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

**ESTEBAN HERNANDEZ LUNA, EUDOCIO ALVARADO,
JUAN GABRIEL LOPEZ PEREZ, ARTURO CRUZ, ERNESTO
SERRANO BRAVO, and VICTOR DELGADO-MATALACUATZI,
on behalf of themselves and all others similarly situated,**

Plaintiffs,

-against-

**CARA FOODS, LLC d/b/a GALWAY HOOKER, CARABEAN,
LLC d/b/a DOWNTOWN GALWAY HOOKER, FIDDLESTICKS
L.L.C. d/b/a FIDDLESTICKS PUB AND GRILL, and MARY
NIAMH CONWAY,**

Defendants.

**CLASS ACTION
COMPLAINT**

Plaintiffs Esteban Hernandez Luna, Eudocio Alvarado, Juan Gabriel Lopez Perez, Arturo Cruz, Ernesto Serrano Bravo and Victor Delgado-Matalacuatzi (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 tips, and other wages for Plaintiffs and their similarly situated co-workers – servers, bussers, runners, bartenders, barbacks, porters, cooks, line cooks, dishwashers, and other food service workers – who work or have worked for Cara Foods, LLC

d/b/a Galway Hooker, Carabean, LLC d/b/a Downtown Galway Hooker, Fiddlesticks L.L.C. d/b/a Fiddlesticks Pub and Grill (“Fiddlesticks”), and Mary Niamh Conway (collectively “Defendants”).

2. Galway Hooker, Downtown Galway Hooker, and Fiddlesticks are a trio of Irish themed bar and grills. They are located at 7 East 36th Street, New York, New York 10016; 133 7th Avenue South, New York, New York 10014; and 56 Greenwich Avenue, New York, New York, 10011 respectively.

3. Galway Hooker, Downtown Galway Hooker, and Fiddlesticks have been reviewed in numerous online restaurant guides. All three bars have received rave reviews in well-known New York City print media, including New York Magazine, TimeOut New York, and Shecky’s.

4. Galway Hooker and Downtown Galway Hooker are linked together by a centralized website, <http://www.galwayhookernyc.com/>, which allows users to click on either the Midtown location or Downtown location. Fiddlesticks’ main website, <http://www.fiddlesticksnyc.com/>, includes links to both Galway Hooker and Downtown Galway Hooker with a note that states “visit our sister bars.” The event planner contact for both Downtown Galway Hooker and Fiddlesticks is Cameron “Doe” and his contact information is listed on both websites as 212-725-0555.

5. In 2011, Mary Niamh Conway was interviewed by Jason Fell of <http://www.entrepreneur.com>. In that interview, Mary Niamh Conway discussed her role as owner of all three bars. The interview is available at <http://www.entrepreneur.com/blog/219351>.

6. Defendants required or directed employees to work simultaneously at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks.

7. Defendants maintain a policy and practice whereby food service workers are not compensated for all hours worked in a workweek.

8. Plaintiffs bring this action on behalf of themselves and similarly situated current and former food service workers at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks 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 others similarly situated of their lawfully earned wages.

9. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former food service workers at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks, pursuant to Rule 23 of the Federal Rules of Civil Procedure, to remedy violations of the New York Labor Law (“NYLL”), and the supporting New York State Department of Labor Regulations.

THE PARTIES

Plaintiffs

Esteban Hernandez Luna

10. Plaintiff Esteban Hernandez Luna (“Luna”) is an adult individual who is a resident of New York, New York.

11. Luna was employed by Defendants as a barback at Galway Hooker from on or about December 2008 to January 7, 2012.

12. Luna is a covered employee within the meaning of the FLSA and the NYLL.

13. A written consent form for Luna is being filed with this Class Action Complaint.

Eudocio Alvarado

14. Plaintiff Eudocio Alvarado (“Alvarado”) is an adult individual who is a resident of Brooklyn, New York.

15. Alvarado was ordered by Steve Masuka, General Manager at Galway Hooker, to work under the name “Luis.”

16. Alvarado was employed by Defendants as a porter, a non-exempt employee, at Galway Hooker from on or about November 2009 to December 2011.

