

**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 COLLECTIVE 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 JERSEY,
WASHINGTON D.C., GEORGIA AND/OR FLORIDA BETWEEN APRIL 7, 2013 THROUGH MAY 17,
2017, YOU MAY BE ABLE TO OBTAIN MONEY FROM A LAWSUIT.**

PLEASE READ THIS NOTICE CAREFULLY

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
PARTICIPATE	To obtain payment, you must fill in the claim form that is attached with this Notice and return it on or before <u>March 9, 2018</u> . This is the only way to receive a payment in this case.
DO NOTHING	If you do nothing, you will not receive a payment and you will not give up any right you may have to file a lawsuit about your pay at Rosa Mexicano.

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 Jersey, Washington, D.C., Georgia or Florida between April 7, 2013 through May 17, 2017.

You are receiving this notice because Rosa Mexicano’s records show that you were employed during this time period in a Covered Position in New Jersey, Washington, D.C., Georgia, and/or Florida.

The Court directed that you receive this Notice because you may be affected by a proposed settlement of a collective 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.

2. WHAT IS A COLLECTIVE 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 under federal law. These employees who sued are called Representative Plaintiffs, and these types of lawsuits are called “Collective Actions.” Other employees who have similar claims do not become part of the Collective Action until they agree to join the Collective Action. You may join the Collective Action part of this lawsuit and become a “Collective Action Member” by signing and returning the claim form attached to this notice by **March 9, 2018** and cashing the settlement check that will be mailed to you.

The Honorable Gabriel Gorenstein, United States Magistrate Judge for the Southern District of New York, is overseeing this class and collective action.

3. WHAT IS THIS CASE ABOUT?

The Representative Plaintiffs (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 Representative Plaintiffs 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 from other states: \$595,000
- Reserve Fund: \$40,000 shall be allocated as a Reserve Fund, which is set aside to cover any errors and omissions, if any.

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.

- Class Members from other states 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 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 Collective Member who returns the signed claim form and cashes their settlement check 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), under Federal law and the state and local laws of New Jersey, Washington, D.C., Georgia, and Florida from the beginning of time through the date the Court grants Final Approval. Collective Members who do not cash their settlement checks within One Hundred Twenty (120) days will not release any claims against Defendants.

8. 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. You do not have to appear at the fairness hearing.

9. DO I HAVE A LAWYER IN THIS CASE?

The law firm of Fitapelli & Schaffer, LLP, 28 Liberty Street, 30th 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.

10. TAX TREATMENT

For tax purposes, 25% of each Class Member's individual settlement payment will be considered back wages subject to lawful deductions and W-2 reporting. For this amount, normal payroll taxes and withholdings will be deducted pursuant to city, state, and federal law. The remaining 75% of each Class Member's individual settlement payment will be considered liquidated damages, penalties, and interest subject to 1099 reporting as 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.

11. 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, 30th 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**

TURN PAGE →

CLAIM FORM AND RELEASE

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

Name: _____ Address: _____ City, State Zip Code: _____ Social Security No.: <u>XXX-XX-XXXX</u>	Name/Address Changes, if any _____ _____ (_____) _____ Area Code Telephone Number
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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 in New Jersey, Washington, D.C., Georgia, and/or Florida at any time between April 7, 2013 through May 17, 2017 and hereby assert a claim.

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 and under the state and local laws of Florida, New Jersey, Georgia, and Washington, D.C. from the beginning of time through the date of Final Approval.

_____	_____
Date	Signature