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AMERICAN ARBITRATION ASSOCIATION

JESSICA ZIER, on behalf of herself and all others similarly situated, **Claimant,** **- against -** **BRINKER INTERNATIONAL PAYROLL COMPANY, L.P. d/b/a CHILI'S,** **Respondent.**	**DEMAND FOR ARBITRATION** **Case No.**

To: Brinker International
c/o General Counsel
6820 LBJ Freeway
Dallas, Texas 75240

As described in the attached Statement of Claim, Claimant Jessica Zier, on behalf of herself and all other similarly situated, demands that the claims asserted against Brinker International Payroll Company, L.P. d/b/a Chili's (hereinafter referred to as "Chili's" or "Respondent") be resolved by final and binding arbitration, to be conducted in Suffolk County, State of New York, in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association ("AAA Rules"), as modified by the Arbitration Agreement, pursuant to an Arbitration Agreement signed on January 24, 2011.

Claimant Jessica Zier resides at 47 Scenic Hills Road, Ridge, New York 11961, telephone number (631) 513-0492.

As set forth in the attached Statement of Claim, Claimant seeks to recover, on behalf of

herself and her similarly situated tipped coworkers of: unpaid minimum wages; overtime compensation; spread-of-hours pay; misappropriated tips; uniform related expenses; unlawful deductions; and other wages and damages due to Respondent's policy of violating of the federal and state wage and hour protections.

The amount in controversy is approximately $50,000,000.00.

In accordance with the AAA Rules, the Answer, if any, must be served on the Claimant's attorneys whose names and addresses are:

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Dated: Melville, New York
July 30, 2015

Respectfully submitted,

By: /s/ *Troy L. Kessler*
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AMERICAN ARBITRATION ASSOCIATION

JESSICA ZIER, on behalf of herself and all others similarly situated, **Claimant,** **- against -** **BRINKER INTERNATIONAL PAYROLL COMPANY, L.P. d/b/a CHILI'S,** **Respondent.**	**STATEMENT OF CLAIM** **Case No.**

INTRODUCTION

Pursuant to the Arbitration Agreement dated January 24, 2011, (hereinafter referred to as the "Arbitration Agreement") between Jessica Zier and Brinker International Payroll Company, L.P. d/b/a Chili's , Jessica Zier, individually, and on behalf of all other servers and bartenders "tipped workers" who are similarly situated (hereinafter referred to as "Claimant") hereby demands that the claims asserted herein against Brinker International Payroll Company, L.P. (hereinafter referred to as "Chili's" or "Respondent") be resolved by final and binding arbitration, to be conducted in Suffolk County, State of New York, in accordance with the American Arbitration Association Rules. A copy of the Arbitration Agreement is annexed hereto as Exhibit "A."

1. Claimant brings this action seeking monetary damages and affirmative relief based upon Respondent's violation of the Fair Labor Standards Act of 1938 (hereinafter referred

to as "FLSA"), as amended, 29 U.S.C. § 201, *et seq*., the New York Labor Law (hereinafter referred to as "NYLL" or "N.Y. Lab. Law") and other appropriate rules, regulations, statutes and ordinances.

2. Claimant also seeks permission to give notice of this arbitration pursuant to 29 U.S.C. § 216(b) to all tipped workers who are presently, or have at any time during the 3 years immediately preceding the filing of this arbitration, worked for Respondent.

3. Claimant also brings this action on behalf of all similarly situated current and former tipped workers of Respondent who elect to opt-in to this action pursuant to the FLSA and specifically the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Respondent that have deprived Claimant and others similarly situated of their lawfully earned wages.

4. Claimant also bring this action on behalf of all similarly situated current and former tipped workers of Respondent located in the State of New York pursuant to the Federal Rule of Civil Procedure 23 to remedy violations of the N.Y. Lab. Law Article 6 §§ 190 *et seq.*, and Article 19 §§ 650 *et seq*., and the supporting New York State Department of Labor regulations.

5. Brinker International Payroll Company, L.P. runs the Chili's Grill & Bar restaurant chain and a publically traded company that operates throughout the United States, including New York.

6. Respondent has approximately 1,600 restaurant locations in 33 countries.

7. Respondent had a reported revenue of $600 million in the first quarter of 2015.

8. Respondent has maintained control, oversight, and direction over Claimant and similarly situated employees, including the ability to hire, fire and discipline.

9. At all times relevant, Respondent has paid Claimant at a "tipped" minimum wage

rate less than the full minimum wage rate for non-tipped workers.

10. Respondent, however, has not satisfied the strict requirements under the FLSA or the NYLL that would allow them to pay a reduced minimum wage (i.e. - take a "tip credit").

11. Specifically, Respondent maintains a policy and practice whereby tipped workers are required to spend a substantial amount of time performing non-tip producing "side work" including, but not limited to, general cleaning of the restaurant, preparing food, refilling condiments, stocking and replenishing the bar and food stations.

12. Respondent requires tipped workers to perform "side work" at the start and end of every shift.

13. As a result, tipped workers spend more than twenty percent of their work time engaged in "side work" duties.

14. Respondent pays tipped workers for this work at or below the reduced tip credit minimum wage.

15. The duties that Respondent requires tipped workers to perform are duties that are customarily assigned to "back-of-the-house" employees in other restaurants, who typically receive at least the full minimum wage rate.

16. The "side work" that Respondent required Claimant and other similarly situated tipped workers to perform includes, but is not limited to: (1) sweeping and mopping floors and bar chairs; (2) cleaning windows; (3) restocking ice; (4) cutting lemons; (5) burning ice; (6) cleaning the bar refrigerator; (7) breaking down and cleaning the kitchen stations, including, but not limited to, refreshment station, dessert station, microwave, refrigerator; (8) preparing food, including soups and desserts; (9) cleaning the grates at the bar; and (10) covering the to-go order counter.

17. Since the "side work" described is not related to Claimant's duties as a tipped worker, Claimant was entitled to the full minimum wage.

18. Respondent's timekeeping system is capable of tracking multiple job codes for different work assignments.

19. Respondent also maintains a policy and practice whereby tipped workers are encouraged to work off-the-clock.

20. Claimant was not permitted to punch in after she received her first customer rather than when she arrived at the restaurant.

21. Respondent's managers shaved Claimant's hours in order to reduce the amount of recorded hours worked.

22. Although Claimant continued to perform work for Respondent after her manager clocked her out, she did so off-the-clock and without compensation.

23. The work that Claimant performed off-the-clock was work in excess of forty hours in a workweek.

24. Respondent maintains a policy and practice whereby tipped workers are required to wear uniforms featuring the Chili's logo.

25. Respondent did not supply its tipped workers with any uniforms, and unlawfully deducted from its tipped workers' pay when it required its tipped workers to pay for their own uniforms.

