

## NOTICE

### NOTICE OF YOUR RIGHTS IN CONNECTION WITH AN OVERTIME COMPENSATION LAWSUIT AGAINST THE HERSHEY COMPANY

**TO:** All individuals who are or were employed by The Hershey Company as a Retail Sales Representative in California from any time up to four years prior to the date the individual's "Consent to Join" is filed to January 28, 2012, as explained below.

**RE:** *Lawsuit against The Hershey Company for the alleged failure to pay overtime compensation as required by federal and California law*

**FROM:** Counsel for Plaintiffs:

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[www.hersheyovertime.com](http://www.hersheyovertime.com)

#### I. INTRODUCTION

This Notice is to inform you about a lawsuit which you may choose to join in order to make a claim for unpaid wages and related damages, advise you of how your rights may be affected by this lawsuit, and describe how you can choose to participate in these proceedings.

Plaintiffs have sued The Hershey Company ("Hershey") on behalf of themselves and other similarly situated Retail Sales Representatives ("RSRs"). As relevant to you, this case is an Opt-In lawsuit, as explained below. If you would like to read the Plaintiffs' allegations in the lawsuit, please visit [www.hersheyovertime.com](http://www.hersheyovertime.com).

Your rights may be affected if you worked as an RSR for Hershey in excess of eight (8) hours in any day and/or forty (40) hours in any workweek in the State of California or forty (40)

hours in any workweek in United States at any time up to four years before the date upon which you return the enclosed “**Consent to Join**” if you choose to do so. The actual cut-off period may be three years before the **Consent to Join** is filed depending on future decisions by the Court. The Court will also allow you to assert any additional claims for unpaid overtime you may have **under California law** with regard to the time period described above.

## II. DESCRIPTION OF THE LAWSUIT

On October 19, 2011, twelve (12) named individual Plaintiffs filed a Complaint in the United States District Court for the Northern District of California. Additional individual Plaintiffs were added to the Complaint or joined the case, bringing the number of named individual plaintiffs to at least 58.

Plaintiffs allege that they and other RSRs regularly worked more than forty (40) hours in a workweek and were not paid overtime compensation for these excess hours. Plaintiffs further allege that Hershey violated the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. § 201, *et seq.*, by allegedly failing to pay them overtime compensation for any hours worked in excess of forty (40) per week.

Under the FLSA, Plaintiffs seek payment of overtime compensation for these excess hours, plus liquidated damages in the form of twice the overtime compensation owed, or in the alternative, prejudgment interest. Plaintiffs also seek a declaratory judgment, an award of reasonable attorney's fees and costs, and such other relief as may be just and proper.

The Court has determined that the named Plaintiffs and all those who choose to **opt-in** to the case may initially proceed with their FLSA overtime claims on a collective action basis. This means that the named Plaintiffs and opt-in Plaintiffs may engage in the discovery process (in which Plaintiffs and Defendant obtain information from each other regarding the facts underlying their claims and defenses) as a group, and, where appropriate, have the Court rule on the issues on behalf of the group. The Court may reconsider later whether this case should be allowed to continue to proceed as a collective action.

In addition to the claims alleged under the FLSA, at least six (6) California Plaintiffs allege that Hershey's failure to pay overtime compensation and timely pay wages violated the wage and hour laws of the State of California. Plaintiffs also claim that Hershey's actions constituted unlawful business practices in violation of California's Unfair Competition Act, Business & Professions Code § 17200, *et seq.* The Court will allow RSRs who worked in California and who choose to Opt In to the FLSA lawsuit to assert any claims for unpaid overtime under California law that they may also have within the time period described herein.

Hershey denies all of the claims made by Plaintiffs and is currently opposing Plaintiffs in pre-trial litigation of the federal and state claims. Not all employees are eligible for overtime under the FLSA and state law, and Hershey contends the RSRs are exempt from federal overtime requirements under either or both the “outside salesperson” exemption or the “administrative employee” exemption.

### III. THE COURT HAS CERTIFIED AN “OPT-IN” CLASS

The Court has certified the following “**Opt-In**” class to determine whether Hershey violated the FLSA and, if so, whether the violation was willful:

All individuals who are or were employed by The Hershey Company as a Retail Sales Representative in California up to four years prior to the date the individual’s “**Consent to Join**” is filed to January 28, 2012, and who did not fully and completely resolve these claims in the previous *Campanelli, et al. v. The Hershey Company* matter, Case No. 08-1862 (BZ), filed in the Northern District of California.

The Court is also permitting individuals who “**Opt-In**” to assert overtime claims under California state law. If you believe you fall within this definition and are able to make certain representations regarding your job duties, you may “**Opt-In**” to this lawsuit - meaning you may join the lawsuit as a plaintiff. Only those who opt-in will be allowed to participate. To “**Opt-In**,” you must complete, sign, and mail the **Consent to Join** form attached to the back of this Notice to Plaintiffs’ Counsel so that it is postmarked on or before July 13, 2012. Plaintiffs’ Counsel will then file your **Consent to Join** with the Court. If you are not interested in participating in this lawsuit and seeking unpaid overtime compensation under federal or California state law, you do not need to take any action.

