

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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ERIC HOUSER, on behalf of himself and		:
similarly situated employees,		:
	Plaintiff,	:
	v.	:
		:
THIRTY, INC.,		:
	Defendant.	:
<hr/>		:

5:20-cv-05087-JFL

STIPULATION AND ORDER

NOW, this 5th day of February, 2021 Eric Houser (“Plaintiff”) and Thirty, Inc. (“Defendant”) **STIPULATE** as follows:

1. This action is conditionally certified, pursuant to 29 U.S.C. § 216(b), as a collective action on behalf of: **All employees paid on an hourly basis¹ who, during any week from October 14, 2017 to January 11, 2021, were employed by Thirty, Inc. (“Defendant”) at the Eden Resort & Suites complex.** These individuals are referred to as “Collective Members.” Moreover, any Collective Members who join the action pursuant to paragraph 7 below or already have joined the action are referred to as “Opt-Ins.”

2. The Pennsylvania Minimum Wage Act (“PMWA”) claim will not be pursued as a class action claim under Federal Rule of Civil Procedure 23. However, Plaintiff and the Opt-Ins will continue to assert individual PMWA claims.

3. Within 14 calendar days of the Court’s entry of this Order, Defendant’s counsel will email to Plaintiff’s counsel an Excel spreadsheet containing the name and last known mailing address of each Collective Member. This spreadsheet will be designated confidential

¹ This includes both tipped and non-tipped hourly employees.

and treated as such by the parties.

4. Within 21 calendar days of the Court's entry of this Order, Plaintiff's counsel will mail to all Collective Members who have not already joined the action finalized copies of the attached "Notice of Collective Action Lawsuit" form ("Notice Form"), the attached "Consent to Join" form ("Consent Form"), and a postage-paid return envelope bearing Plaintiff's counsel's address (together the "Notice Package"). Plaintiff's counsel will pay all postage and printing costs associated with the preparation and mailing of the Notice Packages. If any Notice Package is returned as undeliverable, Plaintiff's counsel will make all reasonable efforts to update the address information and re-send the Notice Package.

5. In order to participate in this action, a Collective Member must complete and sign his/her Consent Form and return it in an envelope postmarked on or before the deadline indicated in the Notice Package, which will be set at 45 calendar days after the initial mailing date (the "Collective Deadline"). In addition, Consent Forms that are emailed or faxed to Plaintiff's Counsel by such postmark deadline will be deemed timely. Collective Members who have already joined the action are not required to complete or return another Consent Form.

6. Plaintiff's counsel will file with the Court each completed Consent Form within 5 business days of receipt.

7. Within 18 days following the passage of the Collective Deadline, the parties shall meet and confer to discuss a proposed schedule governing the progress of this action.

8. Discovery is **STAYED** pending the completion of the above-described notice and opt-in process.

9. Nothing in this stipulation and order waives or is intended to waive any defenses that have been or may be asserted by Defendant in this matter.

10. By stipulating to Conditional Certification, Defendant is not waiving its right to move to decertify this conditionally-certified collective action pursuant to FLSA § 216(b) or to oppose any future motion that Plaintiff may bring with respect to the issue of final certification of an FLSA collective action.

FOR PLAINTIFF:

/s/ Peter Winebrake
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

FOR DEFENDANT:

/s/ Phillip R. Voluck
Phillip R. Voluck
Jennifer L. Prior
Kaufman Dolowich Voluck, LLP
1777 Sentry Parkway West
VEVA 17, Suite 100
Blue Bell, PA 19422
(215) 461-1100

SO ORDERED, this 8th day of February, 2021.

/s/ Joseph F. Leeson, Jr.
Joseph F. Leeson, Jr.
Judge, United States District Court
Eastern District of Pennsylvania

[insert mailing date]

NOTICE OF COLLECTIVE ACTION LAWSUIT

Houser v. Thirty, Inc., 5:20-cv-05087-JFL
United States District Court, Eastern District of Pennsylvania

INTRODUCTION

Important: You are NOT being sued. This Notice is NOT a solicitation from a lawyer.

This Notice tells you about a lawsuit seeking unpaid overtime wages allegedly owed to individuals employed by Thirty, Inc. (the “Defendant”) as tipped and non-tipped hourly employees at the Eden Resort & Suites complex from October 14, 2017 until January 11, 2021.

The Court has authorized the parties to send out this Notice. However, as discussed below, the Court has not decided who is right or who is wrong. The Court expresses no opinion on the merits of the Lawsuit.

Please read this Notice carefully. The purpose of this notice is to advise you of your rights.

