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14 CV 9007

JUDGE BRODERICK

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

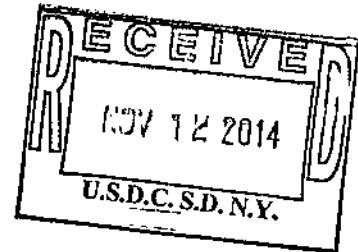
**AMY MEZA and ABELINO MEZA, on behalf of
themselves and all others similarly situated,**

Plaintiffs,

-against-

**317 AMSTERDAM CORP. d/b/a TOLANI,
STANTON DU TOI, and TURGUT BALIKCI,**

Defendants.



**CLASS ACTION
COMPLAINT**

Plaintiffs Amy Meza and Abelino Meza (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, 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 wage, overtime compensation, spread-of-hours pay, misappropriated gratuities, and statutory penalties for Plaintiffs and their similarly situated co-workers – bartenders, barbacks servers, bussers, runners, line cooks, food preparers, dishwashers, and other "Non-Exempt Workers" – who work or have worked at Tolani located at 410 Amsterdam Avenue, New York, New York 10024.

2. Owned and operated by 317Amsterdam Corp, Stanton Du Toit, and Turgut Balikci (collectively, "Defendants"), Tolani has been profiled and reviewed in numerous print and online publications, including the New York Magazine and Zagat.

3. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former Non-Exempt Workers who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, 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 Non-Exempt Workers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the 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

Amy Meza

5. Plaintiff Amy Meza is an adult individual who is a resident of New York, New York.

6. Amy Meza was employed by Defendants as a bartender – a Non-Exempt Worker – at Tolani from in or around April 2014 to July 10, 2014.

7. Amy Meza is a covered employee within the meaning of the FLSA and the NYLL.

8. A written consent form for Amy Meza is being filed with this Class Action Complaint.

Abelino Meza

9. Plaintiff Abelino Meza is an adult individual who is a resident of New York, New York.

10. Abelino Meza was employed by Defendants as a line cook – a Non-Exempt Worker – at Tolani from in or around April 2013 to August 2014.

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

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

Defendants

13. Defendants have employed and/or jointly employed Plaintiffs and similarly situated employees at all times relevant.

14. Each Defendant has had substantial control over Plaintiffs' and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.

317 Amsterdam Corp.

15. Together with the other Defendants, 317 Amsterdam Corp. ("317") has owned and/or operated Tolani during the relevant period.

16. 317 is a domestic business corporation organized and existing under the laws of New York.

17. According to the Entity Information provided by the New York State Department of State Division of Corporations, 317's principal executive office is located at "584 COLUMBUS AVENUE, NEW YORK, NEW YORK 10024"

18. 317 is the corporate identity that has appeared on Non-Exempt Workers' paystubs for work performed at Tolani.

19. 317 is the "Premises Name" that appears on the active New York State Liquor License for the premises doing business as "TOLANI" located at "410 AMTERSDAM AVENUE WEST 80TH ST. & WEST 81ST ST. NEW YORK, NY 10024."

20. 317 is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

21. At all relevant times, 317 has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

22. 317 has applied the same employment policies, practices, and procedures to all Non-Exempt Workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

23. Upon information and belief, at all relevant times, 317's annual gross volume of sales made or business done was not less than \$500,000.00.

Stanton Du Toit

24. Upon information and belief, Stanton Du Toit ("Du Toit") is a resident of the State of New York.

25. At all relevant times, Du Toit has been a founder, owner, and operator of Tolani.

26. Du Toit is listed as the "Managing Partner" under the "Our Story" section of Tolani's website, www.tolaninyc.com.

27. Du Toit is listed as the "General Manager" on Tolani's Facebook page.

28. Du Toit identifies himself as "OWNER, TOLANI" on his LinkedIn page.

29. Du Toit is listed as a "Principal" on the active New York State Liquor License for the premises doing business as "Tolani" located at "410 AMTERSDAM AVENUE WEST 80TH ST. & WEST 81ST ST. NEW YORK, NY 10024."

30. At all relevant times, Du Toit has had power over personnel decisions at the Tolani, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

31. At all relevant times, Du Toit has had power over payroll decisions at Tolani, including the power to retain time and/or wage records.

32. At all relevant times, Du Toit has been actively involved in managing the day to day operations of Tolani. In fact, Du Toit directly managed and supervised Amy Meza on a daily basis at Tolani.

