

## Notice of Settlement of Class Action

*If You Performed at Ferny Properties, LLC, d/b/a The Northern Gentlemen's Club as an Exotic Dancer, a Proposed Class Action Settlement May Affect Your Rights. You May Be Entitled to a Cash Payment.*

**A U.S. Federal Court has authorized this Notice.  
It is not from a lawyer. You are not being sued.**

You are receiving this notice because there is a proposed settlement of a class action lawsuit brought by two exotic dancers (“entertainers” or “Plaintiffs”)(hereinafter “Plaintiff”) against Ferny Properties, LLC (referred to below as “Northern,” or “Defendant”). The lawsuit is captioned *Tompkins et al. v. Ferny Properties, LLC et. al.*, No. 3:18-cv-00190, and is pending before Chief Judge Peter D. Welte, in the United States District Court for the District of North Dakota.

In the lawsuit, Plaintiffs Jill Tompkins and Ella Metcalf brought their claims on behalf of all other entertainers (the “Class”) who performed at Northern from September 19, 2015 through April 5, 2021. The lawsuit alleges that the Defendant, among other allegations, misclassified entertainers as non-employees, failed to pay minimum wages, and unlawfully confiscated tips belonging to the Plaintiffs and to other entertainers performing at Northern.

The Defendants have denied and continue to deny all of the allegations in Plaintiffs’ Complaint and have threatened counterclaims against the Plaintiffs and the Class; including claims that the entertainers should be required to return the mandatory dance fees they retained if they were found to be employees of Northern.

The Court has not made a determination of the merits of Plaintiffs’ claims, or Northern’s defenses or threatened counterclaims.

Rather than continue to litigate these matters, the parties have reached a settlement. The monetary value of the settlement is \$200,000.00 dollars. Pursuant to the terms of the settlement, eligible entertainers may elect to receive, subject to the provisions below: a one-time cash payment, in an amount to be determined based, in part, on the number of dates the entertainer performed during the class period as defined below. Regardless of whether an eligible entertainer requests this optional payment, every member of the entertainer Settlement Class will receive an equal portion of part of the Settlement Fund.

The Court has preliminarily approved the settlement. However, settlement benefits cannot be distributed until after the Court grants final approval of the settlement and after any possible appeals are resolved.

The Court has certified the Class for settlement purposes as being:

**All entertainers who performed at Ferny Properties, LLC, d/b/a The Northern Gentlemen’s Club during the period from September 19, 2015 through April 5, 2021.**

Your legal rights are affected by the Court’s decision to certify a class, and you have a **choice to make now**. Please read the following pages carefully, including the *Summary of Your Rights and Choices* and the *Settlement Benefits and My Options* sections, which are below.

**Summary of Your Rights and Choices:**

*Your Legal Rights Are Affected **Even If You Do Not Act.***

*Read This Notice Carefully.*

<b>You May:</b>	<b>Effect of Choosing the Option:</b>	<b>Due Date:</b>
<i><b>Exclude Yourself</b></i>	You can elect to get out of the Class and keep your right to sue Northern on your own in regard to the claims in the lawsuit. To exclude yourself from participating in the settlement, you <b>must</b> follow the exclusion procedure explained below.	<b><u>Postmarked or E-Mailed by July 26, 2021</u></b>
<i><b>File Objection</b></i>	If you do not exclude yourself, you can remain a Class Member and still write to the Court about why you agree or disagree with the settlement.	<b><u>Postmarked or E-Mailed by July 26, 2021</u></b>
<i><b>Appear at a Hearing</b></i>	If you do not exclude yourself, you can also ask to speak to the Court about the fairness of the settlement.	<b><u>The Notice of Appearance Must be postmarked on or before September 17, 2021, to appear at the final hearing on September 27, 2021 at the Federal Courthouse in Fargo, ND</u></b>
<i><b>Do Nothing</b></i>	You <b>will</b> be bound by the terms of the settlement and give up your right to sue Northern yourself on these claims later. You will still receive a check Equal Distribution Fund, as described below, but you will not receive a check from the Proportional Distribution Fund.	
<i><b>Elect Your Form of Settlement Benefit</b></i>	If you wish to be included in the Class settlement and receive the maximum settlement benefit, you <b>must submit a properly completed Claim Form to the Settlement Administrator prior to July 26, 2021.</b>  If you fail to file a Claim Form or to correct an improperly filed Form prior to <b>July 26, 2021</b> , you will <b>not</b> be eligible to obtain the maximum settlement benefit from the Class settlement and <b>will</b> be bound by the terms of the settlement and give up your right to sue Northern yourself on these claims later.	

