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16 *Attorneys for Plaintiffs*

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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20
21 JOSEPH McDOUGALL and AUSTIN
WALLACE, individually and on behalf of all
22 similarly situated individuals,

23 Plaintiffs,

24 v.

25 THE BOILING CRAB VEGAS, LLC,

26 Defendant.
27
28

CASE NO.: 2:20-cv-01867-RFB-NJK

**NOTICE OF FAIR LABOR
STANDARDS ACT COLLECTIVE
ACTION**

1 **NOTICE OF COLLECTIVE ACTION AND RIGHT TO JOIN LAWSUIT**

2 TO: ALL EMPLOYEES WHO HAVE PARTICIPATED IN A TIP POOL AS SERVERS, BUS-
3 RUNNERS, HOSTS/HOSTESSES, CASHIERS, AND TO GO EMPLOYEES AT THE BOILING
4 CRAB RESTAURANT IN LAS VEGAS, NEVADA AT ANY TIME ON OR AFTER MARCH
5 23, 2018 UNTIL OCTOBER 26, 2020.

6
7 *A federal district court authorized this notice. Nothing in this Notice is intended as an expression*
8 *of the Court’s opinion about the merits of Plaintiffs’ claims or about whether you should join this*
9 *lawsuit.*

- 10
- 11 • Current and former employees who participated in a tip pool with The Boiling Crab
12 restaurant located in Las Vegas, Nevada no earlier than March 23, 2018 and no later than
13 October 26, 2020.
 - 14 • The Court has conditionally certified this case as a collective action. To join this action, you
15 must mail the yellow Consent to Join FLSA Collective Action form so it is postmarked
16 within 75 days after mailing of the notice, May 29, 2022.
 - 17 • The Court has not decided whether Plaintiffs should prevail on their claims. Because your
18 legal rights may be affected by this lawsuit, you are receiving this Notice.
 - 19 • This Notice is to inform you about a lawsuit in which you may make a claim for unpaid
20 tips, to advise you of how your rights may be affected by this suit, and to describe how you
21 can join this lawsuit and participate in these proceedings.

22 **1. Basic Information**

23 Plaintiffs Joseph McDougall and Austin Wallace have sued The Boiling Crab Vegas, LLC (also
24 referred to as “The Restaurant”), on behalf of themselves and other allegedly similarly situated
25 employees. Your rights may be affected if you worked for The Boiling Crab as a server, bus-
26 runner, host/hostess, cashier, or ToGo employee no earlier than March 23, 2018 and no later
27 than October 26, 2020.

28 **2. Summary of the Case**

This lawsuit was filed against The Restaurant on October 7, 2020. Plaintiffs allege that The
Boiling Crab Vegas, LLC, violated the Fair Labor Standards Act (“FLSA”) by improperly
requiring employees to share tips with employees referred to as DSLs (alternatively referred to
as shift leads, working leads, designated shift leads, daily shift leads, daily server leads, and
leads on duty). The lawsuit is pending in the U.S. District Court for the District of Nevada. The
Honorable Richard F. Boulware is assigned to the case. In the lawsuit, Plaintiffs seek to be

1 reimbursed by Defendant for the amount of tips shared with DSLs plus liquidated damages,
2 attorneys' fees, and costs as provided by law.

3 The Boiling Crab Vegas, LLC, denies Plaintiffs' allegations and denies that Plaintiffs and those
4 who join this lawsuit are entitled to any relief. The Boiling Crab Las Vegas, LLC alleges that
5 the Department of Labor in its regulations allows employees who perform some lower level
6 managerial responsibilities to participate in tip pools. The Boiling Crab Las Vegas, LLC
7 contends that the DSLs were such lower level managerial employees. The Court has not yet
8 decided this issue.

9 **The Court Has Conditionally Certified This Case at the Notice Stage as a Collective Action
10 in Which You May Join.**

11 **To join and participate in this FLSA collective action, you must complete, sign and mail the
12 yellow Consent to Join FLSA Collective Action form enclosed with this notice so that it is
13 postmarked on or before 75 days after mailing of the notice.**

14 Because the liability period for your claim depends on the filing of your Consent to Join FLSA
15 Collective Action form, **you are encouraged to return it as soon as possible if you intend to
16 participate.** If you do not return the form so that it is postmarked by May 29, 2022, you will not
17 be able to seek tips in this FLSA lawsuit.

18 The collective will seek to prove that at all relevant times, DSLs employed by The Restaurant
19 were and are managers and/or supervisors as defined under federal law and who were and are
20 prohibited under the FLSA from keeping any tips remitted to the tip pool.

