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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

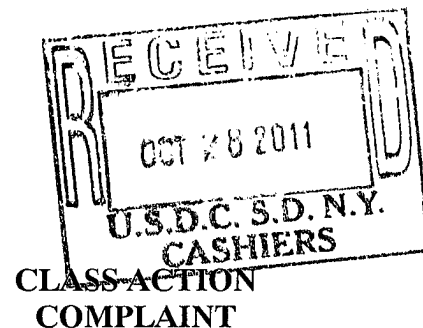
**CRISOFORO TIRO, LEONARDO CORTES, ENRIQUE
HERNANDEZ, and HUMBERTO CAMPOS LARA, on
behalf of themselves and all others similarly situated,**

Plaintiffs,

-against-

**PUBLIC HOUSE INVESTMENTS, LLC, PUBLIC
HOUSE NYC, LLC, PUBLIC HOUSE MGMT NYC,
LLC, BUTTERFIELD 8 NYC, LLC, MARTELL'S
NYC, LLC, BLACK FINN NYC, LLC, CHRIS
COCOZZIELLO, BRIAN HARRINGTON, GARY
CARDI, and FRANK FALESTO,**

Defendants.



Plaintiffs Crisoforo Tiro, Leonardo Cortes, Enrique Hernandez, and Humberto Campos Lara (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves, and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wages, overtime compensation, spread-of-hours pay, misappropriated gratuities, and other wages for Plaintiffs and their similarly situated co-workers – waiters, bussers, runners, bartenders, barbacks, and other tipped, hourly food service workers – who work or have worked at Public House New York, Butterfield8 Restaurant & Lounge, Wicker Park Bar & Bistro, and Tammany Hall Tavern in New York, New York (collectively, the "Public House Restaurants").

2. The Public House Restaurants are owned, operated and controlled by Public House Investments, LLC, Chris Coccozziello, Brian Harrington, Gary Cardi, and Frank Falesto (collectively “PH Investments”). The Public House Restaurants have been reviewed in numerous printed and online restaurant guides, including the Daily News, TimeOut New York, and New York Magazine. Together with the Public House Restaurants, PH Investments owns and operates 15 upscale bars and restaurants around the country. All of PH Investments’ restaurants are listed on their website www.publichouseusa.com, which also provides links to each of the Public House Restaurants’ individual webpages.

3. Plaintiffs bring this action on behalf of themselves and similarly situated current and former tipped, hourly food service workers who elect to opt-in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“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 Defendants that have deprived Plaintiffs and other similarly situated employees of their lawfully earned wages.

4. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former tipped, hourly food service workers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law (“NYLL”) Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

THE PARTIES

Plaintiffs

Crisoforo Tiro

5. Plaintiff Crisoforo Tiro (“Tiro”) is an adult individual who is a resident of Union City, New Jersey.

6. Tiro was employed by Defendants as a busser/runner at Public House New York (“PHNY”) from on or about May 21, 2007 to October 9, 2011.

7. Tiro is a covered employee within the meaning of the FLSA and the NYLL.
8. A written consent form for Tiro is being filed with this Class Action Complaint.

Leonardo Cortes

9. Plaintiff Leonardo Cortes (“Cortes”) is an adult individual who is a resident of Jackson Heights, New York.

10. Cortes has been employed by Defendants as a barback at PHNY from on or about February 26, 2008 to the present.

11. Cortes is a covered employee within the meaning of the FLSA and the NYLL.

12. A written consent form for Cortes is being filed with this Class Action Complaint.

Enrique Hernandez

13. Plaintiff Enrique Hernandez (“Hernandez”) is an adult individual who is a resident of Union City, New Jersey.

14. Hernandez has been employed by Defendants as a busser/runner at PHNY from on or about November 10, 2008 to the present. Hernandez was also employed by Defendants as a dishwasher at Butterfield8 Restaurant and Lounge (“Butterfield”) from on or about April 14, 2009 to August 2009.

