

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT NEW YORK

DEANNA CAROLLO and DIANA J. OWENS, on behalf of
themselves and all other employees similarly situated,

Plaintiff,

CASE NO: 6:16-CV-0013
DNH/TWD

-against-

UNITED CAPITAL CORP., AFP MANAGEMENT CORP. and
AFP 101 CORP,

Defendants.

NOTICE OF CLASS ACTION LAWSUIT, SETTLEMENT AND FAIRNESS HEARING

TO: All hourly banquet class members (including, but not limited to, job titles such as banquet servers, bartenders, and captains) who worked at the Radisson Hotel Utica Centre in Utica, New York during the period from January 5, 2010 to March 24, 2021 (“Banquet Class”).

AND/OR

All tipped restaurant employees who worked at the restaurant located in the Radisson Hotel Utica Centre in Utica, New York during the period from January 5, 2010 through March 24, 2021 (“Restaurant Class”).

AND/OR

All hourly employees of the Radisson Hotel Utica Centre in Utica, New York during the period from April 9, 2011 through March 24, 2021 (“Hourly Employee Class”).

ACCORDING TO DEFENDANTS’ RECORDS YOU HAVE BEEN IDENTIFIED AS IN THE FOLLOWING CLASS(ES):

XXXX Class(es)

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed Settlement of a class action lawsuit. It has been authorized by a New York District Court, Northern District of New York. It contains important information as to your right to participate in the Settlement or elect not to be included in the class.

INTRODUCTION

Former employees Deanna Carollo and Diana J. Owens (“Class Representatives”) have asserted claims on behalf of those similarly situated (“Plaintiffs”) relating to the mandatory banquet fee, minimum wage/overtime, and/or the Wage Theft Prevention Act notices at the Radisson Hotel Utica Centre in a lawsuit captioned *Carollo, et al. v. United Capital Corp., et al.*, United States District Court, Northern District of New York (the “Settled Lawsuit”). This lawsuit has been brought against United Capital Corp., AFP Management Corp., and AFP 101 Corp. (collectively, the “Defendants”). In general, the Settled Lawsuit alleges that, among other things, Defendants violated federal and/or state law by: (1) failing to pay mandatory service charges added to banquet or catered events to banquet service workers at the Radisson Hotel Utica Centre; (2) failing to provide the required notice in order to pay banquet service workers and restaurant service workers subminimum wages; (3) failing to provide proper wage notices to employees; and (4) failing to properly pay all overtime compensation.

The Parties to the Settled Lawsuit disagree as to the probable outcome of the Settled Lawsuit with respect to liability and damages had the allegations not been settled. While the Class Representatives were prepared to proceed with litigating the Settled Lawsuit, they recognized that litigation is a risky

proposition and that they may not have prevailed on any or all of their claims. Likewise, while Defendants were confident that they had strong legal and factual arguments that would resolve the Plaintiffs' claims in their favor, they recognize the risks, distractions, and costs involved with continued litigation. As such, after completing fact discovery which involved numerous depositions and the exchange of significant documentation, Plaintiffs and Defendants agreed to participate in a settlement mediation with Martin F. Scheinman, Esq. (the third mediation during the course of the litigation), and, as a result of the mediation and additional discussions and negotiations, the Parties were able to agree to settlement terms described in the Settlement Agreement ("Settlement" and/or "Agreement").

This Settlement is the result of good-faith, arms-length negotiations between the Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

YOUR LEGAL RIGHTS AND OPTIONS IN THE PROPOSED SETTLEMENT	
Do Nothing	By doing nothing, you will be foregoing the ability to receive distribution from the Net Settlement Fund in the form of a Settlement Check. You are also relinquishing any rights you may have to sue Defendants regarding the Settled Lawsuit.
Timely Submit Claim Form	Submit a Claim Form. To be submitting a timely and valid Claim Form, you are participating in the Settlement, and you will receive distribution from the Net Settlement Fund in the form of a Settlement Check. You will be bound by the terms of the Settlement, if approved by the Court.
Opt-Out of the Settlement	Submit an Opt-Out Statement. By submitting a timely and valid Opt-Out Statement, you are forfeiting any right under the Settlement Agreement, including any right to distribution of a Settlement payment. You will not be bound by the terms of the Settlement, if approved by the Court.
Object to the Settlement	Submit an Objection. By submitting a timely and valid Objection, you are letting the Court know you disagree with some or all of the terms of the Settlement. You will receive distribution from the Net Settlement Fund in the form of a Settlement Check only if you also submit a timely and valid Claim Form.