21 The Boiling Crab Las Vegas, LLC alleges that the Department of Labor in its regulations allows
22 employees who perform some lower level managerial responsibilities to participate in tip pools.
23 The Boiling Crab Las Vegas, LLC contends that the DSLs were such lower level managerial
24 employees. The Court has not yet decided this issue.

25 If you participate in the FLSA collective action, you may receive an award of tips and liquidated
26 damages only if the Court determines that The Restaurant has violated your rights under the
27 FLSA.

28 If you do not wish to participate in this collective action, you do not need to take any action.
Choosing not to participate in the action will not eliminate your right to pursue any claims you
may have on an individual basis.

3. The Boiling Crab is Prohibited from Retaliating Against You

Federal law prohibits The Restaurant from terminating your employment or otherwise
retaliating against you because you have exercised your legal right to opt in to the FLSA
collective action or because you have otherwise exercised your rights under the Fair Labor
Standards Act.

The Legal Effect of Joining this Lawsuit

If you choose to join this FLSA collective action by mailing the enclosed yellow Consent to
Join FLSA Collective Action form, you will be bound by any judgment, whether favorable or
unfavorable, or by any settlement of the FLSA claims that may later be approved by the Court

1 as fair and reasonable. While the suit is proceeding, you may be required to respond to
2 questions under oath or produce certain documents to The Boiling Crab Vegas, LLC.

3 **The Legal Effect of Not Joining This Lawsuit**

4 If you choose not to join this collective action, the statute of limitations for any claim of unpaid
5 tips that you may have will continue to run and your claim could expire forever. If you do not
6 join this collective action, you will not be bound by any ruling, judgment, award, or settlement,
7 entered in this case, favorable or unfavorable. Your claim of unpaid tips may have already
8 expired.

9 **4. Legal Representation If You Join the Lawsuit**

10 You may choose to be represented by the attorneys for Plaintiffs listed here, or you may retain
11 your own legal counsel (at your own expense) or you may represent yourself. The attorneys for
12 Plaintiffs are:

13 T. Christopher Tuck
14 Robert S. Wood
15 T.A.C. Hargrove, II
16 D. Charles Dukes
17 ROGERS PATRICK WESTBROOK &
18 BRICKMAN, LLC
19 1037 Chuck Dawley Blvd., Bldg. A
20 Mt. Pleasant, SC 29464
21 Telephone: (843) 727-6500
22 Facsimile: (843) 216-6509

23 Christopher W. Carson
24 Trent L. Richards
25 SAGEBRUSH LAWYERS
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27 Henderson, Nevada 89015
28 Telephone: (702) 800-7634
Facsimile: (702) 800-7635

Plaintiffs' counsel is being paid on a contingency fee and/or statutory basis, which means that
if there is no recovery, there will be no attorneys' fees. If there is a class-wide recovery, the
attorneys will apply to the court to receive a part of any settlement obtained or money
judgment entered. The Boiling Crab Vegas, LLC is represented by the law firm of
Hejmanowski & McCrea, LLC, 520 South Fourth Street, Las Vegas, NV 89101, (702) 834-
8777. Hejmanowski & McCrea, LLC does not represent the employees in this lawsuit and
will not provide you with legal advice with respect to this lawsuit.

**Although the Court has authorized the sending of this Notice, the Court expresses no
opinion regarding the merits of Plaintiffs' claims or Defendant's liability, if any.**

**DEADLINE: IF YOU WISH TO SUBMIT A
CONSENT TO JOIN FLSA COLLECTIVE ACTION FORM
IT MUST BE POSTMARKED BY MAY 29, 2022.**

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McDougall, et al. v. The Boiling Crab Vegas, LLC No. 2:20-cv-01867-RFB-NJK
CONSENT TO JOIN FLSA COLLECTIVE ACTION

I hereby **consent** to join and participate in this lawsuit as a party plaintiff and make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* to recover tips allegedly owed to me as an employee of The Boiling Crab restaurant who has participated in Defendant’s mandatory tip pool as a server, bus-runner, host/hostess, cashier, or ToGo employee. I represent that I was a server, bus-runner, host/hostess, cashier or To Go employee with The Boiling Crab Vegas, LLC at any time between March 23, 2018 and October 26, 2020.

For purposes of prosecuting my claims under the FLSA, I hereby give my consent to be represented by counsel for the Plaintiffs as identified in the Notice sent by this Court.

Dated: _____, 2022

Signature

Information below will not be filed with the Court.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

Name:
Street Address:
City, State, Zip:

Phone:

Email:

Return this form **SO IT IS POSTMARKED BY MAY 29, 2022.**

Return this form to counsel for Plaintiffs.

T. Christopher Tuck
Rogers, Patrick, Westbrook & Brickman, LLC
P.O. Box 1007
1037 Chuck Dawley Blvd., Bldg. A
Mount Pleasant, South Carolina 29465