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## BASIC INFORMATION

### 1. Why did I get this Notice?

The Court directed this Notice be sent to you because you may have performed as an entertainer at Northern during the Class Period, and therefore may be entitled to benefits pursuant to the terms of the settlement.

If you are a member of the Class, the proposed settlement will affect your legal rights. Therefore, it is important that you read this notice carefully. You have choices to make before the Court decides whether or not to approve the settlement.

### 2. What is a Class Action?

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue one or more defendants on behalf of other people who may have similar claims. All these people together are a “class” or are “class members.” The court can determine whether it will allow a lawsuit to proceed as a class action. If it does, a trial then decides the lawsuit for everyone in the class or the parties may settle without a trial.

In a class action, one court resolves the common issues for everyone in the class - except for those people who choose to exclude themselves from the class.

### 3. What is this Class Action about?

The lawsuit alleges Northern misclassified entertainers as non-employees and as a result of this misclassification, entertainers were not paid minimum wages and other compensation required under federal and North Dakota wage and hour laws. In

addition, the lawsuit alleges that Defendants unlawfully confiscated entertainer tips. The Defendants have denied these allegations and have threatened counterclaims to recover the value of mandatory dance fees retained by entertainers if the entertainers were deemed to have been employees when they collected those fees.

The Court has approved the certification of the class of entertainers who performed at Northern during the Class Period, concluding that the question of whether Northern is liable under Fair Labor Standard Act (“FLSA”) or North Dakota wage laws for the purported misclassification of entertainers, and whether Northern improperly confiscated tips, are common issues deserving class action treatment.

Plaintiffs and Defendants have reached a settlement in this case. The Court has not ruled on the merits of Plaintiffs’ claims or on Northern’s defenses or counter-claims. Rather, the Court has simply certified a settlement class and tentatively approved the proposed settlement.

#### **4. Who are the Class Members?**

In order to determine if you are entitled to benefits from this settlement, you first must determine if you are a Class Member, defined as:

**All entertainers who performed at Ferny Properties, LLC, d/b/a The Northern Gentlemen’s Club during the period from September 19, 2015 through the April 5, 2021.**

If you fall within the definition of a Class Member, you may qualify for a “Cash Payment” pursuant to the criteria set forth in the settlement agreement. If you are not a Class Member as described above, you do not qualify for settlement benefits.

#### **5. Why is the Class Action Being Settled?**

This matter is being settled because both sides have agreed to a settlement of this case in order to avoid the costs and risks of trial.

### **SETTLEMENT BENEFITS AND MY OPTIONS**

#### **6. What are the Settlement Benefits?**

The settlement agreement, if approved, provides both monetary and nonmonetary benefits to the Class. First, each Class Member will receive monetary benefits. Second, all entertainers will benefit from certain injunctive relief as explained below.

As described in greater detail in Section 7 below, each Class Member will receive, at minimum, a one-time cash payment.

As part of the settlement, Defendants have agreed to pay up to \$200,000 to the Class in the form of a “Cash Pool.” All Class Members will receive a payment from the Cash Pool that comes from 1) an equal share of part of the Cash Pool (the “Equal Distribution Fund”) and 2) a pro rata share from the Cash Pool (the based on the numbers of days the Class Member performed at Northern during the Class Period.