17. Alvarado is a covered employee within the meaning of the FLSA and the NYLL.

18. A written consent form for Alvarado is being filed with this Class Action Complaint.

Juan Gabriel Lopez Perez

19. Plaintiff Juan Gabriel Lopez Perez (“Perez”) is an adult individual who is a resident of Bronx, New York.

20. Perez was ordered by Felix Victoria, a Manager involved at all three locations, to work under the name “Gabriel Perez.”

21. Perez was employed by Defendants as a cook, a non-exempt employee, at Galway Hooker from on or about March 2008 to June 2011, and from December 2011 to January 2012. Perez was also employed by Defendants as a cook at Fiddlesticks from on or about March 2009 to June 2011, and from December 2011 to January 2012.

22. Perez is a covered employee within the meaning of the FLSA and the NYLL.

23. A written consent form for Perez is being filed with this Class Action Complaint.

Arturo Cruz

24. Plaintiff Arturo Cruz (“Cruz”) is an adult individual who is a resident of Bronx, New York.

25. Cruz was employed by Defendants as a line cook, a non-exempt employee, at Galway Hooker from on or about August 2011 to February 15, 2012.

26. Cruz is a covered employee within the meaning of the FLSA and the NYLL.

27. A written consent form for Cruz is being filed with this Class Action Complaint.

Ernesto Serrano Bravo

28. Plaintiff Ernesto Serrano Bravo (“Bravo”) is an adult individual who is a resident of Queens, New York.

29. Bravo was employed by Defendants as a line cook, a non-exempt employee, at Fiddlesticks from on or about September 2008 to October 2011. Bravo was also employed by Defendants as a line cook at Galway Hooker from on or about September 2008 to December 2011.

30. Bravo is a covered employee within the meaning of the FLSA and the NYLL.

31. A written consent form for Bravo is being filed with this Class Action Complaint.

Victor Delgado-Matalacuatzi

32. Plaintiff Victor Delgado-Matalacuatzi (“Delgado”) is an adult individual who is a resident of Queens, New York.

33. Delgado was employed by Defendants as a line cook, a non-exempt employee, at Fiddlesticks from on or about October 2010 to May 2011. Delgado was also employed by Defendants as a line cook at Galway Hooker from on or about October 2010 to January 2012.

34. Delgado is a covered employee within the meaning of the FLSA and the NYLL.

35. A written consent form for Delgado is being filed with this Class Action Complaint.

Defendants

36. 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.

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

38. Upon information and belief, during all relevant times, Galway Hooker, Downtown Galway Hooker, and Fiddlesticks shared a common management and were centrally controlled and/or owned by Defendants.

Cara Foods, LLC d/b/a Galway Hooker

39. Together with the other Defendants, Cara Foods, LLC d/b/a Galway Hooker ("Cara Foods") has owned and/or operated Galway Hooker during the relevant period.

40. Cara Foods is a domestic business corporation, organized and existing under the laws of New York.

41. Upon information and belief, Cara Foods' principal executive office is located at 7 East 36th Street, New York, New York 10016.

42. Cara Foods is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

43. Cara Foods is the corporate identity that appears on Plaintiffs' paychecks.

44. Cara Foods is the corporate identity that appears on the New York State Liquor Authority License for "Galway Hooker," located at 7 East 36th Street, New York, New York 10016.

45. At all relevant times, Cara Foods maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other

employment practices that applied to them.

46. Upon information and belief, Cara Foods applies the same employment policies, practices, and procedures to all food service workers, including policies, practices, and procedures with respect to the payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

47. Upon information and belief, Cara Foods has had the power to transfer the assets or liabilities of Galway Hooker.

48. Upon information and belief, Cara Foods has had the power to declare bankruptcy on behalf of Galway Hooker.

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

Carabean, LLC d/b/a Downtown Galway Hooker

50. Together with the other Defendants, Carabean, LLC d/b/a Downtown Galway Hooker ("Carabean") has owned and/or operated Downtown Galway Hooker during the relevant period.

51. Carabean is a domestic business corporation, organized and existing under the laws of New York.

52. Upon information and belief, Carabean's principal executive office is located at 133 7th Avenue South, New York, New York 10014.