26. Respondent did not launder its tipped workers' uniforms.

27. Respondent required Claimant and other tipped workers to pay for the cleaning and maintenance of their uniforms.

28. Respondent also required Claimant and other tipped workers to engage in a tip

distribution scheme whereby they must share tips with expeditors.

29. Respondent's expeditors are not entitled to tips under the FLSA or the NYLL.

30. Respondent's expeditors work in the back-of-the house garnishing plates, confirm special requests for dishes were complied with, and pull the food from the window.

31. Respondent's expeditors have no direct contact or interaction with customers.

JURISDICTION OF AMERICAN ARBITRATION ASSOCIATION

32. Respondent's Arbitration Agreement permits this arbitration to be administered by the American Arbitration Association ("AAA"). *See* Ex. A.

PARTIES

33. Jessica Zier was and still is an individual, residing in Suffolk County, State of New York.

34. At all times relevant to the Statement of Claim, Claimant was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and N.Y. Lab. Law § 190(2).

35. Claimant was employed by Respondent from in or about February 2011 through June 2014.

36. Upon information and belief, Respondent was and still is a foreign corporation, authorized to do business in the State of New York.

37. Respondent does business in Queens, Nassau and Suffolk Counties.

38. Respondent maintains its principal executive office at 682 LBJ Freeway, Dallas, Texas 75240.

39. Upon information and belief, Respondent maintains control, oversight, and direction over its operations, including its employment practices throughout the State of New

York.

40. At all times hereinafter mentioned, Respondent was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and N.Y. Lab. Law § 190(3).

41. At all times hereinafter mentioned, the activities of the Respondent constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

42. At all times hereinafter mentioned, Respondent employs employees, including the Claimant herein, who regularly engage in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which move in or have been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

43. At all times hereinafter mentioned, Respondent's annual gross volume of sales made or business done is not less than $500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

FLSA COLLECTIVE ACTION CLAIMS

44. Claimant brings the First and Second Causes of Action, on behalf of herself and all similarly situated current and former tipped workers employed by Respondent, for a period of three years prior to Respondent's receipt of Claimant's intent to arbitrate these claims, to the date of final judgment in this matter, and who elect to opt-in to this action (the "FLSA Collective Members").

45. Upon information and belief, there are approximately more than 100 current and former tipped workers that are similarly situated to Claimant who were denied minimum wage and overtime compensation by Respondent.

46. At all relevant times, Claimant and the FLSA Collective members are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have had been subjected to Chili's decision, policy, plan and common programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay Claimant at the legally required minimum wage for all hours worked and one-and-one half times this rate for work in excess of forty hours per workweek, and requiring tipped workers to engage in "side work" for more than twenty percent of their time at work. Claimant's claims stated herein are essentially the same as those of the other FLSA Collective Members.

47. Respondent is aware or should have been aware that the federal law required it to pay employees minimum wage for all of the hours they work.

48. Respondent is aware or should have been aware that federal law required it to pay employees performing non-exempt duties an overtime premium for hours worked in excess of forty per workweek.

49. Respondent's unlawful conduct has been widespread, repeated, and consistent.

50. The First and Two Causes of Action are properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. § 216(b).

51. The FLSA Collective is readily identifiable and locatable through use of the Respondent's records. The FLSA Collective should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Arbitrator promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Respondent.

FEDERAL RULE OF CIVIL PROCEDURE RULE 23
NEW YORK CLASS ALLEGATIONS

52. Claimant brings the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, NYLL claims, under Rule 23, on behalf of herself and all similarly situated current and former tipped workers employed at Chili's in New York owned and operated by Respondent between six years prior to Respondent's receipt of Claimant's demand for arbitration and the date of a final judgment in this matter ("Rule 23 Class").

53. The members of the Rule 23 Class ("Rule 23 Class Members") are readily ascertainable. The number and identity of the Rule 23 Class Members are determinable from the Respondent's records. The hours assigned and worked, the positions held, and the rates of pay for each Rule 23 Class Member are also determinable from Respondent's records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Respondent. Notice can be provided by means permissible under Rule 23.

54. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

55. Upon information and belief, there are at least 500 individuals Rule 23 Class Members.

56. Claimant's claims are typical of those claims which could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

57. All Rule 23 Class Members were subject to the same corporate practices of Respondent, as alleged herein, of failing to pay minimum wage, failing to pay overtime, failing to pay off-the-clock work, failing to properly distribute tips, failing to pay spread-of-hours pay, making illegal deductions, failing to pay uniform-related expenses, failing to provide proper

wage statements, and failing to provide proper wage and hour notices.

58. Claimant and the Rule 23 Class Members have all sustained similar types of damages as a result of Respondent's failure to comply with the NYLL.

59. Claimant and the Rule 23 Class Members have all been injured in that they have been uncompensated or under-compensated due to Respondent's common policies, practices, and patterns of conduct. Respondent's corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Respondent benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

60. Claimant and other Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

61. Claimants are able to fairly and adequately protect the interests of the Rule 23 Class Members and have no interests antagonistic to the Rule 23 Class Members.

62. Claimant is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many employees in wage and hour class actions.

63. A class is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporations. Class action treatment will permit a large number of similarly situated persons to protect their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of

individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class Member to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual claims would result in a great expenditure and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class Members, establishing incompatible standards of conduct for Respondent and resulting in the impairment of the Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Arbitrator can, and is empowered to, fashion methods to efficiently manage this action as a class action.

64. Upon information and belief, Respondent violated the NYLL. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the statement of claim a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

65. Claimants' claims are properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

66. Common questions of law and fact common exist to the Rule 23 Class that predominate over any questions solely affecting Claimant and the Rule 23 Class Members individually and include, but are not limited to:

a. whether Respondent violated NYLL Articles 6 and 19, and the supporting New York State Department of Labor Regulations;

b. whether Respondent employed Claimant and the Rule 23 Class Members within the meaning of the NYLL;

c. whether Respondent paid Claimant and the Rule 23 Class Members at the proper minimum wage rate for all hours worked;

d. whether Respondent had a policy or practice of failing to provide adequate notice of their payment of a reduced minimum wage to Claimant and the Rule 23 Class Members;

e. what notice is required in order for Respondent to take a tip credit under New York State Department of Labor regulations;

f. at what common rate, or rates subject to common methods of calculation, was Respondent required to pay Claimant and the Rule 23 Class Members for their work;

g. whether Respondent had a policy of requiring tipped workers to engage in side work for two hours or more/or for more than twenty percent of their time at work in violation of the NYLL;

h. whether Respondent properly compensated Claimant and the Rule 23 Class Members for hours worked in excess of forty hours per workweek;

i. whether Respondent failed to provide Claimant and the Rule 23 Class Members spread-of-hours pay when the length of their workday was greater than ten hours;

j. whether Respondent improperly required Claimant and the Rule 23 Class Members to distribute tips to workers who are not entitled to receive tips under the NYLL;

k. whether Respondent failed to pay Claimant and the Rule 23 Class Members for uniform-related expenses;

l. whether Respondent made unlawful deductions from wages paid to Claimant and the Rule 23 Class Members;

m. whether Respondent failed to keep an accurate statement of wages, hours worked, rates paid, gross wages, and the claimed tip allowance, as required by the Wage Theft Protection Act;

n. whether Respondent acted willfully or with reckless disregarding in its failure to pay the Claimant and the Rule 23 Class Members proper wages; and

o. the nature and extent of class-wide injury and the measure of damages for those injuries.

