

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAFINIS FILHO, RAQUEL ERNEST, and
CHANTEL LYNCH on behalf of themselves and all
others similarly situated,**

Plaintiffs,

-against-

OTG Management, LLC,

Defendant.

Case No. 19-CV-8287 (SN)

COURT-AUTHORIZED NOTICE

**If you work or worked as a tipped employee for OTG Management, LLC,
you may be entitled to a payment from a collective and class action settlement.**

PLEASE READ THIS NOTICE CAREFULLY.

This is a court-authorized notice. This is not a solicitation from a lawyer.

- You are receiving this Notice because OTG Management, LLC’s (“OTG”) records indicate that you are or were employed by OTG as a server, bartender, or other tipped worker at LaGuardia Airport, John F. Kennedy Airport, or Newark Liberty Airport between September 6, 2013 to February 1, 2023 (“Tipped Worker” or “Class Member”).
- Three individuals (“Plaintiffs”) who worked as Tipped Workers for OTG filed a lawsuit alleging that OTG violated federal and state law by failing to pay them and other Tipped Workers the proper minimum wage rate, overtime wage rate, all tips earned, and failing to provide compliant wage statements and notices (the “Lawsuit”). OTG denies any wrongdoing, liability or damages. It is OTG’s position that it properly compensated Plaintiffs and other employees and complied with all applicable federal and state law with respect to wages and notices for Tipped Workers.
- Although OTG denies that it is liable or owes damages to anyone, Plaintiffs and OTG have agreed to settle the Lawsuit to avoid the burden, expense and uncertainty of continued litigation, and the Court has preliminarily approved the settlement. OTG has agreed to a maximum total settlement fund in the amount of \$1,550,000, including settlement payments, taxes, administrator fees and costs, attorneys’ fees and costs (“Settlement”).
- **Your legal rights may be affected by this Settlement, and you have a choice to make now. Your options are explained in this Notice.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM AND OBTAIN A PAYMENT	If you submit a properly completed claim form, you agree to participate in the settlement, will receive a settlement payment, subject to applicable taxes and withholdings, and release your state and federal claims against OTG. The Claim Form must be postmarked by or otherwise received on or before <u>September 5, 2023</u> .
DO NOTHING	If you do nothing, you will not be eligible to receive a settlement payment. You will retain your right to file your own legal action against OTG, should you choose.

These rights and options - **and the deadlines to exercise them** - are explained in this Notice.

The Court still has to decide whether to grant final approval of the Settlement. Settlement payments will be made only if the Court grants final approval of the Settlement, which is a process that may take several months to finalize.

BASIC INFORMATION

1. Why did I receive this Notice?

OTG’s records indicate that you are or were employed by OTG as a server, bartender, or other tipped worker at LaGuardia Airport, John F. Kennedy Airport, or Newark Liberty Airport between September 6, 2013 to February 1, 2023.

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about your options with respect to the Lawsuit, before the Court decides whether to approve the Settlement. This Notice explains the Lawsuit, your legal rights, and what benefits may be available to you.

2. What is this Lawsuit about?

The Lawsuit is captioned as *Filho, et al. v. OTG Management, LLC*, Civil Action No. 19 Civ. 8287, and is pending before the Honorable Sarah Netburn, Magistrate Judge in the United States District Court for the Southern District of New York.

Plaintiffs allege that OTG did not properly pay Tipped Workers in accordance with federal and state labor laws. In particular, this Lawsuit alleges that OTG (1) failed to pay Tipped Workers the proper minimum wage by not providing proper notice of the tip credit minimum wage rate and/or requiring Tipped Workers to spend a substantial amount of time performing non-tip producing work, (2) failed to pay Tipped Workers for all hours worked in excess of 40 per workweek, (3) improperly claimed Tipped Workers’ tips, and/or (4) failed to provide compliant wage statements and notices. OTG denies any wrongdoing, liability or damages. It is OTG’s position that it properly compensated Plaintiffs and other employees and complied with all applicable federal and state law with respect to wages and notices.

3. Why is there a settlement?

The Court has not made any determination about who is right or wrong in this Lawsuit. Both sides believe they would have prevailed in the Lawsuit but there was no decision ruling in favor of either party. Instead, both sides agreed to a settlement. That way, they avoid the cost, delay, and uncertainties associated with a trial or arbitration, and the Tipped Workers who participate in the settlement will get compensation as part of the settlement. Class Counsel analyzed and evaluated the claims made against OTG in the Lawsuit and Plaintiffs and Class Counsel believe the settlement is best for all Tipped Workers.

4. Why is this a class/collective action?

In a class action, one or more Plaintiffs called “class representatives” bring claims on behalf of themselves and other people who they believe have similar claims. The people are called “class members” and together are the “class,” and all class members are automatically a part of the class unless they tell the Court they wish to opt out/exclude themselves.

Similarly, in a collective action, one or more Plaintiffs can seek to represent a “collective” of other people who they believe have similar claims. Individuals wishing to become collective members must consent in writing to join the action or “opt in.”

In a class/collective action like this one, the Plaintiffs ask the Court to resolve the issues for all class and collective members. In this case, we are referring to both class and collective members as “Tipped Workers” and/or “Class Members.”

5. Do I have a lawyer in this case?

The Court decided that the lawyers at the law firm of Outten & Golden LLP are qualified to represent you and all Tipped Workers and/or Class Members. These lawyers are called “Class Counsel.” Information about Class Counsel is available at www.outtengolden.com, and their contact information is listed in Section 14, below.

