

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

Clare Thomas v. Tom Douglas Seattle Kitchen, Inc., et al., Case No. 18-2-56923-1 SEA

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation from a lawyer.

TO: All current and former hourly paid employees who have worked at a Tom Douglas restaurant in Seattle, Washington between December 11, 2015 and February 1, 2019. These restaurants include Dahlia Lounge, Palace Kitchen, Lola, Etta’s, Seatown, Serious Pie, Cuoco, Tanakasan, Carlile Room, Brave Horse Tavern, Cantina Lena, Dahlia Bakery, or Home Remedy.

PLEASE READ THIS NOTICE. A Class Action Settlement may affect your rights. You may be entitled to a payment from the Class Action Settlement. You do not need to do anything to receive a payment so long as your contact information is current.

- A former employee of a Tom Douglas restaurant, Brave Horse Tavern, brought claims against Tom Douglas Seattle Kitchen, Inc., Terry Avenue Restaurant, Inc., and Thomas Douglas (“Tom Douglas Restaurants”) for allegedly violating Washington’s service charge disclosure requirements, failing to properly pay employees service charges collected, and engaging in unlawful rest break and meal break practices under Washington law. Tom Douglas Restaurants vigorously denies these allegations. The parties to the Case have reached a Class Action Settlement.
- The Class Action Settlement will include a total settlement payment by Tom Douglas Restaurants of \$2,400,000.00 plus the provision of an additional \$200 gift card to each class member.
- To receive a share of the settlement payment, you must not exclude yourself from the Class Action Settlement.
- Listed on your Notice is the estimated gross amount of your share of the Settlement before taxes if you do not exclude yourself. This is based on your hours worked or amount of commissions and revenue share received, if applicable, during the claim period. (The final amount may be different.)

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|---|--|
| DO NOTHING | You will be eligible to get a payment for your share of the Class Action Settlement. (You may need to provide Class Counsel any updated contact information to ensure you receive your payment.) |
| OPT OUT | You will not receive any payment from this lawsuit. You will be free to pursue, or not pursue, any wage and hour claims against Tom Douglas Restaurants that are not barred by the statute of limitations. |
| OBJECT | Write to the Court if you do not like the Settlement and explain why. |
| GO TO A HEARING | Ask to speak in Court about the fairness of the Class Action Settlement. |

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments will be made after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

Tom Douglas Restaurants' records show that you worked as an hourly paid employee of one or more of the following restaurants in Seattle between December 11, 2015 and February 1, 2019: Dahlia Lounge, Palace Kitchen, Lola, Etta's, Seatown, Serious Pie, Cuoco, Tanakasan, Carlile Room, Brave Horse Tavern, Cantina Lena, Dahlia Bakery, or Home Remedy. The Court has allowed this Notice to be sent to you to inform you about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to eligible Settlement Class Members who have not opted out of the Settlement.

This Notice explains the Case, the Class Action Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is the Case about?

The lawsuit claims that Tom Douglas Restaurants violated Washington State wage and hour laws between December 11, 2015 and February 1, 2019. More specifically, the lawsuit claims that Tom Douglas Restaurants failed to pay its service employees the full amount of automatic service charges collected from customers without properly disclosing that fact to customers. The lawsuit also claims Tom Douglas Restaurants failed to provide paid ten-minute rest breaks and thirty-minute meal breaks in conformity with the requirements of Washington law. Tom Douglas Restaurants denies all of the claims.

Judge Dean Lum of King County Superior Court is overseeing this Class Action. The Case is known as *Clare Thomas v. Tom Douglas Seattle Kitchen, Inc., et al.*, Case No. 18-2-56923-1 SEA (the "Case").

3. What is a class action and who is involved?

In a class action lawsuit, a "Class Representative" (in this case Clare Thomas) sues on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The employee who sued, and who represents the Class, is called the Plaintiff. The attorneys who represent the Plaintiff and the Class are called "Class Counsel." The entities the Plaintiff sue are called the Defendants. In this case, the Defendants are Tom Douglas Seattle Kitchen, Inc., Terry Avenue Restaurant, Inc., and Thomas Douglas. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or the Defendants. Instead, both sides agreed to a Settlement. This allows the parties to avoid the cost of a trial, and the people allegedly affected will be entitled to compensation and other relief. The Class Representative and Class Counsel think the Settlement is best for everyone in the Class.

