

FALEMA BRUTON, on behalf of herself and others similarly situated,

Claimant,

–against–

JACARANDA CLUB, LLC d/b/a SAPPHIRE NEW YORK,
JACARANDA HOLDINGS LLC, CLUB AT 60TH ST., INC., and
DAVID MICHAEL TALLA,

Respondents.

Case Number: 01-16-0002-8917

**NOTICE OF
PROPOSED CLASS
ARBITRATION SETTLEMENT**

TO: All entertainers who perform or performed as entertainers at Sapphire New York from July 15, 2010 through January 24, 2017 (the “Class Settlement Members”).

DATED: **June 18, 2017**

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed Settlement of this class arbitration. This Class Settlement has been authorized by an Arbitrator. It contains important information as to your right to participate in the Settlement, make a claim for payment or elect not to be included in the class.

Introduction

Claimant Falema Bruton (“Claimant”) commenced a class arbitration on behalf of herself and similarly situated entertainers against JACARANDA CLUB, LLC d/b/a SAPPHIRE NEW YORK (“Sapphire”), JACARANDA HOLDINGS LLC, CLUB AT 60TH ST., INC., and DAVID MICHAEL TALLA (collectively, “Respondents”). In the class arbitration, Claimant sought recovery for, among other things, Respondents’ alleged failure to pay her and other similarly situated entertainers minimum wage, improperly retained gratuities and improper wage deductions in violation of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”). Respondents deny these allegations.

However, Claimant and Respondents have agreed to settle the class arbitration subject to the approval of the Arbitrator. Respondents have agreed to a maximum Settlement fund in the amount of Two Million Six Hundred Seventy-Five Thousand Dollars (\$2,675,000.00), including, among other things, attorneys’ fees and costs. Arbitrator Martin F. Scheinman, Esq. of the American Arbitration Association is presiding over this class arbitration. The arbitration is known as *Bruton v. Jacaranda Club, LLC, et al.*

At mediation, Respondents represented that nearly all of their entertainers had agreed, in writing, to pursue any claims against them individually in arbitration rather than in court. Many entertainers had also signed agreements limiting their right to recover for only one year of unpaid wages and gratuities, rather than the six-year period afforded by the NYLL. However, despite the fact that nearly all Class Settlement Members waived their right to sue as a class, the parties ultimately agreed that the most efficient resolution was to settle the claims on a class-wide basis under the supervision of an experienced Arbitrator, who will make the final determination on whether the Settlement is fair and reasonable.

The Arbitrator has not decided who is right and who is wrong. Your legal rights may be affected and you have a choice to make now. These rights and options are summarized below and explained in detail throughout this Notice.

Respondents vigorously deny Claimant’s allegations and contend that Class Settlement Members, at all times, were independent contractors, not employees, and are therefore not entitled to additional wages and damages beyond the substantial amounts of money they made while performing at Sapphire, which amounts offset any damages that they may have sustained if the Arbitrator were to determine that they were misclassified as independent contractors. Additionally, for the purposes of settlement only, and without waiving any rights they might have if the class Settlement is not approved, or if a Class Settlement Member elects to exclude themselves from this Settlement, Respondents have agreed to waive any contractual agreements preventing Class Settlement Members to participate in a class action lawsuit or proceeding and/or reducing the statute of limitations to assert particular claims, including, but not limited to, claims brought under the FLSA and NYLL.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

PARTICIPATE	As described more fully below, to participate in the class Settlement, you must send a properly completed Claim Form and Release to the Claims Administrator that must be postmarked by August 2, 2017 . If you fail to mail a timely Claim Form and Release, you will receive only 25% of your allocated share of this Settlement, as described below.
EXCLUDE YOURSELF	If you wish to exclude yourself (“opt-out”) from the Class Settlement, you must follow the directions outlined in response to Question 8 below.
OBJECT	You may also object to the Settlement by writing to the Arbitrator about why you believe the Settlement is unfair or unreasonable. If the Arbitrator rejects your objection, you will still be bound by the terms of the Settlement for claims under New York Law unless you validly and timely exclude yourself. You will not be bound by the Settlement if you exclude yourself from this Class Settlement. If you object, you may appear at the Fairness Hearing to speak to the Arbitrator about the fairness of the Settlement.

