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

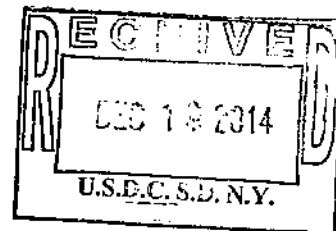
**ERIC BASULTO, ENRIQUE TOXTLE, and  
JOSE JUAN HERNANDEZ, on behalf of  
themselves and all others similarly situated,**

**Plaintiffs,**

**-against-**

**RIO NEW YORK INC., CARLOS BOBADILLA,  
and ALEXANDRA BOBADILLA,**

**Defendants.**



**CLASS ACTION  
COMPLAINT**

Plaintiffs Eric Basulto, Enrique Toxtle, and Jose Juan Hernandez (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 overtime compensation, spread-of-hours pay, statutory penalties, and other damages for Plaintiffs and their similarly situated co-workers – cooks, line cooks, food preparers, dishwashers, and other "Non-Exempt Workers" – who work or have worked at District 12 located at 4892 Broadway, New York, New York 10034 ("District 12").

2. Owned and operated by Rio New York Inc., Carlos Bobadilla, and Alexandra Bobadilla (collectively, "Defendants"), District 12 has been profiled and reviewed in numerous print and online publications, including Time Out New York.

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**

##### **Eric Basulto**

5. Plaintiff Eric Basulto (“Basulto”) is an adult individual who is a resident of Little Ferry, New York.

6. Basulto was employed by Defendants as a cook at District 12 from in or around July 14, 2013 to May 23, 2014.

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

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

##### **Enrique Toxtle**

9. Plaintiff Enrique Toxtle (“Toxtle”) is an adult individual who is a resident of New York, New York.

10. Toxtle has been employed by Defendants as a line cook at District 12 from in or around July 2013 to present.

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

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

**Jose Juan Hernandez**

13. Plaintiff Jose Juan Hernandez (“Hernandez”) is an adult individual who is a resident of Bronx, New York.

14. Hernandez was employed by Defendants as a line cook at District 12 from in or around July 2013 to July 2014.

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

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

**Defendants**

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

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

**Rio New York Inc.**

19. Together with the other Defendants, Defendant Rio New York Inc. d/b/a District 12 (“Rio NY”) has owned and/or operated District 12 during the relevant period.

20. Rio NY is a domestic business corporation organized and existing under the laws of New York.

21. Upon information and belief, Rio NY’s principal executive office is located at 4892 Broadway, New York, New York 10034, the address of District 12.

22. Rio NY is the entity listed on the paystubs provided to Toxtle for work performed at District 12.

23. Rio NY is the “Premises Name” that appears on the active New York State Liquor Authority License for the premises located at “4892 BROADWAY, NEW YORK, NY 10034,” the address of District 12.

24. Rio NY 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.

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

26. Rio NY has applied the same employment policies, practices, and procedures to all Non-Exempt Workers, including policies, practices, and procedures with respect to payment of overtime compensation and spread-of-hours pay.

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

**Carlos Bobadilla**

28. Upon information and belief, Defendant Carlos Bobadilla ("C. Bobadilla") is a resident of the State of New York.

29. At all relevant times, C. Bobadilla has been the founder, owner, and operator of District 12.

30. C. Bobadilla identifies himself as the "ADMINISTRATOR EXECUTIVE AT DISTRICT 12" on his LinkedIn page.

31. At all relevant times, C. Bobadilla has had power over personnel decisions at District 12, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment. In fact, C. Bobadilla hired Basulto.

32. At all relevant times, C. Bobadilla has had power over payroll decisions at District 12, including the power to retain time and/or wage records.

33. At all relevant times, C. Bobadilla has been actively involved in managing the day to day operations of District 12.

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

35. At all relevant times, C. Bobadilla has had the power to transfer the assets and/or liabilities of District 12.

36. At all relevant times, C. Bobadilla has had the power to declare bankruptcy on behalf of District 12.

37. At all relevant times, C. Bobadilla has had the power to enter into contracts on behalf of District 12.

38. At all relevant times, C. Bobadilla has had the power to close, shut down, and/or sell District 12.

39. C. Bobadilla 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.

**Alexandra Bobadilla**

40. Upon information and belief, Defendant Alexandra Bobadilla (“A. Bobadilla”) is a resident of the State of New York.

41. At all relevant times, A. Bobadilla has been the founder, owner, and operator of District 12.

42. A. Bobadilla is the “Principal” listed on the active New York State Liquor Authority License for the premises located at “4892 BROADWAY, NEW YORK, NY 10034,” the address of District 12.

43. At all relevant times, A. Bobadilla has had power over personnel decisions at District 12, 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, A. Bobadilla has had power over payroll decisions at District 12, including the power to retain time and/or wage records.