DESCRIPTION OF THE LAWSUIT

In October 2020, an Eden employee named Eric Houser started this lawsuit against Thirty, Inc., the company that owns the Eden resort in Lancaster, PA.

The lawsuit is proceeding in the United States District Court in Allentown, PA (“the Court”) and is assigned to Judge Joseph F. Leeson, Jr.

The lawsuit is limited to the time period of October 14, 2017 until January 11, 2021. Plaintiff claims that he sometimes worked in excess of forty hours per week and that Defendant did not pay him the proper amount of overtime compensation. Plaintiff primarily asserts that this non-payment of overtime is due to Defendant’s alleged failure to pay him for time spent working during meal breaks on days when Plaintiff worked six or more hours. The lawsuit seeks to recover unpaid overtime wages, liquidated damages, attorney’s fees, and costs.

Defendant adamantly denies the allegations and maintains that it has paid Plaintiff and all employees properly in full compliance with federal and state wage laws.

The Court has not made any ruling in the case about whether Plaintiff or Defendant is correct. The Court has no view on whether you should or should not join this lawsuit.

Joining this lawsuit does not mean that you are automatically entitled to any money. Joining this lawsuit affects you, as discussed below.

EFFECT OF JOINING THE LAWSUIT

If you join the lawsuit, you will be bound by any ruling, settlement, or judgment, whether favorable

or unfavorable. If there is a favorable resolution, either by settlement or judgment, you may be entitled to some portion of the recovery. However, joining this lawsuit does not mean that you are automatically entitled to money, only that the lawyers who represent you will try to obtain money for you. By joining this lawsuit, you designate Plaintiff, or his counsel, to the fullest extent possible, to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiff and/or his counsel relating to the lawsuit will be binding on you if you join the lawsuit.

If you join this lawsuit, you may be asked to provide documents or information relating to your employment with Defendant. You may also be called to testify, under oath, at a deposition and/or at trial, and you may be required to respond to written questions propounded by Defendant.

You are allowed to join the lawsuit even if you do not maintain any documents relating to your employment with Defendant. However, if you have documents relating to your employment with Defendant, you must preserve them and you cannot destroy them.

EFFECT OF NOT JOINING THE LAWSUIT

If you do not join the lawsuit, you will not be bound by any of the Court's rulings in this lawsuit, whether favorable or unfavorable. The limitations period on your claims continues to run.

HOW TO JOIN THE LAWSUIT

Whether or not to join the lawsuit is entirely up to you. If you wish to join, you must complete the enclosed "Consent to Join" form and return it (preferably in the enclosed envelope) to:

Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
pwinebrake@winebrakelaw.com

Your return envelope *must be postmarked* by insert 45 days after mailing. If you do not want to join the lawsuit, you do not need to do anything. If you fail to meet this deadline, you will not be allowed to participate in the lawsuit.

RETALIATION PROHIBITED

Federal law prohibits Defendant from discharging or retaliating against you in any other manner because you join this case.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you join the lawsuit, you will be represented by Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025; Ph: 215-884-2491; Web: www.winebrakelaw.com. Please call this above law firm if you have any questions or want additional information about the lawsuit.

You are not required to pay any money to this law firm. The firm works on a “contingency” basis. If the lawsuit results in a money recovery, the firm will be paid whatever attorney’s fees the Court orders or approves. Those fees will either be paid from the total recovery obtained or be paid separately by the Company. If the lawsuit is unsuccessful, the firm will receive nothing.

Defendant is represented in this lawsuit by Phillip Voluck, Aaron N. Solomon, and Jennifer Prior of Kaufman Dolowich & Voluck, 1777 Sentry Parkway West, VEVA 17, Suite 100, Blue Bell, PA 19422, (267) 841-5906.

Finally, nothing prohibits you from consulting with other lawyers of your choice about the lawsuit or the information contained in this Notice.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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ERIC HOUSER, on behalf of himself and		:
similarly situated employees,		:
	Plaintiff,	:
	v.	:
		:
THIRTY, INC.,		:
	Defendant.	:
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CONSENT TO BECOME PARTY PLAINTIFF

I have read the form entitled "Notice of Collective Action Lawsuit" and consent to become a party plaintiff to this action pursuant to 29 U.S.C. § 216(b). I agree to be represented by Winebrake & Santillo, LLC (Dresher, PA). I understand that I will be bound by the rulings of the Court on all issues in this action, including the fairness of any settlement.

Signature

Date

Name (Please Print Neatly)

Address

City, State, Zip Code

Phone Number

Email Address

Return to:

WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Phone: (215) 884-2491
Fax: (215) 884-2492
Email: pwinebrake@winebrakelaw.com