

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Dianna Khun v. Sleepy's LLC, CMC Acquisition Corp. d/b/a Capital Marketing Concepts, Inc.
Civil Action No. 1:17-CV-10110

OFFICIAL COURT NOTICE OF SETTLEMENT OF CLASS ACTION

To: Certain Customers of Sleepy's LLC Who Made Certain Qualifying Promotional Purchases

Re: Settlement of Class Action Lawsuit

Date: _____

INTRODUCTION

This Notice explains the above-referenced lawsuit and the terms of the settlement and explains your rights and obligations. The Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the parties. The Notice contains information about the following topics:

1. What is the Lawsuit About and Why Was This Notice Sent?
2. Who is Affected by the Proposed Settlement?
3. What are the Terms of the Proposed Settlement and How Much Can You Expect to Receive?
4. Who Represents the Parties and How Will the Attorneys for the Class Get Paid?
5. What are Your Options?
6. What If You Do Nothing?
7. How Can you Exclude Yourself or Opt-Out of the Settlement?
8. How Can you Object to the Settlement?
9. What to do if You Have Questions?

1. What Is the Lawsuit About and Why Was This Notice Sent?

A class action lawsuit was filed by Plaintiff Dianna Khun alleging that the Defendants Sleepy's, LLC ("Sleepy's") and CMC Acquisition Corporation d/b/a Capitol Marketing Concepts, Inc. ("Capitol") offered promotional gift cards as part of certain qualifying purchases made at Sleepy's retail locations in Massachusetts and online for delivery in Massachusetts. The lawsuit alleges that the Defendants' promotion failed to properly identify certain use and redemption conditions for the promotional gift cards, and imposed material terms and conditions related to the promotion that were not disclosed. Defendants deny Plaintiff's allegations and assert that all of their promotional practices complied with all state and federal legal requirements.

The lawsuit is now before the Honorable Judge Saylor, United States District Court Judge for the United States District Court for the District of Massachusetts.

The parties have reached a proposed settlement of all claims in the lawsuit as to the Settlement Class after a thorough review of promotional materials and customer records.

The Court has granted preliminary approval of the settlement and has scheduled a hearing on November 27, 2018 at 3:00 p.m. in the United States District Courthouse in Boston, Massachusetts to determine whether to grant final approval of the proposed settlement.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. Who is Affected by the Proposed Settlement?

The proposed settlement affects those individuals who made qualifying promotional purchases at a Sleepy's retail location in Massachusetts or an online purchase for a Massachusetts delivery between November 7, 2012 to July 23, 2018. The Court has certified, for settlement purposes only, the following Settlement Class:

All persons who made a qualifying promotional purchase during the class period at a Sleepy's retail location located in Massachusetts, or an online purchase for a Massachusetts delivery, and were entitled to a promotional gift card to be provided by Sleepy's as part of their purchase.

Excluded from the Class are all past and present employees, agents, officers, and directors of Sleepy's and Capitol and persons who have released Sleepy's or Capitol from liability for claims associated with the distribution and redemption of promotional gift cards.

Moreover, the Settlement Class is comprised of the following two (2) subclasses:

The Redeemed Voucher Subclass (Subclass A): shall include all persons who made a qualifying promotional purchase during the class period at a Sleepy's retail location located in Massachusetts, or an online purchase for a Massachusetts delivery, and were entitled to a promotional gift card to be provided by Sleepy's as part of their purchase, who were provided with a Voucher, and who did redeem said Voucher.

The Unredeemed Voucher Subclass (Subclass B): shall include all persons who made a qualifying promotional purchase during the class period at a Sleepy's retail location located in Massachusetts, or an online purchase for a Massachusetts delivery, and were entitled to a promotional gift card to be provided by Sleepy's as part of their purchase, who were not provided with a Voucher, but who did not redeem said Voucher.

3. What are the Terms of the Proposed Settlement and How Much Can You Expect to Receive?

How much you will receive will depend on which of the two subclasses of which you are a part.

If the Court finally approves of the Settlement Agreement, members of Subclass A will receive \$25.00 for each Voucher to which the class member was entitled and for which Voucher redemption was made.

If the Court finally approves of the Settlement Agreement, members of Subclass B will receive the actual value of the Voucher to which the class member was entitled and for which no Voucher redemption was made. The average value of the Voucher is \$110.33, but your Voucher may be worth more or less than the average depending on your particular Sleepy's purchase.

The Settlement funds will generally be distributed as follows: (1) simultaneous payment to subclasses A and B, (2) payment of the Court approved Fees and Costs for Class Counsel, and (3) payment of the service fee payment to the named Plaintiff in an amount not to exceed \$6,300.00.

Any funds remaining or uncollected from the Common Fund will be distributed to an agreed upon charitable *cy pres* once all approved disbursements have been made.

4. Who Represents the Parties and How Will the Attorneys for the Class Get Paid?

Attorneys for the Plaintiff and the Class:

John R. Yasi, Esq.

Michael C. Forrest, Esq.

Kevin J. McCullough, Esq.