33. At all relevant times, Du Toit has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

34. At all relevant times, Du Toit has had the power to transfer the assets and/or liabilities of Tolani.

35. At all relevant times, Du Toit has had the power to declare bankruptcy on behalf of Tolani.

36. At all relevant times, Du Toit has had the power to enter into contracts on behalf of Tolani.

37. At all relevant times, Du Toit has had the power to close, shut down, and/or sell Tolani.

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

Turgut Balikci

39. Upon information and belief, Turgut Balikci (“Balikci”) is a resident of the State of Connecticut.

40. At all relevant times, Balikci has been a founder, owner, and operator of Tolani.

41. The Entity Information provided by the New York State Department of State Division of Corporations identifies Balikci as the “Chief Executive Officer” of 317.

42. Balikci is listed as a “Principal” on the active New York State Liquor License for the premises doing business as “TOLANI” located at “410 AMTERS DAM AVENUE WEST 80TH ST. & WEST 81ST ST. NEW YORK, NY 10024.”

43. At all relevant times, Balikci has had power over personnel decisions at Tolani, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

44. At all relevant times, Balikci has had power over payroll decisions at Tolani, including the power to retain time and/or wage records.

45. At all relevant times, Balikci has been actively involved in managing the day to day operations at Tolani.

46. At all relevant times, Balikci has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

47. At all relevant times, Balikci has had the power to transfer the assets and/or liabilities of Tolani.

48. At all relevant times, Balikci has had the power to declare bankruptcy on behalf of Tolani.

49. At all relevant times, Balikci has had the power to enter into contracts on behalf of Tolani.

50. At all relevant times, Balikci has had the power to close, shut down, and/or sell Tolani.

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

JURISDICTION AND VENUE

52. 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.

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

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

55. 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

56. Plaintiffs bring the First and Second Causes of Action, FLSA Claims, on behalf of themselves and all similarly situated persons who have worked as Non-Exempt Workers at Tolani, who elect to opt-in to this action (the “FLSA Collective”).

57. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the FLSA Collective.

58. 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.

59. 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.

60. 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 all 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.

61. 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 properly compensate Plaintiffs and the FLSA Collective for the hours they have worked.

62. Defendants are aware or should have been aware that federal law required them to pay Non-Exempt Workers minimum wages for all hours worked and overtime premiums for all hours worked in excess of 40 per workweek.

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

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

65. There are many similarly situated current and former Non-Exempt Workers who have been denied minimum wage and overtime compensation in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

66. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

67. In recognition of the services Plaintiffs have rendered and will continue to render to the FLSA Collective, Plaintiffs will request payment of service awards upon resolution of this action.

CLASS ACTION ALLEGATIONS

68. Plaintiffs bring the Third, Fourth, Fifth, Sixth, Seventh, and Eighth 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 Non-Exempt Workers and similar employees at Tolani in New York between November 12, 2008 and the date of final judgment in this matter (the "Rule 23 Class").

69. 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.

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

71. 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.

72. 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 per workweek;
- (d) whether Defendants failed to provide Plaintiffs and the Rule 23 Class with spread-of-hours pay when the length of their workday was greater than 10 hours;
- (e) whether Defendants misappropriated tips from Plaintiffs and the Rule 23 Class by demanding, handling, pooling, counting, distributing, accepting, and/or retaining tips 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 or retained 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 proper wage notices, as required by the NYLL;
- (i) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper statements with every payment of wages, as required by the NYLL;
- (j) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (k) the nature and extent of class-wide injury and the measure of damages for those injuries.

73. 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 Non-Exempt Workers at Tolani in New York. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL, including being paid minimum wage, to be paid overtime compensation, 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.

74. 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.

75. In recognition of the services Plaintiffs have rendered and will continue to render to the Rule 23 Class, Plaintiffs will request payment of service awards upon resolution of this action.

76. 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.

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

PLAINTIFFS' FACTUAL ALLEGATIONS

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

Amy Meza

79. Defendants did not pay Amy Meza the proper minimum wage, overtime compensation, and spread-of-hours pay for all of the time that she was suffered or permitted to work each workweek.

80. During her employment, Amy Meza generally worked the following scheduled hours, unless she missed time for vacation, sick days and/or holidays: Thursdays from approximately 4:00 p.m. to 2-3:00 a.m.; Fridays from approximately 4:00 p.m. to 11:00 p.m.-12:00 a.m.; Saturdays from approximately 3:30 p.m. to 11:00 p.m.-12:00 a.m.; and Sundays from approximately 3:30 p.m. to 2:00 a.m. Amy Meza also worked on Wednesdays from approximately 4:00 p.m. to 2-3:00 a.m. approximately one day per month. As a result, Amy Meza generally worked approximately 35-49 hours per week at Tolani.

81. Defendants failed to accurately monitor and record the hours worked by Amy Meza.

82. At all times relevant, Amy Meza was entitled to receive the full statutory minimum wage rate for the first 40 hours of work each week, and time and one-half the full statutory minimum wage rate for all hours worked beyond 40 each week.

