

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

ANITA F. ADAMS, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

AZTAR INDIANA GAMING COMPANY, LLC
d/b/a TROPICANA EVANSVILLE,

Defendant.

Case No. 3:20-cv-00143-RLY-MPB

NOTICE OF PROPOSED SETTLEMENT OF CLASS AND COLLECTIVE ACTION

If you worked as an hourly employee of Tropicana Evansville between June 2017 and the present, you may be entitled to a payment from a class and collective action lawsuit settlement.

Read this Notice carefully, as the proposed settlement will affect your rights. To receive proceeds from the settlement, you do not have to do anything in response to this Notice, as explained in further detail below.

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

- This Notice is directed to members of the Settlement Class (composed of both a Tip Credit Notice Class, Timeclock Rounding Class, and Miscalculated Regular Rate Class) and the Settlement Collective (composed of the Gaming License Collective), as defined below:
 - **Settlement Class**
 - **Tip Credit Notice Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than \$7.25 per hour and for whom a tip credit was claimed at any time from June 18, 2018 to December 31, 2020.
 - **Timeclock Rounding Class:** All current hourly, non-exempt Table Games Dealers of Tropicana Evansville, or former hourly, non-exempt Table Games Dealers who voluntarily separated, who clocked in and clocked out using ADP timekeeping software at any time from June 18, 2018 through June 30, 2021, and who received a Class Notice Form in the Litigation.
 - **Miscalculated Regular Rate Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than \$7.25 per hour and worked more than 40 hours in any workweek from June 18, 2018 through April 20, 2022, and who received a Class Notice Form in the Litigation.
 - **Settlement Collective**
 - **Gaming License Collective:** All hourly, non-exempt employees of Tropicana Evansville who were paid a direct hourly wage equal to or less than \$7.25 per hour and had a gaming license fee deducted from their wages at any time from June 18, 2017 through April 9, 2021, and who filed a Consent to Join form in the Litigation.
- The Named Plaintiff Anita F. Adams filed a class and collective action lawsuit on behalf of herself and other similarly situated employees against Tropicana Evansville alleging the company violated the Fair Labor Standards Act (“FLSA”) and the Indiana Wage Payment Statute (“IWPS”) by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee’s pay which reduced its employees’ compensation below the required minimum wage; and (4) miscalculating its tipped employees’ regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation (hereinafter “Complaint”).
- Tropicana Evansville denies the allegations in the Complaint. However, the Parties have agreed to settle this dispute for the purpose of avoiding further disputes and litigation with its attendant risk, expense, and inconvenience. The Court has not made any ruling on the merits of the claims, and no Party has prevailed in the lawsuit. However, the Court has reviewed and preliminarily approved this settlement and this Notice.
- The settlement monies are being used to pay certain groups of current and former employees of Tropicana Evansville, attorneys’ fees, litigation costs, a service payment to the Named Plaintiff, and the costs of administering the settlement. Tropicana Evansville will not take an adverse action against any employee covered by the settlement whether or not he or she accepts a settlement payment.
- Under the allocation formula created by the settlement, you will be entitled to the following settlement payments:
 - **Rule 23 Settlement Check:** \$
 - **FLSA Settlement Check:** \$

- If you are eligible to receive an FLSA Settlement Check, you will receive the FLSA Settlement Check in the mail if the Court grants final approval of the settlement. You will receive the Rule 23 Settlement Check in the mail if the Court grants final approval of the settlement, and you do not request exclusion from the settlement (described in Section 8 below).
- Your decisions have legal consequences for you. You have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN RESPONSE TO THIS NOTICE:	
IF YOU DO NOTHING	By <u>NOT</u> submitting a request for exclusion, you will be bound by the release of the Released State Claims described in this Notice and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund.
IF YOU SUBMIT AN OPT OUT REQUEST	If you timely request exclusion from the settlement, you will not receive a Rule 23 Settlement Check, and you will not be bound by the release of any of the Released State Claims as described in this Notice. However, you will still receive in the mail a FLSA Settlement Check representing your share of the settlement fund, if applicable. Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

- These rights and options are explained more fully below.

BASIC INFORMATION

1. Why did I receive this Notice?

Tropicana Evansville’s records show that you are a member of the proposed Settlement Class and/or Settlement Collective as defined above. As a member of the proposed Settlement Class and/or Settlement Collective, you have a right to know about the settlement of a class and collective action lawsuit that affects your rights. This Notice explains the lawsuit, the settlement, and your rights and options. The Court supervising this case is the U.S. District Court for the Southern District of Indiana. The lawsuit is known as *Adams v. Aztar Indiana Gaming Company, LLC d/b/a Tropicana Evansville*, No. 3:20-cv-00143-RLY-MPB (the “Litigation”).