This Notice explains these rights and options and the deadlines to exercise them. The Court still has to decide whether to approve this Settlement. Benefits for valid claims will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Details about how each option would affect your rights are explained below.

1. Why did I receive this Notice?

You have received this notice because Defendants' records show that you are in the **XXXX Class(es)**.

In general, Class Members are receiving this notice because Defendants' records show that they worked: (1) as an hourly banquet employee (including, but not limited to a banquet server, bartender, or captain) at Radisson Hotel Utica Centre during the period of January 5, 2010 to March 24, 2021; **and/or** (2) as a tipped restaurant service worker at the Radisson Hotel Utica Centre from January 5, 2010 to March 24, 2021; **and/or** (3) as an hourly employee employed at Radisson Hotel Utica Centre during the period April 9, 2011 to March 24, 2021.

2. What is a class action?

A class action is a lawsuit 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 Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable David N. Hurd United States District Court, Northern District of New York is the Judge who is presiding over this class action.

3. Why is there a Settlement?

Class Counsel has analyzed and evaluated the merits of the claims made against Defendants in the Settled Lawsuit and completed depositions, as well as analyzed payroll records, banquet and records, and other pertinent data for Plaintiffs. The Parties participated in three separate settlement mediations during the course of the litigation, with the third and final mediation being on February 15, 2023 with Martin F. Scheinman, Esq. Based upon their analysis and evaluation of the relevant data, relevant law and the substantial risks of continued litigation, including the possibility that the litigation, 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, Class Counsel has negotiated this proposed Settlement. 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 the Plaintiffs and other Class Members, such as yourself.

4. Terms of the Proposed Settlement

If the Settlement is approved, Defendants will pay a sum not to exceed \$1,800,000.00 (the “Total Settlement Amount”) into a fund to settle all claims in the lawsuit. The Total Settlement Amount will cover Class Counsel’s attorneys’ fees and costs in an amount not to exceed thirty-nine percent (39%) of the Total Settlement Amount, or seven hundred and two thousand dollars and no cents (\$702,000.00), if approved by the Court. In the event that Defendants are required to expend in excess of one million two hundred thousand dollars (\$1,200,000) in total exclusive of payroll taxes, Class Counsel’s attorneys’ fees shall be reduced by the amount in excess of one million two hundred thousand dollars (\$1,200,000) Defendants are required to pay with a maximum reduction of ninety thousand dollars (\$90,000). Additionally, the Settlement proposes that the Class Representatives, who took a lead role in this litigation and assisted in its resolution, would each receive service payments up to \$10,000, for their significant involvement and time devoted to this litigation for the benefit of the Class Members. The Total Settlement Amount will also include the full cost of administration of the Settlement and Claims process.

The “Net Settlement Fund” is the Total Settlement Amount less the deductions set forth in the preceding paragraph. The Net Settlement Fund will then be allocated to Class Members.

The distribution of the Net Settlement Fund will be determined as follows:

1. The Banquet Class Net Settlement Fund shall be 63.7814% of the Net Settlement Fund. Each Banquet Class Members’ Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

Banquet Class Net Settlement Fund: In order to calculate the Banquet Service Class Member Individual Settlement Amounts, take each individual Banquet Class Member’s gross wage earnings for the Banquet Class Relevant Time Period as the numerator and divide it by the sum of the gross wage earnings for the entire Banquet Class as the denominator. The denominator for each Banquet Class Member in that category will be the same number. As a result of this calculation, the total of all Banquet Class Members’ numerators must equal the denominator. Thus, the Banquet Class Member’s individual gross wages divided by the sum of all gross wages for all Banquet Class Members in that category equals his/her individual percentage allocation. Each Banquet Class Member’s individual percentage allocation shall be multiplied by the Banquet Class Net Settlement Fund amount.