WHO IS IN THE SETTLEMENT

5. How do I know whether I am part of the Settlement?

As part of the Settlement of the Case, the judge has decided that everyone who fits the following description is a Settlement Class Member:

All current and former hourly paid employees of Defendants [Tom Douglas Restaurants] who have worked at Defendants' restaurants in Seattle, Washington from December 11, 2015 to February 1, 2019.

If approved, the Settlement will cover all Settlement Class Members who have not excluded themselves from the Case ("Qualified Class Members"). If you are a Settlement Class Member, you do not exclude

yourself from the Settlement, and the Settlement Administrator has your correct address, you will receive money pursuant to the Settlement.

As part of the Settlement of this Case, the judge has also decided that the Settlement covers and provides additional money for a sub-group of employees (which is called a “Subclass”), namely: *All current and former hourly paid service employees of Defendants who have worked as servers, food runners, bartenders, bussers, or hosts at one of Defendants’ restaurants in Seattle, Washington during a time between January 31, 2016 and September 1, 2018 (“Subclass Period”) in which the restaurant had a service charge disclosure on menus or itemized receipts that stated either (1) “20% service charge: 100% of these funds are distributed to our team in the form of wages, sales commissions, benefits and revenue share” or (2) “20% Service Charge Added. 100% of these funds are distributed to our team.”*

THE TERMS OF THE SETTLEMENT

6. What claims are covered by the Settlement?

The Settlement will resolve all of the claims Settlement Class Members could have brought against Tom Douglas Restaurants regarding any failure to provide adequate meal breaks, failure to pay for missed, curtailed, or interrupted meal breaks, overtime violations for failure to provide or pay for missed, curtailed, or interrupted meal breaks, and violations of RCW 49.52 for failure to provide meal breaks or pay for missed, curtailed, or interrupted meal breaks. The Settlement will also resolve all of the claims Settlement Class Members could have brought against Tom Douglas Restaurants regarding any failure to provide adequate rest breaks or failure to pay for all hours worked. For the Subclass, the Settlement will also resolve all of the claims Subclass members could have brought against Tom Douglas Restaurants regarding automatic service charge disclosures and payment of automatic service charges.

7. What are the basic terms of the Settlement?

Subject to Court approval, the essential terms of the Settlement are as follows:

Settlement Fund: Tom Douglas Restaurants will pay \$2,400,000.00 (“Settlement Amount”) and provide each Qualified Class Member an additional \$200 gift card that can be used at any Tom Douglas restaurant for up to a year after its date of issue (an additional value of approximately \$273,400.00) to resolve all claims alleged in this lawsuit. Following the Court-approved deductions set forth below, the remaining amount, the “Net Settlement Fund,” will fund all settlement payments to Qualified Class Members. From the Settlement Amount, if approved by the judge, (a) \$15,000 will be used to compensate the named plaintiff who brought the Case for her service and assistance in prosecuting the lawsuit (“Service Award”); (b) 25% of the Settlement Amount will be used to compensate Class Counsel for the attorneys’ fees they have incurred and will incur through the end of the case in representing the Settlement Class; (c) no more than \$6,000 will be used to reimburse Class Counsel for litigation costs; and (d) no more than \$22,000 will be used to pay for the expenses of providing notice of the Settlement to Settlement Class Members and handling the settlement administration process (“Settlement Administration Expenses”).

Monetary Relief: The Net Settlement Fund is estimated to be no less than \$1,757,000. The Net Settlement Fund will compensate Qualified Class Members for wages allegedly lost and damages they are purportedly owed as a result of the practices alleged in the Case. Based on the relative amount of damages for each claim, 70% of the Net Settlement Fund will be allocated to the claims involving service charges and will be distributed to the Qualified Subclass Members (“Subclass Portion”). The remaining 30% of the Net Settlement Fund will be allocated to the claims relating to alleged missed rest and meal breaks and will be distributed to the Qualified Class Members (“Class Portion”). Each Qualified Class Member will also receive a \$200 gift card to Tom Douglas Restaurants.

Distribution of Net Settlement Fund: Each Settlement Class Member who does not submit a valid and timely request for exclusion will become a Qualified Class Member and will be eligible to receive a settlement payment. Your settlement payment will be calculated based on a detailed analysis of your Tom Douglas Restaurants time records or amount of commissions and revenue share received, if applicable, during the claim period. The payment to each Qualified Class Member will consist of a proportional amount of the Net Settlement Fund based on the following:

(1) Each Qualified Class Member's gross share of the Class Portion of the Net Settlement Fund will be a proportional amount based on the sum of the Qualified Class Member's hours worked for Defendants during the Settlement Class Period in relation to all hours worked by all Qualified Class Members during the Settlement Class Period.

