

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**EDWIN SUAREZ, CARLOS RIVAS, ESTER JIRON, DRISS SENE,  
IMMANUEL THORNTON, and PAULA VILLEGAS, individually and on  
behalf of all others similarly situated;**

**Plaintiffs,**

**No: 1:16-cv-05464 (GWG)**

**-against-**

**ROSA MEXICANO BRANDS INC.; WEST 62 OPERATING LLC; ROSA  
MEXICANO USQ LLC; FENIX REST. INC.; ROSA MEXICANO  
MURRAY LLC; ROSA MEXICANO BOSTON, LLC; ROSA  
MEXICANO RIVERSIDE LLC; ROSA MEXICANO DC LLC; ROSA  
MEXICANO CHEVY CHASE MARYLAND LLC; ROSA MEXICANO  
NATIONAL HARBOR LLC; ROSA MEXICANO ATLANTA LLC;  
ROSA MEXICANO MIAMI LLC; and ROSA MEXICANO SOUTH  
BEACH LLC;**

**Defendants.**

**THIS IS A NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT**

*A federal court authorized this notice.*

**IF YOU WERE A SERVER, SERVER ASSISTANT, BUSSER, RUNNER, DRINK RUNNER, COFFEE  
BAR EMPLOYEE, COCKTAIL SERVER, BARTENDER, SERVICE BARTENDER, AND/OR  
BARBACK EMPLOYED AT ONE OF THE ROSA MEXICANO RESTAURANTS:**

- IN NEW YORK BETWEEN APRIL 7, 2010 AND MAY 17, 2017  
- Or -**
- IN MASSACHUSETTS OR MARYLAND BETWEEN APRIL 7, 2013 AND MAY 17, 2017**

**YOU MAY BE ABLE TO OBTAIN MONEY FROM A LAWSUIT  
PLEASE READ THIS NOTICE CAREFULLY.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>PARTICIPATE</b>	To obtain payment, you must fill in the claim form that is attached with this Notice and return it on or before <b><u>March 9, 2018</u></b> . This is the only way to receive a payment in this case.
<b>DO NOTHING</b>	If you do nothing, you will not receive a payment and you will also give up any right you may have to file a lawsuit about your pay at Rosa Mexicano. This is explained in Paragraph 7 below.
<b>OBJECT</b>	You may write to the court to object to the settlement if you are against the proposed settlement. This process is explained in Paragraph 8 below.

## **1. WHY DID I GET THIS NOTICE?**

This Notice applies to anyone who worked as a server, server assistant, busser, runner, drink runner, coffee bar employee, cocktail server, bartender, service bartender, and/or barback (referred to as the “Covered Positions”) at Rosa Mexicano restaurants in New York, Massachusetts, or Maryland during specific time periods. People who worked in a Covered Position in the time periods below are covered by this Notice:

- New York - between April 7, 2010 and May 17, 2017;
- Massachusetts - between April 7, 2013 and May 17, 2017; and
- Maryland - between April 7, 2013 and May 17, 2017.

You are receiving this notice because Rosa Mexicano’s records show that you were employed during these time periods in a Covered Position in New York, Massachusetts, and/or Maryland.

The Court directed that you receive this Notice because you may be affected by a proposed settlement of a class action lawsuit. This notice tells you your options. The settlement will be submitted to the Court for approval at a later time. If the Court approves the settlement, and after any appeals have finished, you will be mailed your payment (unless you exclude yourself as explained in Paragraph 7).

## **2. WHAT IS A CLASS ACTION?**

Some employees have sued Rosa Mexicano not only on behalf of themselves but also on behalf of people who have the same or similar claims. These employees who sued are called Class Representatives. The people with the same or similar claims are called Class Members. In a class action, the Court makes decisions that affect all Class Members, except those who exclude themselves from the Class (as explained in Paragraph 7 below). The Honorable Gabriel Gorenstein, United States Magistrate Judge for the Southern District of New York, is overseeing this class action.

## **3. WHAT IS THIS CASE ABOUT?**

The Class Representatives (also known as “Plaintiffs”) in this case allege that, among other things, Rosa Mexicano and its corporate entities (known as the “Defendants”) did not pay Plaintiffs and other employees proper minimum and overtime wages for all hours worked, that they required Plaintiffs and other employees to share tips with employees that should not have received tips, that they did not give additional payments required in certain states, and that they did not give accurate wage statements and wage notices.

