

**IMPORTANT LEGAL NOTICE**  
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

VIVIAN VARGAS, JOSE RENTERIA,  
individually, and on behalf of other members  
of the public, similarly situated,

Plaintiffs,

vs.

WENDY'S INTERNATIONAL, INC., and  
Does 1 thru 50, inclusive,

Defendant.

CASE NO. 04 AS 01043

CLASS ACTION

NOTICE OF CLASS ACTION SETTLEMENT AND  
SETTLEMENT HEARING – CLAIM FORM ATTACHED

TO: ALL CURRENT OR FORMER EMPLOYEES OF WENDY'S INTERNATIONAL, INC. ("WENDY'S") WHO WORKED AS GENERAL MANAGERS (INCLUDING TIME SPENT AS GENERAL MANAGERS IN TRAINING) OR CO-MANAGERS (INCLUDING TIME SPENT AS CO-MANAGERS IN TRAINING) (collectively "CLASS POSITIONS") IN THE STATE OF CALIFORNIA AT ANY TIME DURING THE PERIOD DECEMBER 2, 1999 AND DECEMBER 21, 2004 ("CLAIMS PERIOD").

**PLEASE READ THIS NOTICE CAREFULLY**

**You may be entitled to money from this settlement. According to Wendy's records, you worked as a General Manager or Co-Manager during the Claims Period and you are eligible to receive the amount described on the attached Claim Form. This amount is based on the number of weeks you worked for Wendy's in a Class Position during the Claims Period, according to Wendy's records. This amount may be more depending on how many class members submit claims.**

1. **YOU ARE HEREBY NOTIFIED** that a proposed settlement ("Settlement") of the above-captioned class action ("Action") pending in the Superior Court of the County of Sacramento has been reached by the Parties and has been granted preliminary approval by the Court supervising the Action. The purpose of this Notice is to describe the Action, to inform you of the terms of the proposed Settlement, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims in this Action. A Settlement Hearing will be held on April 18, 2005, to determine whether the Action should be granted final approval. **Because your rights may be affected, it is extremely important that you read this Notice carefully. You must file a claim which is postmarked by March 11, 2005, if mailed, or which is received by March 11, 2005, if delivered by means other than mail, to participate in the Settlement. If you fail to file a timely claim, you will receive nothing under the Settlement.**

**WHY SHOULD I READ THIS NOTICE?**

2. You received the Notice because it is believed that you worked in a Class Position for Wendy's in the State of California at some time during the Claims Period (December 2, 1999 to December 21, 2004) and are a Class Member. If that is correct, then the information contained in this Notice affects your legal rights. You should read this Notice because you may be entitled to money under the Settlement.

**WHAT IS A CLASS ACTION?**

3. 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," assert claims on behalf of the entire class.

**PURPOSE OF THIS NOTICE**

4. The Sacramento County Superior Court has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the proposed Settlement of this class action and your potential rights in regard to it.

## SUMMARY OF LITIGATION

5. One current employee and one former employee of Wendy's ("Plaintiffs") filed a class action lawsuit ("Lawsuit") against Wendy's which was transferred to the Sacramento County Superior Court. The Lawsuit alleges that, among other things, General Managers and Co-Managers working in Wendy's restaurants in California were misclassified as exempt employees and are owed overtime wages and penalties for missed meal and rest periods. The Lawsuit seeks damages for unpaid overtime, for interest on the unpaid overtime, for record-keeping violations, meal and rest period violations, for penalties as permitted by California law, for attorneys' fees and costs of suit, and for equitable relief.
6. The Lawsuit includes claims that arise under California Labor Code Sections 201, 202, 203, 204, 216, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1171 *et seq.*, 1194, 1197, 1197.1, 1198, 1199, 2699, Business and Professions Code Section 17200, *et seq.*, and Wage Order No. 5-2001 and its predecessors issued by the Industrial Welfare Commission. These laws provide, among other things, that overtime wages equal to one and one-half times an employee's regular rate of pay must be paid to employees who work more than eight (8) hours in a day or forty (40) hours per week unless they are "exempt," and provide for a penalty in certain circumstances for the failure to keep records of time worked, to provide meal and rest breaks, and to pay all wages due to an employee.
7. Wendy's denies any liability or wrongdoing of any kind associated with the claims alleged, and contends that, among other things, Wendy's has complied with the California Labor Code, California Business and Professions Code, and the applicable Industrial Welfare Commission Wage Order.
8. The Court has made no ruling on the merits of Class Members' claims and has determined only that certification of the Class for Settlement purposes is appropriate under California law.
10. On December 21, 2004, the Court appointed the following attorneys to represent the Settlement Class ("Class Counsel") in this Action:

