

**Kira Florece, et al. v. Jose Pepper's Restaurants, LLC, et al.**

Case number: 2:20-cv-02339

United States District Court for the District of Kansas

[Notice for the Rule 23 Class-Missouri Servers]

**Settlement Notice****1. Why did I get this Notice?**

You were sent this Notice because the parties in the class action lawsuit listed above ("Lawsuit") brought by Kira Florece ("Plaintiff") against Jose Pepper's Restaurants, LLC and its owner Edward J. Gieselman ("Defendants") has settled. This Lawsuit alleged that hourly servers at Defendants' nine Jose Pepper's restaurants in Kansas were required to work off the clock before each shift "off the clock" and denied minimum wages and overtime for this work and it also alleged that servers, were denied minimum wages and overtime during Defendants' operations during the COVID-19 pandemic including illegal tip sharing, and were not provided adequate notice as required by law via posting in the workplace of how wages were to be paid to tipped employees under the law. This Notice is to inform you that a settlement agreement was reached and preliminarily approved by the Court on \_\_\_\_\_, 2021.

**2. Does the settlement mean that Defendants violated the law?**

No. Defendants deny that they violated any law, ordinance, or rule with respect to compensation and maintains they have at all times properly compensated Plaintiff and all other persons. Nevertheless, Defendants have decided that it is a better use of their resources to resolve this matter now, so that they can direct their time and resources to their business operations.

**3. How did the parties decide to reach a settlement?**

The Plaintiff and Defendants agreed to settle the Lawsuit in meditation. By this agreement, the Parties avoid the cost and uncertainty of further litigation, trial, and appeals. Counsel for Defendants and counsel for Plaintiff negotiated the terms of the settlement described in this Notice. The attorneys for Plaintiff Florece believe that the proposed settlement is fair and reasonable and in the best interest of you and other server employees because the settlement creates a settlement fund and avoids the considerable risks and delays involved in continuing the Lawsuit. From the perspective of Defendants, settling now means that they will not have to keep spending money, time, and effort on the Lawsuit.

**4. What are My Choices?**

<p><b>Check the "Participate" Box on the enclosed <i>Claim &amp; Release Form</i>.</b></p> <p><b>or</b></p>	<p>If you <i>want to participate</i> in this settlement and receive your settlement payment, you will need to check the "Participate" box on the enclosed Claim &amp; Release Form and return it by _____, 2021. Your estimated gross settlement payment is \$****. How this amount was determined is explained below. Half of this amount will be paid as lost wages with payroll taxes taken out and for which an IRS Form W-2 will be issued to you. The other half will be paid as liquidated damages permitted under the law, from which no tax withholdings will be made and for which an IRS Form 1099 will be issued to you. Checks for these amounts will be mailed to you within 30 days of the Court granting final approval of this Settlement.</p>
<p><b>Check the "Opt-out" Box on the enclosed <i>Claim/Opt-out Form</i>.</b></p> <p><b>or</b></p>	<p>If you <i>do not want to participate</i> in this settlement and reject your settlement payment, you will need to check the "Opt-out" box on the enclosed Claim &amp; Release Form and return by _____, 2021. By doing so, you will not be releasing your claims against Defendants set forth below in Section 5. You will be free to pursue your claim individually but will be subject to the original statute of limitations.</p>
<p><b>Do Nothing.</b></p>	<p>If you do nothing, you will be releasing all the claims set forth in Section 5 below which include your claims under Missouri's wage and hour laws, however, you will</p>

	not be releasing any claims you might have under the Fair Labor Standards Act.
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The class is made up of 770 servers employed by Defendants at its Missouri restaurants from July 7, 2017 through May 21, 2021 and 1,228 employed at its Kansas restaurants from May 21, 2018 through May 21, 2021. Defendants have agreed to pay a total of \$1,750,000 to settle this matter. Under the terms of the Settlement of this Lawsuit, which has been preliminarily approved by the Court, counsel for Plaintiff will seek court approval to receive 33% of the total amount of the Settlement in attorneys' fees plus reimbursement of an estimated \$13,154.33 in out-of-pocket costs associated with the Lawsuit and \$21,500 for costs associated with printing and mailing this notice and processing all claim forms, an issuing and mailing checks and related tax forms. Plaintiff Florece will seek an additional amount of \$2,000 for taking the risk to file this Lawsuit on behalf of all class members, exposing her name in this litigation and working with counsel to pursue your claims for allegedly unpaid wages. The remaining \$1,135,845.67 will be divided among all class members on a pro-rata basis. Pro-rata shares were based primarily on calculations made by an expert retained by Plaintiff using collective class members' dates of employment, payroll records, and information provided by such members about the number of pre and/or post-shift minutes worked off-the-clock per shift. Plaintiff's expert applied a multiplier of 1.3 to the amount of minimum wage and overtime owed for servers working at Missouri locations. The reason for this multiplier is based upon these claims being asserted under Missouri's wage laws. Unlike the federal wage laws applying to Kansas servers (note: there is no Kansas state law applicable to these claims), Missouri's law mandates a three year statute of limitations (as opposed to the federal two-year) and mandates triple payment as liquidated damages (as opposed to the federal law's double). For these reasons, a multiplier of 1.3 applied to the Missouri class members' damages reflects the greater value of their claims under Missouri's compared to the federal. No class member shall receive a gross payment of less than \$50.00.