You will not be charged for services provided by these lawyers. Class Counsel will apply to the Court for approval of a fee payment from the Settlement, and you do not owe them any additional money for their services. You do not need to retain your own attorney to participate, but you are free to do so, at your own expense.

6. Can OTG and/or my current employer retaliate against me if I participate in the settlement?

No. It is a violation of state and federal law if OTG or your current employer retaliates against you for participating in this Settlement. If you believe that you have been retaliated against as a result of you receiving this Notice, considering whether to participate in this Settlement, or actually participating in this Settlement, please contact Class Counsel listed in Section 14.

THE SETTLEMENT BENEFITS - WHAT YOU GET

7. What does the Settlement provide?

OTG has agreed to pay a maximum total amount of \$1,550,000 to settle all claims and disputes in this Lawsuit (the “Total Settlement Amount”), which will be used to pay (1) settlement payments to Class Members; (2) attorneys’ fees of up to one-third of the Total Settlement Amount; (3) reimbursement of actual litigation expenses and costs; (4) Service Awards of \$12,000 to each of the three Named Plaintiffs; (4) federal and state payroll taxes/withholdings; and (5) the Settlement Administrator’s fees and costs.

8. How was my share of the settlement fund calculated?

The formula used to calculate your settlement payment considers the number of weeks you worked for OTG as a Tipped Worker in New York and/or New Jersey between September 6, 2013 and February 1, 2023. It also considered whether you filed a consent form to join the Lawsuit, whether you have an arbitration agreement with OTG, and whether you notified OTG or Class Counsel that you intended to pursue your claims against OTG in arbitration.

The Settlement Agreement between OTG and Plaintiffs contains the exact allocation formula. You may obtain a copy of the Settlement Agreement by contacting Class Counsel using the information in Section 14 below or on the settlement website, www.OTGTippedWorkerCase.com.

Analytics Consulting LLC, the Settlement Administrator retained by the parties to administer this Settlement, used information from OTG’s records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator or Class Counsel using the information in Section 14 below.

Half of your settlement payment will be subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a W-2, and the other half is not subject to deductions and will be reported to you on a Form 1099. Neither Class Counsel nor OTG's counsel can advise you regarding the tax consequences of the settlement payment. You may wish to consult with your own personal tax advisor in connection with the settlement payment.

HOW YOU RECEIVE A PAYMENT

9. How can I receive my settlement payment?

You must sign and return the enclosed Claim Form by the deadline to be eligible to receive a settlement payment. You must submit your Claim Form (or it must be postmarked) by or before **September 5, 2023**.

You may submit your Claim Form on the website, by email, or return the Claim Form in the pre-stamped return envelope to:

OTG Tipped Worker Case
P.O. Box 2006
Chanhassen, MN 55317-2006
(877) 793-1838
Fax (952) 404-5750
info@OTGTippedWorkerCase.com
www.OTGTippedWorkerCase.com

To be effective, the Claim Form must be completed in full and signed.

If you do not submit a Claim Form or submit an incomplete or invalid Claim Form, you will not receive a settlement payment.

10. When will I receive my settlement payment?

The Court will hold a hearing on **October 23, 2023 at 2:30 PM** to determine whether to give final approval to the Settlement ("Fairness Hearing"), as discussed below in Section 12. If the Court approves the Settlement, settlement checks will be mailed approximately **35** days after the Court enters its final approval order.

11. What am I giving up by participating in the Settlement?

If you sign and return a Claim Form, you will release your state and federal claims against OTG if the Court grants final approval of the Settlement. This means you cannot sue, continue to sue, or be a part of any other action, arbitration nor other proceeding against OTG regarding any and all, known or unknown, wage and hour claims relating back to the full extent of the federal statutes of limitations and continuing through the date of the execution of this Agreement, including, without limitations, claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest available under the FLSA, claims pursuant to the New York Labor Law, including minimum and overtime wages, expense reimbursement, wage statements, waiting time penalties, restitution, and related claims for interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest, and/or claims pursuant to the New Jersey Wage and Hour Law, including minimum and overtime wages, expense reimbursement, wage statements, waiting time penalties, restitution, and related claims for interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest.

THE FAIRNESS HEARING

12. When/where will the Court decide final approval of the Settlement?

The Court will hold a Fairness Hearing on **October 23, 2023**, at **2:30 PM**. At the hearing, the Court will determine whether the Settlement is fair, adequate, and reasonable and will consider any properly submitted objections.

13. Do I have to attend the Fairness Hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to attend at your own expense. If you send an objection, you do not have to attend. As long as you have not excluded yourself and have mailed your written objection within the time specified in this Notice, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

GETTING MORE INFORMATION

14. Questions?

This Notice only summarizes the Lawsuit, the Settlement, and other related matters. More details are in the Settlement Agreement, which you can find at www.OTGTippedWorkerCase.com. You may also direct any questions to the Settlement Administrator in this matter:

OTG Tipped Worker Case
P.O. Box 2006
Chanhassen, MN 55317-2006
(877) 793-1838
Fax (952) 404-5750
info@OTGTippedWorkerCase.com
www.OTGTippedWorkerCase.com

You may also write, e-mail, or call Class Counsel:

Molly Brooks, Esq.
Amy Maurer, Esq.
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, New York 10017
(212) 245-1000
otgtippedworkercase@outtengolden.com

Hannah Cole-Chu, Esq.
1225 New York Ave NW
Suite 1200B
Washington, D.C. 20005
(212) 245-1000
otgtippedworkercase@outtengolden.com

By Order of the Court

Dated: July 5, 2023

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