Defendants deny that they did anything wrong and believe their pay practices and wage records comply with the law.

## **4. WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?**

The Parties have agreed to settle this matter for the maximum total sum of up to Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00).

## **5. HOW WILL MY SHARE OF THE SETTLEMENT FUND BE CALCULATED?**

If the Court approves the Settlement, Defendants will pay a total of up to \$3,600,000.00 in settlement funds and the following payments and expenses will be deducted from the settlement amount before it is given to Class Members:

- Service Awards: In recognition of services performed for the Class, the Class Representatives will ask the Court for service awards totaling \$50,000 as follows: Edwin Suarez (\$10,000), Carlos Rivas (\$10,000), Ester Jiron (\$10,000), Driss Sene (\$10,000), Immanuel Thornton (\$2,500), and Paula Villegas (\$7,500).
- Attorneys’ Fees and Costs: The attorneys for the Plaintiffs and Class Members will ask the Court to award them attorneys’ fees and costs out of the \$3,600,000 settlement. The amount they intend to ask for will be 1/3rd the total Settlement Fund, or \$1,200,000.
- Payment to the Claims Administrator. It is expected that the company supervising the claims process will charge \$50,000 for mailing notices, sending checks and doing other things to administer the settlement.

If the Court approves these payments, they will be deducted from the Settlement Amount, leaving \$2,300,000 to be distributed to Class Members. This is how the distribution will be made.

First, each group of Class Members will be assigned a portion of the remaining \$2,300,000 as follows:

- New York Class Members: \$1,190,000
- Massachusetts Class Members: \$290,000
- Maryland Class Members: \$185,000
- Class Members in other states: \$595,000
- Reserve Fund: \$40,000 shall be allocated as a Reserve Fund, which is set aside to cover any errors or omissions.

Class Members’ shares will be calculated using the following formula:

- New York Class Members shall receive 1 point for every week worked in a Covered Position between April 7, 2010 through May 17, 2017.
- Massachusetts and Maryland Class Members shall receive 1 point for every week worked in a Covered Position between April 7, 2013 through May 17, 2017.
- Each Class Member's points in each Class will be divided by the total points for all Class Members in each of the above Classes then multiplied by the amount allocated for each of the above Classes to determine each Class Member's settlement award.

**Only people who return the Claim Form before March 9, 2018 will receive payment from this Settlement.**

The money assigned to the Classes is based on the alleged violations that occurred at each Rosa Mexicano Restaurant and the damages available under differing state laws, such as additional claims that can be brought under New York state law.

You will have One Hundred Twenty (120) calendar days after your settlement check is mailed to cash the check. If you lose or do not receive your settlement check, you must request a replacement check within One Hundred Twenty (120) days of the check's issue date. Requests for replacement checks after One Hundred Twenty (120) days of the original check's issue date will not be honored.

**6. HOW MUCH WILL MY PAYMENT BE?**

Based on the formula described in section 5, the total individual settlement amount you will be entitled to receive is estimated to be approximately \$           .

**7. WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT?**

The Claim Form must be properly completed, signed, and mailed, emailed, or faxed to the Settlement Claims Administrator by **March 9, 2018**. If you do not properly complete and submit the Claim Form on time, you will not receive any money from this settlement.

If you do not complete and return the Claim by **March 9, 2018**, you will not receive money from the settlement, but you will still be bound by the release of all state law claims as described below (unless you opt out as described in Section 8 below).

If you return the enclosed claim form to the Settlement Claims Administrator so that it is received by fax, email, or post-marked by **March 9, 2018**, the Settlement Claims Administrator will make your payment after a Fairness Hearing as instructed by the Court.

The Release in the Settlement Agreement provides that each individual Class Member, who does not opt-out as explained in Section 8 below, fully releases Defendants from any claims that were claimed or could have been claimed in the Amended Complaint based on the factual allegations in the Amended Complaint (with the exception of retaliation claims) arising under the state and local laws of New York, Massachusetts, and Maryland from the beginning of time through the date the Court grants Final Approval. Class Members who cash their checks will also fully release Defendants from any claims that were claimed or could have been claimed in the Amended Complaint based on the factual allegations in the Amended Complaint (with the exception of retaliation claims) arising under Federal law from the beginning of time through the date the Court grants Final Approval. Class Members who do not cash their settlement checks within One Hundred Twenty (120) days will not release any Fair Labor Standards Act claims against Defendants.