Edward J. Wynne  
J.E.B. Pickett  
RIGHETTI WYNNE  
456 Montgomery Street, 14th Floor  
San Francisco, California 94104  
1-800-447-5549

11. On December 21, 2004, for purposes of the Settlement, Sacramento Superior Court has certified a Class consisting of all current and former Wendy's employees who are or have been employed in a Wendy's restaurant in the State of California as a General Manager or Co-Manager at any time from December 2, 1999 through December 21, 2004 (the "Class").
12. If you are a member of the Class, you will be bound by the proposed Settlement described below if it is approved, unless you are eligible to and do make a written request for exclusion in the manner described below.

### YOUR OPTIONS

13. If you are a Class Member – that is, if you were actively employed by Wendy's in a Class Position in California at any time from December 2, 1999 through December 21, 2004 – you have several options.
14. **If you want to participate in the Settlement and receive money under the Settlement, you must sign and date the enclosed Claim Form and either (1) mail the completed Claim Form by postage pre-paid U.S. First-Class mail postmarked by no later than March 11, 2005, to the Settlement Administrator at the following address, or (2) if delivered by any means other than postage pre-paid U.S. First-Class mail, by a means to ensure the receipt of the completed Claim Form by the Settlement Administrator by no later than March 11, 2005, at the following address:**

*Vargas v. Wendy's International, Inc.*  
c/o Rosenthal & Company LLC  
P.O. Box 6177  
Novato, CA 94948-6177  
Telephone: 1-800-207-0343  
Fax: (415) 382-6565

OR

*Vargas v. Wendy's International, Inc.*  
c/o Rosenthal & Company LLC  
300 Bel Marin Keys Boulevard, Suite 200  
Novato, CA 94949  
*(above address for hand delivery only)*

A copy of your Claim Form is attached. (If you need an extra copy, contact the Settlement Administrator or Class Counsel.) If any information provided on the Claim Form is incorrect, please make corrections. For example, if your address is incorrect, please indicate your correct address. Also, please provide your telephone number and any other indicated information referred to on your Claim Form if it is not provided. If you wish to have confirmation that the Settlement Administrator has received your Claim Form, you may do so by sending it by certified U.S. Mail with a return-receipt request. The Claim Form lists the dates that you worked in Class Positions during the Claims Period. If you believe the dates listed on the Claim Form are incorrect, no later than March 11, 2005, you may send a letter to the Settlement Administrator along with the Claim Form indicating what you believe the correct dates are. You may send any documents or other information that support your belief. The Settlement Administrator will resolve any dispute regarding the dates you worked in Class Positions based on Wendy's records and any information that you provide.

15. If you are a Class Member and you choose to participate in the Settlement, you will be bound by all of the provisions of the Settlement Agreement between the Parties, including a full release of claims that will prevent you from separately suing Wendy's, its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, affiliates, registered agents, attorneys, insurers, successors or assigns for the matters being settled in this case (see paragraph 24 below).
16. **ANY CLASS MEMBER WHO DOES NOT SUBMIT A TIMELY CLAIM FORM WILL NOT RECEIVE A SHARE OF THE SETTLEMENT AMOUNT.** If you do nothing – that is, if you do not mail or deliver a timely Claim Form – you will not be entitled to a share of the Settlement Amount. **HOWEVER, YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE, EVEN THOUGH YOU DID NOT RECEIVE ANY MONEY.** Therefore, you will not have the right to pursue your own claims against Wendy's or other related entities or persons if you do nothing.
17. Settlement Class Members may exclude themselves from (or “opt out” of) the Settlement Class by mailing to the Settlement Administrator at the address listed in paragraph 14, on or before March 11, 2005, a written statement expressing their desire to be excluded from the Settlement Class. If you wish to opt out of the Settlement Class in this Action, your written statement must include your name (and former names, if any), current address, telephone number and Social Security number and the dates of your employment with Wendy's in a Class Position. In addition, it must be postmarked on or before March 11, 2005. Requests to opt out that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Persons who are eligible to and do submit valid and timely requests to opt out of the Settlement Class will not participate in the Settlement, nor will they be bound by the terms of the proposed Settlement, if it is approved, or the Final Judgment in this action.
18. If you are a Class Member and believe that the proposed Settlement Agreement should not be finally approved by the Court for any reason, you may object to the proposed Settlement Agreement by filing an objection in writing with the Court, on or before March 11, 2005, in which you state the basis of your objection, and you must also mail copies of your objection to the Settlement Administrator, Plaintiffs' counsel, and Wendy's counsel at the addresses below.