This settlement includes injunctive relief. Defendants have agreed to make the following changes to their policies and procedures:

- Allowing dancers to make bookings over the phone, text, or email;
- Prices charged to customers for performances in the Couch and VIP Rooms will be set at the following schedule:
  - o For Couch Room dances, the Club will charge customers a \$5 rental fee and the Dancer will charge the customer \$20 per dance, for up to three consecutive dances; and
  - o For VIP Room performances, the Club will charge the customer a \$25 rental fee for each 15 minute increment rental of the VIP Room and the Dancer will charge the customer \$100 for the same period;
- Dancers will pay a flat rental/license/appearance fee of
  - o \$0 if the dancer is ready to perform by 5:30pm;
  - o \$50 if the dancer is ready to perform by 6:30pm; and
  - o \$75 if the dancer is ready to perform at 7:30pm;
- Each of the fees may be increased by \$5 on the anniversary of the Court’s preliminary approval of this Settlement;

- A Dancer’s credit card payments will be held by the Club for no longer than 30 days and only on charges of \$1,500 or more;
- The club will not charge Dancers a credit card processing fee for using Defendant’s credit card system for payment;
- There will be no mandatory tip outs to any Club employees;
- There will be no shoe “heel” minimum length or style;
- Dancers will be free to decline any dance or request made by a customer, employee, or manager. Dancers will be required to appear for their stage rotation dances so long as it does not occur during a Dancer’s Couch or VIP room dance and/or experience;
- Unless a Dancer agrees in writing, any charges for the use of an affiliated “Dormitory” will be separately billed and cannot be added or deducted from any other fee from or payment to Dancer for Dancer’s appearance at the club.

## 7. How do I elect to receive Settlement benefits?

Eligible Class Members are entitled to monetary settlement benefits from the Cash Pool from two separate funds: the Equal Distribution Funds (One Third of the Cash Pool) and the Proportional Distribution Fund (Two Thirds of the Cash Pool). Payments will be made out of the Cash Pool of \$200,000 *after* deducting Enhancement Payments (for the Class Representative), Attorney Fees, and an Expense Award.

To receive the maximum settlement payment, including a payment from the Proportional Distribution Fund, **you must** properly complete and timely submit the Claim Form that is included with this notice. To be deemed timely, **you must**, by first class United States mail, **postmarked on or before July 26, 2021**, or by e-mail, submit the Cash Election Form to:

ND FLSA Settlement  
P.O. Box 2002  
Chanhassen MN 55317-2002  
Email: [info@NorthernGentlemanDancerFLSAsettlement.com](mailto:info@NorthernGentlemanDancerFLSAsettlement.com)  
Toll-free: 1-855-716-1621  
Website: [www.NorthernGentlemanDancerFLSAsettlement.com](http://www.NorthernGentlemanDancerFLSAsettlement.com)

Only one Claim Form is needed, and only one form will be accepted.

Class members who do not submit a Claim Form will only receive an equal share of the smaller Equal Distribution Funds and will receive no funds from the larger Proportional Distribution Fund.

Each Class Member who timely submits a Claim Form and is entitled to receive payment from the Proportional Distribution Fund will be paid based upon the length of time she worked for Northern during the Class Period. Specifically, the cash payments will be paid on a pro-rata basis, based on the number of days the entertainer performed during the Class Period.

**YOU MUST SUBMIT A TIMELY CASH ELECTION FORM TO RECEIVE THE MAXIMUM SETTLEMENT PAYMENT.** If you select to receive a cash payment, you may receive an IRS Form 1099-MISC for the amount of the cash payment made to you. You will be responsible for the payment of any federal and state taxes due as a result of the cash payment.

If you are a Class Member and you do not fill out either a Claim Form or an Opt Out Form (as described below), you will forfeit your entitlement to any payment from the Proportional Distribution Fund, you will only receive a check for an equal share of the Equal Distribution Fund, and you will remain bound by the terms of the settlement.

**Summary:** To summarize, if you wish to remain in the Class and receive the maximum settlement payment, then you **MUST** fill out and timely submit to the Settlement Administrator the Claim Form. Only one Claim Form will be accepted. The value of your cash claim will depend on the number of days you performed at Northern during the Class Period.

***You should seek the advice of a tax professional if you have any questions about the tax implications of this settlement.***

## REMAINING IN THE CLASS

### 8. What happens if I do nothing and stay in the Class?

If you do nothing, you will be included in the Class, and you will be bound by the terms and conditions of the settlement. Under the terms of the settlement, you will still receive a check, but only from the smaller Equal Distribution Fund. You may still benefit from certain injunctive relief provided by the settlement.

Please read the *Settlement Benefits and My Options* section.

