

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JONGMIN CHOI, HYUN SUK PARK, and WOOTAE JUNG, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

-against-

BAYSIDE BCD INC. d/b/a BCD TOFU HOUSE BAYSIDE, BEAN TREE CORP.  
d/b/a BCD TOFU HOUSE MANHATTAN, and HEE SOOK LEE,

Defendants.

16 Civ. 6495 (DCF)

**NOTICE OF PROPOSED CLASS ACTION LAWSUIT SETTLEMENT AND FAIRNESS HEARING**

**TO: All persons employed by BCD Tofu House at Bayside and Manhattan working as a server, runner, busser, greeter, cashier, customer care worker, kitchen worker, kitchen helper, line cook, prep cook, dishwasher, or central kitchen employee during the time periods listed below.**

Based on the records of Bayside BCD Inc. (“BCD Bayside”), Bean Tree Corp. (“BCD Manhattan”) (together, “Defendants” or “BCD Tofu House”), you were employed as a server, runner, busser, greeter, cashier, customer care worker, kitchen worker, kitchen helper, line cook, prep cook, dishwasher, or central kitchen employee at either:

- BCD Bayside between May 14, 2012 and November 9, 2018, or
- BCD Manhattan between April 1, 2013 and November 9, 2018.

You are therefore entitled to participate in the proposed \$2,840,000 settlement (the “Settlement”) of this case, captioned *Choi, et al. v. Bayside BCD Inc., et al.*, 16-cv-6495 (DCF), (S.D.N.Y.) (the “Lawsuit”). Your rights and options, and the deadlines to exercise them, are explained in this notice. In order to receive money from this settlement, you **MUST** complete, sign and return this Claim Form and Release (“Claim Form”) either via mail using the enclosed postage-paid envelope addressed to Arden Claims Service LLC, P.O. Box 1015, Port Washington, NY 11050, or via online submission at: <https://claims.ardenclaims.com/bcd-tofu-house-claim-form/>.

**You must return your Claim Form by mail or online submission no later than October 21, 2019. If you do not return this Claim Form by October 21, 2019 you will not be eligible to receive a payment from this settlement.**

**YOUR LEGAL RIGHTS ARE IMPACTED WHETHER YOU ACT, OR DON’T ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:**

<b>PARTICIPATE IN THE SETTLEMENT</b>	The only way to get a payment. In order to receive a payment from the settlement, <b>you must</b> submit the enclosed Claim Form by <b>October 21, 2019</b> .
<b>EXCLUDE YOURSELF BY OPTING OUT</b>	If you wish to exclude yourself (“opt-out”) from the settlement, you must follow the directions in Paragraph 9 below. If you exclude yourself, you will not receive payment and cannot object to the settlement. Your exclusion request must be postmarked no later than <b>October 21, 2019</b> .
<b>OBJECT</b>	If you believe that the settlement is not fair or reasonable, you can write to the Court to express your views. You must object in writing to appear at the Fairness Hearing to speak to the Court about the fairness of the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York law. Your objection must be postmarked no later than <b>October 21, 2019</b> .
<b>DO NOTHING</b>	If you do not opt-out or submit a Claim Form, you will not receive payment and will not be able to assert New York Labor Law claims in this case against Defendants.

**1. WHAT IS A CLASS ACTION?**

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as “Class Representatives” file a lawsuit asserting claims on behalf of the entire class, *i.e.* Class Members. In this case, the Class Members consist of all persons who worked as a server, greeter, cashier, kitchen worker, kitchen helper, dishwasher, busser, runner, customer care worker, line cook, prep cook, or central kitchen worker at BCD Bayside between May 14, 2012 and November 9, 2018 or at BCD Manhattan between April 1, 2013 and November 9, 2018.

**2. WHAT IS THE PURPOSE OF THIS NOTICE?**

The Court has ordered that this Notice be sent to you because you were identified in BCD Tofu House’s records as a Class Member. The purpose of this Notice is to inform you of your rights under the Settlement Agreement resolving the Lawsuit.

### 3. WHAT IS THIS CASE ABOUT?

The Lawsuit alleges that BCD Tofu House violated federal and state labor laws by failing to pay Class Members for all hours worked, failing to pay Class Members the minimum wage and overtime rates required by law, failing to pay spread of hours pay and taking unlawful deductions. Additionally, the Lawsuit alleges that the Defendants violated the Wage Theft Prevention Act by failing to provide Class Members with annual wage notice forms and wage statements that comply with the requirements of the New York Labor Law (“NYLL”). Defendants deny these allegations and have not admitted or conceded and do not admit or concede any wrongdoing or liability.

### 4. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

You are automatically a Class Member if you worked as a server, runner, busser, greeter, cashier, customer care worker, kitchen worker, kitchen helper, line cook, prep cook, dishwasher, or central kitchen employee at BCD Bayside between May 14, 2012 and November 9, 2018, or at BCD Manhattan between April 1, 2013 and November 9, 2018. However, being a Class Member does not automatically entitle you to recover from this settlement (as is further explained in Paragraph 6 below).