45. At all relevant times, A. Bobadilla has been actively involved in managing the day to day operations of District 12.

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

47. At all relevant times, A. Bobadilla has had the power to transfer the assets and/or liabilities of District 12.

48. At all relevant times, A. Bobadilla has had the power to declare bankruptcy on behalf of District 12.

49. At all relevant times, A. Bobadilla has had the power to enter into contracts on behalf of District 12.

50. At all relevant times, A. Bobadilla has had the power to close, shut down, and/or sell District 12.

51. A. Bobadilla 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 Cause of Action, an FLSA claim, on behalf of themselves and all similarly situated persons who have worked as Non-Exempt Workers at District 12, 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 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, 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 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 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 Second, Third, Fourth, and Fifth 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 District 12 in New York between December 19, 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 correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 per workweek;
- (c) 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;
- (d) 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;
- (e) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper annual wage notices, as required by the NYLL;
- (f) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper statements with every payment of wages, as required by the NYLL;
- (g) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (h) 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 District 12 in New York. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL, including being paid overtime compensation 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.

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:

#### **Eric Basulto**

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

80. From on or around July 14, 2013 to November 2013, Defendants paid Basulto \$30 per hour. From in or around November 2013 to May 23, 2014, Defendants paid Basulto \$300 per day. For instance, payroll records for the week ending November 24, 2013, state that Basulto worked "5 days" at a rate of "\$300" for a total of "\$1,500," while payroll records for the week ending March 2, 2014, state that Basulto worked "4 days" at a rate of "\$300" for a total of "\$1,200." Throughout his employment, Basulto was paid in cash.

81. During his employment, Basulto generally worked the following scheduled hours, unless he missed time for vacation, sick days and/or holidays:

- (a) On or around July 14, 2013 to September 2013: Six to seven days per week from approximately 1:00 p.m. to 11:30 p.m. (averaging approximately 63 to 73.5 hours per workweek); and

(b) In or around September 2013 to May 23, 2014: Tuesday, Wednesday, Thursday, and Friday from approximately 1:00 p.m. to 12:00 a.m., and Saturday and Sunday from approximately 9:00 a.m. to 8:00 p.m. or 2:00 p.m. to 12:00 a.m. (averaging approximately 64 to 66 hours per workweek).

82. Defendants consistently suffered or permitted Basulto to work over 40 hours per week as a cook. During such workweeks, Defendants did not compensate Basulto at time and one-half his regular hourly rate for all of the overtime hours he worked. Rather, from on or around July 14, 2013 to November 2013, Defendants paid Basulto at his “straight time” hourly rate for all hours worked, and from in or around November 2013 to May 23, 2014, Defendants paid Basulto with a fixed daily salary.

83. Defendants were required to pay Basulto at time and one-half his regular hourly rate for all hours worked beyond 40 per workweek.

84. Defendants suffered or permitted Basulto to work over 10 hours per day. Defendants did not pay Basulto 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.

85. Defendants have not kept accurate records of wages earned, or of hours worked by Basulto. Defendants did not require Basulto to punch in or out using their time recording system. As such, Basulto was not compensated for all of the hours he was suffered or permitted to work.

86. Defendants failed to furnish Basulto with proper annual wage notices, as required by the NYLL.

87. Defendants failed to furnish Basulto with a proper statement with every payment of wages, as required by the NYLL.

**Enrique Toxtle**

88. Defendants have not paid Toxtle the proper overtime compensation and spread-of-hours pay for all of the time that he has been suffered or permitted to work each workweek.

89. Throughout his employment, Defendants have paid Toxtle a fixed daily salary ranging from \$100 to \$125 per day, regardless of the total hours he has worked each day and workweek. For instance, according to payroll records for the week ending April 6, 2014, it states that Toxtle worked “5 days” at a rate of “\$125” for a total of “\$625.” Toxtle was paid in cash until in or around June 2014, and he has been paid half in cash and half in check since that time.

90. During his employment, Toxtle has generally worked the following scheduled hours, unless he missed time for vacation, sick days and/or holidays:

- (a) In or around July 2013 to September 2014: Wednesday, Thursday, and Friday from approximately 2:00 p.m. to 12:00 a.m., and Saturday and Sunday from approximately 7:00 a.m. to 12:00 a.m. (averaging approximately 64 hours per workweek).

91. Defendants have consistently suffered or permitted Toxtle to work over 40 hours per week as a line cook. During such workweeks, Defendants have not compensated Toxtle at time and one-half his regular hourly rate for all of the overtime hours he has worked, but rather paid Toxtle a fixed daily salary regardless of the amount of hours he worked in a workweek.

92. Defendants have been required to pay Toxtle at time and one-half his regular hourly rate for all hours worked beyond 40 per workweek.

93. Defendants have suffered or permitted Toxtle to work over 10 hours per day. Defendants have not paid Toxtle 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 – has been greater than 10 hours.

94. Defendants have not kept accurate records of wages earned, or of hours worked by Toxtle. Defendants have not required Toxtle to punch in or out using their time recording system. As such, Toxtle has not been compensated for all of the hours he has been suffered or permitted to work.

