

## NOTICE OF RIGHT TO OPT-IN

If you are or were a Restaurant Manager for Denny's Operated by Top Line Restaurants, Inc. or Top Line Management, LLC, please read this Notice.

You may have rights under a collective action lawsuit filed in the United States District Court for the Western District of New York.

This Notice has been authorized by the Court to be sent under the Fair Labor Standards Act ("FLSA") to all persons who are or were formerly employed as Restaurant Managers for Top Line in the state of New York at any time from [three years prior to the date of mailing] to the present. This Notice does not mean that you are entitled to any relief, including monetary recovery. There has been no determination that Top Line violated any laws, nor that any Restaurant Managers are entitled to any relief.

Two former Denny's Restaurant Managers have filed a lawsuit against franchise operator Top Line entitled *Frisbie v. Top Line Restaurants, Inc., et al.*, Case No. 6:17-cv-06270, claiming that Restaurant Managers were misclassified and that they should have been paid overtime for all hours worked over 40 in a week. The lawsuit claims that Restaurant Managers perform non-exempt tasks as their primary duties, as more fully described in Section I below. Top Line maintains that all Restaurant Managers are properly classified and are not entitled to any overtime pay. Top Line denies any wrongdoing. Despite the fact that you were paid a salary and did not receive overtime, if the plaintiffs in the lawsuit prevail, you may be entitled to overtime wages and other damages if you join the lawsuit.

Your legal rights to participate in the lawsuit are subject to the choice that you must now make. Your legal rights and options are summarized on the next page of this Notice.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

<b>ASK TO BE INCLUDED</b>	<p>If you choose to be included in this lawsuit, you may share in any monetary recovery that might come from a trial or a settlement in this lawsuit. You give up any rights to sue Top Line on your own for the same claims in this lawsuit.</p> <p>If you want to be included in this lawsuit, you must complete and return the “Consent to Join Collective Action Lawsuit” form included with this Notice. You must do so no later than October 12, 2019. You can sign the Consent electronically by visiting <a href="http://www.toplinewages.com">www.toplinewages.com</a>, or you can return the Consent in the enclosed envelope, or you can send it by fax to (914) 934-9220.</p> <p>By returning a Consent, you will “opt-in” to the lawsuit as a plaintiff and become a member of the Collective. As a member of the Collective, you may be entitled to any benefits that might be obtained from the lawsuit. However, by “opting-in” you likely will be required to participate in the discovery process of this matter, which may require you to appear for a deposition to be conducted by Top Line’s counsel and/or to produce documents and answer written questions relevant to your claim.</p>
<b>DO NOTHING</b>	<p>By doing nothing, you will <b>not</b> be included in this lawsuit. This means that you give up the possibility of a monetary recovery that may come from a trial or settlement of the FLSA claims if those bringing the lawsuit are successful.</p> <p>You keep any rights to sue Top Line separately about the same legal claims in this lawsuit and you may hire your own lawyer to do so. You should be aware that your time to bring FLSA claims is limited by a two- or three-year statute of limitations.</p>

Frequently Asked Questions about this lawsuit and this Notice begin on the next page.

## **I. Why Did I Get This Notice and What Is The Lawsuit About?**

This Notice is to tell you of the existence of the litigation and inform you of your rights. The choice to join or not to join this lawsuit is yours.

The Lawsuit. John Frisbie and Rebecca Russell (“Plaintiffs”), former Denny’s Restaurant Managers, have brought a lawsuit against franchise operator Top Line entitled *Frisbie v. Top Line Restaurants, Inc., et al.*, Case No. 6:17-cv-06270, claiming that Restaurant Managers were misclassified as overtime-exempt management employees and not paid overtime in all weeks in which they worked more than 40 hours as they contend is required by federal law. Specifically, the lawsuit alleges that, despite Top Line’s expectation that Restaurant Managers’ primary duty is to supervise and manage the performance of hourly restaurant employees, their primary duties did not differ substantially from those performed by hourly employees, and included tasks such as cleaning, cashiering, seating customers, and cooking. As a consequence, Plaintiffs claim that they and other Restaurant Managers are entitled to overtime under the FLSA.

Top Line adamantly denies any wrongdoing or violation of any laws or regulations and asserts that Restaurant Managers are properly classified as overtime-exempt based upon their management duties and oversight of hourly restaurant employees.

## **II. What Are My Choices?**

If you are or were a Denny’s Restaurant Manager for Top Line at any time from [three years prior to the date of mailing] to the present, you are eligible to file a Consent form to join this lawsuit, which is enclosed. Joining this action does not mean that you are entitled to any unpaid overtime wages, only that the lawyers in the case representing Plaintiffs will try to obtain a recovery for you.

If you wish to join this lawsuit, you must sign and complete the enclosed Consent to Become a Party Plaintiff, which must be postmarked on or before [45 days from the date of mailing]. You can submit the Consent electronically by visiting [www.toplinewages.com](http://www.toplinewages.com), or you can return the Consent in the enclosed envelope, or you can send it by fax to (914) 934-9220. If you do not wish to join this lawsuit, you should not return the enclosed Consent to Join Collective Action Lawsuit. Instead, you should simply do nothing.

## **III. What Happens If I Join This Lawsuit?**

If you join this lawsuit, the lawyers listed below can represent you and work with you to try to obtain any overtime wages you may be entitled to. The Court or jury will determine your rights to any relief. You will be bound by the Court’s judgment, whether it is favorable or unfavorable to you, on all issues including settlement. If you join this lawsuit, you likely will be required to participate in the discovery process of this matter, which may require you to appear for a deposition to be conducted by Top Line’s counsel and/or produce documents and answer written questions relevant to your claim.

