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

**NICHOLAS RITZ, on behalf of himself and all others  
similarly situated,**

**Plaintiffs,**

**-against-**

**MIKE RORY CORP. d/b/a ASTORIA BREWHOUSE,  
SEAN STRAW, and BRENDAN STRAW,**

**Defendants.**

**WEINSTEIN, J.  
LEVY, M.J.**

**CV 12-0367**

**CLASS ACTION  
COMPLAINT**

Plaintiff Nicholas Ritz ("Plaintiff"), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover minimum wages, overtime compensation, spread-of-hours pay, unlawful deductions, and other wages for Plaintiff and his similarly situated co-workers – servers, bussers, runners, bartenders, barbacks, and other tipped, hourly food service workers – who work or have worked at the Astoria Brewhouse located at 2850 31<sup>st</sup> Street in Astoria, New York.

2. Owned, operated and controlled by Mike Rory Corp., Sean Straw, and Brendan Straw (collectively, “Defendants”), the Astoria Brewhouse is known for its sleek design, notable wine and beer lists, and extensive menu. Located in the heart of Astoria, the Astoria Brewhouse has been reviewed in numerous print and online restaurant guides, including New York Magazine and UrbanSpoon.com.

3. Astoria Brewhouse maintains a policy and practice where employees are paid for fewer hours than they actually work. In that regard, while employees are required to punch in and out of every shift, the amount of hours they are compensated for on their paychecks is dramatically fewer than the actual amount of hours they worked.

4. Astoria Brewhouse also maintains a policy and practice where employees are encouraged to work off the clock. For example, Plaintiff was consistently required to perform non-tipped work, such as cleaning and stocking the bar, at the end of his shift after punching out. As a result, Plaintiff was required to perform non-tipped work without compensation from Defendants.

5. Plaintiff brings this action on behalf of himself and all 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 Plaintiff and other similarly situated employees of their lawfully earned wages.

6. Plaintiff also brings this action on behalf of himself 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.

7. In addition, Plaintiff brings an individual claim against Defendants, on his own behalf, for retaliation under the NYLL Article 7, § 215.

## **THE PARTIES**

### **Plaintiffs**

#### **Nicholas Ritz**

8. Plaintiff is an adult individual who is a resident of Astoria, New York.
9. Plaintiff was employed by Defendants as a bartender at Astoria Brewhouse from in or around March 2011 to November 16, 2011.
10. Plaintiff is a covered employee within the meaning of the FLSA and the NYLL.
11. A written consent form for Plaintiff is being filed with this Class Action Complaint.

### **Defendants**

12. Defendants jointly employed Plaintiff and similarly situated employees at all times relevant. Each Defendant has had substantial control over Plaintiff's working conditions, and over the unlawful policies and practices alleged herein.

#### **Mike Rory Corp. d/b/a Astoria Brewhouse**

13. Together with the other Defendants, Mike Rory Corp. d/b/a Astoria Brewhouse ("Mike Rory") has owned and/or operated Astoria Brewhouse during the relevant period.
14. Mike Rory is a domestic business corporation organized and existing under the laws of New York.
15. Upon information and belief, Mike Rory's principal executive office is located at 2850 31<sup>st</sup> Street, Astoria, New York 11102
16. Mike Rory is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.
17. Mike Rory is the "Premises Name" listed on the active New York State Liquor License for "Astoria Brewhouse" located at "28 50 31st Street, Astoria, NY 11102."

18. At all relevant times, Mike Rory maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

19. Upon information and belief, Mike Rory applies the same employment policies, practices, and procedures to all tipped, hourly food service workers, including policies, practices, and procedures with respect to minimum wages, overtime compensation, spread-of-hours pay, and customer tips.

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

#### **Individual Defendants**

##### **Sean Straw**

21. Upon information and belief, Defendant Sean Straw is a resident of the State of New York.

22. At all relevant times, Sean Straw has been the owner of Astoria Brewhouse.

23. Sean Straw is identified as a "Principal" on the active New York State Liquor License for "Astoria Brewhouse" located at "28 50 31st Street, Astoria, NY 11102."