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

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 could have been brought in this case, then you must take steps to exclude yourself from this case.

If you intend to exclude yourself, you must mail a written, signed statement to the Settlement Claims Administrator stating, "I opt out of the Rosa Mexicano wage and hour settlement" and include your name, address, and telephone number ("Opt-out Statement"). To be effective, the Opt-out Statement must be mailed to the Settlement Claim Administrator and postmarked by **March 9, 2018**.

**Rosa Mexicano Settlement Claims Administrator  
c/o Arden Claims Service, LLC  
P.O. Box 1015  
Port Washington, NY 11050  
Tel: 877-623-2703 | Fax: 516-944-1771  
Email: info@ardenclaims.com**

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

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

You can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. If the Court rejects your objection, you will still be bound by the terms of the settlement of your claims under the state and local laws of New York, Massachusetts, and Maryland. To object, you must send a letter saying that you object to the settlement. Your statement may include reasons for the objection and any supporting documentation in your possession. Your statement must also include your name, address, and telephone number.

If you wish to present your objection at the fairness hearing described below, you must make that request in your written objection. Your statement should be as detailed as possible. Mail the objection to the settlement claims administrator via First-Class United States Mail, postage prepaid at the address below. Your objection will not be considered unless it is mailed to the Claim Administrator via First Class United State Mail and post-marked by **March 9, 2018**.

**Rosa Mexicano Settlement Claims Administrator**  
**c/o Arden Claims Service, LLC**  
**P.O. Box 1015**  
**Port Washington, NY 11050**  
**Tel: 877-623-2703 | Fax: 516-944-1771**  
**Email: info@ardenclaims.com**

The Claims Administrator will share your objection with Class Counsel and Defendants' counsel and file your objection statement with the Court.

You may not object to the settlement if you submit a letter requesting to exclude yourself or "opt-out" of the settlement of the lawsuit as described in Section 8.

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

A hearing before the Honorable Gabriel W. Gorenstein will be held on **April 12, 2018** at **4:30 p.m.** at the United States District Court for the Southern District of New York, Courtroom 6B, 500 Pearl Street, New York, New York 10007 (the "Fairness Hearing"). The purpose of the Fairness Hearing is for the Court to determine whether the Settlement is fair, adequate, and reasonable and should be approved by the Court. The Court will take into consideration any objections raised that follow the procedures described in section 9, above.

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

The law firm of Fitapelli & Schaffer, LLP, 28 Liberty Street, 30<sup>th</sup> Floor, New York, NY 10005, has been appointed 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. Their fees will be paid from the total settlement fund (see section 5, above). If you want to be represented by your own lawyer, you may hire one at your own expense.

**12. TAX TREATMENT**

For tax purposes, 25% of each Class Member's individual settlement payment will be considered back wages. For this amount, normal payroll taxes and withholdings will be deducted pursuant to city, state, and federal law, and Class Members will receive a W-2 tax form. The remaining 75% of each Class Member's individual settlement payment will be considered liquidated damages, penalties, and interest, and will be considered non-wage income. At the end of the calendar year, the Claims Administrator will issue each Class Member who has cashed a check an IRS Form W-2 for that portion of the Class Member's settlement payment which is being treated as wages, and an IRS Form 1099 for the portion of the Class Member's settlement payment which is being treated as liquidated damages and interest. Other than the Employers' portion of the withholdings, Class Members are responsible for the appropriate payment of any taxes on the payments they receive. Class Counsel and Defendants' Counsel do not intend this Notice to constitute tax advice, and to the extent that this Notice is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

If you filed for individual bankruptcy, it may be necessary for you to advise the trustee of this settlement.

**13. WHAT IF I HAVE ADDITIONAL QUESTIONS?**

If you have additional questions about this Notice or want more information, you can contact Class Counsel Brian S. Schaffer or Armando A. Ortiz at Fitapelli & Schaffer, LLP, 28 Liberty Street, 30<sup>th</sup> Floor, New York, NY 10005, (212) 300-0375, info@fslawfirm.com, www.fslawfirm.com.

