

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ELNORA T. TAGALOGON, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

THE CHEESECAKE FACTORY RESTAURANTS, INC., a California Corporation, and DOES 1 through 100, inclusive,

Defendants.

Case No. BC 603620

NOTICE OF SETTLEMENT OF CLASS ACTION LAWSUIT

PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR RIGHTS.

WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant The Cheesecake Factory Restaurants, Inc.'s ("Defendant" or "CHEESECAKE") records reflect that you are or may be a class member in a pending class action entitled *Tagalogon v. The Cheesecake Factory Restaurants, Inc.*, Los Angeles County Superior Court, Case No. BC603620 (the "Action") and you may be entitled to money from settlement of that Action (the "Settlement"). This Notice has been approved by the Court and informs you of the terms of the Parties' Settlement.

WHAT IS THIS ACTION ABOUT?

The Action was filed on December 10, 2015, on behalf of Plaintiff Elnora T. Tagalogon ("Named Plaintiff") and other similarly situated current and former managerial employees employed by CHEESECAKE in the State of California. CHEESECAKE and Named Plaintiff are collectively referred to as the "Parties." Plaintiff's complaint alleged causes of action for (1) failure to pay overtime; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to provide proper wage statements; (5) violation of Business and Professions Code § 17200 et seq.; and (6) penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §§ 2698, et seq. The primary contention in the Action is that CHEESECAKE misclassified its California managerial employees as exempt and as a consequence failed to pay such managerial employees overtime, failed to provide meal breaks and pay meal premiums, failed to provide rest breaks and pay rest premiums, failed to provide accurate wage statements and failed to pay all wages due at termination. The Named Plaintiff also contends that CHEESECAKE violated Business & Professional Code Section 17200, et seq. and the Private Attorneys General Act, California Labor Code Sections 2698 et seq.

CHEESECAKE denies each and all of the claims and contentions alleged by Named Plaintiff. CHEESECAKE believes strongly that it has multiple valid defenses to the claims and that its employees have been properly paid and treated in accordance with the law and denies class certification of the claims or trial on a representative basis would be proper. Absent the Settlement, CHEESECAKE would contest the lawsuit vigorously. By agreeing to the Settlement, CHEESECAKE is not admitting that it has any liability. Named Plaintiff believes she would prevail on the claims that are subject to the Settlement.

After engaging in discovery, extensive motion practice, and an all-day mediation before an experienced mediator, the Parties agreed to the Settlement, which was preliminarily approved by the Court on June 26, 2020.

Neither the Court nor any other fact finder has decided whether the claims brought by Named Plaintiff (or CHEESECAKE's defenses) are meritorious. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and any final determination of those issues will be made at the Final Approval Hearing. CHEESECAKE reserves the right, if for any reason the Settlement is not approved, to contest any factual or legal allegations in the Action including whether this Action should proceed as a class action or on a representative basis.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Elnora T. Tagalagon is the Class Representative or Named Plaintiff in the Action, and has asserted claims on behalf of herself and the class. CHEESECAKE is the Defendant. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action unless they affirmatively exclude themselves from the class by opting out.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

The Class includes all persons employed by CHEESECAKE in California as “employed in the job positions entitled “Kitchen Manager” or “Manager” who worked for CHEESECAKE in California at any time between December 10, 2011 through June 26, 2020 (the “Class Period”) and who because of their dates of employment and/or position have been identified by CHEESECAKE as “Kitchen Managers” or “Managers” who did not sign an arbitration agreement containing a class waiver provision. This group of approximately 235 employees will be referred to as “Class Members” or the “Class.”

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Defendant will pay a maximum of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (“Gross Settlement Fund”) to settle the class claims as described below. The Gross Settlement Fund includes all settlement payments to Class Members, Class Counsel’s attorneys’ fees and litigation expenses, all Settlement Administration expenses, payments to the California Labor and Workforce Development Agency (“LWDA”), and enhancement award to the Class Representative, as outlined below.

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Gross Settlement Fund as follows, which will be subject to final Court approval:

- Settlement Administration. Payment to the settlement administrator (“Administrator”) for the expense of notifying the Class Members of the Settlement, processing objections and opt-outs submitted by Class Members, responding to Class inquiries, maintaining a Settlement website, distributing settlement payments and issuing tax reporting forms. Phoenix Class Action Administration Solutions has been approved by the Court to act as the Administrator and has preliminarily estimated that costs of settlement administration will be approximately \$9,250.00.
- Attorneys’ Fees and Costs. Payment to Court-approved Class Counsel of reasonable attorneys’ fees not to exceed One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty Six Cents (\$116,666.67) as reasonable compensation for the work Class Counsel performed in this Action and costs not to exceed Twenty Seven Thousand Five Hundred Dollars (\$27,500.00) and will continue to perform through settlement finalization, together with reimbursement for litigation expenses actually incurred in connection with the Action. Class Counsel has been prosecuting the Action on behalf of Named Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.
- Enhancement Award to Class Representative. A service enhancement not to exceed \$10,000.00 to Class Representative and Named Plaintiff Elnora T. Tagalagon, to compensate her for services on behalf of the Class in initiating and prosecuting the action and in consideration of her executing a general release in favor of Defendant. This payment is in addition to whatever payments the Class Representative is otherwise entitled to receive as a Class Member.
- Payment to LWDA. A payment of \$10,000.00 will be allocated as PAGA penalties under the Labor Code Private Attorneys General Act, Lab. Code §§ 2698, et seq. Seventy-five percent (75%) of that amount, or Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), shall be paid to California’s Labor and Workforce Development Agency (“LWDA”). The remainder shall be paid to Settlement Class Members as part of the Net Settlement Amount.