## 9. If I remain in the Class, what am I giving up?

If the Court approves the settlement, you will have released all Defendants from any further claims related to the matters raised in this lawsuit, and you cannot ever sue any of the Defendants about these issues based upon conduct that occurred prior to the effective date of the settlement. Should you have any questions about the scope of the release, you may contact Class Counsel.

## EXCLUDING YOURSELF FROM THE CLASS

### 10. Why would I want to be excluded from the Class?

You do not have to take part in the settlement or be a member of the Class. You can exclude yourself from the settlement by “opting out.” If you exclude yourself, you will not get the benefits of the settlement, nor can you object to the settlement. Any Court orders will not apply to you. By excluding yourself, you keep any right to file or proceed with a lawsuit against the Defendants regarding the subject of the settlement.

If you have sued any of the Defendants and want to continue with your suit, you need to personally ask to be excluded from the Class. If you exclude yourself, you will not be legally bound by the Court’s judgments in this case. Similarly, if you wish to start your own lawsuit against any of the Defendants, you must exclude yourself from the Class. Should you do so, you will have to hire and pay your own lawyer for that lawsuit and prove your own claims. If you do exclude yourself so you can start or continue your own lawsuit against Northern, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

### 11. How do I exclude myself from the Class?

If you are a member of the Class and wish to be excluded from the settlement, you must complete and personally sign the Opt Out Form included with this notice, or send a written request, signed by you personally, which includes all of the following:

- Your legal name, current address, and telephone number;
- The name and number of the lawsuit: *Tompkins et al. v. Ferny Properties, LLC et. al.*, No. 3:18-cv-00190; and
- A statement, signed personally by you, clearly stating that you want to be excluded from the Class.

All exclusion requests must be mailed first class United States mail, postmarked on or before **July 26, 2021**, to:

ND FLSA Settlement  
P.O. Box 2002  
Chanhassen MN 55317-2002

***Any request for exclusion must contain your personal signature, which shall be an indication to the Court that you wish to be excluded from the Class.*** You cannot exclude yourself by phone or by e-mail. Further, if you do not follow these instructions properly, you will lose your right to exclude yourself. There are no exceptions.

**UNLESS YOU PROPERLY SIGN AND TIMELY MAIL AN OPT OUT FORM OR REQUEST FOR EXCLUSION, YOU WILL BE BOUND BY ANY JUDGMENT IN THIS CASE AND YOU WILL NOT BE PERMITTED TO PURSUE ANY PENDING OR FUTURE LITIGATION AGAINST NORTHERN REGARDING THE MATTERS RESOLVED IN THIS SETTLEMENT. SHOULD YOU WISH TO EXCLUDE YOURSELF FROM THIS SETTLEMENT, IT IS IMPORTANT THAT YOU FOLLOW THESE INSTRUCTIONS CAREFULLY.**

### 12. How Do I Object to the Settlement?

If you do not like the settlement, you may file an objection to it. This means you can tell the Court that you disagree with the settlement or some of its terms. For example, you can say you don’t think the settlement is fair or adequate, or that you object to the amount of the attorneys’ fees, costs, or expenses. The Court will consider your views but may approve the settlement anyway.

You can object only if you do not exclude yourself from the Class (*i.e.*, you do not “opt out”). If you opt out, or exclude yourself, you cannot object.

To object, either you or a lawyer of your own choosing must prepare an objection that contains all of the following:

1. The name and title of the lawsuit: *Tompkins et al. v. Ferny Properties, LLC et. al.*, No. 3:18-cv-00190 (D.N.D.);

2. A written statement of objections clearly specifying the grounds or reasons for each objection;
3. A statement of whether or not you or your lawyer will ask to appear at the Final Approval Hearing to talk about your objections, and, if so, how long you will need to present your objections; and
4. Copies of documents (if any) you or your lawyer will present at the Final Approval Hearing.

Your objection must be filed with the Court and served on Class Counsel and Counsel for the Defendants no later than **July 26, 2021**. Any objection postmarked after that date will be rejected.

