

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**CLAUDIO CABRERA, Individually and on
Behalf of All Others Similarly Situated,**

Plaintiff,

-against-

17 Civ. 2221 (MKB) (RLM)

**FROST RESTAURANT INC., ROCCO
DEPAOLA, GIOVANNI DEPAOLA, and
GIUSEPPE MORENA, Jointly and
Severally,**

Defendants.

**STIPULATION AND ~~PROPOSED~~ ORDER ON CONSENT MOTION TO
CONDITIONALLY CERTIFY A FAIR LABOR STANDARDS ACT COLLECTIVE
ACTION AND AUTHORIZE NOTICE TO BE ISSUED TO ALL PERSONS ALLEGED
TO BE SIMILARLY SITUATED**

THIS MATTER came before the Court on the parties' Consent Motion to Conditionally Certify a Fair Labor Standards Act Collective Action and Authorize Notice to be Issued to All Persons Alleged to be Similarly Situated ("Consent Motion for Collective Action") and related relief, and the Court, having reviewed the said motion, the responses and replies thereto, if any, and the case file herein, and now being sufficiently advised in the premises,

HEREBY ORDERS that the parties' Consent Motion is GRANTED upon the terms set forth herein, and FURTHER ORDERS that:

1. The collective action notice entitled "COURT AUTHORIZED NOTICE OF LAWSUIT," attached to the Consent Motion for Collective Action as Exhibit "A", is hereby approved for mailing to potential plaintiffs in English and Spanish; and
2. The collective class of potential plaintiffs in this matter that is conditionally certified shall consist of all persons who worked as non-management employees at Frost Restaurant at any time between April 12, 2014 and the present; and
3. Defendants shall provide to Plaintiff's counsel the names, last known addresses, phone numbers and email addresses, if available, and kept in the regular course of business (the "Contact Information"), of all potential plaintiffs who worked at Frost Restaurant as current and former non-management employees at any time between April 12, 2014 and the present (the "Potential Plaintiffs"). This information shall be supplied to Plaintiff's counsel within twenty-one (21) days

of the date of this Order digitally in one of the following formats: Microsoft Excel; or Microsoft Word; and

4. Plaintiff's counsel shall mail the notice of collective action to all Potential Plaintiffs no later than ten (10) days following Defendants' disclosure of the contact information for the Potential Plaintiffs, and provide proof of such mailing, including the date of such mailing, to counsel for the Defendants; and

5. If any notice to any Potential Plaintiff is returned as undeliverable, Defendants' counsel will provide Plaintiff's counsel with such other information available to help facilitate the location of a proper address for the potential plaintiff. Any such instance of secondary notice by Plaintiffs' counsel must be sent prior to the end of the opt-in period, and does not extend the opt-in period; and

6. All Potential Plaintiffs must opt-in no later than 60 days after the date of the mailing of the notice, by returning the executed form entitled "Consent to Join," attached to the Consent Motion for Collective Action as Exhibit "B," to Plaintiff's counsel before that date. Plaintiff's counsel shall thereupon promptly file ~~such executed consents~~ with the Court

Dated: New York, New York
August 22, 2017

or to the Court, as appropriate,

/s/ Brent E. Pelton
Brent Pelton
PELTON GRAHAM LLC
111 Broadway, Suite 1503
New York, New York 10006
(212) 385-9700
pelton@peltongraham.com

the executed consent received by plaintiff's counsel.

/s/ Jeffrey Douglas
Jeffrey Douglas
FORD HARRISON LLP
60 East 42nd Street, 51st Floor
New York, New York 10165
(212) 453-5927
jdouglas@fordharrison.com

SO ORDERED:

HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CLAUDIO CABRERA, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

-against-

17 Civ. 2221 (MKB) (RLM)

FROST RESTAURANT INC., ROCCO
DEPAOLA, GIOVANNI DEPAOLA, and
GIUSEPPE MORENA, Jointly and
Severally,

Defendants.

COURT AUTHORIZED NOTICE OF LAWSUIT

Important: You are NOT being sued. This Notice is NOT a solicitation from a lawyer.