CLAIMANT'S FACTUAL ALLEGATIONS

67. Consistent with its policies and patterns or practices as described herein, Respondent harmed Claimant as follows:

68. Claimant worked for Respondent as a server from approximately April 2011 through May 2011.

69. Claimant worked for Respondent as a bartender from approximately June 2011 through June 2014.

70. From approximately April 2011 through April 2014, Claimant worked for Respondent at its Bay Shore, New York location.

71. From approximately April 2011 through June 2011, Claimant worked for Respondent at its Westbury, New York location.

72. Sometime in 2013, Claimant also worked for approximately one day at Respondent's Bethpage, New York location.

73. Respondent did not pay Claimant the proper minimum wages, overtime wages, and spread-of-hours pay for all of the time that she was suffered or permitted to work each workweek for Respondent.

74. Throughout the duration of her employment at Chili's, Claimant received weekly pay checks from Respondent that did not properly record or compensate her for all the hours that she worked.

75. Respondent paid Claimant at the New York tipped minimum wage rate.

76. Respondent did not provide Claimant with notification of the tipped minimum age or tip credit provisions of the FLSA or the NYLL, or its intent to apply a tip credit to her wages.

77. Respondent unlawfully required Claimant to share tips with expeditors, employees who are not entitled to tips under the FLSA and/or the NYLL.

78. Respondent required Claimant to spend at least 20% of her shift performing non-tipped work unrelated to her duties as a tipped worker. These duties included, but are not limited to, sweeping and mopping floors and bar chairs, cleaning windows, restocking ice, cutting lemons, burning ice, cleaning the bar refrigerator, breaking down and cleaning the kitchen stations, including, but not limited to, refreshment station, dessert station, microwave, refrigerator, preparing food, including soups and desserts, cleaning the grates at the bar; and covering the to-go order counter.

79. Although Claimant should have been paid the full minimum wage, Respondent paid her an hourly rate that fell below the minimum wage.

80. Respondent frequently required Claimant to perform work off-the-clock without compensation.

81. For instances, Respondent often instructed Claimant to punch into the time clock when she started to serve her first table, rather than when she arrived at work. Respondent only compensated Claimant for the time after she punched in.

82. Respondent often punched Claimant out when she finished serving tables but required her to continue working, performing "side work," off-the-clock. Respondent did not compensate Claimant for this time. For example, if Claimant was close to forty hours in a workweek, Claimant's managers punched her out after service so she could perform "side work."

83. Respondent suffered or permitted Claimant to work more than forty hours per week, including weeks during which she was not paid at all for some of her time.

84. As Claimant typically worked 5 shifts per week, some of the above mentioned off-the-clock work was in excess of forty hours per week.

85. In addition, Respondent also removed hours that Claimant worked from her time records and did not pay her for that time that was removed.

86. Some weeks, Claimant worked 45 hours per week without proper overtime compensation.

87. During her employment, Claimant generally worked the following scheduled hours unless she missed time for vacation, sick days, or holidays:

a. From in or around April through May 2011, Claimant typically worked five shifts per week. The shifts were typically all from 4:00 p.m. until approximately 12:00 a.m. as a server; and

b. From in or around June 2011 through April 2014, Claimant typically worked five shifts per week, typically from approximately 4:00 p.m. until approximately 12:00 a.m. on Sundays, Tuesdays, and Thursdays, and from approximately 5:00 p.m. until approximately 1:00 a.m. as a bartender.

88. The overtime premiums Respondent paid Claimant for hours worked in excess of 40 per workweek were not calculated at 1.5 times the full minimum wage rate.

89. Claimant worked more than 10 hours in a day several times. Claimant occasionally worked a double shift which lasted longer than ten hours in a day.

90. Respondent never paid Claimant spread-of-hours pay.

91. Respondent required Claimant to wear a uniform consisting of a shirt with the Chili's logo.

92. Respondent did not launder and/or maintain Claimant's uniform, and failed to pay Claimant the required weekly uniform maintenance amount in addition to the required minimum wage.

93. Respondent did not keep accurate records of wages or tips earned, or of hours worked by Claimant.

94. Respondent failed to furnish Claimant with accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance.

FIRST CAUSE OF ACTION

Fair Labor Standards Act – Minimum Wages (Brought by Claimant and the FLSA Collective)

95. Claimant, on behalf of herself and the FLSA Collective Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

96. Respondent has engaged in a widespread pattern, policy and practice of violating the FLSA, as detailed in this Statement of Claim.

97. At all relevant times, Respondent has been, and continues to be, an employer engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Respondent has employed "employee[s]," including Claimant and the FLSA Collective Members.

98. Respondent was required to pay directly to Claimant and the FLSA Collective Members the applicable New York State minimum wage rate for all hours worked.

99. Respondent failed to pay Claimant and the FLSA Collective Members the minimum wages to which they are entitled under the FLSA.

100. Respondent is not eligible to avail itself of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Respondent failed to inform Claimant and the FLSA Class Members of the provisions of subsection 203(m) of the FLSA, and distributed a portion of their tips to workers who do not "customarily and regularly" receive tips.

101. Respondent also required Claimant and the FLSA Collective Members to perform a substantial amount of non-tipped "side work" in excess of twenty percent of their time at work. During these periods, Respondent compensated Claimant and the FLSA Collective Members at the tipped minimum wage rate rather than the full hourly minimum wage rate as required by 29 U.S. C. §§ 201 *et seq.*

102. Respondent unlawful conduct, as described in this Statement of Claim, has been willful and intentional. Respondent was aware or should have been aware that the practices described in this Statement of Claim are unlawful. Respondent has not made a good faith effort to comply with the FLSA with respect to the compensation of Claimant and the FLSA Collective Members.

103. Because Respondent's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S. C. §§ 201 *et seq.*

104. As a result of Respondent's willful violations of the FLSA, Claimant and the FLSA Collective Members have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S. C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
FLSA – Overtime Wages
(Brought on behalf of the Claimant and the FLSA Collective)

105. Claimant, on behalf of herself and the FLSA Collective Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

106. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Respondent and protect Claimant and the FLSA

Collective Members.

107. Claimant and the FLSA Collective Members worked in excess of forty hours during some workweeks in the relevant period.