53. Carabean is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

54. Carabean is the corporate identity that appears on the New York State Liquor Authority License for "Downtown Galway Hooker," located at 133 7th Avenue South, New

York, New York 10014.

55. At all relevant times, Carabean maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

56. Upon information and belief, Carabean applies the same employment policies, practices, and procedures to all food service workers, including policies, practices, and procedures with respect to the payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

57. Upon information and belief, Carabean has had the power to transfer the assets or liabilities of Downtown Galway Hooker.

58. Upon information and belief, Carabean has had the power to declare bankruptcy on behalf of Downtown Galway Hooker.

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

Fiddlesticks L.L.C. d/b/a Fiddlesticks

60. Together with the other Defendants, Fiddlesticks L.L.C. ("Fiddlesticks") d/b/a Fiddlesticks has owned and/or operated Fiddlesticks during the relevant period.

61. Fiddlesticks is a domestic business corporation, organized and existing under the laws of New York.

62. Upon information and belief, Fiddlesticks' principal executive office is located at 56 Greenwich Avenue, New York, New York 10011.

63. Fiddlesticks is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

64. Fiddlesticks is the corporate identity that appears on the New York State Liquor Authority License for “Fiddlesticks,” located at 56 Greenwich Avenue, New York, New York 10011.

65. At all relevant times, Fiddlesticks maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

66. Upon information and belief, Fiddlesticks applies the same employment policies, practices, and procedures to all food service workers, including policies, practices, and procedures with respect to the payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

67. Upon information and belief, Fiddlesticks has had the power to transfer the assets or liabilities of Fiddlesticks.

68. Upon information and belief, Fiddlesticks has had the power to declare bankruptcy on behalf of Fiddlesticks.

69. Upon information and belief, at all times relevant, Fiddlesticks’ annual gross volume of sales made or business done was not less than \$500,000.00.

Mary Niamh Conway

70. Upon information and belief, Defendant Mary Niamh Conway (“Conway”) is a resident of the State of New York.

71. Upon information and belief, at all relevant times, Conway has been the owner of Galway Hooker, Downtown Galway Hooker, and Fiddlesticks.

72. Conway is identified by the New York State Liquor Authority, as a “Principal” of Cara Foods, Carabean and Fiddlesticks.

73. Upon information and belief, at all relevant times, Conway has had power over

personnel decisions at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

74. Upon information and belief, at all relevant times, Conway has had power over payroll decisions at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks, including the power to retain time and/or wage records.

75. Upon information and belief, Conway is actively involved in managing the day to day operations of Galway Hooker, Downtown Galway Hooker, and Fiddlesticks.

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

77. Upon information and belief, at all relevant times, Conway has had the power to transfer the assets or liabilities of Cara Foods, Carabean and Fiddlesticks.

78. Upon information and belief, at all relevant times, Conway has had the power to declare bankruptcy on behalf of Cara Foods, Carabean and Fiddlesticks.

79. Upon information and belief, at all relevant times, Conway has had the power to enter into contracts on behalf of Cara Foods, Carabean and Fiddlesticks.

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

JURISDICTION AND VENUE

81. 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.

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

83. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.

§§ 2201 and 2202.

84. 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-WIDE FACTUAL ALLEGATIONS

85. Plaintiffs bring the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who have worked as food service workers at Galway Hooker, Downtown Galway Hooker, and Fiddlesticks, who elect to opt-in to this action (the “FLSA Collective”).

86. 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.

87. 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.

88. 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 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.

89. 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.

90. 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.

91. 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.

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

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

CLASS ACTION ALLEGATIONS

94. Plaintiffs bring the Third, Fourth, Fifth, Sixth and Seventh 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 for Defendants as food service workers at Galway Hooker, Downtown Galway Hooker, and/or Fiddlesticks, in New York between June 19, 2006 and the date of final judgment in this matter (the "Rule 23 Class").

95. 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.

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

97. 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.

98. 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.