2. The Restaurant Class Net Settlement Fund shall be 11.0642% of the Net Settlement Fund. Each Restaurant Class Members' Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

Restaurant Class Net Settlement Fund: In order to calculate the Restaurant Class Member Individual Settlement Amount, take each individual Banquet Class Member's gross wage earnings for the Restaurant Class Relevant Time Period as the numerator and divide it by the sum of the gross wage earnings for the entire Restaurant Class as the denominator. The denominator for each Restaurant Class Member in that category will be the same number. As a result of this calculation, the total of all Restaurant Class Members' numerators must equal the denominator. Thus, the Restaurant Class Member's individual gross wages divided by the sum of all gross wages for all Restaurant Class Members in that category equals his/her individual percentage allocation. Each Restaurant Class Member's individual percentage allocation shall be multiplied by the Restaurant Net Settlement Fund amount.

3. The Hourly Employee Class Net Settlement Fund shall be 25.1544% of the Net Settlement Fund. Each Hourly Employee Class Members' Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

Hourly Employee Class Net Settlement Fund: In order to calculate the Hourly Employee Class Member Individual Settlement Amount, each member of the Hourly Non-Tipped Class shall receive a pro rata share of the Hourly Employee Class Net Settlement Fund amount.

In the event any Class Member qualified to be in two or more Classes, they are entitled to distributions collectively in each of the Classes.

Each Class Member who timely submits the enclosed Claim Form to the settlement administrator by July 14, 2023 shall receive an individual payment(s) pursuant to the above calculations.

Fifty percent of the payments to the Banquet and/or Restaurant Classes made pursuant to this Settlement will be paid as wages and subject to required wage withholdings and deductions. The other fifty percent of the payments to Banquet and/or Restaurant Classes made pursuant to this Settlement will be paid as non-wage payments. One hundred percent of the payments to the Hourly Employee Class made pursuant to the Settlement will be IRS Form-1099-misc. Neither Class Counsel nor Defendants make any representations concerning tax consequences of this Settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

5. How do I participate in the Settlement?

You must submit a Claim Form to the settlement administrator in order to receive Settlement benefits. The Claim Form must be submitted by **July 14, 2023** via email at info@AFPsettlement.com or fax at 516-461-5278 or if mailed, postmarked by **July 14, 2023**.

If you move after submitting a Claim Form, it is your responsibility to provide your new address to the settlement administrator. The settlement administrator will use the most recent address it has on file for providing benefits under the Settlement.

It is strongly recommended that you retain proof of your timely mailing until receipt of settlement payment.

6. How will the proposed Settlement impact my legal rights?

If the Court approves the proposed Settlement and you do not opt out of the Settlement, you will no longer be able to sue Releasees (definition is in the below paragraph) for any and all claims, debts, losses, demands, obligations, liabilities, causes of action, charges, grievances, complaints, or suits of

any kind that relate to his or her compensation or any wage and hour violations that may have occurred during, arising from, or relating to Class Member's employment at the Hotel under federal, state, and/or local law from January 5, 2010 through date of full execution of the Agreement for the Restaurant and Banquet Classes and then April 9, 2011 through date of full execution of the Agreement for the Hourly Employee Class including, but not limited to, any and all claims for unpaid wages, overtime compensation, gratuities, tips, tip credits, tip allowances, service charges, administrative charges, operational charges, other mandatory charges, commissions, improper deductions, travel time, bonuses, penalties, spread-of-hours pay, meal breaks, meal credits, uniform maintenance, uniform reimbursement, expense reimbursement, failure to maintain and furnish employees with proper wage notices and statements, other compensation, wages or benefits, including, but not limited to, life insurance, accidental death and disability insurance, sick leave, other employer-provided plans or programs, distributions of income or profit, vacation or other leave time, retirement benefits, pension benefits, and any other claims that were or could have been asserted in the litigation, whether known or unknown, under federal, state, and/or local wage and hour laws (including, but not limited to, the Fair Labor Standards Act, New York Labor Law, New York Code of Rules and Regulations, New York Hospitality Industry Wage Order, New York Restaurant Industry Wage Order, New York Minimum Wage Order for Miscellaneous Industries and Occupations, and New York Wage Theft Prevention Act). This release includes all claims for relief relating to any such released claims, including claims for liquidated damages, punitive damages, penalties, interest, and attorneys' fees, costs, and expenses outside of those provided for under the Agreement. Nothing shall preclude any Class Member from pursuing any claims for unemployment insurance benefits or workers' compensation benefits; however, the Named Plaintiffs affirm that they are unaware of any workplace injury that they suffered. Moreover, Plaintiffs acknowledge that they were not members of any employee benefit plan during their employment with Defendants.