15. Hernandez is a covered employee within the meaning of the FLSA and the NYLL.

16. A written consent form for Hernandez is being filed with this Class Action Complaint.

Humberto Campos Lara

17. Plaintiff Humberto Campos Lara (“Lara”) is an adult individual who is a resident of Brooklyn, New York.

18. Lara has been employed by Defendants as a busser/runner at PHNY from on or about December 6, 2010 to the present.

19. Lara is a covered employee within the meaning of the FLSA and the NYLL.

20. A written consent form for Lara is being filed with this Class Action Complaint.

Defendants

21. Defendants Public House Investments, LLC, Public House NYC, LLC, Public House MGMT NYC, LLC, Butterfield 8 NYC, LLC, Martell's NYC, LLC, Black Finn NYC, LLC, Chris Cocozziello, Brian Harrington, Gary Cardi, and Frank Falesto (collectively "Defendants") jointly employed Plaintiffs and similarly situated employees at all times relevant. Each Defendant has had substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

22. Upon information and belief, Defendants are part of a single integrated enterprise that jointly employed Plaintiffs and similarly situated employees at all times relevant.

23. Upon information and belief, Defendants' operations are interrelated and unified.

24. Upon information and belief, during all relevant times, the Public House Restaurants shared a common management and were centrally controlled and/or owned by Defendants.

Public House Investments, LLC

25. Together with the other Defendants, Public House Investments, LLC has owned and/or operated the Public House Restaurants during the relevant period.

26. Public House Investments, LLC is a foreign business corporation organized and existing under the laws of Pennsylvania.

27. Upon information and belief, Public House Investments, LLC's principal executive office is located at 1819 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103.

28. Public House Investments, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

29. At all relevant times, Public House Investments, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

30. Upon information and belief, Public House Investments, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

31. Upon information and belief, at all relevant times, Public House Investments, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Public House NYC, LLC

32. Together with the other Defendants, Public House NYC, LLC has owned and/or operated the Public House Restaurants during the relevant period.

33. Public House NYC, LLC is a domestic business corporation organized and existing under the laws of New York.

34. Public House NYC, LLC's principal executive office is located at 140 East 41st Street, New York, New York 10017.

35. Public House NYC, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

36. At all times relevant, Public House NYC, LLC has been the entity listed on Plaintiffs' paychecks for work performed at PHNY.

37. At all relevant times, Public House NYC, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

38. Upon information and belief, Public House NYC, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

39. Upon information and belief, at all relevant times, Public House NYC, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Public House MGMT NYC, LLC

40. Together with the other Defendants, Public House MGMT NYC, LLC has owned and/or operated the Public House Restaurants during the relevant period.

41. Public House MGMT NYC, LLC is a domestic business corporation organized and existing under the laws of New York.

42. Public House MGMT NYC, LLC's principal executive office is located at 140 East 41st Street, New York, New York 10017.

43. Public House MGMT NYC, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

44. At all relevant times, Public House MGMT NYC, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

45. Upon information and belief, Public House MGMT NYC, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

46. Upon information and belief, at all relevant times, Public House MGMT NYC, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Butterfield 8 NYC, LLC

47. Together with the other Defendants, Butterfield 8 NYC, LLC has owned and/or operated the Public House Restaurants during the relevant period.

48. Butterfield 8 NYC, LLC is a domestic business corporation organized and existing under the laws of New York.

49. Upon information and belief, Butterfield 8 NYC, LLC's principal executive office is located at 5 East 38th Street, New York, New York 10016.

50. Butterfield 8 NYC, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

51. Butterfield 8 NYC, LLC was the entity listed on Hernandez's paychecks for work performed at Butterfield.

52. At all relevant times, Butterfield 8 NYC, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

53. Upon information and belief, Butterfield 8 NYC, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

54. Upon information and belief, at all relevant times, Butterfield 8 NYC, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Martell's NYC, LLC

55. Together with the other Defendants, Martell's NYC, LLC has owned and/or operated the Public House Restaurants during the relevant period.

56. Martell's NYC, LLC is a domestic business corporation organized and existing under the laws of New York.

57. Upon information and belief, Martell's NYC, LLC's principal executive office is located at 1469 3rd Avenue, New York, New York 10028.

58. Martell's NYC, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

59. At all relevant times, Martell's NYC, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

60. Upon information and belief, Martell's NYC, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

61. Upon information and belief, at all relevant times, Martell's NYC, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Black Finn NYC, LLC

62. Together with the other Defendants, Black Finn NYC, LLC has owned and/or operated the Public House Restaurants during the relevant period.