99. 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 failed to pay Plaintiffs and the Rule 23 Class minimum wages for all of the hours they worked;
- (b) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (c) whether Defendants failed to provide Plaintiffs and the Rule 23 Class spread-of-hours pay;
- (d) 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;
- (e) whether Defendants distributed a portion of the tips paid by customers to workers who are not entitled to receive tips under the NYLL;
- (f) 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;
- (g) 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;
- (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.

100. 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 food service workers at Galway Hooker, Downtown Galway Hooker, and/or Fiddlesticks 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 and to be paid spread-of-hours pay. 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.

101. 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.

102. 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.

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

PLAINTIFFS' FACTUAL ALLEGATIONS

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

Esteban Hernandez Luna

105. Defendants did not pay Luna 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.

106. Defendants did not inform Luna 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 146 *et seq.*

107. From December 2008 to June 2011, Luna did not receive any wages and was paid only in tips. Defendants did not compensate Luna for all of the hours he worked.

108. From June 2011 to January 2012, Luna received weekly paychecks from Defendants that did not properly record or compensate Luna for the actual hours he worked.

109. Defendants repeatedly suffered or permitted Luna to work over 40 hours per week, up to a maximum of approximately 60 hours per week, without paying him premium overtime pay.

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

111. Defendants did not pay Luna his weekly paycheck for his last week of employment in January 2012.

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

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

114. Defendants imposed upon Luna a tip redistribution scheme to which he never agreed.

115. Defendants unlawfully redistributed part of Luna's tips to employees in positions that are not entitled to tips under the FLSA and/or the NYLL.

116. Customers were charged a mandatory gratuity to host private parties and/or events at Galway Hooker, Downtown Galway Hooker and Fiddlesticks. Though customers were led to believe that this mandatory gratuity was intended for Luna 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.

117. Upon information and belief, Defendants did not keep accurate records of wages earned by Luna. In fact, Defendants did not have any procedures in place at Galway Hooker to monitor or record the hours Luna worked.

Eudocio Alvarado

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

119. From on or about November 2009 until December 2011, Alvarado was paid a weekly salary from Defendants that did not properly compensate Alvarado for all the hours he worked.

120. Defendants repeatedly suffered or permitted Alvarado to work over 40 hours per week, up to a maximum of approximately 78 hours per week, without paying him premium overtime pay.

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

122. Upon information and belief, Defendants did not keep accurate records of wages earned by Alvarado. In fact, Defendants did not have any procedures in place at Galway Hooker to monitor or record the hours Alvarado worked.

Juan Gabriel Lopez Perez

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

124. From March 2008 to on or about January 2012, Perez received wages from Defendants that did not properly compensate Perez for all the hours he worked.

125. Defendants repeatedly suffered or permitted Perez to work over 40 hours per week, up to a maximum of approximately 66 hours per week, without paying him premium overtime pay.

126. Defendants did not pay Perez spread-of-hours pay for all of the times that he

worked in excess of 10 hours per day.

127. Defendants did not pay Perez his weekly wages for his last two weeks of employment in January 2012.

128. Upon information and belief, Defendants did not keep accurate records of wages earned by Perez. In fact, Defendants did not have any procedures in place at Galway Hooker or Fiddlesticks to monitor or record the hours Perez worked.

Arturo Cruz

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

130. From on or about August 2011 until on or about February 15, 2012, Cruz received wages from Defendants that did not properly compensate Cruz for all the hours he worked.

131. Defendants repeatedly suffered or permitted Cruz to work over 40 hours per week, up to a maximum of approximately 60 hours per week, without paying him premium overtime pay.

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

133. Defendants did not pay Cruz his weekly paycheck for his last week of employment in January 2012.

134. Upon information and belief, Defendants did not keep accurate records of wages earned by Cruz. In fact, Defendants did not have any procedures in place at Galway Hooker to monitor or record the hours Cruz worked.

Ernesto Serrano Bravo

135. Defendants did not pay Bravo the proper overtime wages and spread-of-hours pay

for all of the time that he was suffered or permitted to work each workweek.

136. From September 2008 to December 2011, Bravo received wages from Defendants that did not properly compensate Bravo for all the hours he worked.

137. Defendants repeatedly suffered or permitted Bravo to work over 40 hours per week, up to a maximum of approximately 80 hours per week, without paying him premium overtime pay.