(2) Each Qualified Subclass Member's gross share of the Subclass Portion of the Net Settlement Fund will be a proportional amount based on the sum of the Qualified Subclass Member's commissions and revenue share received during the Subclass Period..

Checks will be mailed to the last known address of all Settlement Class Members who do not submit a valid and timely request for exclusion.

Tom Douglas Restaurants will receive no reversion from the settlement funds. This means that if you opt out of the Settlement, the money that would have been paid to you will not be returned to Tom Douglas Restaurants. Instead, it will be paid to the other Qualified Class Members. Also, if you do not cash your settlement check, that check amount will not be returned to Tom Douglas Restaurants. You will have 60 days to cash your settlement check. After that date, if you have not cashed your settlement check, you will have no interest in the settlement funds. If, after 60 days following issuance of checks to Qualified Class Members ("the First Distribution"), the amount of checks remaining uncashed exceeds \$100,000, the Settlement Administrator will redistribute the remaining amount (except for a \$25,000 reserve fund to address payment discrepancies) proportionally to all Qualified Class Members who cashed their original checks ("the Second Distribution"). The proceeds of any uncashed checks after 30 days following the Second Distribution (or if there is no Second Distribution and no necessity to use any of the reserve fund to ensure appropriate payments) will be considered Residual Funds and will be paid to the FareStart (50%) and the Legal Foundation of Washington (50%) for programs supporting low-wage workers.

Tax Treatment of Settlement Awards: 50% of each Qualified Class Member's settlement award will be allocated to wage claims, and the final wage amounts will be reported to the taxing authorities and the Qualified Class Member on an IRS Form W-2. After the parties have agreed to each Qualified Class Member's gross settlement share, the Settlement Administrator will calculate and deduct all employee and employer payroll tax amounts from this wage allocation of each such share. The remaining 50% of each Qualified Class Member's settlement award will be treated as non-wages (prejudgment interest and exemplary damages) on which there will be no tax withholding and for which an IRS Form 1099 (marked "Other Income") will be issued to the taxing authorities and the Qualified Class Member.

Employee Hotline: As part of this settlement, Tom Douglas Restaurants has agreed to institute a confidential employee hotline that will allow workers to report workplace issues, including but not limited to, unpaid wages and break violations. This hotline has already been instituted by Tom Douglas Restaurants, effective August 1, 2019.

Employment Law Training: As part of this settlement, Tom Douglas Restaurants has agreed to provide training to supervisors regarding meal periods, rest breaks, and the payment of proper wages for all hours worked.

Release of Claims: Upon final approval by the Court, the Settlement Class and each Settlement Class Member who has not submitted a valid and timely written request to be excluded from the Settlement will release all claims or causes of action relating to rest breaks, meal periods, any related claims for unpaid wages or overtime for missed rest or meal breaks, as well as any attendant claims for enhancements, penalties, attorneys' fees and/or costs, which were or could have been asserted based on the facts alleged in this lawsuit on behalf of the Settlement Class and which arose on or before February 1, 2019, whether premised on an express or implied cause of action under any statutory or regulatory provision, an express or implied agreement, or otherwise.

Upon final approval by the Court, the Subclass and each Subclass Member who has not submitted a valid and timely written request to be excluded from the Settlement will also release all claims and causes of action relating to the payment or distribution of service charges or service charge disclosures, as well as any attendant claims for enhancements, penalties, attorneys' fees and/or costs, which were or could have been asserted based on the facts alleged in this lawsuit on behalf of the Subclass and which arose on or before September 1, 2018, whether premised on an express or implied cause of action under any statutory or regulatory provision, tort or common law (e.g., intentional or negligent misrepresentation), equity (e.g., unjust enrichment), or otherwise.

HOW YOU CAN GET PAYMENT

8. How can I get a payment?

To get a payment, you must not submit a request for exclusion. If your address listed on the envelope containing this notice is correct and you do not request exclusion, you will receive a payment. If you need to update your address, please call 1-888-598-6527.