63. Black Finn NYC, LLC is a domestic business corporation organized and existing under the laws of New York.

64. Upon information and belief, Black Finn NYC, LLC's principal executive office is located at 218 East 53rd Street, New York, New York 10022.

65. Black Finn NYC, LLC is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

66. At all relevant times, Black Finn NYC, LLC maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

67. Upon information and belief, Black Finn NYC, LLC applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

68. Upon information and belief, at all relevant times, Black Finn NYC, LLC's annual gross volume of sales made or business done was not less than \$500,000.00.

Individual Defendants

Chris Coccoziello

69. Upon information and belief, Defendant Chris Coccoziello ("Coccoziello") is a resident of the State of New York.

70. Upon information and belief, at all relevant times, Coccoziello has been the owner of the Public House Restaurants.

71. Upon information and belief, at all relevant times, Coccoziello has had power over personnel decisions at the Public House Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

72. Upon information and belief, at all relevant times, Coccoziello has had power over payroll decisions at the Public House Restaurants, including the power to retain time and/or wage records.

73. Upon information and belief, Coccoziello is actively involved in managing the day to day operations of the Public House Restaurants.

74. Upon information and belief, at all relevant times, Coccoziello has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

75. Coccoziello is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

Brian Harrington

76. Upon information and belief, Defendant Brian Harrington (“Harrington”) is a resident of the State of Pennsylvania.

77. Upon information and belief, at all relevant times, Harrington has been the owner of the Public House Restaurants.

78. Upon information and belief, at all relevant times, Harrington has had power over personnel decisions at the Public House Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

79. Upon information and belief, at all relevant times, Harrington has had power over payroll decisions at the Public House Restaurants, including the power to retain time and/or wage records.

80. Upon information and belief, Harrington is actively involved in managing the day to day operations of the Public House Restaurants.

81. Upon information and belief, at all relevant times, Harrington has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

82. Harrington is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

Gary Cardi

83. Upon information and belief, Defendant Gary Cardi (“Cardi”) is a resident of the State of Pennsylvania.

84. Upon information and belief, at all relevant times, Cardi has been the owner of the Public House Restaurants.

85. Upon information and belief, at all relevant times, Cardi has had power over personnel decisions at the Public House Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

86. Upon information and belief, at all relevant times, Cardi has had power over payroll decisions at the Public House Restaurants, including the power to retain time and/or wage records.

87. Upon information and belief, Cardi is actively involved in managing the day to day operations of the Public House Restaurants.

88. Upon information and belief, at all relevant times, Cardi has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

89. Cardi is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

Frank Falesto

90. Upon information and belief, Defendant Frank Falesto (“Falesto”) is a resident of the State of New York.

91. Upon information and belief, at all relevant times, Falesto has been the owner of the Public House Restaurants.

92. Upon information and belief, at all relevant times, Falesto has had power over personnel decisions at the Public House Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

93. Upon information and belief, at all relevant times, Falesto has had power over payroll decisions at the Public House Restaurants, including the power to retain time and/or wage records.

94. Upon information and belief, Falesto is actively involved in managing the day to day operations of the Public House Restaurants.

95. Upon information and belief, at all relevant times, Falesto has also had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

96. Falesto is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiffs and similarly situated employees.

JURISDICTION AND VENUE

97. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

98. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

99. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

100. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

101. Plaintiffs brings the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who have worked as tipped, hourly food service workers at the Public House Restaurants who elect to opt-in to this action (the "FLSA Collective").

102. Consistent with Defendants policy and pattern or practice, Plaintiffs and the FLSA Collective were not paid minimum wages for all hours worked and premium overtime compensation for all hours worked beyond 40 per workweek.

103. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

104. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiffs and the FLSA Collective, minimum wages for all hours worked and premium overtime wages for hours that they worked in excess of 40 hours per workweek; and
- (b) willfully failing to record all of the time that its employees, including Plaintiffs and the FLSA Collective, have worked for the benefit of Defendants.

105. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by failing to record the hours employees work.

106. Defendants are aware or should have been aware that federal law required them to pay employees minimum wage for all of the hours they worked.