### IV. THE LEGAL EFFECT OF JOINING THIS LAWSUIT

If you choose to join this lawsuit by submitting the enclosed **Consent to Join** form, you will be bound by the judgment on your **federal FLSA and California state law** claims whether it is favorable or unfavorable, and by any settlement of the FLSA claim and California state law claim that may later be approved by the Court as fair and reasonable. While the lawsuit is proceeding you may be required to provide documents and information, appear for a deposition, and/or testify in court.

If you signed a Severance Agreement when leaving your employment at Hershey, you may still be eligible for overtime compensation.

### V. THE LEGAL EFFECT OF NOT JOINING THIS LAWSUIT

If you choose **not** to join this lawsuit, you will not be bound by any settlement or judgment, favorable or unfavorable, of any of the claims brought under the federal overtime laws (FLSA) or California state laws that are alleged in this action. If you do not file a Consent to Join form, you will not receive any back overtime wages or other relief from the case if the Plaintiffs prevail on their FLSA or California state law claims. Recovery under the federal law (FLSA) or California state law would be obtainable **only** if you file your own lawsuit within the time provided by law and then you prevail on your claims. Federal law (FLSA) requires that any claims for overtime compensation must be filed, if at all, in a state or federal court within two (2) years (or within three (3) years if the violation was willful as defined by law). Any claims for overtime pay under federal law that are not filed within these time limits are likely to be denied as untimely. Any state law rights you may have will be unaffected.

## **VI. LEGAL REPRESENTATION IF YOU JOIN THE LAWSUIT**

The attorneys for Plaintiffs and the Opt-In Class are:

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By checking the box on the **Consent to Join** form, you can choose to have the above attorneys represent you in this matter and have confidential communications with them toward that end. However, you are not obligated to have the above attorneys represent you if you choose to join this matter, and you are free to hire your own lawyer. If you elect to participate in this lawsuit, you will also be consenting to have Magistrate Judge Bernard Zimmerman rule on your claim. *See* 28 U.S.C. § 636(c).

## **VII. NO OPINION EXPRESSED AS TO THE MERITS OF THE CASE**

This Notice is for the sole purpose of providing former and current RSRs with information concerning their right to pursue a claim for overtime compensation under federal law (FLSA) as well as other California claims in this case. Although the Court has authorized the sending of this Notice, the Court expresses no opinion regarding the merits of Plaintiffs' claims or Hershey's defenses.

## **VIII. NO RETALIATION OR DISCRIMINATION PERMITTED**

Federal and state law prohibits Hershey from taking adverse action against persons based upon the fact that they have exercised their rights to participate in this lawsuit. So if you are presently an RSR, Hershey is barred from retaliating against you for participating in this lawsuit.

## **IX. ADDITIONAL INFORMATION**

For further information about this lawsuit, you may contact Plaintiffs' Counsel at the address, telephone number and/or email addresses listed above, or visit [www.hersheyovertime.com](http://www.hersheyovertime.com), a website the Plaintiffs' attorneys have established about this lawsuit. You are also free to talk to Hershey.

This Notice was authorized by the United States District Court for the Northern District of California, the Honorable Bernard Zimmerman, United States Magistrate Judge presiding.

Zulewski, et al. v. The Hershey Company

USDC Northern District of California Case No.: 3:11-cv-05117-BZ

**CONSENT TO JOIN FLSA OVERTIME CLAIM**

I, \_\_\_\_\_ [insert name], hereby certify that:

I am a current or former employee of The Hershey Company (“Hershey”) who worked as an RSR in California within the four years before the date I return this Consent to Join;

As an RSR during that time period, I worked in excess of forty (40) hours per week in individual workweeks; and

I do not believe I was an outside salesperson whose primary duty was making sales. I do not believe my primary duties included the exercise of discretion and independent judgment with respect to significant matters related to the management or operation of Hershey or its customers.

I hereby consent and agree to pursue my claims arising under the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“FLSA”), and California state law overtime claims for wages and penalties due to me as a RSR for Hershey in the above-captioned lawsuit.

By opting-in to this action for purposes of asserting my FLSA and California overtime claims, I hereby consent and agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable, regarding my FLSA and California overtime claims against Hershey. I further agree to be bound by any collective or class action settlement approved by my attorneys and approved by this Court as fair, adequate and reasonable. I further voluntarily consent to have a United States Magistrate Judge conduct any and all further proceedings in this case, including trial, and order the entry of final judgment.

By checking this box, I hereby designate The Brandi Law Firm and Hoban & Feola, LLC to represent me in this action.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
SIGN NAME

\_\_\_\_\_  
TODAY’S DATE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
PHONE NUMBER

*Failure to return this Consent to Join form to the Plaintiffs' Counsel by July 13, 2012 may result in a loss of your right to join the FLSA Overtime and California State Law Claims and, therefore, exclude you from any judgment or approved settlement in this action.*

**RETURN TO PLAINTIFFS' COUNSEL:**

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