FROM: PELTON GRAHAM LLC
111 Broadway, Suite 1503
New York, New York 10006
Telephone: (212) 385-9700
Email: pelton@peltongraham.com

TO: All current and former non-management employees who worked at Frost Restaurant at any time between April 12, 2014 and the present.

RE: Notice of lawsuit asserting violations of the Fair Labor Standards Act and New York Labor Law against Frost Restaurant Inc., Rocco DePaola, Giovanni DePaola, and Giuseppe Morena (collectively, "Defendants") for their alleged failure to pay minimum wages for all hours worked, overtime premiums for hours worked over forty (40) in a given work week, as well as spread-of-hours, wage notice and wage statement violations under New York State Law.

Defendants deny any wrongdoing and/or liability and deny that any employee was underpaid for his or her work.

While the Court has authorized the parties to send out this Notice, the Court has not decided who is right or who is wrong.

I. INTRODUCTION

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiff, to advise you of how your rights may be affected by this lawsuit and to instruct you on the procedure for participating in this lawsuit if you elect to do so. The lawsuit at issue was filed on April 12, 2017 against Defendants in the United States District Court for the Eastern District of New York. The plaintiff alleges that the Defendants violated the federal Fair Labor Standards Act and the New York Labor Law by improperly failing to pay minimum wage for all hours worked and overtime premiums for hours worked in excess of forty (40) per week. The lawsuit also asserts spread-of-hours, wage notice and wage statement violations pursuant to the New York Labor Law, and seeks back pay and liquidated damages, as well as costs and attorneys' fees. Defendants deny the plaintiff's allegations and deny that they are liable to the plaintiff for any of the back pay, liquidated damages, costs or attorneys' fees sought.

II. COMPOSITION OF THE COLLECTIVE ACTION CLASS

Plaintiff seeks to bring this Fair Labor Standards Act claim on behalf of himself and on behalf of all other employees with whom he is similarly situated. Specifically, plaintiff seeks to bring a Fair Labor Standards Act claim on behalf of himself and all current and former non-management employees who worked at Frost Restaurant at any time between April 12, 2014 and the present.

III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION

If you fit within the definition above and worked for Defendants at any time between April 12, 2014 and the present, you may join this case. In order to join this case (that is, to "opt-in"), you must sign the attached "Consent to Become a Party Plaintiff" form and return it to either the lawyers who are representing the plaintiffs, ~~counsel of your choosing~~, or the Court, in time for it to be filed by [Insert date 60 days after mailing] .

If you sign and return the attached form to plaintiffs' counsel, you will be represented by plaintiffs' counsel at the following address:

PELTON GRAHAM LLC
111 Broadway, Suite 1503
New York, New York 10006
Telephone: (212) 385 9700
Facsimile: (212) 385 0800
Email: pelton@peltongraham.com

Alternatively, you

~~You can also sign and return the attached form to counsel of your choosing or you can represent yourself pro se, in which event you must sign and return the attached form to the Court at the following address:~~

opting either to represent yourself pro se or to be represented by counsel of your choosing, whom you must identify in the attached form² and who must promptly file a notice of appearance with the Court:

Plan
if you choose to be represented by them, or else to

Magistrate Judge Roanne L. Mann

Clerk of Court

United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

If you choose not to return the Consent to Become a Party Plaintiff form to plaintiffs' counsel, ~~counsel of your own choosing~~, or the Court in time for it to be filed on or before the above deadline, you will not be able to participate in this lawsuit, but can proceed separately with your own claims. Claims under the Fair Labor Standards Act typically must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years. In addition, claims under the New York Labor Laws typically must be brought within 6 years of the date the claim accrues.

IV. EFFECT OF JOINING THIS ACTION

If you choose to join in this case, you will be bound by any decision or Judgment of the Court, or any settlement, whether it is favorable or unfavorable. In addition, if you join this lawsuit, you may be asked to give testimony and information about your work for Defendants, to help the Court decide whether you are owed any money. If you sign and return the Consent to Become a Party Plaintiff form attached to this Notice, you are agreeing to designate the named plaintiff as your agent to make decisions on your behalf concerning the litigation. This Notice does not mean that you are entitled to monetary recovery. Any such determination must still be made by the Court.