In addition, if the Court grants final approval of the Settlement, this action will be dismissed with prejudice and Class Members who do not timely opt out will fully release and discharge Defendants, Defendants' present, former, and future parents, subsidiaries, affiliates, and related entities, including each of their respective present and former shareholders, members, owners, officers, investors, directors, employees, managers, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, representatives, successors, and assigns, as well as any persons or entities acting in concert with any of them and any individual or entity that could be jointly liable with any of them ("Releasees").

7. How do I exclude myself from ("Opt-Out of") the Settlement?

If you do not wish to participate in this proposed Settlement, but you want to keep the right to sue or continue to sue Defendants, on your own, about the legal issues in this case or which are released by this Settlement, then you must take steps to exclude yourself from or opt-out of the Settlement.

The Opt-Out Statement must set forth the following:

- A. The name of this action ("*Carollo et al. v. United Capital Corp. et al.*");
- B. The letter must include your full name, last four digits of your Social Security Number, current address, and telephone number; and
- C. A declaration stating "I request that I be excluded from the Settlement in *Carollo et al. v. United Capital Corp., et al.*, and do not wish to participate in the Settlement. I understand that by requesting to be excluded from the Settlement, I will not receive any benefits under the Settlement."

Your request for exclusion must be emailed, faxed or postmarked no later than **July 14, 2023**, and if mailed must be mailed to:

AFP Management Settlement Administrator
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050

Tel: 516-461-2682 | Fax: 516-461-5278

Email: info@AFPsettlement.com

www.AFPsettlement.com

REQUESTS TO OPT-OUT THAT ARE NOT RECEIVED OR POSTMARKED ON OR BEFORE JULY 14, 2023 WILL NOT BE HONORED.

If you opt-out of the Settlement, you cannot also object to the Settlement.

If you properly submit a timely Opt-Out Statement, you will not be eligible to receive any of the benefits under the Settlement.

8. If I opt-out, can I get money from this Settlement?

No. If you opt out, you will not receive any money from this Settlement. But, you may sue, continue to sue, or be part of a different lawsuit against Defendants regarding these same claims.

9. How do I tell the Court that I don't like the Settlement?

As a Class Member, you can object to the proposed Settlement if you do not think the proposed Settlement is fair, reasonable, or adequate by filing a written objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, the Class Members will not receive the benefits described in this notice, and the lawsuit will continue.

You may object to the proposed Settlement in writing and appear at the Fairness Hearing, either in person or through your own attorney, at your own expense, if the Court allows. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must include:

- i. the name of the proceedings (“*Carollo, et al. v. United Capital Corp., et al.*”);
- ii. your full name, current mailing address, and telephone number;
- iii. a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- iv. a statement as to whether the objection applies only to you, to a specific subset of the class, or to the entire class;
- v. the identity of any attorney(s) representing you;
- vi. a statement regarding whether you (or your attorney) intends to appear at the Fairness Hearing;
- vii. all other cases in which you (or your attorney) have filed an objection to any other proposed class action settlement within the past three (3) years; and

viii. either your or your attorney's signature.

CLASS MEMBERS MUST MAIL OBJECTIONS TO THE SETTLEMENT ADMINISTRATOR POSTMARKED BY JULY 14, 2023.

If you wish to be heard at the Fairness Hearing, you must send a signed Notice of Intention to Appear to the settlement administrator no later than July 14, 2023. The Notice of Intention to Appear must include the following:

- i. the name of this Action (“*Carollo et al. v. United Capital Corp., et al.*”);
- ii. your full name, address, and telephone number if you intend to appear at the Fairness Hearing;
- iii. the words “Notice of Intention to Appear” at the top of the document;
- iv. the points you wish to speak about at the Final Fairness Hearing; and
- v. the identity (name, address, and telephone number) of any lawyer who will speak on your behalf.

If you object and the Settlement is approved, you will still be entitled to receive a Settlement Check under the Settlement that you qualify for only if you must submit a valid Claim Form (see Question 5 above). Submitting a Claim Form does not waive your objection to the Settlement.

