

## LEGAL NOTICE

**Regarding your right to join a lawsuit seeking unpaid overtime wages.**

**TO: All current and former RESTAURANT GENERAL MANAGERS and ASSISTANT UNIT MANAGERS who are or were employed by SYLVAN FOOD SYSTEMS, INC. from November 30, 2008, to the present.**

**RE: FAIR LABOR STANDARDS ACT LAWSUIT**

**DATE: January 9, 2012**

### **1. PURPOSE OF NOTICE**

This is a Legal Notice from the United States District Court. It serves three purposes

(a) it informs you of the existence of a collective action lawsuit which alleges that Defendant Sylvan Food Systems, Inc., violated the Fair Labor Standards Act (“FLSA”) by failing to pay overtime wages to certain employees,

(b) it advises you of how your rights might be affected by this lawsuit, and

(c) it explains what actions you should take if you want to join the lawsuit.

### **2. DESCRIPTION OF THE LAWSUIT**

Dianna Simons (“Plaintiff”) brought this lawsuit against Defendant Sylvan Food Systems, Inc. (“Sylvan”) on behalf of herself and all other current and former Restaurant General Managers and Assistant Unit Managers (collectively “Restaurant-Level Managers”) who were employed by Sylvan from November 30, 2008 to the present. Plaintiff contends that Sylvan had a policy and practice of taking improper deductions from the salaries of Restaurant-Level Managers or requiring cash payments from those managers which caused these positions to lose their exempt status under the FLSA. If a position is not “exempt” under the FLSA, then individuals in that position are entitled to overtime pay for hours worked in excess of forty hours per week.

If Plaintiff proves her claims, then she and other Restaurant-Level Managers who join this action will be eligible for overtime pay for any hours they worked in excess of forty hours per week during the two to three year period preceding when those managers join this action. (A two-year period applies unless Plaintiff proves the violation was willful.)

Defendant denies Plaintiff’s allegations and contends that it complied with the FLSA. Defendant has also repaid some of the challenged deductions, which it argues should either preclude or limit recovery of damages.

**3. NO OPINIONS EXPRESSED AS TO THE MERITS OF THE CASE**

This Notice is for the sole purpose of determining the identity of those persons who might be eligible to and wish to participate in this case. **The court expresses no opinion regarding the merits of Plaintiff's claim or Defendant's defenses**, including any defenses which might arise from Defendant's repayment of some deductions. This notice does not mean you have a valid claim or that you are entitled to any monetary recovery. Any such determination must still be made by the court.

**4. WHO MAY JOIN THIS COLLECTIVE ACTION**

You are entitled to join this action if you are or have been employed by Sylvan Food Systems, Inc., as a Restaurant General Manager or Assistant Unit Manager at any time from November 30, 2008 to the present.

**5. RETALIATION IS PROHIBITED**

Federal Law prohibits your employer from discriminating or retaliating against you in any way for joining this lawsuit or otherwise enforcing your rights under the FLSA.

**6. HOW TO PARTICIPATE IN THE LAWSUIT**

**In order to participate in this action, a person must fit the requirements in paragraph 4 above and MUST FILE A CONSENT FORM by February 23, 2012.** A consent form requesting all the necessary information is enclosed. If you decide to join the action, you must read, complete, and return the enclosed Consent Form by February 23, 2012, to:

Clerk of Court  
Matthew J. Perry, Jr. Courthouse  
901 Richland Street  
Columbia, South Carolina 29201

**Consent forms returned by First Class mail will be considered timely if post-marked by February 23, 2012. All other forms of delivery will be timely only if actually received by that date.**

You are only required to take action if you wish to participate (become a Plaintiff) in this action. It is entirely your own decision whether or not you should join this lawsuit. This notice does not mean you have a valid claim or that you are entitled to any monetary recovery. Any such determination must still be made by the court.

**7. EFFECT OF PARTICIPATION**

If you choose to join this lawsuit, you will be bound by the judgment of the court whether it is favorable or unfavorable to you. In the event the matter is resolved by settlement without judgment of the court, you will be bound by that settlement.

If you complete the enclosed Consent Form, you are designating Plaintiff to act on your behalf and to represent your interests in this lawsuit.

While the suit is pending, you must assist counsel in this matter. Your assistance may include providing information, appearing for your deposition, or testifying in court.

By signing and filing the consent form, you are giving permission to Defendant to provide your complete personnel file, including pay records, to Plaintiff's counsel.