108. Respondent willfully failed to pay Claimant and the FLSA Collective Members one and one half times the full minimum wage for all work in excess of forty hours per workweek. Respondent's unlawful conduct, as described in this Statement of Claim, has been willful and intentional. Respondent was aware or should have been aware that the practices described in this Statement of Claim were unlawful. Respondent has not made a good faith effort to comply with the FLSA with respect to the compensation of Claimant and the FLSA Collective Members.

109. Because Respondent's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

110. As a result of Respondent's violations of the FLSA, Claimant and the FLSA Collective Members have been deprived of overtime compensation in amounts to be determined at a hearing, and are entitled to recovery in such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

THIRD CAUSE OF ACTION
NYLL – Minimum Wages
(Brought on behalf of the Claimant and the Rule 23 Class)

111. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

112. Respondent has engaged in a widespread pattern, policy and practice of violating the NYLL, as detailed in this Statement of Claim.

113. At all times relevant, Claimant and the Rule 23 Class Members have been employees of Respondent, and Respondent has been the employer of Claimant and the Rule 23

Class Members within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

114. At all times relevant, Claimant and the Rule 23 Class Members have been covered by the NYLL.

115. The wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Relegations apply to Respondent and protect Claimant and the Rule 23 Class Members.

116. Respondent failed to pay Claimant and the Rule 23 Class Members the minimum wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

117. Respondent required Claimant and the Rule 23 Class Members to perform a substantial amount of non-tipped "side work" in excess of twenty percent of their time at work. During these periods, Claimant and the Rule 23 Class Members were engaged in a non-tipped occupation and compensated by Respondent at the tipped minimum wage or lower rate rather than the full hourly minimum wage, in violation of the NYLL and the supporting New York Department of Labor Regulations.

118. Respondent was required to pay Claimant and the Rule 23 Members the full minimum wage at a rate of; (a) $7.25 per hour for all hours worked from July 24, 2009 through the December 30, 2013; (b) $8.00 per hour for all hours worked from December 31, 2013 through December 30, 2014; and (c) $8.75 per hour for all hours worked from December 31, 2014 to the present under the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

119. Through its knowing or intentional failure to pay minimum hourly wages to Claimant and the Rule 23 Class Members, Respondent has willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

120. Due to Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
NYLL – Overtime Wages
(Brought on behalf of the Claimant and the Rule 23 Class)

121. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

122. Respondent failed to pay Claimant and the Rule 23 Class Members the proper overtime wages to which they are entitled to under the NYLL and the supporting New York State Department of Labor Regulations.

123. Respondent failed to pay Claimant and the Rule 23 Class Members one-and-one-half times the full minimum wage for all work in excess of forty hours per workweek.

124. Through their knowledge or intentional failure to pay Claimant and the Rule 23 Class Members overtime wages for hours worked in excess of forty hours per workweek, Respondent has willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

125. Due to Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and

post-judgment interest.

FIFTH CAUSE OF ACTION
NYLL – Spread-of-Hours Pay
(Brought on behalf of the Claimant and the Rule 23 Class)

126. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

127. At times, Claimant and the Rule 23 Class Members worked more than ten hours in a workday.

128. Respondent willfully failed to compensate Claimant and the Rule 23 Class Members one hour's pay at the basic New York minimum hourly wage rate on days in which the length of their workday was more than ten hours, as required by New York law.

129. Through their knowledge or intentional failure to pay Claimant and the Rule 23 Class Members spread-of-hours pay, Respondent has willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

130. Through their knowledge or intentional failure to pay Claimant and the Rule 23 Class Members a spread-of-hours pay, Respondent has willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

131. Due to Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION
NYLL – Tip Misappropriation
(Brought on behalf of the Claimant and the Rule 23 Class)

132. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

133. Respondent unlawfully demanded, directed, or indirectly, part of gratuities received by Claimant and the Rule 23 Class Members be shared with employees other than servers, bartenders, or other similar employees, in violation of NYLL, Article 6 § 196-d and the supporting New York State Department of Labor Regulations.

134. By Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent their unpaid gratuities, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SEVENTH CAUSE OF ACTION
NYLL – Uniform Violation
(Brought on behalf of the Claimant and the Rule 23 Class)

135. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

136. Respondent required Claimant and the Rule 23 Class Members wear a uniform consisting of a Chili's logo shirt, dark jeans, a belt, and non-slip black work shoes.

137. Respondent failed to launder and/or maintain the required uniform for Claimant and the Rule 23 Class Members, and failed to pay them the required weekly amount in addition to the required minimum wage.

138. By failing to pay Claimant and the Rule 23 Class Members for the maintenance of the required uniforms, Respondent has willfully violated the NYLL, and the supporting New York

State Department of Labor Regulations.

139. Due to Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent the costs of maintaining their uniforms, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

EIGHTH CAUSE OF ACTION
NYLL – Unlawful Deductions from Wages
(Brought on behalf of the Claimant and the Rule 23 Class)

140. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

141. Respondent made unlawful deductions from the wages of Claimant and the Rule 23 Class Members for uniform shirts.

142. The deductions made from the wages of Claimant and the Rule 23 Class Members were not authorized by law.

143. The deductions made from the wages of Claimant and the Rule 23 Class Members were not expressly authorized in writing by Claimant and the Rule 23 Class Members, and were not for the benefit of Claimant and the Rule 23 Class Members.

144. Through its knowing or intentional efforts to permit unauthorized deductions from the wages of Claimant and the Rule 23 Class Members, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

145. Due to Respondent's willful violations of the NYLL, Claimant and the Rule 23 Class Members are entitled to recover from Respondent the amount of any unlawful deductions, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

NINTH CAUSE OF ACTION
NYLL – Failure to Provide Annual Wage Notices
(Brought on behalf of the Claimant and the Rule 23 Class)

146. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

147. Respondent has willfully failed to supply Claimant and the Rule 23 Class Members with wage notices, as required by NYLL, Article 6 § 195(1), in English or in the language identified as their primary language, containing Claimant and the Rule 23 Class Members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

148. Through its knowing or intentional failure to provide Claimant and the Rule 23 Class Members with the wage notices required by the NYLL, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

149. Due to Respondent's willful violations of the NYLL, Article 6 § 195(1) Claimant and the Rule 23 Class Members are entitled to statutory penalties of fifty dollars for each day that Respondent failed to provide them with wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, §§ 190 *et seq*.

TENTH CAUSE OF ACTION
NYLL – Failure to Provide Accurate Wage Statements
(Brought on behalf of the Claimant and the Rule 23 Class)

150. Claimant, on behalf of herself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

151. Respondent has willfully failed to supply Claimant and the Rule 23 Class Members with accurate statements of wages as required by NYLL, Article 6 § 195(3), containing the dates of work covered for that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

152. Through its knowing or intentional failure to provide Claimant and the Rule 23 Class Members with accurate wage statements required by the NYLL, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

153. Due to Respondent's willful violations of the NYLL, Article 6 § 195(3), Claimant and the Rule 23 Class Members are entitled to statutory penalties of two hundred fifty dollars for each workweek that Respondent failed to provide them with accurate wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198 (1-d).

