

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Kalvin Drummond, et al. v. Herr Foods, Inc., et al.

Case No. 2:13-cv-05991-BMS

IMPORTANT NOTIFICATION TO POTENTIAL COLLECTIVE ACTION MEMBERS

Please read carefully. Your legal rights may be affected.

TO: Any individuals who worked for Herr Foods, Inc. (“Herr’s”) in the United States as a Route Sales Person at any time from November 10, 2011 to the present date.

FROM: Court Appointed Notice Administrator, Herr Foods, Inc. Notice Administrator, P.O. Box 6188, Novato, CA 94948-6188

RE: LAWSUIT BY ROUTE SALES PERSONS ASSERTING VIOLATIONS OF FEDERAL WAGE LAWS AGAINST HERR’S

RESPONSE DUE: August 4, 2015

- **Your legal rights may be affected whether you act or don’t act.** Read this Notice carefully.

I. INTRODUCTION

This Notice is being sent to you by Order and under supervision by the United States District Court for the Eastern District of Pennsylvania. The purpose of this Notice is: (1) to inform you of the existence of a collective action lawsuit filed against Herr’s; (2) to advise you of how your rights may be affected by this lawsuit; and (3) to instruct you on the procedure for joining this lawsuit, if you wish to do so. You have been sent this Notice because Herr’s employment records indicate that you are eligible to participate in the collective action. **However, you are not required to join this lawsuit or take any other action in response to this Notice if you do not wish to participate.**

II. DESCRIPTION OF THE LAWSUIT

Four Route Salespersons, Calvin Drummond, Mohammed Bah, Christopher Grandison, and Shane Bent (the “Representative Plaintiffs”) filed suit against Herr’s on behalf of themselves and all other Route Salespersons who work or worked for Herr’s in the United States at any time during the time period stated above. The Representative Plaintiffs contend that Herr’s violated the overtime provisions of the Fair Labor Standards Act (“FLSA”) and state laws by failing to pay them at least one and one half times their regular rate for hours worked beyond 40 per workweek. The Representative Plaintiffs have sued Herr’s to recover all wages allegedly due on behalf of all eligible Route Salespersons during the statute of limitations. The Representative Plaintiffs are also seeking liquidated damages (double damages), attorneys’ fees, and costs.

Plaintiffs contend that they are non-exempt from the overtime requirements of federal law because they contend that their primary duty was the delivery and stocking of product to Herr’s customers, and that sales duties performed were incident to this primary duty. Herr’s denies the allegations and contends that the Plaintiffs are exempt under federal overtime law because Herr’s contends that Plaintiffs’ primary duty was outside sales or promotion work to assist in their own sale and/or Plaintiffs drove trucks with a gross weight of more than 10,000 pounds.

If you join this litigation, and Plaintiffs prevail on their claims, you will be only eligible to recover damages you incurred during the applicable statute of limitations under the FLSA, which will be based upon the date you file your Consent Form. Accordingly, if you wish to participate in the lawsuit, you should act promptly because any delay in joining this case may result in your claim being partially or completely extinguished due to the applicable statute of limitations.

III. YOUR OPTIONS FOR HOW TO JOIN THIS LAWSUIT

You may join this lawsuit by completing the enclosed “Consent to Join Lawsuit” Form (“Consent Form”) and returning it in the mail in the enclosed, pre-stamped and self-addressed envelope. You may also join the lawsuit by completing the enclosed Consent Form and faxing it to 1-877-311-4771 [Herr Foods, Inc. Notice Administrator] or emailing it to herrs@swartz-legal.com. In the alternative, you may complete the Consent Form online at <http://www.swartz-legal.com>.

THIS IS **NOT** AN ADVERTISEMENT.

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THIS NOTICE CONTAINS INFORMATION PERTAINING TO YOUR LEGAL RIGHTS. IT HAS BEEN MAILED PURSUANT TO AN OFFICIAL COURT ORDER ISSUED BY THE FEDERAL DISTRICT COURT IN PHILADELPHIA, PENNSYLVANIA.

IF YOU WISH TO JOIN THIS LAWSUIT, YOU MUST RETURN THE CONSENT FORM OR COMPLETE THE ONLINE CONSENT FORM BY NO LATER THAN AUGUST 4, 2015.

IV. NO RETALIATION PERMITTED

Under federal law, it is illegal for Herr's to terminate you or to retaliate against you in any way for joining this lawsuit. You will not be retaliated against for joining this lawsuit. Herr's has confirmed that it will not take any retaliatory measures against any Route Sales Person who joins this lawsuit.

V. EFFECT OF JOINING OR NOT JOINING THIS LAWSUIT

If you do not file a Consent Form to join in this lawsuit, you will not participate in this lawsuit and will not be bound by, nor will you receive any compensation from, any judgment or settlement. However, you will retain your individual rights under federal and state law to assert any overtime claims against Herr's provided that you act within the applicable statute of limitations. If you so choose, you may pursue your claim on your own. The pendency of this lawsuit, however, will not stop the running of the statute of limitations as to such claims unless you opt-in by returning the Consent Form.

If you do join the lawsuit, you may participate in any judgment or settlement that may be achieved. However, Herr's may ask the Court to require you to respond to written questions under oath, produce documents, provide sworn testimony at a deposition about your employment by Herr's, and/or testify in federal court in Philadelphia, Pennsylvania at trial. If testifying in Philadelphia creates an undue burden to you, Plaintiffs will seek to have the Court allow you to participate remotely if your testimony is necessary.

VI. NO OPINIONS EXPRESSED AS TO THE MERITS OF THE CASE

This Notice is for the sole purpose of determining the identity of those persons who may be entitled to and wish to participate in this lawsuit and any potential judgment or settlement. The Court has expressed no opinion regarding the merits of Plaintiffs' claims or Herr's defenses, and those claims may be subject to later dismissal if the Court ultimately finds that the claims lack merit or that they cannot be litigated collectively.

VII. QUESTIONS REGARDING THIS NOTICE

If you have any questions regarding this Notice, you can contact Justin L. Swidler, Esq. or Joshua S. Boyette, Esq., or Matthew D. Miller, Esq. of Swartz Swidler, LLC, the attorneys representing the class of employees. Their phone numbers are listed below. **You should not contact the Court.**

VIII. LEGAL COUNSEL

If you choose to join this case by filing a Consent Form, you will be agreeing to representation by Plaintiffs' attorneys, identified below.

Justin L. Swidler, Esq.
Joshua S. Boyette, Esq.
Matthew D. Miller, Esq.
Swartz Swidler, LLC
1101 Kings Hwy N, Ste. 402
Cherry Hill, NJ 08034

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Plaintiffs' attorneys have taken this case on a contingency fee. They may be entitled to receive attorneys' fees and costs from Herr's should there be a recovery or judgment in favor of the Plaintiffs. If there is a recovery, Plaintiffs' attorneys will apply to receive 1/3 of any settlement obtained or money judgment entered in favor of all members of the collective action or some or all of their fees may be paid separately by Herr's. If there is no recovery or judgment in Plaintiffs' favor, Plaintiffs' attorneys will not seek any attorneys' fees or costs from anyone.

VIII. COURT APPOINTED NOTICE ADMINISTRATOR

You may also contact the court appointed notice administrator, Herr Foods, Inc. Notice Administrator, at 1-866-431-3856.