2. What is this lawsuit about?

In her Complaint, Named Plaintiff alleges Tropicana Evansville violated the Fair Labor Standards Act (“FLSA”) and the Indiana Wage Payment Statute (“IWPS”) by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee’s pay which reduced its employees’ compensation below the required minimum wage; and (4) miscalculating its tipped employees’ regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation. Tropicana Evansville denies all the claims asserted in the Complaint and maintains that all of their respective employees were paid, and have always been paid, correctly and in accordance with the law.

3. Why is there a proposed settlement?

The Court did not decide in favor of the Named Plaintiff or Defendant, and no Party prevailed. The Parties agreed to a settlement to avoid further disputes and the risk, expense, and inconvenience of litigation.

On February 24, 2023, the Court granted preliminary approval of the proposed settlement. The Court will decide whether to give final approval to the proposed settlement in a hearing scheduled for June 23, 2023 (“Final Approval Hearing”). See Section 12 below for details.

The Named Plaintiff and her attorneys believe that this settlement is a good outcome for all individuals covered by the proposed settlement. But if you believe the settlement on behalf of Class Members is not in your interests, you may opt out of the Class settlement. See Section 8 below for details.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. What does the settlement provide?

The Maximum Settlement Fund, \$2,100,000 in total, fully resolves and satisfies the attorneys’ fees and costs approved by the Court, all amounts to be paid to individuals covered by the Settlement, the Court-approved service payment to the Named Plaintiff, and the Settlement Administrator’s fees and costs. The Settlement funds are being divided among the individuals covered by the Settlement according to an allocation formula.

5. How much is my payment and how was it calculated?

Based on the allocation formula that has been approved by the Court, you will be receiving a Rule 23 Settlement Check and/or FLSA Settlement Check, half of which is subject to deductions for applicable taxes and withholding like any other paycheck, and for which you will receive a W-2, and half of which will not be taxed at this time and will be reported on IRS Form 1099.

The Net Settlement Amount available for distribution shall be allocated as follows: 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective. This allocation approximates the proportional damages attributable to each group and each claim. You can be a member of one or more Class and Collective. Each Class Member and Collective Member’s estimated share of the Net Settlement Amount will be calculated by the Settlement Administrator as follows:

- a. Each **Tip Credit Notice Class** member’s estimated share of the Tip Credit Notice Class payment shall be calculated *pro rata* by comparing the number of hours that the Tip Credit Notice Class member worked from June 18, 2018 through December 31, 2020 while earning a base hourly wage (not including tips) that was less than \$7.25 per hour against the total amount of such hours that all Tip Credit Notice Class members worked from June 18, 2018 through December 31, 2020.
- b. Each **Timeclock Rounding Class** member’s estimated share of the Timeclock Rounding Class payment shall be calculated *pro rata* by comparing the number of shifts that the Timeclock Rounding Class member worked from June 18, 2018 through June 30, 2021 against the total amount of such shifts that all Timeclock Rounding Class members worked from June 18, 2018 through June 30, 2021.
- c. Each **Miscalculated Regular Rate Class** member’s estimated share of the Miscalculated Regular Rate Class payment shall be calculated *pro rata* by comparing the number of overtime hours that the Miscalculated Regular Rate Class member worked from June 18, 2018 through April 20, 2022 against the total amount of overtime hours that all Miscalculated Regular Rate Class members worked from June 18, 2018 through April 20, 2022.
- d. Each **Gaming License Collective** member’s estimated share of the Gaming License Collective payment shall be calculated *pro rata* by comparing the amount of money that the Gaming License Collective member had deducted from his or her pay for a gaming license fee from June 18, 2017 through April 9, 2021 against the total amount of money that all Gaming License Collective members had deducted from their pay for gaming license fees from June 18, 2017 through April 9, 2021.

- e. To the extent any Opt-In Plaintiff is not included within the class definitions due to being involuntarily separated, but would otherwise meet the class definition, the Opt-In Plaintiff will be eligible to participate in the class allocation based on their *pro rata* share.

Neither Class Counsel nor Defendant makes any representations concerning the tax consequences of your settlement payment. You are advised to obtain personal tax advice prior to acting in response to this Notice.

HOW YOU GET A PAYMENT

6. How do I get my payment?

To receive proceeds from the Settlement, **you do not have to do anything in response to this Notice.**

If the Court grants final approval of the Settlement and you do **not** request exclusion from the settlement (described in Section 8 below), you will be bound by the release of the Released State Claims described in Section 7 below, and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund. Class Members who choose to cash or deposit their FLSA Settlement Check will further be bound by the release of the Released Federal Claims described in Section 7 below.

7. What am I giving up if I receive proceeds from the settlement?

If you do not request exclusion from the settlement in accordance with Section 8 below, you will be deemed to have waived, released, and forever discharged any and all state wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, those brought under the IWPS (“Released State Claims”). Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

In addition, Class Members who cash or deposit your forthcoming FLSA Settlement Check, you will be deemed to have further waived, released, and forever discharged any and all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, those brought under the FLSA (“Released Federal Claims”). Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you will be deemed to have waived, released, and forever discharged any and all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, the Released Federal Claims, regardless of whether you negotiate your forthcoming FLSA Settlement Check.