PRAYER FOR RELIEF

WHEREFORE, Claimant, individually, and on behalf of all other similarly situated persons, respectfully requests the following relief:

A. Designation of this action as a collective action on behalf of the FLSA Collective Members (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, appraising them of this pending arbitration, and permitting them to assert timely FLSA claims and state claims in this arbitration by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

B. Unpaid minimum wages, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this arbitration as a class action pursuant to Rule 23;

D. Designation of Claimant as the representative of the Rule 23 Class and counsel of record as Class Counsel;

E. Issuance of a declaratory judgment that the practices complained of in this Statement of Claim are unlawful under the NYLL, Article 6 §§ 190 *et seq*., and the supporting New York State Department of Labor Regulations;

F. Unpaid minimum wages, overtime pay, spread-of-hours pay, misappropriated tips, uniform related expenses, unlawful deductions, and other unpaid wages and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

G. Statutory penalties of fifty dollars for each day that Respondent failed to provide Claimant and the Rule 23 Class Members with a wage notice, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

H. Statutory penalties of two hundred fifty dollars for each workweek that Respondent failed to provide Claimant and Rule 23 Class Members with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

I. Prejudgment and post-judgment interest;

J. An injunction requiring Respondent to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;

K. Reasonable attorneys' fees and costs for this arbitration;

L. Reasonable incentive awards for the named Claimant to compensate her for the time she spent attempting to recover wages for Class Members and for the risk she took in doing so; and

M. Such other relief as this Court shall deem just and proper.

Dated: Melville, New York
July 30, 2015

Respectfully submitted,

By: /s/ *Troy L. Kessler*
Troy L. Kessler

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Attorneys for Claimant and the Putative Class and Collective Actions

EXHIBIT "A"

AGREEMENT TO ARBITRATE

Brinker International Payroll Company, L.P. ("Brinker") makes available certain internal procedures for amicably resolving any complaints or disputes you have relating to your employment. However, if you are unable to resolve any such complaints or disputes to your satisfaction internally, Brinker has provided for the resolution of all disputes that arise between you and Brinker through formal, mandatory arbitration before a neutral arbitrator.

Because of, among other things, the delay and expense which result from the use of the court systems, any legal or equitable claims or disputes arising out of or in connection with employment, terms and conditions of employment, or the termination of employment with Brinker will be resolved by binding arbitration instead of in a court of law or equity. This agreement applies to all disputes involving legally protected rights (e.g., local, state and federal statutory, contractual or common law rights) regardless of whether the statute was enacted or the common law doctrine was recognized at the time this agreement was signed. This agreement does not limit an employee's ability to complete any external administrative remedy (such as with the EEOC).

This Agreement to Arbitrate substitutes one legitimate dispute resolution form (arbitration) for another (litigation), thereby waiving any right of either party to have the dispute resolved in court. This substitution involves no surrender, by either party, or any substantive statutory or common law benefits, protection or defense.

Arbitration Rules:

The arbitration proceedings shall take place in or near the city where you worked.

Each party is entitled to representation by an attorney throughout the arbitration proceedings at their own expense. Each party shall bear their own fees and expenses, unless otherwise awarded by the arbitrator in the final, written decision.

A written notice of your intention to arbitrate must be submitted in writing within the applicable statute of limitations. The notice shall contain: (1) the name, address and telephone number for all the parties; (2) the name, address and telephone numbers of all counsel; (3) a brief statement of the nature of the dispute, including all claims raised; (4) the amount in controversy and (5) the remedy sought. The notice shall be sent to: General Counsel, Brinker International, 6820 LBJ Freeway, Dallas, TX 75240.

The Respondent shall answer in writing within thirty (30) business days of the receipt of the notice to arbitrate.

Within ten (10) business days thereafter, both parties shall submit to the other a list of three (3) qualified arbitrators. An arbitrator must be qualified in employment laws and any other areas of law referenced in the notice.

An arbitrator shall be selected within thirty (30) business days thereafter. If the parties cannot agree, they shall submit any pleadings (notice, answer, etc.) and a list of arbitrators to the American Arbitration Association (AAA) to select a qualified arbitrator. AAA may select an individual not on either party's list.

The Federal Rules of Civil Procedure and Federal Rules of Evidence shall apply throughout the arbitration unless modified by the mutual agreement of the parties, or the arbitrator.

Discovery (interrogatories, document production and depositions), as authorized by the arbitrator, shall commence upon the selection of an arbitrator and shall be completed within six (6) months from that date. The time frame may be modified by mutual agreement, or by the arbitrator.

The arbitrator shall hear the case no more than forty-five (45) business days after discovery is completed.

Parties may submit briefs and one rebuttal brief or such other submittals as the arbitrator decides.

Within twenty (20) days of the close of the hearing, the arbitrator shall issue a written decision and award (if any) stating the reasons for the decision and award. The decision shall be final and binding on both parties, their heirs, executors, administrators, successors and assigns, and may be entered and enforced in any court of competent jurisdiction. Proceedings to enforce, confirm, modify or vacate the decision will be controlled by and conducted in conformity with the Federal Arbitration Act 9 U.S.C. Sec. 1 et seq. or applicable state law.

By signing below, I affirm that I have read the above Agreement to Arbitrate and agree to resolve all disputes that arise between me and Brinker through formal, mandatory arbitration as outlined above. I further understand and agree that the Agreement to Arbitrate does not change or alter my at-will employment status.

Jessica Glen
SIGNATURE OF APPLICANT

01/24/11
DATE

[Revised 9/2008]

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AMERICAN ARBITRATION ASSOCIATION

MEGAN BOGGIO, **Claimant,** **- against -** **BRINKER INTERNATIONAL PAYROLL COMPANY, L.P. d/b/a CHILI'S,** **Respondent.**	**DEMAND FOR ARBITRATION** **Case No.**

To: Brinker International
c/o General Counsel
6820 LBJ Freeway
Dallas, Texas 75240

As described in the attached Statement of Claim, Claimant Megan Boggio demands that the claims asserted against Brinker International Payroll Company, L.P. d/b/a Chili's (hereinafter referred to as "Chili's" or "Respondent") be resolved by final and binding arbitration, to be conducted in Suffolk County, State of New York, in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association ("AAA Rules"), as modified by the Arbitration Agreement, pursuant to an Arbitration Agreement signed on November 20, 2014.

Claimant Megan Boggio resides at 58 Woodmont Road, Melville, New York 11747, telephone number (631) 991-8000.