Net Settlement Fund. After deducting the Court approved settlement administration expenses, attorney fees and costs, class representative enhancement, and payment to the LWDA from the Gross Settlement Fund, the Administrator shall pay Individual Settlement Payments from the resulting Net Settlement Fund.

Calculation of Class Member Awards. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the total months worked in the Kitchen Manager or Manger Positions during the Class Period when compared to the sum of all Settlement Class Members total months in such positions during the Class Period based on Defendant's internal records.

Months worked by Class Members in the position entitled Manager or Kitchen Manager during the Class Period have been determined by CHEESECAKE, based on its internal records. You have the right to dispute the number of months worked by submitting a written challenge to the Settlement Administrator, no later than September 21, 2020, supported by documentation showing the number of months you believe you should have been credited with.

- You have been credited with ___ months worked during the Class Period.
- Accordingly, your Individual Settlement Payment (prior to deductions for payroll taxes) has been estimated to be approximately ___.

Only Class Members who do not opt out of the Settlement as provided for below (defined as "Settlement Class Members"), will be entitled to receive a payment pursuant to the Settlement. If the conditions of the Settlement (as described in this Notice) are met, and if the Court grants final approval of the Settlement, then settlement checks will be mailed to Class Members. Settlement checks returned as undeliverable and Settlement checks remaining un-cashed for more than 180 days after issuance will be tendered the California State Controller to be held in the unclaimed property fund in your name.

Tax Matters. Settlement payments to Settlement Class Members shall be allocated as follows: 33⅓% of each Individual Settlement Payment shall be allocated to wages, 33⅓% to penalties and 33⅓% to interest.

The Administrator shall: (a) Pay the employee's side of payroll taxes from the wage portion of Individual Settlement Payments due each Settlement Class Member and pay the employer's side of pay roll taxes from funds separately paid by Defendant; (b) Report the wage portion of Individual Settlement Payment to the Internal Revenue Services and State tax authorities as wage income to the Settlement Class Member and to the extent required report the non-wage portion of the Gross Awards as 1099 income; and (c) provide W-2 and 1099 forms to each Settlement Class Member who is paid a settlement payment.

Other than as provided above, Settlement Class Members shall be solely responsible for the reporting and payment of any federal, state, and/or local income or employment tax or any other withholdings, if any, on the payments described above. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement. Neither Defendant nor Class Counsel offers tax advice regarding this Settlement.

Payments awarded to you will not form the basis for additional contributions to or benefits under any benefit plans, policies, or bonus programs that may exist and/or be offered to you through, by, or in conjunction with CHEESECAKE or any other Released Party. Additionally, the size of the payment received may vary depending on a number of factors including, but not limited to, the number of Class Members who exclude themselves, the amount of payroll taxes deducted from the wage portion of the Individual Settlement Payment, and the amounts of Administrator expenses, attorney fees and costs, class representatives enhancements and LWDA payment approved by the Court.

Conditions of Settlement. This Settlement is conditioned upon the Court entering a non-appealed order and judgment at or following the Settlement Hearing finally approving the Settlement.

WHAT AM I RELEASING UNDER THE SETTLEMENT?

Upon the Effective Date as defined in the Settlement Agreement, all members of the Class who do not timely request exclusion fully release and discharge the Cheesecake Factory Restaurants, Inc., as well as and Defendant's past and present corporate parents, subsidiaries, employees, officers, directors, managing agents, shareholders, attorneys, guarantors, indemnitors, insurers, predecessors, successors, and assigns ("Released Parties"), from all known and unknown claims, demands, rights, liabilities, and causes of action that were or could have been asserted by the Class based on the existing allegations contained in the Complaint filed in the Action including, but not limited to, any claims for misclassification, failure to pay overtime, failure to pay minimum wages, failure to provide meal periods and/or meal premiums, failure to provide rest breaks and/or rest premiums, wage statement and payroll record claims under Labor Code Section 226, waiting time penalties for failure to pay all wages due upon employment/termination under Labor Code Sections 201, 202, and 203

and related claims under the California Unfair Competition Law, Business and Professions Code Section 17200 et seq., under the Private Attorneys General Act (“PAGA”), Labor Code Sections 2698 et seq. and under the relevant Wage Orders. The Released Claims are limited to all claims described above that could have been asserted by the Class based on the allegations in the Complaint during the Class Period.