FREQUENTLY ASKED QUESTIONS

Question 1. Why did I receive this notice?

You received this notice because Sapphire’s records show that you performed at Sapphire during the period of July 15, 2010 through January 24, 2017 (the “Covered Period”), as an entertainer.

Question 2. What is a class arbitration?

A class arbitration is an arbitration where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Settlement Members. In a class arbitration, one Arbitrator resolves the issues for all Class Settlement Members, except for those who exclude themselves from the Settlement. Martin F. Scheinman, Esq. of the American Arbitration Association is presiding over this class arbitration.

Question 3. Why is there a Settlement?

Class Counsel, identified in Question 4 below, analyzed and evaluated the merits of the claims made against Respondents in the arbitration. Based upon Class Counsel’s investigation and due diligence, changes made to Respondents’ practices during the relevant period, and the substantial risks of a continued arbitration, including the possibility that the arbitration, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Claimant, Class Counsel, and Respondents entered into this proposed Class Settlement. In particular, Class Counsel considered the fact that most entertainers agreed, in writing, to pursue their claims individually in arbitration, which would require each entertainer who might seek to recover allegedly unpaid wages and gratuities to testify under oath and present evidence in a separate individual arbitration proceeding. Class Counsel also weighed the risk that an arbitrator would enforce the contractual provision limiting some Class Settlement Members’ ability to recover on certain claims to one year of alleged unpaid wages and gratuities instead of the six-year recovery period provided by the NYLL. In light of these risks, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate, and that this Agreement is in the best interest of Claimant and Class Settlement Members.

Question 4. Do I have a lawyer in this case?

The law firm of Leeds Brown Law, P.C., One Old Country Road, Suite 347, Carle Place, New York 11514, (516) 873-9550, has been designated as legal counsel to represent you and other Class Settlement Members. You can ask for Michael Tompkins, Brett Cohen, or Laura Reznick. These lawyers are called Class Counsel. You will not be charged separately for these lawyers. You will not be charged for calling, emailing or speaking confidentially to Class Counsel. You are permitted to call Class Counsel with any questions about the Settlement or participating in it. Class Counsel’s fees are being paid from the total Settlement fund as part of the Settlement and are subject to the approval of the Arbitrator. If you want to be represented by your own lawyer, you may hire one at your own expense.

Question 5. How are Settlement amounts calculated?

Class Settlement Members who submit a properly completed Claim Form and Release as described in Question 7 below, will receive their share of the Net Settlement Fund, as defined in the Settlement Agreement, according to the allocation formula set forth in Section 3.4 of the Settlement Agreement and summarized below.

A Class Settlement Member's portion of the Settlement award ("Individual Settlement Allocation") shall be determined by the Claims Administrator. The Individual Settlement Allocation to Class Settlement Members is based on a formula in which, first, all points for all Class Settlement Members are added together to obtain the "Total Denominator" which will be based on the total number of log-ins shown on the reports maintained by Sapphire for the Class Settlement Members during the Covered Period. Next, the Claims Administrator will divide each individual Class Settlement Member's total number of log-ins shown on the reports maintained by Sapphire for such individual Class Settlement Member during the Covered Period by the Total Denominator to obtain the "Point Value." Finally, the Claims Administrator will multiply the Point Value by the Net Settlement Fund to obtain the Class Settlement Member's "Individual Settlement Allocation."

The Individual Settlement Allocation is only to be distributed and paid to the Class Settlement Member in the event that a timely Claim Form and Release is submitted.

If you believe your log-in total, as identified on the Claim Form and Release, is incorrect, you may challenge that log-in total by submitting a sworn affidavit and documentary proof supporting same to demonstrate why you believe the total log-in number on the Claim Form and Release is inaccurate.