83. Throughout her employment, Defendants applied a tip credit towards the minimum wage rate paid to Amy Meza.

84. Defendants failed to notify Amy Meza of the tip credit provisions of the FLSA and the NYLL, or of their intent to apply a tip credit to her wages.

85. Amy Meza was unable to retain all of the tips she received during the course of her employment. In that regard, Du Toit would unlawfully confiscate and retain a percentage of Amy Meza's pooled tips before they were distributed to Amy Meza and other tipped workers.

86. Defendants failed to furnish Amy Meza with a statement with each payment of wages listing her hours worked, rates paid, gross wages, and tip allowance claimed.

87. Defendants required Amy Meza to spend a substantial amount of time performing non-tip producing “side work,” including but not limited to: stocking silverware and napkins; folding napkins; cutting fruit; making juices and mixes; restocking; cleaning tables; breaking down the restaurant; and cleaning and polishing tables, sections, the bar and stations. Amy Meza has generally performed these non-tip producing duties before opening and/or after food service, when no customers are present in the restaurant. As a result of this practice, there were days when Amy Meza spent in excess of two hours a day and/or twenty percent of her daily shifts engaged in a non-tipped capacity. Further, everyday Defendants required Amy Meza to be engaged in a dual occupation whereby she was required to perform duties unrelated to the tipped profession, such as maintenance and food preparation.

88. As a result of the above, Defendants did not satisfy the requirements under the FLSA and the NYLL by which they could apply a tip credit to the hourly rates paid to Amy Meza, and Defendants failed to compensate Amy Meza at the proper minimum wage rate.

89. Defendants suffered or permitted Amy Meza to work over 40 hours per week. During such workweeks, Defendants shaved her work time for payroll purposes and capped her weekly hours at exactly 40, and did not compensate Amy Meza at time and one-half the full minimum hourly wage rate for all hours in excess of 40 per workweek.

90. Defendants suffered or permitted Amy Meza to work over 10 hours per day. Defendants did not pay Amy Meza one additional hour of pay at the basic minimum hourly rate for all of the times that the length of the interval between the beginning and end of her workday -- including working time plus time off for meals plus intervals off duty -- was greater than 10 hours.

91. Defendants did not keep accurate records of wages and tips earned or of hours worked by Amy Meza.

92. Defendants failed to furnish Amy Meza with a proper wage notice, as required by the NYLL.

93. Defendants failed to furnish Amy Meza with a proper statement with every payment of wages, as required by the NYLL.

Abelino Meza

94. Defendants did not pay Abelino Meza the proper overtime compensation and spread-of-hours pay for all of the time that he was suffered or permitted to work each workweek.

95. During his employment, Abelino Meza generally worked the following scheduled hours, unless he missed time for vacation, sick days and/or holidays: Sunday and Monday from approximately 2:00 p.m. to 12:00 a.m.; Thursday and Friday from approximately 2:00 p.m. to 11:00 p.m.; and Saturday from approximately 6:00 p.m. to 1:00 a.m. As a result, Abelino Meza generally worked an average of approximately 45 hours per workweek at Tolani.

96. Defendants failed to accurately monitor and record the hours worked by Abelino Meza.

97. Throughout his employment, Defendants paid Abelino Meza the following regular hourly rates:

(a) In or around April 2013 to September 10, 2013: \$12.50 per hour;

(b) In or around December 11, 2013 to August 2014: \$13.50 per hour.

98. As evidenced by his paystubs, Abelino Meza received the above hourly rates from Defendants for all reported hours, including hours worked beyond 40 per workweek.

99. Defendants consistently suffered or permitted Abelino Meza to work over 40 hours per week. During such workweeks, Defendants did not compensate Abelino Meza at time and one-

half his regular hourly rate for all of the overtime hours he worked, but rather provided Abelino Meza with his regular hourly rates.

100. Defendants suffered or permitted Abelino Meza to work over 10 hours per day. Defendants did not pay Abelino Meza one additional hour of pay at the basic minimum hourly rate for all of the times that the length of the interval between the beginning and end of his workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

101. Defendants did not keep accurate records of wages earned, or of hours worked by Abelino Meza.

102. Defendants failed to furnish Abelino Meza with annual wage notices, as required by the NYLL.

103. Defendants have failed to furnish Abelino Meza with a proper statement with every payment of wages, as required by the NYLL.

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

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

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

106. Plaintiffs have consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b).

107. At all times relevant, Plaintiffs and the members of the FLSA Collective have been 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. §§ 201 *et seq.*, and/or they have been engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

108. 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. §§ 201 *et seq.*

109. 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. §§ 201 *et seq.*

110. The minimum 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.

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

112. Defendants have been required to pay directly to Plaintiffs and the members of the FLSA Collective the full federal minimum wage rate for all hours worked.