24. Sean Straw is identified by the New York State Department of State – Division of Corporations as the "Chairman or Chief Executive Officer" of Mike Rory.

25. At all relevant times, Sean Straw has had power over personnel decisions at Astoria Brewhouse, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

26. At all relevant times, Sean Straw has had power over payroll decisions at Astoria Brewhouse, including the power to retain time and/or wage records.

27. Sean Straw is actively involved in managing the day-to-day operations of Astoria Brewhouse.

28. At all relevant times, Sean Straw has also had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

29. Upon information and belief, at all relevant times, Sean Straw has had the power to transfer the assets or liabilities of Astoria Brewhouse.

30. Upon information and belief, at all relevant times, Sean Straw has had the power to declare bankruptcy on behalf of Astoria Brewhouse.

31. Upon information and belief, at all relevant times, Sean Straw has had the power to enter into contracts on behalf of Astoria Brewhouse.

32. Sean Straw is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiff and similarly situated employees.

**Brendan Straw**

33. Upon information and belief, Defendant Brendan Straw is a resident of the State of New York.

34. Upon information and belief, at all relevant times, Brendan Straw has been the owner of Astoria Brewhouse.

35. Brendan Straw is identified as a “Principal” on the active New York State Liquor License for “Astoria Brewhouse” located at “28 50 31st Street, Astoria, NY 11102.”

36. At all relevant times, Brendan Straw has had power over personnel decisions at Astoria Brewhouse, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

37. At all relevant times, Brendan Straw has had power over payroll decisions at Astoria Brewhouse, including the power to retain time and/or wage records.

38. Brendan Straw is actively involved in managing the day-to-day operations of Astoria Brewhouse.

39. At all relevant times, Brendan Straw has also had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

40. Upon information and belief, at all relevant times, Brendan Straw has had the power to transfer the assets or liabilities of Astoria Brewhouse.

41. Upon information and belief, at all relevant times, Brendan Straw has had the power to declare bankruptcy on behalf of Astoria Brewhouse.

42. Upon information and belief, at all relevant times, Brendan Straw has had the power to enter into contracts on behalf of Astoria Brewhouse.

43. Brendan Straw is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, employed and/or jointly employed Plaintiff and similarly situated employees.

#### **JURISDICTION AND VENUE**

44. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

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

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

47. Venue is proper in the Eastern 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**

48. Plaintiff brings the First and Second Causes of Action, FLSA claims, on behalf of himself and all similarly situated persons who have worked as tipped, hourly food service workers at Astoria Brewhouse, who elect to opt-in to this action (the "FLSA Collective").

49. Consistent with Defendants policy and pattern or practice, Plaintiff 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.

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

51. 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 Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiff 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 Plaintiff and the FLSA Collective, have worked for the benefit of Defendants.

52. 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.

53. 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.

54. 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.

55. Plaintiff and the FLSA Collective perform or performed the same primary duties.

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

## **CLASS ACTION ALLEGATIONS**

57. Plaintiff 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 himself and a class of persons consisting of:

All persons who work or have worked as tipped, hourly food service workers and similar employees at Astoria Brewhouse in New York between January 26, 2006 and the date of final judgment in this matter (the “Rule 23 Class”).

58. 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.

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

60. 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.

61. 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.

62. 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 Plaintiff and the Rule 23 Class minimum wages for all of the hours they worked;
- (c) whether Defendants correctly compensated Plaintiff and the Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (d) whether Defendants failed to provide Plaintiff and the Rule 23 Class spread-of-hours pay;
- (e) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Rule 23 Class, and other records required by the NYLL;
- (f) whether Defendants failed to furnish Plaintiff 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;
- (g) whether Defendants unlawfully made deductions from the wages of Plaintiff and the Rule 23 Class for meals they did not receive;
- (h) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (i) the nature and extent of class-wide injury and the measure of damages for those injuries.