107. Defendants are aware or should have been aware that federal law required them to pay employees performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

108. Plaintiffs and the FLSA Collective perform or performed the same primary duties.

109. Defendants' unlawful conduct has been widespread, repeated, and consistent.

CLASS ACTION ALLEGATIONS

110. Plaintiffs brings the Third, Fourth, Fifth, and Sixth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as tipped, hourly food service workers and similar employees at the Public House Restaurants in New York between October 28, 2005 and the date of final judgment in this matter (the "Rule 23 Class").

111. Excluded from the Rule 23 Class are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

112. The members of the Rule 23 Class are so numerous that joinder of all members is impracticable.

113. Upon information and belief, the size of the Rule 23 Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

114. Defendants have acted or have refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

115. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- (b) whether Defendants failed to pay Plaintiffs and the Rule 23 Class minimum wages for all of the hours they worked;
- (c) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (d) whether Defendants failed to provide Plaintiffs and the Rule 23 Class spread-of-hours pay;
- (e) whether Defendants misappropriated tips and/or service charges from Plaintiffs and the Rule 23 Class by demanding, handling, pooling, counting, distributing, accepting, and/or retaining tips and/or service charges paid by customers that were intended for Plaintiffs and the Rule 23 Class, and which customers reasonably believed to be gratuities for Plaintiffs and the Rule 23 Class;
- (f) whether Defendants distributed a portion of the tips paid by customers to workers who are not entitled to receive tips under the NYLL;
- (g) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiffs and the Rule 23 Class, and other records required by the NYLL;
- (h) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with an accurate statement of wages, hours worked, rates paid, gross wages, and the claimed tip allowance as required by the NYLL;

- (i) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (j) the nature and extent of class-wide injury and the measure of damages for those injuries.

116. The claims of Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent. Plaintiffs and all of the Rule 23 Class members work, or have worked, for Defendants as tipped, hourly food service workers at the Public House Restaurants in New York. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL, including to be paid for all hours worked, to be paid overtime wages, to be paid spread-of-hours pay, and to retain customer tips. Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

117. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. Plaintiffs understand that as class representatives, they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiffs recognize that as class representatives, they must represent and consider the interests of the class just as they would represent and consider their own interests. Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the class. Plaintiffs recognize that any resolution of a class action must be in the best interest of the class. Plaintiffs understand that in order to provide adequate representation, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiffs have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiffs and the Rule 23 members.

118. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' violations of the NYLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiffs lack the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

119. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

PLAINTIFFS' FACTUAL ALLEGATIONS

120. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiffs, individually, as follows:

Crisoforo Tiro

121. Defendants did not pay Tiro the proper minimum wages, overtime wages, and spread-of-hours pay for all of the time that he was suffered or permitted to work each workweek.

122. Throughout the duration of his employment at PHNY, Tiro received weekly paychecks from Defendants that did not properly record or compensate Tiro for the actual hours he worked.

123. Defendants did not inform Tiro of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

124. Defendants repeatedly suffered or permitted Tiro to work over 40 hours per week as a busser/runner, up to a maximum of approximately 65 hours per week.

125. Defendants did not pay Tiro spread-of-hours pay for all of the times that he worked in excess of 10 hours per day.

126. Defendants did not allow Tiro to retain all of the tips and/or gratuities he earned.

127. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Tiro earned.

128. Defendants imposed upon Tiro a tip redistribution scheme to which he never agreed.

129. Upon information and belief, Defendants unlawfully redistributed part of Tiro's tips to employees in positions that are not entitled to tips under the FLSA and/or the NYLL.

130. Customers were charged a mandatory 25 percent gratuity to host private parties and/or events at PHNY. Though customers were lead to believe that this mandatory gratuity was intended for Tiro and similarly situated employees, Defendants retained a portion of the mandatory gratuity and/or distributed a portion to employees who are not entitled to tips under the FLSA and/or the NYLL.

131. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Tiro.

132. Tiro has complained to Defendants regarding Defendants' policy and/or practice concerning mandatory gratuities.

Enrique Hernandez

133. Defendants did not pay Hernandez the proper minimum wages, overtime wages, or spread-of-hours pay for all of the time that he was suffered or was permitted to work each workweek.

134. Throughout the duration of his employment at PHNY and Butterfield, Hernandez received weekly paychecks from Defendants that did not properly record or compensate Hernandez for the actual hours he worked.