As set forth in the attached Statement of Claim, Claimant seeks to recover: unpaid minimum wages; misappropriated tips; uniform related expenses; unlawful deductions; and other

wages and damages due to Respondent's policy of violating of the federal and state wage and hour protections.

The amount in controversy is approximately $100,000.00.

In accordance with the AAA Rules, the Answer, if any, must be served on the Claimant's attorneys whose names and addresses are:

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Troy L. Kessler
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Melville, New York 11747

FITAPELLI & SHAFFER, LLP
Brian S. Shaffer
Frank Mazzaferro
475 Park Avenue South, 12th Floor
New York, New York 10016

Dated: Melville, New York
July 30, 2015

Respectfully submitted,

By: /s/ *Troy L. Kessler*
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AMERICAN ARBITRATION ASSOCIATION

MEGAN BOGGIO, **Claimant,** **- against -** **BRINKER INTERNATIONAL PAYROLL COMPANY, L.P. d/b/a CHILI'S,** **Respondent.**	**STATEMENT OF CLAIM** **Case No.**

INTRODUCTION

Pursuant to the Arbitration Agreement dated November 20, 2014, (hereinafter referred to as the "Arbitration Agreement") between Megan Boggio and Brinker International Payroll Company, L.P. d/b/a Chili's , Megan Boggio (hereinafter referred to as "Claimant") hereby demands that the claims asserted herein against Brinker International Payroll Company, L.P. (hereinafter referred to as "Chili's" or "Respondent") be resolved by final and binding arbitration, to be conducted in Suffolk County, State of New York, in accordance with the American Arbitration Association Rules. A copy of the Arbitration Agreement is annexed hereto as Exhibit "A."

1. Claimant brings this action seeking monetary damages and affirmative relief based upon Chili's violation of the Fair Labor Standards Act of 1938 (hereinafter referred to as "FLSA"), as amended, 29 U.S.C. § 201, *et seq*., the New York Labor Law (hereinafter referred

to as "NYLL" or "N.Y. Lab. Law") and other appropriate rules, regulations, statutes and ordinances.

2. Brinker International Payroll Company, L.P. runs the Chili's Grill & Bar restaurant chain and a publically traded company that operates throughout the United States, including New York.

3. Chili's has approximately 1,600 restaurant locations in 33 countries.

4. Chili's had a reported revenue of $600 million in the first quarter of 2015.

5. Chili's has maintained control, oversight, and direction over Claimant and similarly situated employees, including the ability to hire, fire and discipline.

6. At all times relevant, Chili's has paid Claimant at a "tipped" minimum wage rate less than the full minimum wage rate for non-tipped workers.

7. Chili's, however, has not satisfied the strict requirements under the FLSA or the NYLL that would allow them to pay a reduced minimum wage (i.e. - take a "tip credit").

8. Specifically, Chili's required Claimant spend a substantial amount of time performing non-tip producing "side work" including, but not limited to, general cleaning of the restaurant, preparing food, refilling condiments, stocking and replenishing the bar and food stations.

9. Chili's required Claimant to perform "side work" at the start and end of every shift.

10. As a result, Claimant spent more than twenty percent of her work time engaged in "side work" duties.

11. Chili's paid Claimant for this work at or below the reduced tip credit minimum wage.

12. The duties that Chili's required Claimant to perform are duties that are customarily assigned to "back-of-the-house" employees in other restaurants, who typically receive at least the full minimum wage rate.

13. The "side work" that Chili's required Claimant and other similarly situated tipped workers to perform includes, but is not limited to: (1) sweeping and mopping floors and bar chairs; (2) cleaning windows; (3) restocking ice; (4) cutting lemons; (5) burning ice; (6) cleaning the bar refrigerator; (7) breaking down and cleaning the kitchen stations, including, but not limited to, refreshment station, dessert station, microwave, refrigerator; (8) preparing food, including soups and desserts; (9) cleaning the grates at the bar; and (10) covering the to-go order counter.

14. Since the "side work" described is not related to Claimant's duties as a tipped worker, Claimant is entitled to the full minimum wage.

15. Chili's timekeeping system is capable of tracking multiple job codes for different work assignments.

16. Claimant was not permitted to punch in after she received her first customer rather than when she arrived at the restaurant.

17. Although Claimant continued to perform work for Chili's after her manager clocked her out, she did so off-the-clock and without compensation.

18. Respondent required Claimant to wear a uniform featuring the Chili's logo.

19. Respondent did not supply Claimant with any uniforms, and unlawfully required Claimant to pay for her own uniforms.

20. Respondent did not launder Claimant's uniforms.

21. Respondent required Claimant to pay for the cleaning and maintenance of her

uniforms.

22. Respondent also required Claimant to engage in a tip distribution scheme whereby she must share tips with expeditors.

23. Respondent's expeditors are not entitled to tips under the FLSA or the NYLL.

24. Respondent's expeditors work in the back-of-the house garnishing plates, confirm special requests for dishes were complied with, and pull the food from the window.

25. Respondent's expeditors have no direct contact or interaction with customers.

JURISDICTION OF AMERICAN ARBITRATION ASSOCIATION

26. Respondent's Arbitration Agreement permits this arbitration to be administered by the American Arbitration Association ("AAA"). *See* Ex. A.

PARTIES

27. Claimant was and still is an individual, residing in Suffolk County, State of New York.

28. At all times relevant to the Statement of Claim, Claimant was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and N.Y. Lab. Law § 190(2).

29. Claimant was employed by the Respondent from in or about December 2014 through April 2015.

30. Upon information and belief, Respondent was and still is a foreign corporation, authorized to do business in the State of New York.

31. Respondent does business in Queens, Nassau and Suffolk Counties.

32. Respondent maintains its principal executive office at 682 LBJ Freeway, Dallas, Texas 75240.

33. Upon information and belief, Respondent maintains control, oversight, and direction over its operations, including its employment practices throughout the State of New York.

34. At all times hereinafter mentioned, Chili's was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and N.Y. Lab. Law § 190(3).

35. At all times hereinafter mentioned, the activities of the Respondent constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

36. At all times hereinafter mentioned, Respondent employs employees, including the Claimant herein, who regularly engage in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which move in or have been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

37. At all times hereinafter mentioned, Respondent's annual gross volume of sales made or business done is not less than $500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

CLAIMANT'S FACTUAL ALLEGATIONS

38. Consistent with its policies and patterns or practices as described herein, Respondent harmed Claimant as follows:

39. Respondent employed Claimant as a server throughout her employment.

40. Claimant worked for Respondent at its Farmingdale, New York location.

41. Respondent did not pay Claimant the proper minimum wages for all of the time that she was suffered or permitted to work each workweek for Respondent.

42. Throughout the duration of her employment with Respondent, Claimant received weekly paychecks from Respondent that did not properly record or compensate her for all the hours that she worked.

