

TO BE CIRCULATED IN ENGLISH AND SPANISH

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

WALTER ZEPEDA, individually and on behalf of all other persons similarly situated who were employed by SAL'S FRUIT TREE DELI, INC. and/or SALVATOR MESSINA; and/or any other entities affiliated with or controlled by SAL'S FRUIT TREE DELI, INC. and/or SALVATOR MESSINA,

Plaintiffs,

- against -

SAL'S FRUIT TREE DELI, INC. and any related corporate entities and SALVATOR MESSINA,

Defendants.

Index No: 10-cv-2588

NOTICE OF LAWSUIT

**IMPORTANT NOTICE
ADVISING YOU OF YOUR LEGAL
RIGHTS**

TO: All individuals who performed supermarket related jobs at Sal's Fruit Tree from 2004 through the present.

(This does not include supervisors, officers, executive, managerial or administrative personnel.)

If you worked for SAL'S FRUIT TREE at any time since 2004, the purpose of this Notice is to advise you of this collective action lawsuit, and to further advise you of certain rights you may have with respect to this action.

This lawsuit seeks the payment of minimum wages and overtime wages pursuant to the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and New York State Labor Law allegedly owed to current and former employees of Sal's Fruit Tree who performed supermarket related jobs.

Plaintiff Walter Zepeda ("Plaintiff") is a former employee of SAL'S FRUIT TREE who has brought this action on behalf of all other current and former SAL'S FRUIT TREE employees to recover allegedly unpaid minimum wages and overtime compensation (for all hours worked in excess of 40 per week) for which they have allegedly been paid incorrectly.

Defendants vigorously deny any wrongdoing and/or liability to Plaintiff or any other past or present employee of SAL'S FRUIT TREE who may allege that he or she was underpaid. SAL'S FRUIT TREE strongly denies that any employee was underpaid for his or her work at any time.

You may be owed payment if you worked for SAL'S FRUIT TREE and received less than the minimum wage for all hours worked. You may also be owed payment if you worked for SAL'S FRUIT TREE for more than 40 hours per week and you were not paid overtime at time and one-half (1.5x) your normal hourly rate of pay for all hours actually worked over forty (40) hours each week;

This Notice is meant to advise you of your right to participate in this lawsuit as a claimant and plaintiff under the Fair Labor Standards Act if you believe that you were underpaid by SAL'S FRUIT TREE.

No determination has been made that you are owed any minimum wages or overtime wages, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.

* * *

FEDERAL LAW CLAIMS

If you worked for SAL'S FRUIT TREE between 2007 and 2010, you may be entitled to certain protection under the Federal Fair Labor Standards Act if there were any hours that you worked for which you received less than the minimum wage. You may also be entitled to certain protection under the Federal Fair Labor Standard Act for all work performed in excess of 40 hours each week if you were not paid one and one-half times (1.5x) your regular hourly wage rate.

If you wish to participate in this portion of the lawsuit, you must have the enclosed written "Consent to Join Lawsuit" Form filed with the Clerk of the Court. If you do not sign and mail the "Consent to Join Lawsuit" form to the address listed below, you will not be permitted to seek recovery of unpaid wages under the Fair Labor Standards Act in this case.

If you choose to join this lawsuit, you will be bound by the judgment or settlement, whether it is favorable or unfavorable. While this case is pending, you may be required to respond to written questions, sit for depositions, and/or testify in Court.

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement rendered in this case and are free to file your own lawsuit. The statute of limitations will continue to run on your claim until you join this suit or file your own.

NEW YORK LAW CLAIMS

A class has not yet been certified for claims arising under New York law. Under New York law, you may have claims for allegedly unpaid minimum wages and overtime compensation (work performed over 40 hours) that date back to 2004. You will be advised of any additional rights that you may have to recover under New York law in the event that a class is certified by this Court.

FILING THE CONSENT TO JOINDER FORM

If you wish to participate in the portion of this lawsuit that seeks payment of allegedly unpaid minimum wages and overtime wages under the Fair Labor Standards Act, you must sign and return the enclosed Consent to Joinder form as directed below. Your Consent to Join Lawsuit form will be filed with the Clerk of the Court on your behalf. If you fail to mail a signed Consent to Joinder form to the Clerk of the Court you will not be eligible to participate in the FLSA portion of this lawsuit. Consent to Joinder forms filed after _____ 2011 [60 days from notice being sent out] will be rejected unless good cause is shown for the delay.