113. Defendants have not been eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants have failed to inform Plaintiffs and the FLSA Collective of the provisions of subsection 203(m) of the FLSA, and have distributed a portion of their tips to workers who do not “customarily and regularly” receive tips.

114. Defendants have not been eligible to avail themselves of the federal tip credit under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because they have required Plaintiffs and the FLSA Collective to spend in excess of twenty percent of their daily shifts engaged in a non-tipped capacity.

115. Defendants have not been eligible to avail themselves of the federal tip credit under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because they have required Plaintiffs and the FLSA Collective to be engaged in a dual occupation whereby Plaintiffs and the FLSA Collective have been required to perform duties unrelated to the tipped profession.

116. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants are aware or should have been aware that the practices described in this Class Action Complaint are 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.

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

118. As a result of Defendants' willful 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. §§ 201 *et seq.*

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

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

120. 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.

121. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective the overtime wages to which they have been entitled under the FLSA.

122. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants are aware or should have been aware that the practices described in this Class Action Complaint are 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.

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

124. As a result of Defendants' violations of the FLSA, Plaintiffs and the members of the FLSA Collective have been deprived of overtime compensation 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).

THIRD CAUSE OF ACTION
New York Labor Law – Minimum Wage
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

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

127. 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 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

128. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been covered by the NYLL.

129. 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.

130. Defendants have 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.

131. Pursuant to the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, Defendants have been required to pay Plaintiff and the members of the Rule 23 Class the full minimum wage at a rate of (a) \$7.15 per hour for all hours worked from November 12, 2014 through July 23, 2009; (b) \$7.25 per hour for all hours worked from July 24, 2009 through December 30, 2013; and (c) \$8.00 per hour for all hours worked from December 31, 2013 through the present.

132. After January 1, 2011, Defendants have failed to notify Plaintiffs and the members of the Rule 23 Class in writing of the tip credit as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate at all relevant times.

133. At all times relevant, Defendants have required Plaintiffs and the members of the Rule 23 Class to share gratuities with workers who are not eligible to receive tips under the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate at all relevant times.

134. Defendants have required Plaintiff and the members of the Rule 23 Class to spend over two hours per workday or in excess of twenty percent of their daily shifts engaged in a non-tipped capacity. As a result, Plaintiff and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during such times.

135. Defendants have failed to furnish with every payment of wages to Plaintiffs and the members of the Rule 23 Class statements listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class are entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

136. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and the members of the Rule 23 Class, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class are entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

137. 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.

138. Due to Defendants' willful 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 – Overtime Wage
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

140. 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.

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

142. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and the members of the Rule 23 Class.

143. 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.

144. 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 – Spread-of-Hours Pay
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

146. 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 that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – has been greater than 10 hours.

147. Through their knowing or intentional 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.

148. 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 –Tip Misappropriation
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

150. 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.

151. 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.

152. 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.

153. Defendants have unlawfully demanded or accepted, directly or indirectly, 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.

154. Defendants have 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.

155. Defendants have required Plaintiffs and the members of the Rule 23 Class to share gratuities they have 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.

156. Through their knowing or intentional demand for, acceptance of, and/or retention of 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. Part 137 and Part 146.

157. Due to Defendants' willful violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants the value of the misappropriated gratuities, 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 – Failure to Provide Proper Wage Notices (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

159. Defendants have willfully failed to furnish Plaintiffs and the members of the Rule 23 Class with wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; 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.

160. Through their knowing or intentional failure to provide Plaintiffs and the members of the Rule 23 Class with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

161. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiffs and the members of the Rule 23 Class are entitled to statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage notices, or a total of twenty-five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

EIGHTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Proper Wage Statements (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

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

163. Defendants have willfully failed to furnish Plaintiffs and the members of the Rule 23 Class with a statement with every payment of wages as required by NYLL, Article 6, § 195(3), listing: 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; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

164. Through their knowing or intentional failure to provide Plaintiffs and the members of the Rule 23 Class with the wage statements required by the NYLL, Defendants have

willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

165. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs and the members of the Rule 23 Class are entitled to statutory penalties of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of twenty-five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, 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 Non-Exempt Workers who are presently working, or have worked 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, at Tolani. 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 compensation, 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. Payment of service awards to Plaintiffs, in recognition of the services they have rendered and will continue to render to the FLSA Collective and Rule 23 Class;
- F. 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;
- G. Unpaid minimum wages, overtime compensation, spread-of-hours pay, misappropriated gratuities, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;
- H. Statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage notices, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;
- I. Statutory penalties of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;
- J. Prejudgment and post-judgment interest;
- K. An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;
- L. Reasonable attorneys' fees and costs of the action; and
- M. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
November 12, 2014

Respectfully submitted,



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