43. Respondent paid Claimant at the New York tipped minimum wage rate.

44. Respondent did not provide Claimant with notification of the tipped minimum age or tip credit provisions of the FLSA or the NYLL, or its intent to apply a tip credit to her wages.

45. Respondent unlawfully required Claimant to share tips with expeditors, employees who are not entitled to tips under the FLSA and/or the NYLL.

46. Respondent required Claimant to spend at least 20% of her shift performing non-tipped work unrelated to her duties as a tipped worker. These duties included, but are not limited to, sweeping and mopping floors and bar chairs, cleaning windows, restocking ice, cutting lemons, burning ice, cleaning the bar refrigerator, breaking down and cleaning the kitchen stations, including, but not limited to, refreshment station, dessert station, microwave, refrigerator, preparing food, including soups and desserts, cleaning the grates at the bar; and covering the to-go order counter.

47. Although Claimant should have been paid the full minimum wage, Respondent paid him an hourly rate that fell below the minimum wage.

48. Respondent frequently required Claimant to perform work off-the-clock without compensation.

49. For instances, Respondent often instructed Claimant to punch into the time clock when she started to serve her first table, rather than when she arrived at work. Respondent only compensated Claimant for the time after she punched in.

50. Respondent often punched Claimant out when she finished serving tables but required her to continue working, performing "side work," off-the-clock. Respondent did not compensate Claimant for this time. For example, if Claimant was close to forty hours in a workweek, Claimant's managers punched her out after service so she could perform "side work."

51. Respondent required Claimant to wear a uniform consisting of a shirt with the Chili's logo.

52. Respondent did not launder and/or maintain Claimant's uniform, and failed to pay Claimant the required weekly uniform maintenance amount in addition to the required minimum wage.

53. Respondent did not keep accurate records of wages or tips earned, or of hours worked by Claimant.

54. Respondent failed to furnish Claimant with accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Minimum Wages
(Brought by Claimant)

55. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

56. Respondent has engaged in a widespread pattern, policy and practice of violating the FLSA, as detailed in this Statement of Claim.

57. At all relevant times, Respondent has been, and continues to be, an employer engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Respondent has employed "employee[s]," including Claimant.

58. Respondent was required to pay directly to Claimant the applicable New York State minimum wage rate for all hours worked.

59. Respondent failed to pay Claimant the minimum wages to which she is entitled under the FLSA.

60. Respondent is not eligible to avail itself of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Respondent failed to inform Claimant of the provisions of subsection 203(m) of the FLSA, and distributed a portion of her tips to workers who do not "customarily and regularly" receive tips.

61. Respondent also required Claimant perform a substantial amount of non-tipped "side work" in excess of twenty percent of her time at work. During these periods, Respondent compensated Claimant at the tipped minimum wage rate rather than the full hourly minimum wage rate as required by 29 U.S. C. §§ 201 *et seq.*

62. Respondent unlawful conduct, as described in this Statement of Claim, has been willful and intentional. Respondent was aware or should have been aware that the practices described in this Statement of Claim are unlawful. Respondent has not made a good faith effort to comply with the FLSA with respect to the compensation of Claimant.

63. Because Respondent's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S. C. §§ 201 *et seq.*

64. As a result of Respondent's willful violations of the FLSA, Claimant has suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S. C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
NYLL – Minimum Wages
(Brought on behalf of the Claimant)

65. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

66. Respondent has engaged in a widespread pattern, policy and practice of violating the NYLL, as detailed in this Statement of Claim.

67. At all times relevant, Claimant was an employee of Respondent, and Respondent was Claimant's employer within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

68. At all times relevant, Claimant was covered by the NYLL.

69. The wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Relegations apply to Respondent and protect Claimant.

70. Respondent failed to pay Claimant the minimum wages to which she is entitled to under the NYLL and the supporting New York State Department of Labor Regulations.

71. Respondent required Claimant perform a substantial amount of non-tipped "side work" in excess of twenty percent of her time at work. During these periods, Claimant was engaged in a non-tipped occupation and compensated by Respondent at the tipped minimum wage or lower rate rather than the full hourly minimum wage, in violation of the NYLL and the supporting New York Department of Labor Regulations.

72. Respondent was required to pay Claimant the full minimum wage at a rate of; (a) $7.25 per hour for all hours worked from July 24, 2009 through the December 30, 2013; (b) $8.00 per hour for all hours worked from December 31, 2013 through December 30, 2014; and (c) $8.75 per hour for all hours worked from December 31, 2014 to the present under the NYLL

§§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

73. Through Respondent's knowing or intentional failure to pay minimum hourly wages to Claimant, Respondent has willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

74. Due to Respondent's willful violations of the NYLL, Claimant is entitled to recover from Respondent her unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
NYLL – Tip Misappropriation
(Brought on behalf of the Claimant)

75. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

76. Respondent unlawfully demanded, directed, or indirectly, part of gratuities received by Claimant be shared with employees other than servers, bartenders, or other similar employees, in violation of NYLL, Article 6 § 196-d and the supporting New York State Department of Labor Regulations.

77. By Respondent's willful violations of the NYLL, Claimant is entitled to recover from Respondent her unpaid gratuities, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
NYLL – Uniform Violation
(Brought on behalf of the Claimant)

78. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

79. Respondent required Claimant wear a uniform consisting of a Chili's logo shirt,

dark jeans, a belt, and non-slip black work shoes.

80. Respondent failed to launder and/or maintain the required uniform for Claimant, and failed to pay her the required weekly amount in addition to the required minimum wage.

81. By failing to pay Claimant for the maintenance of the required uniforms, Respondent has willfully violated the NYLL, and the supporting New York State Department of Labor Regulations.

82. Due to Respondent's willful violations of the NYLL, Claimant is entitled to recover from Respondent the costs of maintaining its uniforms, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION
NYLL – Unlawful Deductions from Wages
(Brought on behalf of the Claimant)

83. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

84. Respondent made unlawful deductions from Claimant's wages for uniform shirts.

85. The deductions made from Claimant's wages were not authorized by law.

86. The deductions made from Claimant's wages were not expressly authorized in writing by Claimant, and were not for the benefit of Claimant.

87. Through its knowing or intentional efforts to permit unauthorized deductions from Claimant's wages, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

88. Due to Respondent's willful violations of the NYLL, Claimant is entitled to recover from Respondent the amount of any unlawful deductions, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION
NYLL – Failure to Provide Annual Wage Notices
(Brought on behalf of the Claimant)

89. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

90. Respondent has willfully failed to supply Claimant with wage notices, as required by NYLL, Article 6 § 195(1), in English or in the language identified as her primary language, containing Claimant's rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material an necessary.

91. Through its knowing or intentional failure to provide Claimant with the wage notices required by the NYLL, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

92. Due to Respondent's willful violations of the NYLL, Article 6 § 195(1) Claimant is entitled to statutory penalties of fifty dollars for each day that Respondent failed to provide her with wage notices, or a total of five thousand dollars, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, §§ 190 *et seq*.