Question 6. Who brought this action and are they being compensated?

This class arbitration was brought by Claimant Falema Bruton. Claimant took a lead role in this lawsuit and assisted in its resolution. In addition to her allocated share as described in Question 5, she will request a service award that is traditionally given to class representatives to reflect her efforts and the time and energy expounded on behalf of herself and Class Settlement Members in reaching this Settlement.

Question 7. What do I have to do to be compensated?

To be eligible for a distribution from the Settlement fund, you must timely complete and return the enclosed Claim Form and Release according to the instructions provided on the form, including: (1) an acknowledgment that, by signing the Claim Form and Release, you wish to participate in the class arbitration and be subject to payment under the FLSA and NYLL; and (2) a release of claims consistent with that set forth in this Notice, and the Claim Form and Release. The Claim Form and Release must be personally filled out by the Class Settlement Member who seeks to participate in the Settlement, or someone with a legal right to act on his or her behalf.

The Claim Form and Release must be properly completed, signed, and mailed to the Settlement Claims Administrator by **August 2, 2017** (the "Claim Bar Date"). If you do not properly complete and timely submit the Claim Form and Release, you will not be eligible to receive the full amount of your Individual Settlement Allocation.

You should keep in mind that if you do not timely opt-out, and if you do not properly and timely complete and return the Claim Form and Release by the Claim Bar Date, you will not be entitled to receive the full amount allocated to you from the Net Settlement Fund, but you will still be bound by the Release of all NYLL claims as described below.

If you timely return the enclosed Claim Form and Release to the Settlement Claims Administrator so that it is received via mail, postmarked by **August 2, 2017**, the Settlement Claims Administrator will make your payment after a Fairness Hearing as instructed by the Arbitrator.

Additionally, if the Arbitrator grants final approval of the Settlement, this class arbitration will be dismissed with prejudice and Class Settlement Members who do not exclude themselves will fully release and discharge Respondents through January 24, 2017. This means that you cannot sue, continue to sue, or be party to any other lawsuit or arbitration against Respondents regarding the claims that are being released herein, i.e. all wage and hour claims accruing during the Covered Period. It also means that all of the Arbitrator's orders will apply to you and legally bind you. In addition, by signing the Claim Form and Release, you forever and fully release Respondents through January 24, 2017, from all FLSA claims asserted in this arbitration.

The Release in the Settlement Agreement provides that:

By operation of the entry of the Final Award, each Class Member who does not timely opt-out shall be deemed to have released Respondents, Respondents' insurers, past and present employees, contractors, officers, directors, attorneys, agents, servants, representatives, partners, owners, shareholders, members, predecessors and successors in interest, and assigns from all wage and hour claims arising from each Class Member's affiliation or association with Sapphire New York under the FLSA and the NYLL that were, or could have been, brought in the Arbitration and interest, liquidated damages, attorneys' fees, and costs with respect to such claims.

Question 8. How do I exclude myself from the Settlement?

If you do not want a payment from the Settlement, but you want to keep the right to sue or continue to sue Respondents, on your own, about the legal issues in this case or which could have been brought in this case, then you must take steps to exclude yourself from this case.

If you intend to exclude yourself, you must mail a written, signed statement (“Opt-out Statement”) to the Settlement Claims Administrator stating “I elect to exclude myself from the Settlement in the Sapphire New York Arbitration.” To be valid, you must also include your name and address on the Opt-out Statement. To be effective, the Opt-out Statement must be mailed, via First Class United States Mail, to the Settlement Claims Administrator and postmarked by **August 2, 2017**:

Bruton v. Jacaranda Club, LLC, et al.
c/o Arden Claims Service, LLC
P.O. Box 1015
Port Washington, NY 11050
Ph: 877-623-2703 | E-mail: info@ardenclaims.com

If you exclude yourself from the arbitration and the Settlement, you will NOT be allowed to object to the Settlement as described in Question 13.

Question 9. What am I giving up by staying in the case?