If you want to keep the right you may have, if any, to sue Defendants based on the claims set forth in the Settlement Agreement, you must exclude yourself from the Settlement classes, as described above in Question 7.

If you have submitted an Opt-Out Statement, you may not also submit objections to the Settlement. Class Counsel and Defendants may file with the Court a written response to any filed objections not later than four (4) calendar days before the Fairness Hearing.

10. What’s the difference between objecting and excluding or opting out?

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Settlement (“opting-out”) is telling the Court that you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court will hold a Fairness Hearing to decide whether to approve the Settlement. Class Counsel will answer questions the Judge may have. You do not have to come to the hearing, but you are welcome to do so at your own expense.

If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection to the settlement administrator at the above addresses on time, the Court will consider it. If you do attend the hearing, it is possible that you will not be permitted to speak unless you timely object in writing as described above and indicate in writing your intention to appear at the Fairness Hearing.

11. Do I have a lawyer in this case?

The law firm of Thomas & Solomon LLP, 693 East Avenue, Rochester, New York 14607, (877) 272-4066, along with Black & Buffone, 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 these lawyers. Attorneys' fees and litigation costs and expenses will be deducted from the Total Settlement Amount noted above in order to pay Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 1:00 p.m. on August 7, 2023, before Honorable David N. Hurd at the United States District Court, Northern District of New York, 10 Broad Street, Utica, New York 13501. Please note that the hearing may be conducted virtually by online or telephonic means. At this hearing the Court will consider whether the terms of the Settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

13. Can the Settlement Agreement be modified?

Prior to entry of the Final Approval Order and Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of the Parties or their counsel, who may only sign with the permission of their clients, without giving any additional notice to the Settlement Class, provided that such modifications are not materially adverse to the Settlement Class. To the extent that Class Members desire to be notified regarding any additional changes as described in this paragraph, or otherwise after the initial notice of the Settlement, the preliminary approval hearing and the Fairness Hearing, they must file with the Court in this Action a request for notice, or send such a request in writing to the settlement administrator or Class Counsel, who shall maintain a list of all such requests that are received. Class Members who have and who provide an e-mail address agree to electronic notification.

14. Are there more details about the Settlement?

This Notice only summarizes the proposed Settlement. More details are in the Settlement Agreement which can be located at www.AFPsettlement.com. You can also review the Settlement Agreement by asking for a copy of the Settlement Agreement by writing or calling the settlement administrator.

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CLAIM FORM

If you were identified as a member of the: (1) Banquet Class; **and/or** (2) Restaurant Employee Class; **and/or** (3) Other Hourly Employee Class, and you wish to make a claim in the Settlement, **you must submit a valid Claim Form by July 14, 2023**. You may submit your Claim Form through email, mail or fax:

EMAIL: Complete the Claim Form and email it to: info@AFPsettlement.com

FAX: Complete the Claim Form and fax it to: 516-461-5278

MAIL: Complete the Claim Form and mail it to the following address:

AFP Management Settlement Administrator
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050

The detailed Notice and Settlement Agreement contains additional information and are available at www.AFPsettlement.com or by calling 516-461-2682.

INSTRUCTIONS

1. Fill out all fields in **Section I**.
2. Sign, date, and print your name in **Section II**.
3. Submit your claim to the Settlement Administrator by email, fax or mail by **July 14, 2023**.

SECTION I: NAME AND CONTACT INFORMATION.

Name: _____

Address: _____

City, State, Zip Code: _____

Email Address: _____

Please write clearly and legibly.

If your claim is accepted and the Court grants final approval, you will receive a payment by check via U.S. Mail.

SECTION II: REQUIRED SIGNATURE.

Signature

Date

Print Name

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE SETTLEMENT ADMINISTRATOR BY JULY 14, 2023.

IF YOU HAVE ANY QUESTIONS ABOUT THIS LAWSUIT, YOUR RIGHTS, OR COMPLETING THIS CLAIM FORM, PLEASE CONTACT THE SETTLEMENT ADMINISTRATOR AT 516-461-2682 OR CLASS COUNSEL AT 585-272-0540 OR CONTACTUS@THEEMPLOYMENTATTORNEYS.COM.

AFP Management Settlement Administrator
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050

Return Service Requested

SAMPLE RECORD
322 MAIN STREET
PORT WASHINGTON, NY 11050



0500