Plaintiffs are represented by:

<p>Seth R. Lesser Fran L. Rudich Christopher M. Timmel</p> <p><b>KLAFTER OLSEN &amp; LESSER, LLP</b></p> <p>Two International Drive Suite 250 Rye Brook, NY 10573</p> <p>T. (914) 934-9200 F. (914) 934-9220</p> <p><a href="mailto:seth@klafterolsen.com">seth@klafterolsen.com</a> <a href="mailto:fran@klafterolsen.com">fran@klafterolsen.com</a> <a href="mailto:Christopher.Timmel@klafterolsen.com">Christopher.Timmel@klafterolsen.com</a></p> <p><a href="http://www.klafterolsen.com">www.klafterolsen.com</a></p>	<p>Nicholas A. Migliaccio Jason S. Rathod</p> <p><b>MIGLIACCIO &amp; RATHOD LLP</b></p> <p>412 H Street NW Suite 302 Washington DC 20002</p> <p>T. (202) 470-3520 F. (202) 800-2730</p> <p><a href="mailto:nmigliaccio@classlawdc.com">nmigliaccio@classlawdc.com</a> <a href="mailto:jrathod@classlawdc.com">jrathod@classlawdc.com</a></p> <p><a href="http://www.classlawdc.com">www.classlawdc.com</a></p>	<p>Drew Legando</p> <p><b>MERRIMAN LEGANDO WILLIAMS &amp; KLANG, LLC</b></p> <p>1360 West 9th Street Suite 200 Cleveland, Ohio 44113</p> <p>T. (216) 522-9000 F. (216) 522-9007</p> <p><a href="mailto:drew@merrimanlegal.com">drew@merrimanlegal.com</a></p>
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By returning the Consent form, you will join this lawsuit, and these attorneys will represent you. These attorneys have taken on this case on a contingency fee basis, which means that they will not be paid unless there is a settlement or judgment in this case. If there is no recovery, you will not have to pay any attorneys' fees, and you will not owe the attorneys anything. If there is a recovery, these attorneys will receive a part of any settlement approved by the Court or any judgment entered in your favor.

#### **IV. What Happens If I Do Not Join This Lawsuit?**

If you do not join this lawsuit, you will not be bound by any settlement approved by the Court or judgment in this case – whether it is favorable or unfavorable. You will not be entitled to share in any settlement approved by the Court or judgment entered in this lawsuit, if any. Also, if you do not join the lawsuit, the statute of limitations on any potential claim may continue to run, and you may lose some or all of your rights if you do not act.

#### **V. How Do I Join This Lawsuit?**

Enclosed is a “Consent to Join Collective Action Lawsuit” form. If you want to participate in this lawsuit, you must read, sign, and return the Consent form within [45 days from the date of mailing]. You can sign the Consent electronically by visiting [www.toplinewages.com](http://www.toplinewages.com), you can e-mail it to Christopher Timmel at

Christopher.Timmel@klafterolsen.com, you can return the Consent in the enclosed, stamped self-addressed envelope, or you can send it by fax to (914) 934-9220. You may also submit a Consent form by regular mail to:

**ATTN: TOP LINE CONSENT  
KLAFTER OLSEN & LESSER, LLP  
Two International Drive, Suite 250  
Rye Brook, NY 10573**

Should you lose or misplace the enclosed Consent form, please contact Plaintiffs' counsel at (914) 934-9200, ext. 312, (216) 522-9000, or (202) 470-3520.

#### **VI. Will My Participation in This Lawsuit Affect My Employment?**

No. Federal law prohibits an employer from firing or in any way retaliating against you because you have joined this lawsuit. However, participating in this lawsuit does not excuse you from complying with Top Line's existing policies and work rules.

#### **VII. How Can I Get More Information?**

Additional information can be obtained from Klafter Olsen & Lesser LLP, Merriman Williams Legando & Klang LLC, or Migliaccio & Rathod LLP at the above addresses and telephone numbers. The court file in this case can also be examined online using the Public Access to Court Electronic Records website at [www.pacer.gov](http://www.pacer.gov), or in person at the United States District Court for the Western District of New York, 2 Niagara Square, Rochester, NY 14614. Other than in-person requests to examine the file at the Clerk's office, no inquiries concerning this case should be directed to the Court or the Clerk.

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The Notice has been ordered by the Court, Honorable Jonathan W. Feldman, United States District Court Magistrate Judge.

This Notice is not an expression by the Court of any opinion concerning the alleged claims.

This Notice simply informs you of the pendency of this litigation and your rights to join, or not join, the lawsuit.

**CONSENT TO JOIN COLLECTIVE ACTION LAWSUIT  
UNDER SECTION 16(b) OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(b).**

1. I consent to be a party plaintiff in a lawsuit against Top Line Restaurant, Inc., and Top Line management, LLC (“Top Line”) in order to seek redress for alleged violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I designate Drew Legando and other attorneys of Merriman Williams Legando & Klang LLC, 1360 W. 9<sup>th</sup> St, Suite 200, Cleveland, Ohio 44113; Nicholas Migliaccio and Jason S. Rathod of Migliaccio & Rathod LLP, 412 H Street N.E., Suite 302, Washington DC 20002; and Seth R. Lesser, Fran L. Rudich and other attorneys of Klafter Olsen & Lesser LLP, Two International Dr., Suite 350, Rye Brooke, NY 10573, to represent me in this case.

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Full Legal Name (please PRINT clearly)

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Signature

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Date

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Street Address (with apartment number, if applicable)

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City, State, Zip Code

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Home Phone Number

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Cell Phone Number

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Email Address

(we will use this as our primary method to contact you)