***To File an Objection with the Court, Mail Objection to:***

Clerk of the Court  
Quentin N. Burdick  
U.S. Courthouse  
655 1st Ave., North, #130  
Fargo, North Dakota 58102-4932

***To Serve Class Counsel, Mail Objection to:***

Edward W. Ciolko  
Carlson Lynch LLP  
1133 Penn. Avenue, 5th Floor  
Pittsburgh, PA 15222

***To Serve Defendants' Counsel, Mail Objection to:***

Matthew J. Hoffer  
Shafer & Associates, P.C.  
3800 Capitol City Blvd # 2,  
Lansing, MI 48906

Objections postmarked after **July 26, 2021** will be untimely and not be considered by the Court.

## **THE LAWYERS REPRESENTING YOU**

### **13. Do I have a lawyer representing my interests in this case?**

Yes. The Court has approved law firms to represent you and other Class Members. The primary law firm and lawyer in this matter are referred to as Class Counsel, and are:

Edward W. Ciolko  
Carlson Lynch LLP  
1133 Penn. Avenue, 5th Floor  
Pittsburgh, PA 15222

You will not be charged directly by Class Counsel for their lawyers' services, but they will ask the Court to award them a fee from the settlement.

If you so desire, you may hire your own attorney. However, you will be responsible for that attorney's fees and expenses.

### **14. How Will the Lawyers be Paid?**

The lawyers who represent the Class will ask the Court for reimbursement of their out of pocket expenses and an award of attorneys' fees based on their work in this litigation. The amount of attorneys' fees to be awarded will be determined solely by the Court. Under the terms of the settlement agreement and subject to Court approval, Class Counsel will petition the Court for up to 33 1/3% of the Cash Pool (\$66,666.67) dollars in attorneys' fees and, in addition, reimbursement of their out-of-pocket costs associated with prosecuting this case and effectuating the settlement. Attorneys' fees payable to Class Counsel have been factored into the value of the settlement.

These fees and approved expenses will be paid from the Cash Pool prior to disbursements to Class Members.

The settlement agreement provides further details on attorney fees payable to Class Counsel, and a copy of the settlement agreement may be obtained either from Class Counsel or the Court.

## **15. How Will the Class Representatives be Compensated?**

To compensate the Class Representatives (Jill Tompkins and Ella Metcalf) for their work in this litigation on behalf of the Class and for the particular claims they may have, the named Plaintiffs will share a total award and incentive payment of up to \$6,000. The Defendants shall pay this award to the named Plaintiffs from the Cash Pool proceeds that are available to the Class, but the incentive payment has been factored into the value of the settlement.

### **THE COURT'S FINAL APPROVAL HEARING**

## **16. When and Where will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Final Approval Hearing on **September 27, 2021 at 9:00 a.m.** At this hearing, the Court will consider whether or not the settlement is fair, reasonable, and adequate. If there are written objections, the Court will consider them; and the Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether or not to approve the settlement.

The Hearing will be held at: United States District Court for the District of North Dakota, before the Honorable Peter D. Welte, 655 1st Ave., North, # 130, Fargo, North Dakota, 58102-4932.

## **17. Do I have to attend the Hearing?**

No. Class Counsel will answer questions the Court may have, but you may appear at your own expense. If you send a written objection, the Court will consider it. You may also pay your own lawyer to attend the hearing if you desire.

## **18. Can my lawyer appear at the Final Approval Hearing to tell the Court about my opinions regarding the Settlement?**

Yes. As long as you do not exclude yourself, you have the right to appear through counsel at the Final Approval Hearing, so long as your Attorney's Notice of Appearance and any written objections you may have are postmarked or received by the Court, Defendants' Counsel, and Class Counsel by **September 17, 2021**. If you do this, however, the cost of having your lawyer appear will be at your own expense.

### **GETTING MORE INFORMATION**

## **19. Where do I obtain more information?**

If you want additional information, you may write Class Counsel at the addresses listed above.

The specific terms of the settlement are outlined in the legal documents that have been filed with the Court. You can look at and copy these documents at any time during regular office hours at the Office of the Clerk of Court for the United States District Court for the District of North Dakota, Quentin N. Burdick U.S. Courthouse, 655 1st Ave., North, # 130 Fargo, ND 58102-4932. If you have a PACER account, you may view the documents on the Court's CM/ECF website under case number: 3:18-cv-00190. You may also contact Class Counsel above who will be happy to provide you with case related information.

**PLEASE DO NOT CONTACT THE COURT  
REGARDING THE CONTENTS OF THIS NOTICE**