The Released Federal Claims and the Released State Claims include interest and liquidated or punitive damages based on said claims, and are intended to include all claims described or identified herein through February 24, 2023. However, the Released Federal Claims and the Released State Claims do **not** include any rights or claims (i) that may arise after February 24, 2023; or (ii) which may not be infringed, limited, waived, released or extinguished by private agreement and/or as a result of any law, statute, or ordinance.

HOW YOU REQUEST EXCLUSION FROM OR OBJECT TO THE SETTLEMENT

8. What if I do not want to participate in the settlement?

If you do not want to participate in the Class Settlement and receive a Rule 23 Settlement Check, and do not wish to release any state wage and hour claims included within the Released State Claims, you must send a letter stating your desire to be excluded from the settlement, include the name of the Litigation, your name, your address, and your signature. The letter must be sent to the Settlement Administrator at:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

Requests for exclusion sent to the Settlement Administrator should be sent in an envelope addressed to the Settlement Administrator as set forth in Section 13 below. Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

In order to be valid, your completed request for exclusion must be received by the Settlement Administrator and be postmarked no later than **May 22, 2023**. If you timely submit a request for exclusion, you will not be eligible to receive any of the benefits under the Class Settlement or receive a Rule 23 Settlement Check. You will, however, retain whatever legal rights you may have with respect to the Released State Claims described above in Section 7.

9. What if I want to object to the settlement?

If you do not request exclusion from the Settlement but believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement by mailing a copy of your written objection to the Settlement Administrator.

All objections must be signed and include your address, telephone number, and the name of the Litigation. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing. All objections must be filed with the Court or received by the Settlement Administrator and postmarked by no later than **May 22, 2023**. If you submit a timely objection, you may appear, at your own expense, at the Final Approval Hearing, discussed below.

Any Settlement Class Member who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the service payment to the Named Plaintiff, the claims process, and any and all other aspects of the Settlement. Likewise, regardless of whether you attempt to file an objection, you will be deemed to have released all of the Released State Claims as set forth above in Section 7 unless you request exclusion from the Settlement in accordance with Section 8 above.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has determined that the lawyers at the law firms of Stueve Siegel Hanson LLP and McClelland Law Firm, P.C., are qualified to represent you and all individuals covered by this settlement. These lawyers are called "Class Counsel." You will not be charged for these attorneys. You do not need to retain your own attorney to participate as a member of this class action. However, you may consult with any attorney you choose at your own expense before deciding whether to opt out of this settlement. Class Counsel are:

George A. Hanson
Alexander T. Ricke
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112

Ryan L. McClelland
Michael J. Rahmberg
McCLELLAND LAW FIRM, P.C.
200 Westwoods Drive
Liberty, MO 64068

11. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed one third (33.3%) of the Maximum Settlement Fund plus reimbursement of \$35,000 in expenses, which will be paid from the Maximum Settlement Fund. In addition, Class Counsel will ask the Court to authorize payment from the Maximum Settlement Fund of a service payment of not more than \$10,000 to the Named Plaintiff to recognize the risks she took and her services to the beneficiaries of this Settlement.

FINAL APPROVAL OF THE SETTLEMENT

12. When will the settlement be final and when will I receive my settlement payment?

If the Court grants Final Approval of the settlement, and you did not request exclusion from the settlement, you will receive your Rule 23 Settlement Check and/or FLSA Settlement Check in the mail a few weeks after Final Approval.

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, and the service payment to the Named Plaintiff on June 23, 2023 at 10:00 a.m. Evansville time (CDT) in Courtroom #301 of the U.S. District Court for the Southern District of Indiana, located at the Winfield K. Denton Federal Building & U.S. Courthouse, 101 Northwest Martin Luther King Boulevard, Evansville, Indiana 47708. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to appear at the hearing to participate in or to opt-out of the Settlement.

FOR MORE INFORMATION

13. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You are encouraged to read it. To the extent there is any inconsistency between this Notice and the Settlement Agreement, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement by sending a request, in writing, to:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

14. How do I get more information?

If you have other questions about the settlement or require additional information, you can contact Class Counsel through the Settlement Administrator at 1-844-412-2527 or info@TropicanaEvansvilleCase.com. You can also find more information about the lawsuit at www.TropicanaEvansvilleCase.com.

15. What if my name or address changes before I receive my settlement payment?

If, for future reference and mailings from the Court or Settlement Administrator, you wish to change the name or address listed on the envelope in which the Class Notice was first mailed to you, then you must fully complete, execute, and mail the Change of Name and/or Address Information Form (enclosed with this Notice as Form A).

DATED: April 6, 2023

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.