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

139. Upon information and belief, Defendants did not keep accurate records of wages earned by Bravo. In fact, Defendants did not have any procedures in place at Fiddlesticks or Galway Hooker to monitor or record the hours Bravo worked.

Victor Delgado-Matalacuatzi

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

141. From October 2010 to January 2012, Delgado received wages from Defendants that did not properly compensate Delgado for all the hours he worked.

142. Defendants repeatedly suffered or permitted Delgado to work over 40 hours per week, up to a maximum of approximately 72 hours per week, without paying him premium overtime pay.

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

144. Upon information and belief, Defendants did not keep accurate records of wages earned by Delgado. In fact, Defendants did not have any procedures in place at Fiddlesticks or

Galway Hooker to monitor or record the hours Delgado worked.

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

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

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

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

148. 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).

149. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. § 203(m), because Defendants failed to inform Plaintiffs and the FLSA Collective of the provisions of subsection 203(m) of the FLSA, 29 U.S.C. § 203(m), and did not permit Plaintiffs and the members of the FLSA Collective to retain all of the tips they received.

150. Defendants distributed a portion of tips received by Plaintiffs and the FLSA Collective to workers who do not “customarily and regularly” receive tips.

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

152. 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).

153. 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.

154. 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.

155. 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).

156. 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.

157. 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)

158. Plaintiffs reallege and incorporate by reference all allegations in all preceding

paragraphs.

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

160. 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 FLSA Collective.

161. At all times relevant, Plaintiffs and 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) and 207(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) and 207(a).

162. At all times relevant, Plaintiffs and the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

163. At all times relevant, Defendants have been employers of Plaintiffs and 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 207(a).

164. Defendants have failed to pay Plaintiffs and the FLSA Collective overtime wages for all of the hours they worked in excess of 40 hours in a workweek.

165. As a result of Defendants' unlawful acts, Plaintiffs and 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).

166. 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 FLSA Collective.

167. 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 Wages (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

169. 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.

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

171. 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 Class within the meaning of the NYLL §§ 190, 651(5), 652, and the supporting New York State Department of Labor Regulations.

172. Defendants were required to pay Plaintiffs 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 April 24, 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.

173. 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.

174. 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. Part 137 and Part 146.

175. Defendants required Plaintiffs to share gratuities with non-tip eligible employees. As a result, Plaintiffs are entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

176. 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.

177. 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 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 Plaintiffs and the members of the Rule 23 Class)

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

179. The overtime 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.

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

181. 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 Class within the meaning of the NYLL Article 19, §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations.

182. 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.

183. 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.

184. 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 the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

New York Labor Law Article 19 – Spread-of-Hours Pay (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

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

187. 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.

188. 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 the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION

New York Labor Law Article 6 – Tip Misappropriation

(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. 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.

191. 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.

192. 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.

193. 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.

194. 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.

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

196. 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.

SEVENTH CAUSE OF ACTION

New York Labor Law Article 6 – Recordkeeping Violation (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

198. Defendants have willfully failed to supply Plaintiffs and the members of the Rule

23 Class notice as required by NYLL Article 6, § 195, in English or in the language identified by Plaintiffs and the members of the Rule 23 Class as their primary language, containing Plaintiffs' and the members of the Rule 23 Class' 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; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; 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.

199. Defendants have willfully failed to supply Plaintiffs and the members of the Rule 23 Class with an accurate statement of wages as required by NYLL Article 6, § 195, containing the dates of work covered by 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; allowances, if any, claimed as part of the minimum wage; and net wages.

200. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants one hundred dollars for each workweek that the violations occurred or continue to occur, or a total of twenty-five hundred dollars, as provided for by NYLL Article 6, § 198(1)-d, reasonable attorneys' fees, costs, injunctive and declaratory relief.