135. Defendants did not inform Hernandez of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

136. Defendants repeatedly suffered or permitted Hernandez to work over 40 hours per week as a busser/runner and dishwasher, up to a maximum of approximately 55 hours per week.

137. Defendants did not pay Hernandez spread-of-hours pay for all of the times that he worked in excess of 10 hours per day.

138. Defendants did not allow Hernandez to retain all of the tips and/or gratuities he earned.

139. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Hernandez earned.

140. Defendants imposed upon Hernandez a tip redistribution scheme to which he never agreed.

141. Upon information and belief, Defendants unlawfully redistributed part of Hernandez's tips to employees in positions that are not entitled to tips under the FLSA and/or the NYLL.

142. Customers were charged a mandatory 25 percent gratuity to host private parties and/or events at PHNY. Though customers were lead to believe that this mandatory gratuity was intended for Hernandez and similarly situated employees, Defendants retained a portion of the mandatory gratuity and/or distributed a portion to employees who are not entitled to tips under the FLSA and/or the NYLL.

143. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Hernandez.

144. Hernandez has complained to Defendants regarding Defendants' policy and/or practice concerning mandatory gratuities or service charges.

145. During his employment with Defendants at PHNY and Butterfield, Hernandez encountered individuals who worked simultaneously at both restaurants.

Leonardo Cortes

146. Defendants did not pay Cortes the proper minimum wages, overtime wages, or spread-of-hours pay for all of the time that he was suffered or was permitted to work each workweek.

147. Throughout the duration of his employment at PHNY, Cortes received weekly paychecks from Defendants that did not properly record or compensate Lara for the actual hours he worked.

148. Defendants did not inform Cortes of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

149. Defendants repeatedly suffered or permitted Cortes to work over 40 hours per week as a busser/runner, up to a maximum of approximately 78 hours per week.

150. Defendants did not pay Cortes spread-of-hours pay for all of the times that he worked in excess of 10 hours per day.

151. Defendants did not allow Cortes to retain all of the tips and/or gratuities he earned.

152. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Cortes earned.

153. Defendants imposed upon Cortes a tip redistribution scheme to which he never agreed.

154. Upon information and belief, Defendants unlawfully redistributed part of Cortes' tips to employees in positions that are not entitled to tips under the FLSA and/or the NYLL.

155. Customers were charged a mandatory 25 percent gratuity to host private parties and/or events at PHNY. Though customers were lead to believe that this mandatory gratuity was intended for Cortes and similarly situated employees, Defendants retained a portion of the mandatory gratuity and/or distributed a portion to employees who are not entitled to tips under the FLSA and/or the NYLL.

156. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Cortes.

157. Cortes has complained to Defendants regarding Defendants' policy and/or practice concerning mandatory gratuities or service charges.

Humberto Campos Lara

158. Defendants did not pay Lara the proper minimum wages, overtime wages, or spread-of-hours pay for all of the time that he was suffered or was permitted to work each workweek.

159. Throughout the duration of his employment at PHNY, Lara received weekly paychecks from Defendants that did not properly record or compensate Lara for the actual hours he worked.

160. Defendants did not inform Lara of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

161. Defendants repeatedly suffered or permitted Lara to work over 40 hours per week as a busser/runner, up to a maximum of approximately 45 hours per week.

162. Defendants did not pay Lara spread-of-hours pay for all of the times that he worked in excess of 10 hours per day.

163. Defendants did not allow Lara to retain all of the tips and/or gratuities he earned.

164. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Lara earned.

165. Defendants imposed upon Lara a tip redistribution scheme to which he never agreed.

166. Upon information and belief, Defendants unlawfully redistributed part of Lara's tips to employees in positions that are not entitled to tips under the FLSA and/or the NYLL.

167. Customers were charged a mandatory 25 percent gratuity to host private parties and/or events at PHNY. Though customers were lead to believe that this mandatory gratuity was intended for Lara and similarly situated employees, Defendants retained a portion of the mandatory gratuity and/or distributed a portion to employees who are not entitled to tips under the FLSA and/or the NYLL.

168. Lara has complained to Defendants regarding Defendants' policy and/or practice concerning mandatory gratuities or service charges.

169. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Lara.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Minimum Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

170. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

171. Defendants failed to pay Plaintiffs and the members of the FLSA Collective the minimum wages to which they are entitled under the FLSA.

172. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.

173. At all times relevant, Plaintiffs and the members of the FLSA Collective were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (m), and 206(a), and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (m), and 206(a).

174. At all times relevant, Plaintiffs and the members of the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 203(e), (m), and 206(a).

175. At all times relevant, Defendants have been employers of Plaintiffs and the members of the FLSA Collective, engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(e) and 206(a).

176. Defendants were required to pay directly to Plaintiffs and the members of the FLSA Collective the applicable federal minimum wage rate for all hours worked.

177. Defendants did not inform Plaintiffs and the members of the FLSA Collective of the provisions of subsection 203(m) of the FLSA, 29 U.S.C. § 203(m).

178. Defendants did not permit Plaintiffs and the members of the FLSA Collective to retain all of the tips they received.

179. Defendants failed to post and keep posted in a conspicuous place on their premises a notice explaining the FLSA, as prescribed by the Wage and Hour Division of the U.S. Department of Labor, in violation of the FLSA, 29 U.S.C. § 203(m) and supporting federal regulations, including but not limited to 29 C.F.R. § 516.4.

180. As a result of Defendants' violations of the FLSA, Plaintiffs and the members of the FLSA Collective 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. § 216(b).

181. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and the members of the FLSA Collective.

182. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

SECOND CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

183. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

184. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiffs and the members of the FLSA Collective.

185. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective overtime wages for all of the hours that they worked in excess of 40 hours in a work week.

186. As a result of Defendants' violations of the FLSA, Plaintiffs and the members of the FLSA Collective have been deprived of overtime compensation and other wages 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. § 216(b).

187. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and the members of the FLSA Collective.

188. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

THIRD CAUSE OF ACTION

**New York Labor Law Article 19 – Minimum Wage
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

189. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

190. Defendants failed to pay Plaintiffs and the members of the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor regulations.

191. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

192. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiffs and the members of the Rule 23 within the meaning of the NYLL §§ 190, 651(5), 652, and the supporting New York State Department of Labor Regulations.

193. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiffs and the members of the Rule 23 Class.

194. Defendants were required to pay Plaintiffs and the members of the Rule 23 Class a minimum wage at a rate of (a) \$6.00 per hour for all hours worked from October 25, 2005 through December 31, 2005; (b) \$6.75 per hour for all hours worked from January 1, 2006 through December 31, 2006; (c) \$7.15 per hour for all hours worked from January 1, 2007 through July 23, 2009; and (d) \$7.25 per hour for all hours worked from July 24, 2009 through the present, under the NYLL § 652 and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. §§ 137-1.2 and 146-1.2.

195. Defendants failed to post, in a conspicuous place in their establishments, notices issued by the Department of Labor summarizing minimum wage provisions, in violation of the NYLL and supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. §§ 137-2.3 and 146-2.4.

196. Defendants failed to furnish with every payment of wages to Plaintiffs and the members of the Rule 23 Class a statement listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, in violation of the NYLL and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. §§ 137-2.2 and 146-2.3.

197. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiffs and the members of the Rule 23 Class, Defendants have willfully violated the NYLL Article 19, §§ 650, *et seq.*, and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

198. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, as provided for by NYLL Article 6, § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
New York Labor Law Article 19 – Unpaid Overtime
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

199. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

200. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiffs and the members of the Rule 23 Class.

201. Defendants have failed to pay Plaintiffs and the members of the Rule 23 Class overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

202. Through their knowing or intentional failure to pay Plaintiffs and the members of the Rule 23 Class overtime wages for hours worked in excess of 40 hours per week, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

203. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, as provided for by NYLL Article 6, § 198, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION
New York Labor Law – Spread-of-Hours Pay
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

204. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

205. Defendants have willfully failed to pay Plaintiffs and the members of the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which they worked more than 10 hours.

206. By Defendants' failure to pay Plaintiffs and the members of the Rule 23 Class spread-of-hours pay, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

207. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages, as provided for by NYLL Article 6, § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION
New York Labor Law –Tip Misappropriation
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

208. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

209. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been employees within the meaning of NYLL Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

210. At all times relevant, each Defendant has been an employer within the meaning of the NYLL Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

211. The wage payment provisions of Article 6 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiffs and the members of the Rule 23 Class.