63. The claims of Plaintiff are typical of the claims of the Rule 23 Class he seeks to represent. Plaintiff and all of the Rule 23 Class members work, or have worked, for Defendants as tipped, hourly food service workers at Astoria Brewhouse in New York. Plaintiff 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. Plaintiff and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiff 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.

64. Plaintiff will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would

represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the Rule 23 Class members.

65. 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 Plaintiff lacks 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.

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

### **PLAINTIFF'S FACTUAL ALLEGATIONS**

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

**Nicholas Ritz**

68. Defendants did not pay Plaintiff 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.

69. Defendants did not inform Plaintiff of the tipped minimum wage or tip credit provisions of the FLSA, 29 U.S.C. 203(m), or the NYLL, 12 N.Y.C.R.R. Part 137 and Part 146.

70. Throughout the duration of his employment at Astoria Brewhouse, Plaintiff received weekly paychecks from Defendants that did not properly record or compensate him for all of the hours he worked.

71. Defendants consistently required Plaintiff to punch out before performing non-tipped work such as cleaning and stocking the bar. During these periods when Plaintiff was punched out, but still working, he was not compensated by Defendants.

72. Defendants repeatedly suffered or permitted Plaintiff to work over 40 hours per week as a bartender without paying him premium overtime pay.

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

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

75. Defendants consistently made unlawful deductions from Plaintiff's wages for meals that Plaintiff did not receive and for bar tabs left open by customers at the end of a shift. At the end of a shift, if a customer failed to close their bar tab Defendants would deduct the amount owed on the bar tab from Plaintiff's wages.

76. In or around October 2011, Plaintiff made several complaints to his manager, Sigred "Doe" ("Sigred"), with respect to his wages. These complaints included not being able to take breaks and having meal pay deducted from his wages when he received no such meals.

77. In or around November 2011, Plaintiff expressed concern to Lili “Doe” (“Lili”), the General Manager at Astoria Brewhouse, regarding not being able to take breaks and having meal pay deducted from his wages when he received no such meals. Plaintiff requested that Lili speak to Defendants Sean Straw and Brandon Straw regarding these issues.

78. In or around November 2011, Plaintiff requested an in-person meeting with Defendants Sean Straw and Brendan Straw to discuss his complaints regarding the policies at Astoria Brewhouse concerning breaks and meal pay. Though Defendants Sean Straw and Brendan Straw agreed to this meeting, they failed to appear at the scheduled meeting time.

79. On November 16, 2011, approximately three days after Defendants Sean Straw and Brendan Straw failed to attend the meeting with Plaintiff, Plaintiff was terminated in retaliation for complaining about Defendants’ unlawful wage and hour policies and practices.

**FIRST CAUSE OF ACTION**

**Fair Labor Standards Act – Minimum Wages**

**(Brought on behalf of Plaintiff and the members of the FLSA Collective)**

80. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

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

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

83. At all times relevant, Plaintiff 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).

84. At all times relevant, Plaintiff 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).

85. At all times relevant, Defendants have been employers of Plaintiff 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).

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

87. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. § 203(m), and supporting federal regulations, including but not limited to 29 C.F.R. § 531.50 *et seq.*, because Defendants failed to inform Plaintiff and the members of the FLSA Collective of the provisions of subsection 203(m) of the FLSA, 29 U.S.C. § 203(m), and distributed a portion of their tips to workers who do not “customarily and regularly” receive tips.

88. As a result of Defendants’ violations of the FLSA, Plaintiff 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).

89. 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.

90. 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 Plaintiff and the members of the FLSA Collective)**

91. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

92. 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 Plaintiff and the members of the FLSA Collective.

93. Defendants have failed to pay Plaintiff 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.

94. As a result of Defendants' violations of the FLSA, Plaintiff 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).

95. 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 Plaintiff and the members of the FLSA Collective.

96. 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 Plaintiff and the members of the Rule 23 Class)**

97. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

98. Defendants failed to pay Plaintiff 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.

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

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

101. 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 Plaintiff and the members of the Rule 23 Class.

