multiple lawsuits, and assures that all class members are bound by the results of a single lawsuit.

IV. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT

In settlement of all Class claims alleged by Class Plaintiffs on behalf of each of the Sub-Classes, Ruth's Chris shall pay the sum of \$1,625,000.00 (Gross Settlement Funds) which shall settle all pending issues between the parties including attorneys' fees, costs, and enhancement payments for the Class Representative Plaintiffs. The "Net Fund Value" is the Gross Fund Value, less court-approved attorneys' fees, less costs (including up to \$50,000 of costs of administration), less enhancement payments, and less the Vacation Pay Fund. The Vacation Pay Fund is set at \$50,000. Any residual amount of this fund, appearing after all claims have been processed, shall be re-allocated to the Net Fund.

The settlement proceeds (net of attorney fees, costs, enhancement payments, and claims administration fees and costs) will be distributed as follows from the proceeds of the Net Fund and the Vacation Pay Fund:

Meal and Rest Breaks: For each shift worked in the amount of three and one half (3.5) or more hours, the Class Member shall be awarded one point. For each shift worked in excess of five (5) hours, Class Member shall be awarded a second point. Each Class Member shall then receive a pro rata share of the Net Fund Value devoted to meal and rest breaks based on the Class Member's point total. Based on this formula your point total is xx points. This means that you will receive no less than \$xx.xx for the meal and rest breaks portion of the settlement.

Vacation Pay Claims: Employees who worked at least one (1) year for Ruth's Chris and whose employment terminated before the date of preliminary approval will be potentially eligible for payments from the Vacation Pay Fund. Each such person shall receive a claim form for vacation pay. Each such person will be allowed to make a written claim under penalty of perjury stating the number of hours of vacation pay they believe they earned but were not paid during their employment at Ruth's Chris. To the extent these claims are verified or Ruth's Chris does not challenge them, each vacation claimant will receive the number of vacation hours claimed at their hourly rate as of the time their employment terminated. To the extent Ruth's Chris challenges any claim, the burden will be on Ruth's Chris to establish through company records that the class member's vacation allotment is smaller than the amount requested. Class Counsel will resolve any challenges. In the event that class members' vacation pay claims in the aggregate exceed the total value of the Vacation Pay Fund, each class member's vacation pay claims will be reduced on a pro rata basis.

Uniform and Tool Claims: All employees who ultimately receive checks for the meal and rest claims will also receive a flat five dollars (\$5.00) as consideration for their release of claims alleging that Ruth's Chris required employees to incur the cost of uniforms and tools. This five dollars per claimant shall be deducted from the Net Fund Value. In the event that the sum total of claimants exceeds 1000, the value of the Uniform and Tool Payment will be reduced such that the aggregate value of Uniform and Tool payments will be \$5,000.

Additionally, of the amount to be paid to Class Members, the parties agree that, for purposes of this settlement, 10% is allocated to wages, 90% is allocated to civil penalties and interest. Ruth's Chris shall pay, in addition to the Gross Fund Value, any employer payroll taxes owing on the portion of the Gross Fund Value that is allocated to wages.

In exchange for the benefits described above, members of the settlement will be deemed to have given a complete release and/or assignment as to all of their claims arising from their employment at Ruth's Chris. If the Court grants final approval to the settlement, the Court will enter a final judgment and dismiss all such claims with prejudice.

V. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS

If you are a member of the settlement class, and wish to remain in the settlement class, you do not need to do anything at this time, and you will be represented by counsel for the settlement class. You will be eligible to receive your pro rate share for the meal period claim without submitting anything to the Claims Administrator. If you wish to make a claim for vacation pay, however, you must complete the vacation pay claim form and return it to the Claims Administrator.

If you wish to exclude yourself (Opt-Out) from the settlement class, you must complete and submit the request for exclusion form attached to this Notice, to the Claims Administrator at the address below no later than October 25, 2005. Your Opt-Out request must set forth your full name and any names you have used in the past, your present address, your home telephone number, your cell number (if any), and your Social Security number, if available, and you must sign your request for it to be valid. If you are a former

employee of Ruth's Chris, you must also provide a current work telephone number, if any. Requests for exclusion **MUST be postmarked on or before October 25, 2005.**

Ruth's Chris Claims Administrator
c/o Desmond, Marcello & Amster
P.O. Box 451999
Los Angeles, California 90045

If you properly opt out of the settlement, you will not be bound by the settlement, and you will not be eligible to participate in the potential benefits. Any such person, at their own expense, may pursue any claims he/she may have against Ruth's Chris

VI. CAN I OBJECT TO THE CLASS SETTLEMENT

If you are member of the settlement class, you may file a written statement, commenting on or objecting to the proposed settlement. Any written comments or objections must be in the form of a statement sworn to under penalty of perjury. The statement must include your name and address (the name and address of your attorney, if you have one), and the basis of your comments or objections. All comments or objections must be filed with the Clerk of the Orange County Superior Court in Department CX-102, located at 751 West Santa Ana Boulevard, Santa Ana, CA 92701 and mailed to the counsel below:

Counsel for Settlement Class

Mike Arias, Esq.
Arias, Ozzello & Gignac, LLP
6701 Center Drive West, Suite 1400
Los Angeles, California 90045

Counsel for Ruth's Chris

Thomas Kaufman, Esq.
Seyfarth Shaw LLP
One Century Plaza, Suite 3300
2029 Century Park East
Los Angeles, California 90067-3063

To be timely, your comments or objections must be postmarked on or before October 25, 2005. If you do not file an objection in this manner and by this deadline, you will waive your right to object. You may choose to engage the services of an attorney, at you own expense, to pursue your objection, in which case your attorney must file a notice of appearance with the Court by October 25, 2005, and mail copies to the counsel listed above.