9. When would I get my payment?

The King County Superior Court will hold a hearing on November 4, 2019 to decide whether to finally approve the settlement. If there is an appeal, it may take up to a year or more to resolve. In the event of an appeal, information regarding the appeal's progress will be available to you by calling Class Counsel at (206) 682-6711. If there is no appeal, we expect payments will go out approximately three weeks after the Court's final approval of the Settlement. Please be patient.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has decided that Marc Cote and Jillian Cutler from the law firm of Frank Freed Subit & Thomas LLP of Seattle, Washington are qualified to represent you and all Settlement Class Members and Subclass Members. These lawyers are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by our own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

As indicated above, Class Counsel will seek payment of their attorneys' fees in the amount of 25% of the total settlement amount, which must be approved by the Court as part of the final approval of this Settlement. Class Counsel have been working on this case since 2018 and have not received any fees or reimbursements for the costs of the lawsuit.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I exclude myself from the Settlement?

If you fit the definition of a Settlement Class Member and want to exclude yourself from the Settlement, you must request exclusion in writing by **October 9, 2019**. You may be excluded as a member of the class

by submitting a written request stating, “I request that I be excluded from the Settlement Class in the case of *Thomas v. Tom Douglas Seattle Kitchen, Inc. et al.*” The request must include your name, your address, and your signature. You must mail a copy of the letter postmarked no later than **October 9, 2019** to Frank Freed Subit & Thomas LLP, 705 Second Avenue, Suite 1200, Seattle, Washington 98104-1798.

If you exclude yourself from the Settlement (i.e., opt out), you will not receive any payment from the Settlement. You will also not be entitled to object to the Settlement. If you exclude yourself, you will not be bound by the terms of the Settlement, including the Release described in Section 7, above. This means you will retain the right at your own expense, to pursue any claims you may have against Tom Douglas Restaurants.

OBJECTING TO THE SETTLEMENT

13. If I don’t like the Settlement, how do I tell the Court?

If you are a Settlement Class Member, have not excluded yourself from the Settlement, and do not like the Settlement or any aspect of it, you can object. You must do so in writing and you must state the reasons why you think the Court should not approve the Settlement. If you object, be sure to include your name, address, and telephone number, the name of the Case (*Clare Thomas v. Tom Douglas Seattle Kitchen, Inc., et al.*, Case No. 18-2-56923-1), the reasons you object to the Settlement (along with any supporting documentation that you wish the Court to consider), and a signature. You must file your objection with the King County Superior Court and mail a copy of the objection to the following addresses **postmarked no later than October 9, 2019**:

Marc Cote
Frank Freed Subit & Thomas LLP
Counsel for Plaintiff and Settlement Class
705 Second Avenue, Suite 1200
Seattle, Washington 98104

Sheehan Sullivan
Davis Wright Tremaine LLP
Counsel for Defendants
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104-1610

THE COURT’S FAIRNESS HEARING

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

The Court will hold a Fairness Hearing at 1:30 p.m. on November 4, 2019, before the Honorable Judge Dean S. Lum at King County Superior Court, 516 3rd Avenue, Seattle, Washington, Courtroom E-912. If there are objections, the judge will consider them. The judge will listen to people who have asked to speak at the hearing (see Section 16). After the hearing, the Court will decide whether to approve the Settlement, including Class Counsel’s request for attorneys’ fees, costs, Settlement Administration Expenses, and a Service Award for the named Plaintiff. We do not know how long that decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions the judge may have. But you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying it is your “Notice of Intention to Appear in *Clare Thomas v. Tom Douglas Seattle Kitchen, Inc., et al.*, Case No. 18-2-56923-1.” Be sure to include your name, address, phone number, and your signature.

Your Notice of Intention to Appear must be **postmarked no later than October 9, 2019**, and be sent to the Court, Class Counsel, and Defense Counsel at the three addresses set forth below:

| COURT | CLASS COUNSEL | DEFENSE COUNSEL |
|---|---|---|
| King County Superior Court 516 3rd Avenue Seattle, Washington 98104 | Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104 | Sheehan Sullivan Davis Wright Tremaine LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 9810 |

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If you do nothing – that is, if you do not mail or deliver a timely request for exclusion – you will be entitled to a share of the Settlement if it is approved by the Court. Please contact the Settlement Administrator, CPT Group, Inc., at 1-888-598-6527 if you need to update your address.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This Notice summarizes the Settlement. More details are in the Settlement Agreement, which is available on the settlement website at www.cptgroup.com/tomdouglas. Plaintiff's motion for final approval of the settlement agreement, including Class Counsel's request for attorneys' fees, costs, Settlement Administration Expenses, and Service Award for the named Plaintiff will also be available for you to review on the settlement website by September 26, 2019. All other documents filed in the case are available in the King County Superior Court file for *Clare Thomas v. Tom Douglas Seattle Kitchen, Inc., et al.*, Case No. 18-2-56923-1.