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 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 Galway Hooker, Downtown Galway Hooker, and/or Fiddlesticks. 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 liquidated damages permitted by law pursuant to the NYLL;

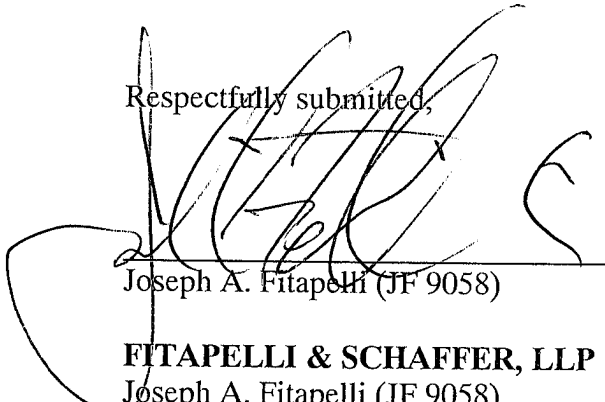
G. One hundred dollars for each workweek that the violations of NYLL Article 6, §

195 occurred or continue to occur, or a total of twenty-five hundred dollars, as provided for by
NYLL Article 6, § 198(1)-d;

- H. Prejudgment and post-judgment interest;
- I. An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;
- 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
June 19, 2012

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, New York 10016


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*Attorneys for Plaintiff and
the Putative Class*

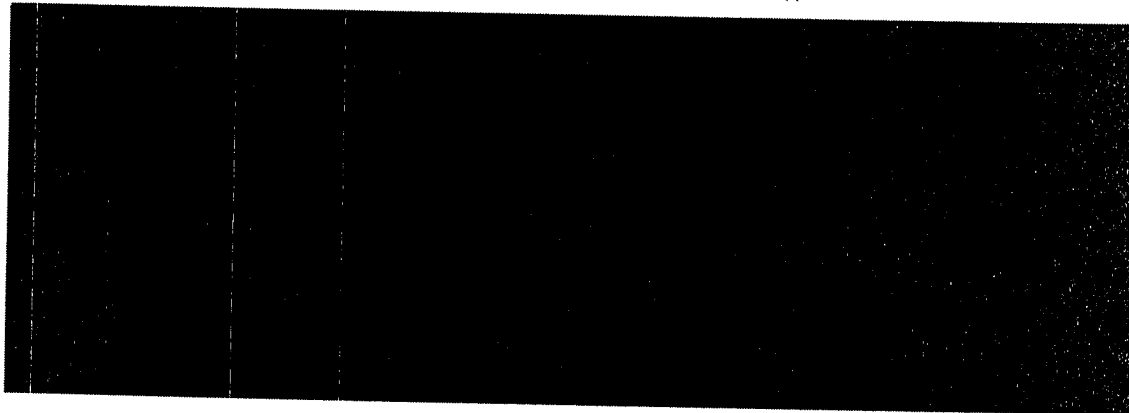
FAIR LABOR STANDARDS ACT – CONSENTIMIENTO/CONSENT FORM

Doy mi consentimiento para ser parte demandante en una demanda contra Fiddlesticks, Galway Hooker, Downtown Galway Hooker 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 Fiddlesticks, Galway Hooker, Downtown Galway 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 designate Fitapelli & Schaffer, LLP to represent me in such a lawsuit.


Firma (Signature)

Esteban Hernandez Luna
Nombre legal completo (Imprenta) (Full Legal Name (Print))



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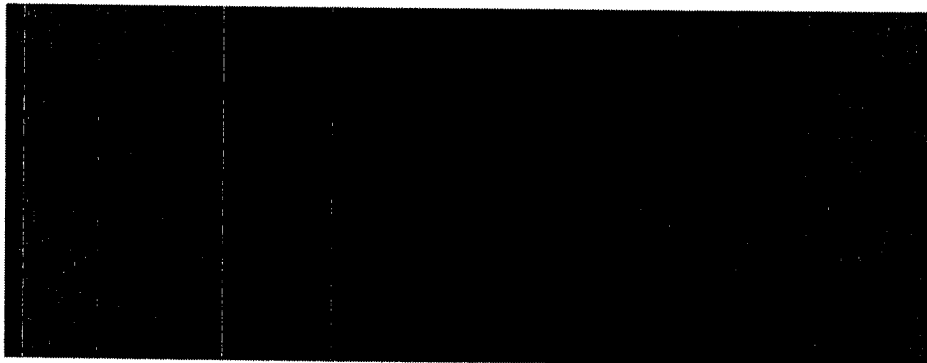
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EUDOCIO ALVARADO