Robert Kristoff, Esq.  
PAUL, HASTINGS, JANOFSKY & WALKER  
55 Second Street, 24th Floor  
San Francisco, CA 94105

Edward J. Wynne, Esq.  
J.E.B. Pickett, Esq.  
RIGHETTI WYNNE  
456 Montgomery Street, 14th Floor  
San Francisco, CA 94104

AND

**Vargas v. Wendy's International, Inc.**  
c/o Rosenthal & Company LLC  
P.O. Box 6177  
Novato, CA 94948-6177  
Telephone: 1-800-207-0343  
Fax: (415) 382-6565

19. You also may appear at the hearing scheduled for April 18, 2005, at 2:00 p.m. in Dept. 14 of the Superior Court of the State of California for the County of Sacramento, located at 720 Ninth Street, Sacramento, CA 95814, to have your objection heard by the Court. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who will represent an individual objecting to the Settlement Agreement must file a notice of appearance with the Court and serve counsel for all parties on or before March 11, 2005. All objections or other correspondence must state the name and number of the case, which is Vargas, et al. v. Wendy's

International, Inc., et al., Case No. 04 AS 01043. If you object to the Settlement, you may be deposed in connection with your objection and claim. If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Class Member who does not object.

20. Any member of the Class who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.
21. Any member of the Class who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

### **SUMMARY OF TERMS OF SETTLEMENT AGREEMENT**

22. The Parties entered into a proposed Joint Stipulation of Settlement (“Settlement Agreement” or “Settlement”) on September 17, 2004. The Court granted preliminary approval to the Settlement Agreement on December 21, 2004. The Court will hold a Settlement Hearing on the Settlement Agreement in Department 14 of the Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, CA 95814 at 2:00 p.m. on April 18, 2005, at which time the Court will determine whether to recommend final approval of the Settlement. The principal terms of the Settlement are summarized in this Notice. If you would like a complete copy of the Settlement or if you have any questions about the Settlement, please contact Class Counsel at the address or telephone number listed in paragraph 10 above.
23. **Settlement Amount.** The Agreement provides that Wendy’s will pay one million seven hundred fifty thousand dollars (\$1,750,000.00) (the “Total Settlement Amount”) to fully resolve the issues in the Action. After the following Court-approved deductions, the remaining amount will be distributed to Class Members who timely file claims (“Qualified Claimants”) pursuant to the Court-approved Plan of Allocation, which is based on the Class Member’s weeks worked in a Class Position during the Claims Period.
  - (a) **Deductions.** The following deductions will be made from the Settlement Amount:
    - (i) **Settlement Administrator.** The Court has tentatively approved a charge of twenty-five thousand dollars (\$25,000.00) to be paid for the Settlement Administrator, Rosenthal & Company LLC, to notify the class and process claims.
    - (ii) **Attorneys’ Fees and Costs.** The Court has appointed Edward J. Wynne and J.E.B. Pickett of Righetti Wynne as Class Counsel. Class Counsel has been prosecuting this litigation on behalf of the Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. Class Counsel will be entitled to request from the Court reimbursement of their costs and expenses. Any such reimbursements will be subject to the Court’s approval and will be paid out of the Settlement Amount. Class Members are not personally responsible for any fees or expenses. The Settlement provides that Class Counsel may request from the Court a payment of up to five hundred eighty-three thousand three hundred twenty-seven dollars and fifty cents (\$583,327.50) or 1/3 of the Settlement Amount for attorneys’ fees, and Class Counsel intend to request such an amount. Class Counsel may also seek reimbursement of the expenses they have advanced in connection with the Lawsuit; such costs are approximately fifteen thousand dollars (\$15,000.00). These amounts would constitute full compensation for all legal fees, costs, and expenses of Class Counsel, including costs and expenses incurred by Class Counsel in connection with the Lawsuit and all future work done through the completion of the litigation, whenever that may be. Class Members will not be required to pay Class Counsel for any other attorneys’ fees, costs or expenses out of their own pockets if the Settlement Agreement and the fee request are finally approved by the Court. If finally approved by the Court, this attorneys’ fee would be within the range of fees awarded to plaintiffs’ counsel under similar circumstances in litigation of this type.
    - (iii) **Service Payment Enhancements to Named Plaintiffs.** Class Counsel will also seek service payment enhancements for the two Plaintiffs, Vivian Vargas and Jose Renteria, for acting as Representative Plaintiffs on behalf of the Class as follows: Class Counsel will ask the Court to award each of these two, in addition to whatever payments they are otherwise entitled to as a Settlement Class Member, five thousand dollars (\$5,000.00). If approved by the Court, these amounts will be paid from the Total Settlement Amount for Plaintiffs’ risks and services on behalf of the Class which include, among other things, reviewing documents, attending strategy sessions and meetings with Class Counsel and other Plaintiffs, and performing other services of that nature on behalf of the Class. Any service payments approved by the Court shall be paid by Wendy’s from the Total Settlement Amount.