Brian P. McNiff, Esq.

Forrest, LaMothe, Mazow McCullough, Yasi & Yasi, P.C.

2 Salem Green, Suite 2

Salem, MA 01970

Class Counsel will apply to the Court for legal fees and reimbursement of litigation costs in an amount not to exceed \$250,000.00. Class Counsel will also request a representative service award for the named Plaintiff of an amount not to exceed \$6,300.00. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable.

5. What are Your Options?

You have three options with regard to this Settlement. You can:

1. Do nothing.
2. Request to be excluded from the settlement entirely; or
3. Object to any portion of the settlement agreement.

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

6. What If You Do Nothing?

If you are identified as a Settlement Class member and receive this Notice and if you do nothing more, you will be bound by the terms of the Settlement and will, upon approval of the Settlement by the Court and that approval becoming final, be deemed to have released all of the federal and/or state claims you may have against both Defendants.

If you are identified as a Settlement Class member and receive this Notice and if you do nothing more, you will receive a check in the mail which will be for the amounts identified in Section 3, above upon final approval of the Settlement.

7. How Can You Exclude Yourself or Opt-out of the Settlement?

You may exclude yourself from the Class Settlement by submitting a 'Request for Exclusion' to the Settlement Administrator at PO Box 404020, Louisville, KY 40233-4020. If you exclude yourself, you will not participate in these proceedings, nor will you receive any money from the net settlement fund. You will also retain the right to assert any of the claims you may have against either Defendant.

To exclude yourself from the Class, you must submit a "*Request for Exclusion from the Settlement Class*" in writing to the Settlement Administrator at the address above with a postmark date of no later than October 04, 2018.

This Request for Exclusion shall include your name and current address and shall specifically state your desire to be excluded from the Settlement Agreement and from the Settlement Class in the case of *Dianna Khun v. Sleepy's LLC, CMC Acquisition Corp. d/b/a Capital Marketing Concepts, Inc.* Civil Action No. 1:17-CV-10110, and that you understand that by excluding yourself from the Settlement, you will receive no funds in connection with this case.

8. How Can You Object to the Settlement?

If you're a Class Member, you can object to the settlement if you do not like any part of it.

In order to object to the Settlement, you must file a copy of your written objection with the Court at the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA, and mail a copy of your written objection to Counsel for the parties, identified below, no later than October 04, 2018.

To state a valid objection to the Settlement, your objection must contain the following information: (i) full name, current address, and current telephone number; (ii) a statement of the position(s) you wish to assert, including the factual and legal grounds for your position; and (iii) provide copies of any other documents that you wish to submit in support of your position. You must also include the name of the case *Dianna Khun v. Sleepy's LLC, CMC Acquisition Corp. d/b/a Capital Marketing Concepts, Inc.* Civil Action No. 1:17-CV-10110 in your objection.

PLEASE DO NOT TELEPHONE THE COURT.

If you submit a timely objection, you may also appear, at your own expense, at the Final Approval Hearing. However, to appear at the Final Approval Hearing in Court, you must first file and serve upon Counsel for the parties a “Notice of Intention to Appear at the Final Approval Hearing” which is set to occur on November 27, 2018, at United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA. You may represent yourself or appear through your own attorney. To do so, you or your attorney must also file a “Notice of Appearance” with the Clerk of the United States District Court for the District of Massachusetts and deliver copies of each to the Counsel listed below, no later than October 04, 2018.

You must mail the objection or request for exclusion to all of the following no later than October 04, 2018:

<p>To the Court:</p> <p>United States District Court for the District of Massachusetts Attn: Khun Settlement Civil Action No. 1:17-CV-10110 1 Courthouse Way Boston, MA 02210</p>	<p><u>And to Counsel:</u></p> <p>Kevin J. McCullough, Esq. Brian P. McNiff, Esq. Attn: Khun Settlement Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C. Attn: Khun Settlement 2 Salem Green, Suite 2 Salem, MA 01970</p> <p>Jessica Alhalel, Esq. Attn: Khun Settlement Greenspoon Marder, LLP PNC Building 200 East Broward Blvd, Suite 1800 Fort Lauderdale, FL 33301</p> <p>Benjamin R. Davis, Esq. Attn: Khun Settlement Locke Lord, LLP 2800 Financial Plaza Providence, RI 02903</p> <p>Christopher B. Parkerson, Esq. Erica L. Larence, Esq. Attn: Khun Settlement Campbell, Campbell, Edwards & Conroy, P.C. One Constitution Center, 3rd Floor Boston, MA 02129</p>
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9. What To Do If You Have Questions?

This notice summarizes the proposed settlement. More details are in a settlement agreement. You can get a copy of the settlement agreement by writing to Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C., 2 Salem Green, Salem, MA 01970, or by visiting the Settlement Website at www.sleepyscmcsettlement.com. You can also call Class Counsel at 877-599-8890.

PLEASE DO NOT TELEPHONE THE COURT, DEFENDANTS OR DEFENDANTS’ COUNSEL.