95. Defendants have failed to furnish Toxtle with proper annual wage notices, as required by the NYLL.

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

**Jose Juan Hernandez**

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

98. Throughout his employment, Defendants paid Hernandez a fixed daily rate of approximately \$140, regardless of the total hours he worked each day and workweek. For instance, payroll records for the week ending April 6, 2014 state that Hernandez worked “5 days” at a rate of “\$140” for a total of “\$700.” Throughout his employment, Hernandez was paid in cash.

99. Throughout his employment, Hernandez generally worked the following scheduled hours, unless he missed time for vacation, sick days and/or holidays: Tuesday and Thursday from approximately 2:00 p.m. to 12:00 a.m., Friday from approximately 2:00 p.m. to 11:00 p.m., and Saturday and Sunday from approximately 7:00 a.m. to 5:00 p.m. (averaging approximately 49 hours per workweek).

100. Defendants consistently suffered or permitted Hernandez to work over 40 hours per week as a line cook. During such workweeks, Defendants did not compensate Hernandez at time and one-half his regular hourly rate for all of the overtime hours he worked, but rather paid Hernandez a fixed daily salary regardless of the amount of hours he worked in a workweek.

101. Defendants were required to pay Hernandez at time and one-half his regular hourly rate for all hours worked beyond 40 per workweek.

102. Defendants suffered or permitted Hernandez to work over 10 hours per day. Defendants did not pay Hernandez 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.

103. Defendants have not kept accurate records of wages earned, or of hours worked by Hernandez. Defendants did not require Hernandez to punch in or out using their time recording system. As such, Hernandez has not been compensated for all of the hours he has been suffered or permitted to work.

104. Defendants failed to furnish Hernandez with proper annual wage notices, as required by the NYLL.

105. Defendants failed to furnish Hernandez with a proper statement with every payment of wages, as required by the NYLL.

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

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

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

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

109. 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.*

110. 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.*

111. 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.*

112. 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.

113. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective overtime compensation at a rate of time and one-half their regular hourly wage rate for all hours worked in excess of 40 per workweek, as required under the FLSA.

114. 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.

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

116. 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).



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

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

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

119. 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.

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

121. 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.

122. Defendants have failed to pay Plaintiffs and the members of the Rule 23 Class overtime wages at a rate of time and one-half their regular hourly rates for all hours worked in excess of 40 per workweek, as required under the NYLL and the supporting New York State Department of Labor Regulations.

123. 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.

124. 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.

125. 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.

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

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

127. 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.

128. 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.

129. 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.

#### **FOURTH CAUSE OF ACTION**

##### **New York Labor Law – Failure to Provide Annual Wage Notices (Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

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

131. Defendants have willfully failed to furnish Plaintiffs and the members of the Rule 23 Class with annual 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.

132. 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.

133. 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 annual 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).

**FIFTH CAUSE OF ACTION**  
**New York Labor Law – Failure to Provide Wage Statements**  
**(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

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

135. 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.

136. 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.

137. 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 at, 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 District 12. 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 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 overtime compensation, spread-of-hours pay, 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 annual 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  
December 19, 2014

Respectfully submitted,



\_\_\_\_\_  
Brian S. Schaffer

**FITAPELLI & SCHAFFER, LLP**

Joseph A. Fitapelli

Brian S. Schaffer

Nicholas P. Melito

475 Park Avenue South, 12<sup>th</sup> Floor

New York, NY 10016

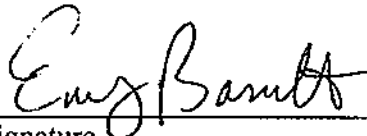
Telephone: (212) 300-0375

*Attorneys for Plaintiffs and  
the Putative Class*

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against DISTRICT 12 RESTAURANT and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216 (b).

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

  
Signature

ERIC BASULTO  
Full Legal Name (Print)



**FORMULARIO DE CONSENTIMIENTO DE UNIÓN**

1. Doy mi consentimiento para ser parte demandante en una demanda contra DISTRICT 12 RESTAURANT 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).

2. Al firmar y devolver este formulario de consentimiento, yo designo Fitapelli & Schaffer, LLP ("La Firma") para representarme y hacer decisiones en mi defensa acerca del caso y cualquier acuerdo extrajudicial. Entiendo que costos razonables hechos en mi defensa serán deducido de cualquier acuerdo extrajudicial o juicio será prorrateado entre todos los otros demandantes. Entiendo que la firma peticionara con la Corte para conseguir los costos de abogado de cualquier acuerdo extrajudicial o juicio en la suma que será el mayor de lo siguiente: (1) la suma "lodestar", que es calculada por multiplicar una tarifa por hora razonable por los números de horas dedicado a la demanda, o (2) 1/3 del total bruto del acuerdo judicial o juicio. Estoy de acuerdo de ser vinculado a cualquier proceso legal de este asunto por la Corte, sea favorable o desfavorable.



\_\_\_\_\_  
Firma (Signature)

Enrique Toxtle

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





**FORMULARIO DE CONSENTIMIENTO DE UNIÓN**

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\_\_\_\_\_  
Firma (Signature)

JOSÉ SUAR HERNÁNDEZ

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