In order to be eligible to receive a monetary award from the settlement, you must complete and return the enclosed Claim Form. If you complete and return the enclosed Claim Form, and do not opt out of the settlement, you will be a “Claimant.”

### 5. WHAT IS THE SETTLEMENT AMOUNT AND HOW WILL MY SHARE BE CALCULATED?

Defendants have agreed to pay a settlement amount no less than \$1,900,000.00 and no greater than \$2,840,000.00 to be divided among the Claimants, Class Counsel for attorneys’ fees and costs, and the Claims Administrator who is responsible for distribution of this Notice and Settlement Checks.

Subject to the Court’s approval of deductions for requested attorneys’ fees, service awards to the Named Plaintiffs who commenced this case, and reasonable costs to the Claims Administrator, the remainder of the settlement amount (the “Net Settlement Amount”) will be divided among the Claimants as follows:

- Claimants who worked for BCD Tofu House prior to 2017:
  - Any Claimant who worked for Defendants prior to 2017 will receive payment based on the Claimant’s weeks of employment and position(s) held, calculated according to Defendants’ records. However, Claimants who worked for sixty days, or less, will be paid a fixed amount of \$25. Claimants who worked more than sixty days will be paid \$100 or more.
- Claimants who worked for BCD Tofu House starting January 1, 2017:
  - As a result of changes in Defendants’ policies as of January 1, 2017, payment to Claimants who only worked for Defendants from January 1, 2017 through November 9, 2018 will be either:
    - \$25 if employed for sixty (60) days or less, or
    - \$100 if employed for more than sixty (60) days.

Your Individual Settlement Amount has been calculated based on Defendants’ records. An estimate of the payment you could receive is noted on the enclosed Claim Form. If you believe the estimate of payment is inaccurate, please contact the Claims Administrator and provide records regarding the weeks of your employment and position(s) held.

Fifty percent (50%) of the payment you receive will be treated as interest, liquidated damages, or penalties and fifty percent (50%) will be treated as unpaid wages. The interest, liquidated damages, or penalties payment will be paid to you directly, without any deductions. The unpaid wage payment will be subject to deductions for applicable taxes and withholdings like any other paycheck.

If you would like more information about how individual settlement awards are calculated, you may view the Settlement Agreement at: [www.ardenclaims.com/BCDTofu-house](http://www.ardenclaims.com/BCDTofu-house) or contact the Claims Administrator at 877-623-2703.

### 6. HOW CAN I GET MY PAYMENT?

In order to be eligible to receive the payment identified in Paragraph 5, you must complete and return the enclosed Claim Form to the Claims Administrator by mail or online submission at: <https://claims.ardenclaims.com/bcd-tofu-house-claim-form/> by the deadline of, **October 21, 2019**. If you choose to exclude yourself (as explained in Paragraph 9 below) or fail to return the Claim Form prior to the deadline, you will not receive a payment.

It is your responsibility to retain proof of timely mailing of a Claim Form until receipt of your settlement payment.

If you move, please send the Claims Administrator your new address. It is your responsibility alone to provide a forwarding address to the United States Post Office and your current address to the Claims Administrator.

If you are found eligible to participate in the settlement, you should not expect to receive any payment until the settlement is final, which will likely be several months away.

### 7. WHEN WILL I RECEIVE MY PAYMENT?

The Court will hold a hearing on November 7, 2019 to decide whether to approve the settlement. If the Court approves the settlement and there are no appeals, Settlement checks will be mailed to Claimants within 50 days of the date that the Court grants final approval.

Class Members who do not return their Claim Form by **October 21, 2019** will not be eligible to receive a payment from this settlement.

If you receive a settlement check, you must deposit or cash your settlement check within two hundred (200) calendar days of the date it is mailed to you. If you need a replacement check, you must contact the Claims Administrator within the two hundred (200) days and provide a sworn statement that you never received the original settlement check or lost the settlement check. The Claims Administrator may re-issue the settlement check provided an effective stop-payment can be placed on the originally issued check.

### 8. WHAT AM I GIVING UP BY RECEIVING A PAYMENT OR STAYING IN THE CLASS?

Unless you exclude yourself (as explained in Paragraph 9 below), you will remain in the Class. That means that you can’t sue or be part of any other lawsuit against the Defendants about the legal issues and facts in this case or that could have been asserted in this case. It also means that the Court’s orders will apply to you and legally bind you.

Specifically, unless you exclude yourself from the settlement of the Litigation, you will fully release all Defendants, their present and former parents, divisions, affiliates, subsidiaries, predecessors, successors, assigns, directors, partners, principals, officers, members, shareholders,

fiduciaries, trustees, insurers, employees, attorneys, insurers, employee benefit plan administrators, agents, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity which could be jointly liable with any of them (“Releasees”), from all state law claims between May 14, 2012 through November 9, 2018 under the NYLL, and any other state or local law or common law relating to failure to pay wages, overtime wages, minimum wages, spread of hours payments, wage notice violations, wage statement violations, liquidated damages, punitive damages, interest, penalties and attorneys’ fees and costs related to such claims or claims that were or could have been brought in this Litigation.