By Order of the Court  
Dated: **January 8, 2018**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**EDWIN SUAREZ, CARLOS RIVAS, ESTER JIRON, DRISS SENE,  
IMMANUEL THORNTON, and PAULA VILLEGAS, individually and  
on behalf of all others similarly situated;**

**Plaintiffs,**

**No: 1:16-cv-05464 (RLE)**

**-against-**

**ROSA MEXICANO BRANDS INC.; WEST 62 OPERATING LLC; ROSA  
MEXICANO USQ LLC; FENIX REST. INC.; ROSA MEXICANO  
MURRAY LLC; ROSA MEXICANO BOSTON, LLC; ROSA  
MEXICANO RIVERSIDE LLC; ROSA MEXICANO DC LLC; ROSA  
MEXICANO CHEVY CHASE MARYLAND LLC; ROSA MEXICANO  
NATIONAL HARBOR LLC; ROSA MEXICANO ATLANTA LLC;  
ROSA MEXICANO MIAMI LLC; and ROSA MEXICANO SOUTH  
BEACH LLC;**

**Defendants.**

**INSTRUCTIONS**

In order to receive your portion of the settlement funds in the estimated amount of \$      described in the Notice of Proposed Settlement (“Notice”), you must fill in your name, address, and phone number, and then sign, date, and return this Claim Form and Release to the Settlement Claims Administrator by March 9, 2018:

**Rosa Mexicano Settlement Claims Administrator  
c/o Arden Claims Service, LLC  
P.O. Box 1015  
Port Washington, NY 11050  
Tel: 877-623-2703 | Fax: 516-944-1771  
Email: info@ardenclaims.com**

**CHANGES OF ADDRESS**

It is **your responsibility** to keep a current address on file with the Settlement Claims Administrator. Please make sure to notify Class Counsel of any change of address.

**Rosa Mexicano Settlement Claims Administrator  
c/o Arden Claims Service, LLC  
P.O. Box 1015  
Port Washington, NY 11050  
Tel: 877-623-2703 | Fax: 516-944-1771  
Email: info@ardenclaims.com**

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**CLAIM FORM AND RELEASE**

***THIS FORM MUST BE MAILED, EMAILED OR FAXED BY MARCH 9, 2018.***

Name: _____	Name/Address Changes, if any
Address: _____	_____
City, State Zip Code: _____	_____
Social Security No.: <u>XXX-XX-XXX</u>	(_____) _____
	Area Code Telephone Number

I affirm that I hereby assert a claim and was employed by Rosa Mexicano as a server, server assistant, busser, runner, drink runner, coffee bar employee, cocktail server, bartender, service bartender, and/or barback either in: 1) New York at any time between April 7, 2010 through May 17, 2017, or 2) in Massachusetts or Maryland at any time between April 7, 2013 through May 17, 2017.

My signature below constitutes a full and complete release and discharge of Rosa Mexicano Brands Inc.; West 62 Operating LLC; Rosa Mexicano USQ LLC; Rosa Mexicano Murray LLC; Fenix Rest. Inc.; Rosa Mexicano Boston, LLC; Rosa Mexicano Riverside LLC; Rosa Mexicano DC LLC; Rosa Mexicano Chevy Chase Maryland LLC; Rosa Mexicano National Harbor LLC; Rosa Mexicano Atlanta LLC; Rosa Mexicano Miami LLC; and Rosa Mexicano South Beach LLC and their respective past and present restaurants, affiliates and related entities, subsidiaries, parents, divisions, shareholders, members, predecessors, successors, and assigns, and each of its or their past and present officers, directors, trustees, fiduciaries, insurers, owners, investors, attorneys, administrators, employees, agents, representatives, shareholders, members, joint employers, predecessors, successors, and assigns, in their individual and official capacities (together with Defendants, collectively the "Releasees") by me of all claims, whether asserted in the Amended Complaint or not, based on the factual allegations in the Amended Complaint, with the exception of retaliation claims, under the Fair Labor Standards Act, the New York Labor Law and any local laws, Massachusetts state and local laws, and Maryland state and local laws, with the exception of retaliation claims, from the beginning of time through the date of Final Approval.

_____	_____
Date	Signature