THE LAST DAY TO FILE THE
CONSENT TO JOIN LAWSUIT FORM IS
_____ 2011 [60 DAYS AFTER NOTICE IS SENT OUT]

IF YOU WISH TO FILE A CLAIM FOR UNPAID MINIMUM WAGES AND UNPAID OVERTIME PAY UNDER THE FEDERAL FAIR LABOR STANDARDS ACT, YOU MUST MAIL THE ENCLOSED CONSENT TO JOINDER FORM POSTMARKED BY _____ 2011 [60 DAYS AFTER RECEIPT OF NOTICE] TO:

LLOYD AMBINDER, ESQ.
VIRGINIA & AMBINDER, LLP
111 BROADWAY, ROOM 1403
NEW YORK, N.Y. 10006
RE: SAL'S FRUIT TREE

Lloyd Ambinder, Esq., of Virginia & Ambinder, LLP, located at 111 Broadway, Suite 1403, New York, New York 10006, telephone number (212) 943-9080, facsimile number (212) 943-9082 along with Jeffrey K. Brown, Esq., of Leeds, Morelli & Brown, P.C., located at One Old Country Road, Suite 347, Carle Place, New York 11514, telephone number (516) 873-9550, facsimile number (516) 747-5024 represent the Plaintiff in this case. If you are represented by Plaintiff's attorneys Virginia & Ambinder, LLP and Leeds, Morelli & Brown, P.C. and there is a recovery against Sal's Fruit Tree, their costs and fees will be paid out of that recovery. This means that, if there is no recovery, there will be no attorneys' fees.

Sal's Fruit Tree is represented by Garfunkel, Wild P.C., located at Great Neck Road, Great Neck, NY 11021.

You have a right to consult with an attorney about this matter. If you wish to be represented by other counsel, you may retain another attorney, but you may be responsible for paying that attorney. Further information about this Notice, the deadline for joining the lawsuit, the form provided or answers to other questions concerning this lawsuit may be obtained by contacting the plaintiff's attorney Lloyd Ambinder, Esq., telephone number (212) 943-9080, facsimile number (212) 943-9082. If you require Spanish translation, please ask for Yeskenia Polanco, or Polish translation, please ask for Maria Tokarz or Iwona Ner.

You have a right to participate in this action even if you are an undocumented alien or if you were paid in cash.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT
WITH QUESTIONS INVOLVING THIS LAWSUIT.**

SQ|ORDERED:

U.S.D.J.

Dated: New York, New York
February 18, 2011

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

WALTER ZEPEDA, individually and on behalf of
all other persons similarly situated who were
employed by SAL'S FRUIT TREE DELI, INC.
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CONSENT TO JOINDER

Plaintiffs,

- against -

SAL'S FRUIT TREE DELI, INC. and any related
corporate entities and SALVATOR MESSINA,

Defendants.

By signing below I, _____ (Print Name), consent
to become a party plaintiff in this lawsuit.

Signature: _____ Print Name: _____

Address: _____

Zip Code: _____ Apt. _____ Phone Number: (____) _____

E-mail: _____ @ _____ . _____

THE LAST DAY TO FILE THIS CONSENT TO JOINDER FORM IS _____

[60 DAYS AFTER RECEIVING NOTICE]

**CONSENT TO JOINDER FORMS FILED AFTER _____ WILL BE REJECTED
UNLESS GOOD CAUSE IS SHOWN FOR THE DELAY**

**IF YOU WISH TO SEEK RECOVERY OF UNPAID MINIMUM WAGES AND
OVERTIME UNDER THE FEDERAL FAIR LABOR STANDARDS ACT IN THIS
LAWSUIT, YOU MUST MAIL THE ENCLOSED CONSENT TO JOINDER FORM**

POSTMARKED BY _____ 2011 TO:

**LLOYD AMBINDER, ESQ.
VIRGINIA & AMBINDER, LLP
111 BROADWAY, ROOM 1403
NEW YORK, N.Y. 10006
RE: SAL'S FRUIT TREE**