In addition, if you cash or negotiate a settlement check, you will also release Defendants, and Releasees, from all claims, debts, obligations, guarantees, costs, expenses, attorneys’ fees, demands, actions, rights, causes of action, and liabilities against any Releasees, arising under Federal law, relating to the payment of wages, minimum wages, overtime wages, and expenses including the Fair Labor Standards Act of 1938 (“FLSA”), whether known or unknown, and whether anticipated or unanticipated, through November 9, 2018.

**9. HOW DO I OPT-OUT OF THE SETTLEMENT CLASS?**

If you do not want to participate in the settlement of the Litigation, or if you want the right to pursue your own lawsuit against Defendants, you must exclude yourself from the Class, which is also referred to as “opting out” of the Class.

To exclude yourself/opt-out, you must mail a written, signed statement including your name, address, and telephone number(s), saying that you wish to opt-out of the BCD Tofu House class action settlement. The written opt-out statement must be postmarked no later than **October 21, 2019**. The letter must be mailed to:

**Arden Claims Service LLC  
PO Box 1015  
Port Washington, NY 11050**

If you ask to be excluded/opt-out, you will not receive a settlement payment and you cannot object to the settlement. You will not be legally bound by anything that happens in the Lawsuit. If you wish to exclude yourself in order to file an individual lawsuit against Defendants, you should speak to a lawyer as soon as possible because your claims are subject to a statute of limitations.

**If you do not opt-out within the time limit set forth above, you will be bound by the terms of the Settlement Agreement.**

**10. WHAT IF I HAVE AN OBJECTION TO THE SETTLEMENT?**

If you are a Class Member, you can object to the settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a written statement including your name, address, and telephone number(s) to:

**Arden Claims Service LLC  
PO Box 1015  
Port Washington, NY 11050**

The statement must include all reasons for the objection. The written objection statement must be postmarked no later than **October 21, 2019**. Any reasons not included in the statement will not be considered by the Court.

All objections will be provided to the Court. The Parties may file written responses to any objections.

**11. WHAT’S THE DIFFERENCE BETWEEN OBJECTING TO THE SETTLEMENT AND EXCLUDING MYSELF?**

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

**12. WHEN IS THE FAIRNESS HEARING AND WHAT HAPPENS AT IT?**

A hearing before the Honorable Magistrate Judge Debra Freeman will be held on November 7, 2019 at 10:00 a.m. at the United State District Court, Southern District of New York, 500 Pearl Street, Courtroom 17A, New York, NY 10007 (the “Fairness Hearing”). The purpose of the Fairness Hearing is for the Court to determine whether the settlement of the Litigation is fair, adequate, and reasonable and should be approved by the Court.

The Court will take into account any objections raised in accordance with the procedures described in Paragraph 10, above. You may attend and you may speak if you file a timely objection, but you don’t have to because Class Counsel will represent you at the hearing. If you file a timely objection to the settlement, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include the words “I intend to appear at the Fairness Hearing” in your written objection, which must be filed according to the procedure described in Paragraph 10, above. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you exclude yourself/opt-out from the settlement.

**13. DO I HAVE A LAWYER IN THIS CASE?**

Pechman Law Group PLLC ([www.pechmanlaw.com](http://www.pechmanlaw.com)) has been designated as legal counsel to represent you and the other Class Members. These lawyers are called Class Counsel. You will not be charged separately for representation by Class Counsel. Their fees will be paid from the total settlement amount (see Paragraph 5, above). If you want to be represented by your own lawyer, you may hire one at your own expense.

You may contact Class Counsel at:

**Pechman Law Group PLLC  
488 Madison Avenue, 17th Floor  
New York, New York 10022  
Tel: 212-583-9500  
Fax: 212-409-8763  
E-mail: [pechman@pechmanlaw.com](mailto:pechman@pechmanlaw.com)**

**14. NO RETALIATION PERMITTED?**

BCD Tofu House and its managers, owners, or other people associated with it, are prohibited by federal and state laws from firing or in any other manner discriminating against any person, including a current employee, for submitting a Claim Form or otherwise taking part in this case.

**15. ARE THERE MORE DETAILS AVAILABLE?**

Yes. If you want additional information, please contact Pechman Law Group PLLC using the contact information provided in Paragraph 13.

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE HONORABLE DEBRA FREEMAN, UNITED STATES MAGISTRATE JUDGE OF THE UNITED STATES DISTRICT COURT, SDNY. THE COURT HAS MADE NO DECISION IN THIS CASE ABOUT THE MERITS OF THE CLAIMS OR DEFENSES.**

By Order of the Court

Dated: July 22, 2019