Choosing to file a Consent Form does not guarantee a continuing right to participate in this suit. Your eligibility to participate may depend on a later determination by the court that you and Plaintiff are "similarly situated" according to federal law and that your claim was filed within the applicable statute of limitations.

Should your claims not succeed in this lawsuit, you, together with other Plaintiffs, may be required to pay Defendant's costs (but not attorneys' fees). Defendant may also bring a countersuit against you either to reduce the amount of damages owed to you or for any valid legal claims Defendant may have against you.

## **8. REPRESENTATION BY COUNSEL**

If you join this action, you have several options regarding your legal representation. If you join, but do not indicate any other preference, you will be represented by the attorneys for Plaintiff and will be subject to the same attorneys' fee agreement. That agreement provides for a contingency fee of forty percent (40%) of the total recovery as well as recovery of costs and other expenses incurred by Plaintiff's attorneys in pursuing this lawsuit. It is also possible that the court will award attorneys' fees and costs to be paid by Defendant. If such an award is made, it will be applied to the attorneys' fees reflected in the contingency fee agreement with Plaintiff's attorneys as summarized above. Any fees awarded in this matter will be reviewed by the court for reasonableness. You may review a copy of Plaintiff's attorneys' fee agreement by contacting Plaintiff's counsel either through their website or by telephone. See paragraph 9 below for contact information.

If you do not want to be represented by Plaintiff's attorneys, you may either proceed on your own behalf without an attorney (proceed "pro se") or you may have an attorney of your choice enter an appearance on your behalf. That appearance should be made no later than the deadline for filing your consent form. If you hire your own attorney, you will be responsible for that attorney's fees.

## **9. ADDITIONAL INFORMATION**

You may obtain copies of key documents in this case (*e.g.*, amended complaint, answer to amended complaint, order granting conditional certification of this collective action, this notice and consent form) by visiting [www.breibartlaw.com/sylvan](http://www.breibartlaw.com/sylvan).

You may also contact Plaintiffs' attorneys for additional information either through the website listed above or by contacting them at:

Law Office of Richard J. Breibart, LLC  
201 West Main Street  
Lexington, South Carolina 29072  
(803) 359-7996

Do NOT contact the court for advice. Court personnel may only receive and file your consent form or provide you with the contact information in this notice.

**10. TIME TO CONSENT IS LIMITED**

Remember, the Consent Form must be *received* at the United States District Court for the District of South Carolina, no later than February 23, 2012, or, if sent by United States Postal Service, First Class Mail, must be postmarked by that date. If your fully completed Consent Form is not signed and received by that date, you will lose your right to participate in this lawsuit.

**11. PERSONAL INFORMATION**

Your consent form will be filed in the court's record and your name will be listed as a party who has joined the action. The court will, however, limit access to all other information on the consent form to court personnel and the attorneys in this case. The one exception is if you proceed "pro se," in which case your address and phone number must be included in the public record.

**CONSENT FORM FOR**  
**SIMONS V. SYLVAN FOOD SYSTEMS, INC.**  
C.A. No. 3:11-cv-00792-CMC

I, \_\_\_\_\_, am a current or former Restaurant General Manager or Assistant Unit Manager who was employed by Sylvan Food Systems, Inc., at some time between November 30, 2008, and the present. I consent to be a party plaintiff in the *Simons v. Sylvan Food Systems, Inc.* lawsuit, which seeks recovery of overtime wages under the Federal Fair Labor Standards Act. By my signature below, I designate Dianna Simons to act on my behalf and to represent my interests in this lawsuit. Also by my signature below, I confirm that I have read and understand the Legal Notice that accompanied this Consent Form.

PLEASE PRINT:

\_\_\_\_\_  
Your Full Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
City, State and Zip Code

CHECK ONE OF THE FOLLOWING (if you do not check one, you will be represented by Diana Simons' attorney):

My attorney in this lawsuit will be Dianna Simons' attorney;

My attorney in this lawsuit will be \_\_\_\_\_  
(Please print attorney's name and remember he/she must enter an appearance by February 23, 2012.)

I choose not to have an attorney and will be representing myself.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

**CONFIDENTIALITY:** This consent form will be filed in the court's record and your name will be listed as a party who has joined the action. The court will, however, limit access to all other information on the consent form to court personnel and the attorneys in this case unless you represent yourself (in which case your address will be public information).

**DEADLINE FOR JOINING LAWSUIT:** It is entirely up to you whether to join this lawsuit. However, if you decide to join, you must return this form by **February 23, 2012.**