Neither counsel for Plaintiff nor Defendants can provide you with tax advice, so if you have any questions about the tax consequences of any payment you receive, you should consult your own tax professional. These payments will not be made unless and until all the terms of the Settlement have been met.

#### **5. What claims am I releasing?**

If you elect to participate in this Settlement, you agree that you have waived and released Defendants and all entities or individuals related to Defendants from all wage-related claims of whatever nature, whether known or unknown, as a result of actions or omissions through and including the Claim Deadline, whether under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including, but not limited to, the FLSA, the MMWL, the KWPA, and any other federal, state, or local wage and hour or wage payment laws, including any and all claims thereunder for unpaid overtime, liquidated damages, unpaid wages, deductions, minimum wages, premium pay, interest, attorneys' fees, injunctive relief, or penalties related to overtime, missed meal periods, missed rest breaks, breach of contract, quantum meruit or retaliation related to wage claims, the prompt pay laws of any state, and other alleged wage and hour violations.

#### **6. Fairness Hearing & Objections to the Settlement.**

The Judge presiding over this Lawsuit, the Hon. \_\_\_\_\_, will conduct a Final Fairness Hearing at \_\_\_\_\_ [a.m./p.m.] on \_\_\_\_\_, 2021 in Division \_\_\_\_ of the United States District Court of Kansas federal courthouse located at 500 State Ave., Kansas City, KS 66101. At this hearing, the Judge will decide whether the settlement is sufficiently fair and reasonable to warrant final court approval. You are not required or expected to attend the Fairness Hearing.

If you wish to object to the proposed settlement, you must submit a written objection to the Claims Administrator Simpluris, Inc. [\*\*address\*\*]. The envelope containing your written objection must be postmarked by \_\_\_\_\_, 2021. Your written objection must include your name, your address, a statement describing the reasons for your objection, and any other documents you believe the Judge should consider in evaluating the settlement's fairness. If you return a written objection, the Judge will consider your objection whether or not you attend the Fairness Hearing. If you intend to personally attend and speak during the hearing you should clearly indicate this in your written objection.

#### **7. Questions about this Notice? Who is the class Counsel?**

If you have questions about this notice or want a copy of the complete Agreement, you can contact the court approved company administering this settlement, Simpluris, Inc. at **800-000-0000**. The Court approved class counsel are Brendan J. Donelon, DONELON, P.C., 4600 Madison, Ste. 810 Kansas City, MO 64112 and Brandon Boulware and Erin Lawrence of BOULWARE LAW, 1600 Genessee, Ste. 416, Kansas City, MO 64102. Also, if you so choose, you have the right to retain your own legal counsel and enter an appearance in this lawsuit.

*Florece, et al. v. Jose Pepper's Restaurants, LLC, et al.*

2:20-cv-2339

United States District Court of Kansas

## Claim & Release Form

[insert name and mailing address]

Corrected Mailing Address:

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**Select one of the two options below by checking the box.**

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**Participate**

I desire to participate in this Settlement, which means I accept the terms of the Settlement, accept the amount of my settlement payment set forth in the Notice, and in return will Release my claims, as set forth in Section 5 of the Notice, against the Releasees.

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**Opt-Out**

I wish to exclude myself from, or opt out of, the Class. I understand that by opting out, I will be excluded from the Class Settlement and will receive no money from the Settlement. I understand that if I opt out, I may bring a separate lawsuit. I understand that in any separate lawsuit, it is possible that I may receive nothing or less than I would have received if I had filed a claim under the settlement in this Lawsuit. I understand that any separate lawsuit by me will be undertaken at my own expense and at my own risk. I understand that Class Counsel will not represent my interests if I opt out.



Signature

8/30/2021

Date (mm/dd/yyyy)

After completing this Claim and Release Form, mail it in the enclosed self-addressed, postage prepaid envelope so that it is postmarked no later than [insert time deadline] to \_\_\_\_\_. Or, you can email it to \_\_\_\_\_ or fax it to \_\_\_\_\_.

KEEP A COPY OF THIS FORM FOR YOUR RECORDS. YOU MAY WISH TO REQUEST A RETURN RECEIPT FROM THE POST OFFICE

*If you relocate after submitting this Claim and Release Form but before receiving money from the settlement, please notify Simpluris, Inc. of your new address to ensure that the check is forwarded to you.*