SEVENTH CAUSE OF ACTION
NYLL – Failure to Provide Accurate Wage Statements
(Brought on behalf of the Claimant)

93. Claimant realleges and incorporates by reference all allegations in all preceding paragraphs.

94. Respondent has willfully failed to supply Claimant with accurate statements of wages as required by NYLL, Article 6 § 195(3), containing the dates of work covered for that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

95. Through its knowing or intentional failure to provide Claimant with accurate wage statements required by the NYLL, Respondent has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

96. Due to Respondent's willful violations of the NYLL, Article 6 § 195(3), Claimant is entitled to statutory penalties of two hundred fifty dollars for each workweek that Respondent failed to provide her with accurate wage statements, or a total of five thousand dollars, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198 (1-d).

PRAYER FOR RELIEF

WHEREFORE, Claimant respectfully requests the following relief:

A. Unpaid minimum wages, misappropriated tips, uniform related expenses, unlawful deductions, and other unpaid wages and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

B. Issuance of a declaratory judgment that the practices complained of in this Statement of Claim are unlawful under the NYLL, Article 6 §§ 190 *et seq.*, and the supporting

New York State Department of Labor Regulations;

C. Statutory penalties of fifty dollars for each day that Respondent failed to provide Claimant with a wage notice, or a total of five thousand dollars, as provided for by NYLL, Article 6 § 198;

D. Statutory penalties of two hundred fifty dollars for each workweek that Respondent failed to provide Claimant with accurate wage statements, or a total of five thousand dollars, as provided for by NYLL, Article 6 § 198;

E. Prejudgment and post-judgment interest;

F. An injunction requiring Respondent to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;

G. Reasonable attorneys' fees and costs for this arbitration;

H. Such other relief that is deemed just and proper.

Dated: Melville, New York
July 30, 2015

Respectfully submitted,

By: /s/ *Troy L. Kessler*
Troy L. Kessler

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Attorneys for Claimant

EXHIBIT "A"

AGREEMENT TO ARBITRATE

Brinker International Payroll Company, L.P. ("Brinker") makes available certain internal procedures for amicably resolving any complaints or disputes you have relating to your employment. However, if you are unable to resolve any such complaints or disputes to your satisfaction internally, Brinker has provided for the resolution of all disputes that arise between you and Brinker through formal, mandatory arbitration before a neutral arbitrator.

Because of, among other things, the delay and expense which result from the use of the court systems, any legal or equitable claims or disputes arising out of or in connection with employment, terms and conditions of employment, or the termination of employment with Brinker will be resolved by binding arbitration instead of in a court of law or equity. This agreement applies to all disputes involving legally protected rights (e.g., local, state and federal statutory, contractual or common law rights) regardless of whether the statute was enacted or the common law doctrine was recognized at the time this agreement was signed. This agreement does not limit an employee's ability to complete any external administrative remedy (such as with the EEOC).

This Agreement to Arbitrate substitutes one legitimate dispute resolution form (arbitration) for another (litigation), thereby waiving any right of either party to have the dispute resolved in court. This substitution involves no surrender, by either party, of any substantive statutory or common law benefits, protection or defense for individual claims. You do waive the right to commence or be party to any representative, collective or class action.

Arbitration Rules:

The arbitration proceedings shall take place in or near the city where you worked.

Each party is entitled to representation by an attorney throughout the arbitration proceedings at their own expense. Each party shall bear their own fees and expenses, unless otherwise awarded by the arbitrator in the final, written decision.

A written notice of your intention to arbitrate must be submitted in writing within the applicable statute of limitations. The notice shall contain: (1) the name, address and telephone number for all the parties; (2) the name, address and telephone numbers of all counsel; (3) a brief statement of the nature of the dispute, including all individual claims raised; (4) the amount in controversy and (5) the remedy sought. The notice shall be sent to: General Counsel, Brinker International, 6820 LBJ Freeway, Dallas, TX 75240.

The Respondent shall answer in writing within thirty (30) business days of the receipt of the notice to arbitrate.

Within ten (10) business days thereafter, both parties shall submit to the other a list of three (3) qualified arbitrators. An arbitrator must be qualified in employment laws and any other areas of law referenced in the notice.

An arbitrator shall be selected within thirty (30) business days thereafter. If the parties cannot agree, they shall submit any pleadings (notice, answer, etc.) and a list of arbitrators to the American Arbitration

Association (AAA) to select a qualified arbitrator. AAA may select an individual not on either party's list who is qualified as set out above.

The Federal Rules of Civil Procedure and Federal Rules of Evidence shall apply throughout the arbitration unless modified by the mutual agreement of the parties or the arbitrator. Discovery (interrogatories, document production and depositions), as authorized by the arbitrator, shall commence upon the selection of an arbitrator and shall be completed within six (6) months from that date. The time frame may be modified by mutual agreement or by the arbitrator.

The arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative, collective or class proceeding.

The arbitrator shall hear the case no more than forty-five (45) business days after discovery is completed.

Parties may submit briefs and one rebuttal brief or such other submittals as the arbitrator decides.

Within twenty (20) days of the close of the hearing, the arbitrator shall issue a written decision and award (if any) stating the reasons for the decision and award. The arbitrator may award individual relief only. The decision shall be final and binding on both parties, their heirs, executors, administrators, successors and assigns, and may be entered and enforced in any court of competent jurisdiction. Proceedings to enforce, confirm, modify or vacate the decision will be controlled by and conducted in conformity with the Federal Arbitration Act 9 U.S.C. Sec. 1 et seq. or applicable state law.

By signing below, I affirm that I have read the above Agreement to Arbitrate and agree to resolve all disputes that arise between me and Brinker through formal, mandatory arbitration as outlined above. I further understand and agree that the Agreement to Arbitrate does not change or alter my at-will employment status.

Megan Boggio — 24.187.136.22

Full Name — IP Address

Megan Boggio — 11/20/14

SIGNATURE OF APPLICANT — **DATE**

[Revised 7/2011]

Electronic Signature Agreement

Brinker utilizes electronic signatures to verify that applicants and employees have received and agreed to certain documents and information. Please click below to indicate that you voluntarily agree to enter into electronic agreements with Brinker using your electronic signature. By indicating "I agree," you voluntarily acknowledge that your electronic signature is the legal equivalent of your manual signature and has the same force and effect as if actually signed by you in writing. Your agreement to use electronic signatures may be revoked at any time upon written notice to Brinker, but that revocation will only operate prospectively and will not alter the enforceability of any electronic signature made before the revocation.

◉ [I AGREE] ○ [I DISAGREE]

Megan Boggio	133784489
Full Name	Social Security Number
Megan Boggio 24.187.136.22	11/20/14
Signature of Team Member	Date