Unless you exclude yourself, you will remain a Class Settlement Member. That means you cannot sue, continue to sue, or be a party to any other lawsuit against Respondents for claims being released as part of this Settlement. If you have a pending lawsuit or arbitration against Respondents, speak to your lawyer in that case immediately to see if the Settlement will affect your other case. Remember, the exclusion deadline is **August 2, 2017**.

Question 10. If I exclude myself, can I get money from the Settlement?

No. If you exclude yourself, you will not receive any money from this Settlement.

Question 11. What happens if I do nothing?

If you do nothing, you will be subject to all decisions and rulings by the Arbitrator, and all of your NYLL claims will be relinquished. If the Arbitrator approves the Settlement, within ten (10) days of the Effective Date, as that term is defined in the Settlement Agreement, the Claims Administrator will mail you 25% of your Individual Settlement Allocation. If you elect to endorse and/or deposit this check, your FLSA claims will also be relinquished.

Question 12. How will the Lawyers be paid?

Class Counsel will ask the Arbitrator to approve attorneys’ fees and costs not to exceed Nine Hundred and Twenty Thousand Dollars (\$920,000.00), which represents 34% of the total Settlement Fund. The fees would pay Class Counsel for all work that they have performed in this class arbitration including filing briefs, engaging in discovery, investigating the facts, attending arbitrations, participating in private mediation, and negotiating and overseeing the Settlement.

Question 13. How do I tell the Arbitrator that I do not like the Settlement?

You can object to the Settlement if you do not like any part of it. You can give reasons why you think the Arbitrator should not approve it. The Arbitrator will consider your views. However, if the Arbitrator rejects your objection, you will still be bound by the terms of the Settlement under New York Law – unless you submitted a valid and timely request for exclusion. To object, you must send a letter stating that you object to the Settlement. Your statement must include reasons for the objection and any supporting documentation in your possession. Your statement must also include your name, address, and telephone number. The written objection must also contain the words, “I object to the Settlement in the Sapphire New York Arbitration.” Failure to include these words renders the objection invalid.

If you wish to present your objection at the Fairness Hearing described below, you must state your intention to do so in your written objection. Your statement should be as detailed as possible, otherwise the Arbitrator may not allow you to present reasons for your objection at the Fairness Hearing that you did not describe in your written objection. Your objection will not be heard unless it is postmarked by **August 2, 2017** and mailed, via First-Class United States Mail, to the Settlement Claims Administrator at:

Bruton v. Jacaranda Club, LLC, et al.
c/o Arden Claims Service, LLC
P.O. Box 1015
Port Washington, NY 11050
Ph: 877-623-2703 | E-mail: info@ardenclaims.com

The Settlement Claims Administrator will share your objection with Class Counsel and Respondents' Counsel and file your objection statement with the Arbitrator.

You may not object to the Settlement if you submit a letter requesting to exclude yourself or opt-out of the Settlement, as described in Question 8 above.

Question 14. What's the difference between objecting and excluding?

Objecting is simply telling the Arbitrator that you do not like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself from the Settlement is telling the Arbitrator that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

Question 15. When and where will the Arbitrator decide whether to approve the Settlement?

A Fairness Hearing will be held at **3:30pm** on **September 13, 2017**, at **322 Main Street, Port Washington, NY 11050** before Arbitrator Martin F. Scheinman, Esq.

At the Fairness Hearing, the Arbitrator will consider whether the terms of the Settlement are fair, reasonable, and adequate. If there are objections, the Arbitrator will consider them. The Arbitrator will listen to people who have asked to speak at the hearing. Typically, at the Fairness Hearing, the Arbitrator will decide whether to approve the Settlement. Other times, the Arbitrator may consider the materials separately after the Fairness Hearing. We do not know how long these decisions will take.

The Settlement is confidential and may not be disclosed by you to any third party other than your tax advisor, your attorneys, or immediate family members.

Question 16. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can review the Settlement Agreement by asking for a copy of the Settlement Agreement by writing to or calling:

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