VII. WHAT IF THE SETTLEMENT IS NOT APPROVED

If the settlement is not approved by the Court or is later reversed on duly noticed appeal, the benefits from the settlement will not be provided, and you will not be bound by the releases in that settlement, and the lawsuit will proceed in Court as active litigation.

VIII. WHO REPRESENTS THE SETTLEMENT CLASS

The Class Representatives are Michelle Miller, Tyson Thomas, and Jeremy Pittario, who have represented the interests of class members over the course of this litigation.

The Representative Plaintiffs and the Settlement Class are represented by Mike Arias, Esq., of Arias, Ozzello & Gignac, LLP; Rich Quintilone, II, Esq., of Quintilone & Associates; and, Lee Burrows, Esq., of Callahan & Blaine.

IX. WHAT FEES AND COSTS ARE INVOLVED

If eligible, members of the settlement class may participate without incurring any legal fees. In connection with the final approval hearing on November 10, 2005, settlement class counsel will make a request to the Court for attorneys' fees in the amount not exceeding thirty percent (30%) of the settlement and reasonable costs and expenses. Further, settlement class counsel will make a request to the Court for an incentive award, not to exceed an aggregate total of twenty thousand dollars (\$20,000.00), for the Class Representatives and Traci Harrington for their efforts on behalf of the settlement class throughout this litigation. The requests for attorneys' fees and costs and the incentive awards are subject to Court approval. If the Court reduces or disapproves any portion of the attorneys' fees, costs or incentive awards, those funds will remain in the settlement fund.

To date, settlement class counsel have not received any payment for their services in conducting this action on behalf of the representative plaintiffs and the members of the settlement class, nor have counsel been reimbursed for their out-of-pocket expenses. The requested attorneys' fees will compensate counsel for their efforts in achieving the settlement for the benefit of the settlement class and for their risk in undertaking this representation on a wholly contingent basis.

Additionally, the cost of the administration will be paid out of the settlement, in an amount not to exceed fifty thousand dollars (\$50,000). The Parties have secured an assurance from the selected administrator that, absent extraordinary circumstances not anticipated by the parties, administration costs should not exceed \$50,000. However, in the event reasonable administration costs exceed \$50,000, Ruth's Chris shall pay such excess.

X. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

The Stipulation re Settlement between Class Plaintiff and Ruth’s Chris contains a release, which releases Ruth’s Chris from any and all claims each Participating Class Member may have arising out of or related to the allegations of the class action complaint, whether known or unknown, suspected or unanticipated, which the Class, any Participating Class Member or Class Representative has, or ever had, against any Ruth’s Chris. The Stipulation re Settlement also contains a waiver of the benefits of California Civil Code Section 1542. This is only a summary of the full release contained in the Stipulation re Settlement, which is on file with the Court and available for your review.

If you are a member of the Settlement Class and do not exclude yourself from the Settlement Class you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Ruth’s Chris or any other released party with respect to the matters being settled in this Settlement. If the Settlement is not approved by the Court or does not become final for some reason, the litigation will continue.

XI. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on November 10, 2005 at 1:30 p.m. in Department CX102 of the Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, CA 92701, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and reimbursement of costs and the enhancement paid to the Class Representatives. Class Counsel’s application for attorneys’ fees and reimbursement of expenses, as well as any applications for Enhancements for the Class Representatives will be on file with the Court no later than 16 days before the Hearing and will be available for review after that date. **It is not necessary for you to appear at this hearing unless you have timely filed an objection with the Court.**

XII. HOW DO I OBTAIN ADDITIONAL INFORMATION

This Notice is intended only to provide a summary of the circumstances surrounding the litigation, the terms of the proposed settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at the Clerk’s office, Orange County Superior Court, located at 751 West Santa Ana Boulevard, Santa Ana, CA 92701. You may review the Motion for Preliminary Approval; the Order preliminarily approving the settlement; the settlement agreement; this Notice; and the Opt-Out form by logging onto www.dmaaction.com or upon written request to Settlement Class Counsel. You may review Class Counsel’s Motion for Attorneys’ Fees, Costs and Incentive Awards after October 14, 2005 by logging onto www.dmaaction.com. You may also call (310) 674-1575 to obtain additional information regarding the settlement. You will not receive any further notice in the event that the settlement is approved and/or is terminated or modified under the terms of the settlement agreement.

PLEASE DO NOT ADDRESS QUESTIONS OR REQUESTS FOR INFORMATION TO THE COURT.

DATED: _____

HONORABLE JONATHAN H. CANNON
ORANGE COUNTY SUPERIOR COURT JUDGE