Firma (Signature)

EUDOCIO ALVARADO

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



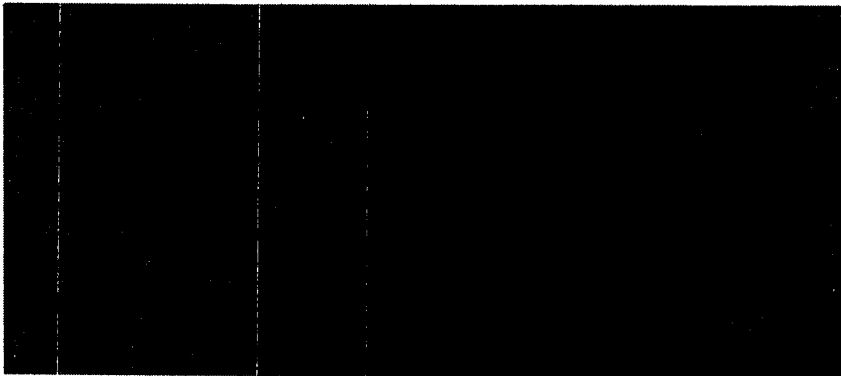
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Sam Gabriel Lopez Perez
Firma (Signature)

Sam Gabriel Lopez Perez
Nombre legal completo (Imprenta) (Full Legal Name (Print))



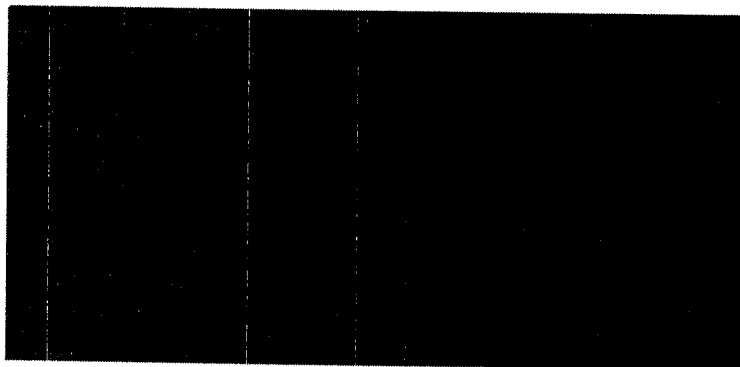
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Arturo Cruz
Firma (Signature)

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



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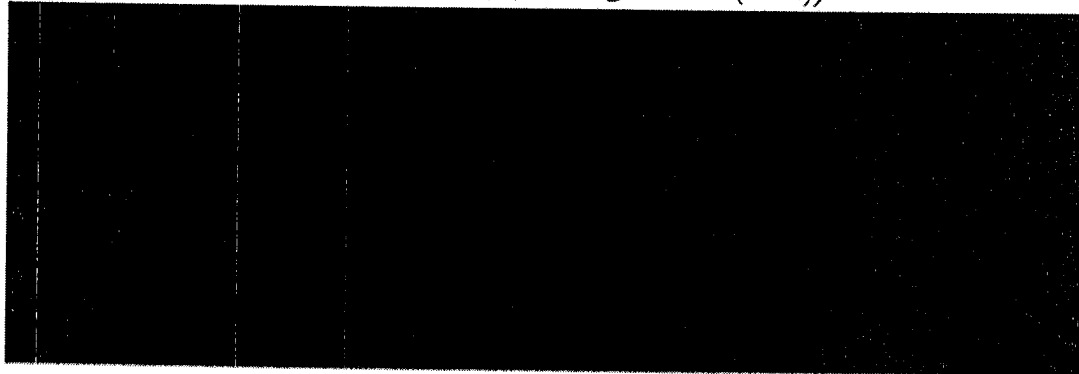
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Firma (Signature)

Ernesto Serrano Bravo

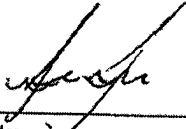
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Firma (Signature)

VICTOR DELGADO MATLALCUATZ

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