- (b) Payment to Class Members: Plan of Allocation. The approximately one million one hundred sixteen thousand six hundred seventy-two dollars and fifty cents (\$1,116,672.50) remaining after these deductions will be available for distribution to Class Members who submit timely Claim Forms (“Qualified Claimants”) as follows:
- (i) Calculation of Qualified Claimants’ Proportionate Share of the Settlement Payment. Qualified Claimants will receive a proportionate share of the Settlement Payment based on the number of weeks worked in a Class Position during the Claims Period (December 2, 1999 through December 21, 2004). The dates during which Class Members worked will be determined with reference to Wendy’s records. Approximations and averages will be used to cover periods where data is missing or otherwise not available.
- (c) Tax Matters. IRS Forms W-2 and 1099 (and/or the equivalent California forms) will be distributed to Qualified Claimants reflecting the payments they receive under the Settlement. For purposes of tax payment obligations, fifty percent (50%) of the amounts distributed to each Qualified Claimant shall be treated as damages for lost wages and reported as such (W-2 reporting), and fifty percent (50%) treated as damages for interest and/or penalties and reported as such (1099 reporting). Qualified Claimants should consult with their tax advisors concerning the tax consequences of the payments that they receive under the Settlement. The usual and customary deductions will be taken out of the amount distributed that is attributable to unpaid overtime. Wendy’s will pay the employer portion of FICA and FUTA on the portion of the payment designated as wages.
24. Release. If approved by the Court, the proposed Settlement Agreement will be binding on all members of the Class and will bar any Class Member who does not timely opt out of the Settlement from bringing any claims concerning overtime wages or the computation of overtime pay for work performed for Wendy’s as a General Manager or Co-Manager between December 2, 1999 and December 21, 2004. The Settlement, once approved by the Court, will fully release and discharge Wendy’s International, Inc. and all present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, affiliates, servants, registered representatives, attorneys, insurers, successors and assigns, from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys’ fees, damages, actions or causes of action whatever kind or nature, whether known or unknown, that were alleged or that reasonably could have arisen out of the same facts alleged in the *Vargas, et al. v. Wendy’s International, Inc.* action, including but not limited to any claims for unpaid wages, including unpaid overtime, unlawful deduction of wages, record-keeping violations, failure to provide meal or rest periods, including without limitation, Labor Code Sections 201, 202, 203, 204, 216, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1171 *et seq.*, 1194, 1197, 1197.1, 1198, 1199, 2699, Business and Professions Code Section 17200, *et seq.*, and Wage Order No. 5-2001 and its predecessors under federal and state law up to and including the date of preliminary Court approval of this Settlement Agreement. In addition, Class Members who do not opt out of the Settlement will waive any and all rights and benefits afforded by Section 1542 of the California Civil Code with respect to the released claims, which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

25. Each Qualified Claimant on the Claim Form will release any and all claims against Wendy’s related to any claims of unpaid wages, including overtime, record-keeping violations, meal or rest period penalties, interest and other claims or penalties under federal or state law that were brought or could have been brought in the Action. The Claim Form and the back of each Settlement check issued to the Qualified Claimants will state, “My signature constitutes a full and complete release of Wendy’s International, Inc. from any and all claims of unpaid wages, including unpaid overtime, unlawful deduction of wages, record-keeping violations, meal or rest period penalties, interest and other claims or penalties under federal and state law that were brought or that could reasonably have arisen out of the same facts alleged in the *Vargas v. Wendy’s* action up to and including the date of preliminary court approval of the Settlement.”

Conditions of The Settlement. This Settlement is conditioned upon the Court entering an order at or following the Settlement Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

#### **NO RETALIATION OR UNDUE INFLUENCE**

26. California law prohibits Wendy’s from retaliating against employees who exercise their rights under California wage and hour laws. In the event you feel you have been threatened or coerced to participate or to not participate in this Settlement, or are retaliated against for electing to participate or to not participate in this Settlement, you should immediately contact Class Counsel listed above, in Paragraph 10.