WHAT DO I NEED TO DO TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT?

To receive your settlement check, you do not need to do anything. You will receive a settlement check unless you choose to exclude yourself by opting out. You must, however, notify the Administrator of any change in your name, mailing address, and/or telephone number. It is your responsibility to keep the Administrator informed of any such change, as your settlement check will be mailed to the address on file. Settlement checks which are undeliverable will be transmitted to the California State Controller to be held in the unclaimed property fund in the Settlement Class Member’s name.

Once you receive your settlement check, you shall have one hundred eighty (180) calendar days after issuance by the Administrator to cash your check. If you do not cash your check within that period, your check will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one hundred eighty (180) days of mailing will be transmitted to the California State Controller to be held in the unclaimed property fund in the Settlement Class Member’s name.

WHAT IF I DON’T WANT TO PARTICIPATE IN THIS SETTLEMENT?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive no money from the Settlement, and you will not be bound by its terms.** To opt out, you must submit a written request for exclusion to the Administrator at the following address: P.O. Box 7208, Orange, CA 92863. To be valid, a written request for exclusion must: (1) must contain the name, address, and telephone number of the person requesting exclusion; (2) must be signed by the Class Member; and (3) must be returned to the Administrator P.O. Box 7208, Orange, CA 92863 on or before September 21, 2020.

If you timely request to be excluded from the Settlement, you will not be entitled to receive any payment under the Settlement, and you will not release any of the Released Claims against the Released Parties. Class Counsel will not represent your interests if you validly exclude yourself. Class Members who exclude themselves may not object to the Settlement.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member (that is, Class Member who has not opted out from the Settlement) may object to the Settlement. Class Members may also (but are not required to) appear at the final hearing where the Court will make a final decision whether or not to approve the Settlement (“Final Approval Hearing”). The Final Approval Hearing is scheduled to take place on November 2, 2020 at 11:00 a.m., in Department 7 of the Los Angeles County Superior Court, located at the address below. The hearing may be continued (moved to another date) without further notice to you.

If you wish to object, you may submit a Notice of Objection to the Settlement Administrator at the following address: P.O. Box 7208, Orange, CA 92863. The Notice of Objection should include: (i) the objector’s full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing. A Class Member who wishes to object in this manner may submit his or her written objection to the Settlement Administrator no later than September 21, 2020. Alternatively, Class Members who wish to object to the Settlement may appear at the Final Approval Hearing to raise their objections without submitting a Notice of Objection. Class Members who fail to make timely objections by either filing a Notice of Objection and/or by appearing at the final approval hearing will be deemed to have waived any objection and will be foreclosed from making objections to the Settlement (whether by appeal or otherwise).

The Court has concluded that the law firm listed under “CLASS COUNSEL” below is qualified to represent the Class Members. However, you have the right to retain your own attorney, at your own expense, to submit an objection or appear on your behalf at the Final Approval Hearing.

Submitting an objection will not exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still have the right to receive an Individual Settlement Payment and will be barred from pursuing the Released Claims.

Do not submit both an objection and request for exclusion. If you submit both a request for exclusion and an objection, you will be excluded from the class and your objection will not be considered.

WHO ARE THE ATTORNEYS?

CLASS COUNSEL:

Larry W. Lee, Esq. SBN 228175
DIVERSITY LAW GROUP
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554
Email: lwlee@diversitylaw.com

Edward W. Choi, Esq. SBN 211334
Paul M. Yi, Esq. SBN 207867
LAW OFFICES OF CHOI & ASSOCIATES
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
edward.choi@choiandassociates.com

Thomas M. Lee, State Bar No. 210599
LEE LAW OFFICES, APLC
3435 Wilshire Blvd Suite 2400
Los Angeles, California 90010
Telephone: (213) 251-5533
Facsimile: (213) 251-5534
Email: leethomas.esq@gmail.com

DEFENDANT'S COUNSEL:

Arthur Chinski (SBN: 48945)
Michael J. Cereseto (SBN: 56711)
BUCHALTER NEMER
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Telephone: (213) 891-0700
Fax: (213) 896-0400

THE COURT:

SPRING STREET COURTHOUSE
312 North Spring Street
Los Angeles, CA 90012

FURTHER INFORMATION

The foregoing is only a summary of the Settlement. The Settlement, pleadings, and all other records of this litigation may be examined and copied any time during regular office hours in the Clerk's Office of the Los Angeles County Superior Court listed above as "THE COURT." If you have any questions about the Settlement, you can contact the Administrator at Phoenix Settlement Administrators at 1-800-523-5773. You may also obtain more information on the following website: <http://www.phoenixclassaction.com/tagalagon-v-cheesecake-factory/>

**PLEASE DO NOT TELEPHONE THE COURT,
DEFENDANT, OR DEFENDANT'S COUNSEL
REGARDING THIS NOTICE. THE COURT IS NOT ABLE
TO PROVIDE ANY INFORMATION OR ADVICE
REGARDING THIS NOTICE.**