212. Defendants unlawfully demanded or accepted, directly or indirectly, part of the gratuities received by Plaintiffs and the members of the Rule 23 Class in violation of NYLL Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

213. Defendants unlawfully retained part of the gratuities earned by Plaintiffs and the members of the Rule 23 Class in violation of NYLL Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

214. Defendants required Plaintiffs and the members of the Rule 23 Class to share part of the gratuities they received with employees other than waiters, servers, busboys, or similar employees, in violation of NYLL Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

215. By Defendants' knowing or intentional demand for, acceptance of, and/or retention of part of the gratuities received by Plaintiffs and the members of the Rule 23 Class, Defendants have willfully violated the NYLL Article 6, § 196-d and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. §§ 137 *et seq.* and 146 *et seq.*, entitling Plaintiffs and the members of the Rule 23 Class to the value of the misappropriated gratuities, liquidated damages, as provided for by NYLL Article 6, § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, respectfully request that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all tipped, hourly food service workers who are presently, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at the Public House Restaurants in New York. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

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 case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiffs as representatives 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 Class Action Complaint are unlawful under the NYLL Article 6, §§ 190 *et seq.*, NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations;

F. Unpaid minimum wages, overtime pay, spread-of-hours pay, misappropriated tips, and other unpaid wages, and 100% liquidated damages permitted by law pursuant to the NYLL;

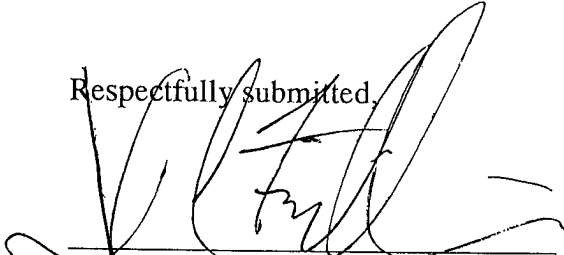
G. Prejudgment and post-judgment interest;

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

- I. Reasonable attorneys' fees and costs of the action; and
- J. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
October 28, 2011

Respectfully submitted,



Joseph A. Fitapelli (JF 9058)

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli (JF 9058)
Brian S. Schaffer (BS 7548)
Eric J. Gitig (EG 7399)
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New York, NY 10016
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*Attorneys for Plaintiffs and
the Putative Class*

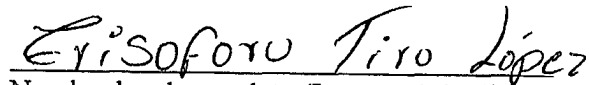
FAIR LABOR STANDARDS ACT – CONSENTIMIENTO/CONSENT FORM

Doy mi consentimiento para ser parte demandante en una demanda contra Public House y / o entidades e individuos relacionados con el fin de obtener reparación por violaciones de la Fair Labor Standards Act, (*Ley de las Normas Laborales Justas*) de conformidad con 29 USC § 216 (b). Por la presente yo designo Fitapelli & Schaffer, LLP para representarme en tal demanda.

I, consent to be a party plaintiff in a lawsuit against Public House and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. §216(b). I hereby designated Fitapelli & Schaffer, LLP to represent me in such a lawsuit.



Firma (Signature)



Nombre legal completo (Imprenta) (Full Legal Name (Print))



Dirección (Address)



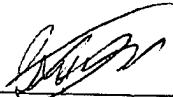
Ciudad, Estado
(City, State)

Código Postal
(Zip Code)

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Firma (Signature)

Leonardo Corfes Perez

Nombre legal completo (Imprenta) (Full Legal Name (Print))



Dirección (Address)



Ciudad, Estado
(City, State)

Código Postal
(Zip Code)


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Enrique Heloz G
Firma (Signature)

Enrique Hernandez
Nombre legal completo (Imprenta) (Full Legal Name (Print))


Dirección (Address)



Ciudad, Estado
(City, State)

Código Postal
(Zip Code)


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Firma (Signature)

Humberto Campos
Nombre legal completo (Imprenta) (Full Legal Name (Print))


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(City, State)

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