V. TO STAY OUT OF THE LAWSUIT

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the Fair Labor Standards Act typically must be brought within 2 years of the date the claim accrues, unless the employer's violation of the law was "willful," in which case the claim must be brought within 3 years. In addition, claims under the New York Labor Laws typically must be brought within 6 years of the date the claim accrues.

VI. NO RETALIATION PERMITTED

Federal law prohibits Defendants from discharging or in any other manner retaliating against you because you join this case.

VII. YOUR LEGAL REPRESENTATION IN THIS MATTER

If you choose to join this suit and agree to be represented by the named plaintiff through their attorneys, your counsel in this action will be Pelton Graham LLC. The attorneys for the collective action plaintiffs are being paid on a contingency fee basis, which means that if there is no recovery, there will be no attorneys' fees. In the event that the Plaintiff and collective action plaintiffs are successful, Pelton Graham LLC may petition the Court for an award of fees and costs to be paid by Defendants. In the event of a settlement, Plaintiffs' attorneys may petition the Court for costs and an award of attorneys' fees of approximately one-third (1/3) of the settlement to be deducted from your settlement or judgment amount, or such other amount as approved by the Court.

However, you can have your own counsel represent your interest in the lawsuit or represent yourself *pro se* if you so desire.

VIII. COUNSEL FOR DEFENDANTS

The Defendants in this case are represented by:

FORD HARRISON LLP
One Grand Central Place
60 East 42nd Street, 51st Floor
New York, NY 10165
Telephone: (212) 453-5900

IX. IMMIGRATION STATUS

You have the right to participate in this action even if you are an undocumented immigrant or if you were paid in cash. You do not need to have a record of the hours you worked in order to participate in this lawsuit.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, THE HONORABLE ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFF'S CLAIMS OR OF THE DEFENDANTS' DEFENSES.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.

Date: _____, 2017

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CLAUDIO CABRERA, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

-against-

FROST RESTAURANT INC., ROCCO
DEPAOLA, GIOVANNI DEPAOLA, and
GIUSEPPE MORENA, Jointly and
Severally,

Defendants.

16 Civ. 5824 (LDH) (CLP)

CONSENT TO BECOME A PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of the above styled Fair Labor Standards Act action in my name and on my behalf by the representative plaintiff Claudio Cabrera as my agent to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation and all other matters pertaining to this lawsuit. I understand that if I return this form to Pelton Graham LLC I will be represented by them without prepayment of costs or attorneys' fees. I understand that if plaintiffs are successful, costs expended by attorneys on my behalf will be deducted from my settlement or judgment first. I understand that my attorneys may petition the court for an award of fees and costs which may be deducted from my settlement proceeds. I understand that the amount of the fees will be approximately 1/3 of my total settlement or judgment, or such other amount as approved by the Court.

Printed Name

Signature

Date

Street Address

Email Address

Telephone

City, State, Zip code

Approximate Dates of Employment

IF YOU WISH TO BE REPRESENTED BY PLAINTIFFS' ATTORNEYS, PLEASE RETURN THIS FORM FOR FILING WITH THE COURT BY **Insert Date 60 days after Mailing of Notice** TO:

PELTON GRAHAM LLC
111 Broadway, Suite 1503
New York, New York 10006
Phone (212) 385-9700; Fax (212) 385-0800
Email: pelton@peltongraham.com

"OF"

INCLUDE THE NAME AND CONTACT INFORMATION FOR YOUR ATTORNEY (IF ANY) AND

IF YOU WISH TO BE REPRESENTED BY COUNSEL OF YOUR CHOOSING OR REPRESENT YOURSELF *PRO SE*, PLEASE RETURN THIS FORM FOR FILING WITH THE COURT BY Insert Date 60 days after Mailing of Notice TO:

Magistrate Judge Roanne L. Mann
~~Clerk of Court~~

United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

- I will proceed without counsel [*pro se*]
- I will be represented by:

Name of attorney

Address of attorney

Attorney's phone number

Attorney's email address