102. Defendants were required to pay Plaintiff and the members of the Rule 23 Class a minimum wage at a rate of (a) \$6.75 per hour for all hours worked from January 26, 2006 through December 31, 2006; (b) \$7.15 per hour for all hours worked from January 1, 2007 through July 23, 2009; and (c) \$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. Part 137 and Part 146.

103. 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. Part 137 and Part 146.

104. Defendants failed to furnish with every payment of wages to Plaintiff 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. Part 137 and Part 146.

105. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiff 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.

106. Due to Defendants' violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants 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**  
**New York Labor Law Article 19 – Unpaid Overtime**  
**(Brought on behalf of Plaintiff and the members of the Rule 23 Class)**

107. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

108. 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.

109. Defendants have failed to pay Plaintiff 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.



110. Through their knowing or intentional failure to pay Plaintiff 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.

111. Due to Defendants' violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants 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**  
**New York Labor Law – Spread-of-Hours Pay**  
**(Brought on behalf of Plaintiff and the members of the Rule 23 Class)**

112. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

113. Defendants have willfully failed to pay Plaintiff 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.

114. By Defendants' failure to pay Plaintiff 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.

115. Due to Defendants' violations of the NYLL, Plaintiff 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 the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

**SIXTH CAUSE OF ACTION**  
**New York Labor Law Article 6 – Unlawful Deductions**  
**(Brought on behalf of Plaintiff and the members of the Rule 23 Class)**

116. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

117. Defendants failed to pay Plaintiff and the members of the Rule 23 Class the full amount of their wages as a result of deductions for meals and open bar tabs that Plaintiff and the members of the Rule 23 Class did not receive, in violation of the NYLL Article 6, § 193 and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 137 and Part 146.

118. The deductions made by Defendants from the wages of Plaintiff and the members of the Rule 23 Class were not expressly authorized in writing by Plaintiff and the members of the Rule 23 Class, and were not for the benefit of Plaintiff and the members of the Rule 23 Class.

119. By Defendants' knowing or intentional failure to pay Plaintiff and the members of the Rule 23 Class the full amount of their wages as a result of deductions for meals and open bar tabs, Defendants have willfully violated the NYLL Article 6, § 193, and the supporting New York State Department of Labor regulations.

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

**SEVENTH CAUSE OF ACTION**  
**New York Labor Law Article 7 – Retaliation**  
**(Brought on behalf of Plaintiff, individually)**

121. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

122. In or around October and November 2011, Plaintiff complained to his manager,

including the date of this Court's issuance of court-supervised notice, worked at Astoria Brewhouse 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 Plaintiff as 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 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, unlawful deductions, 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;

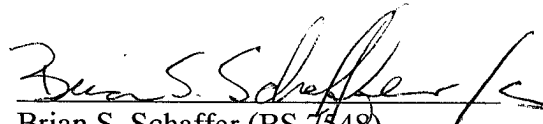
I. Back pay, front pay, compensatory damages, and punitive damages, and attorneys' fees for Plaintiff, individually, pursuant to the NYLL Article 7, § 215;

J. Reasonable attorneys' fees and costs of the action; and

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

Dated: New York, New York  
January 26, 2012

Respectfully submitted,



Brian S. Schaffer (BS 7548)

**FITAPELLI & SCHAFFER, LLP**

Joseph A. Fitapelli (JF 9058)

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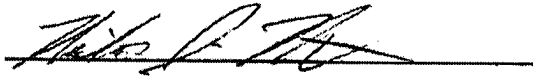
Telephone: (212) 300-0375

*Attorneys for Plaintiff and  
the Putative Class*

FAIR LABOR STANDARDS ACT CONSENT

1. I, consent to be a party plaintiff in the above-captioned lawsuit against Astoria Brew House and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. §216 (b).

2. By signing and returning this consent form, I hereby designate Fitapelli & Schaffer, LLP ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.



Signature

Nicholas J. Ritz

Full Legal Name (Print)

