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| USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>06/21/2017</u> |
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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| <p>JOSE LUIS ORTIZ, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>GRACE 365 GROUP, LLC d/b/a Nick's Pizzabar and HANOVER VENTURES, LLC,</p> <p style="text-align: center;">Defendants.</p> |
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No: 17 Civ. 1848 (RMB)(KHP)

**STIPULATION REGARDING CONDITIONAL COLLECTIVE ACTION
CERTIFICATION**

WHEREAS, Jose Luiz Ortiz commenced this putative collective action under the Fair Labor Standards Act on March 13, 2017;

WHEREAS, Plaintiff and Defendants Grace 365 Group, LLC and Hanover Ventures, LLC (collectively, "Defendants") have reached agreement regarding the scope of conditional collective action certification and issuance of notice in this matter;

NOW THEREFORE, Plaintiff and Defendants (collectively, the "Parties"), through their undersigned counsel, hereby stipulate and agree as follows:

1. The Parties stipulate and consent to the conditional certification of a FLSA collective action consisting of:

All current and former delivery workers who have worked at Nick's Pizzabar and who have been paid less than the full statutory minimum wage rate at any time between November 1, 2014 and the present.

2. The parties have negotiated a form of FLSA § 216(b) notice ("Notice") and consent to join form ("Consent") to be sent to the group identified above, which are attached hereto as

Exhibit A.

3. Within fifteen (15) days of the Court's endorsement of this stipulation and approval of the attached Notice and Consent, Defendants shall provide Plaintiff's counsel with a list in Microsoft Excel format (the "List"), containing the following information: the full names, last known residence addresses, telephone numbers, last known email addresses, dates of employment, and location(s) worked of all current and former delivery workers who have worked at Nick's Pizzabar and who have been paid less than the full statutory minimum wage rate at any time between November 1, 2014 and the present. Plaintiff's counsel shall prepare a Spanish translation of the Court approved Notice and Consent form.

4. Within fifteen (15) days of Plaintiff's counsel's receipt of the List from Defendants, Plaintiff's counsel shall cause copies of the Notice and Consent, together with a stamped return envelope addressed to Plaintiff's counsel, to be sent by first class mail to the individuals set forth on the List.

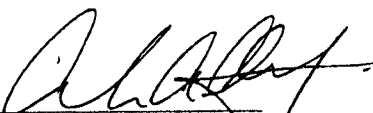
5. As will be set forth in the Notice, the putative participants in this action identified above shall have seventy-five (75) days from the mailing of the Notice and Consent to join this action by filing their Consent.

6. Consents shall be returned to Plaintiff's counsel.

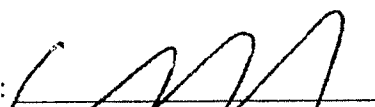
7. Defendants reserve their right to oppose certification of the collective action following the close of discovery in this matter.

Dated: New York, New York
June 20, 2017

FITAPELLI & SCHAFFER, LLP

By: 
Brian S. Schaffer, Esq.
Armando A. Ortiz
28 Liberty Street, 30th Floor
New York, New York 10016
Tel: (212) 300-0375
*Attorneys for Plaintiff and
the Putative Class*

LAW OFFICES OF WAYNE KREGER, P.A.

By: 
Wayne Kreger, Esq.
503 Fifth Avenue, Suite 1201
New York, New York 10016
Tel: (212) 956-2136
Attorney for Defendants

SO ORDERED.

Dated: New York, New York
June 21, _____, 2017



Hon. Katharine H. Parker, U.S.M.J. 

EXHIBIT A

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

JOSE LUIS ORTIZ, individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

GRACE 365 GROUP, LLC d/b/a Nick's
Pizzabar and HANOVER VENTURES, LLC,

Defendants.

No: 17 Civ. 1848 (RMB)(KHP)

COURT AUTHORIZED NOTICE

**If you have been employed as a Delivery Worker at NICK'S PIZZBAR
between November 1, 2014 and the present, please read this notice.**

A collective action lawsuit may affect your legal rights.

*This is a court-authorized notice.
This is not a solicitation from a lawyer.*

The purpose of this Notice is to advise you of the lawsuit that has been filed against Grace 365 Group, LLC and Hanover Ventures, LLC, and advise you of your legal rights in connection with that suit.

- The lawsuit claims Grace 365 Group, LLC and Hanover Ventures, LLC (collectively, "Defendants") failed to pay delivery workers the proper minimum wage and overtime pay, as well as other wages required by law. The lawsuit seeks to recover money owed in back wages and additional damages known as "liquidated damages," along with interest, attorneys' fees, and costs.
- Defendants deny any violation of the Fair Labor Standards Act ("FLSA") or any other law, and maintain that they paid delivery workers appropriately for all of the hours they worked.
- The Court has authorized the parties to send out this notice of the lawsuit. The Court has not decided who is right and who is wrong. Your legal rights may be affected, and you have a choice to make now.

Questions?

Contact Armando A. Ortiz of Fitapelli & Schaffer, LLP • (212) 300-0375 • Info@fslawfirm.com

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT | |
|--|--|
| ASK TO BE INCLUDED | <p>If you choose to be included in this case, you keep the possibility of getting money or benefits that may come from a trial or a settlement in this lawsuit.</p> <p><u>If you wish to be included in the federal portion of this lawsuit and represented by Fitapelli & Schaffer LLP, you must complete the form at the end of this Notice.</u></p> |
| DO NOTHING | <p>By doing nothing, you will not be included in the portion of the lawsuit relating to claims under the Fair Labor Standards Act. This means that you give up the possibility of getting money or benefits that may come from a trial or settlement in this lawsuit if those bringing the lawsuit are successful. However, you do not give up your right to bring your own action, but the limitations period on your claim continues to run. Each day that you do not take action to protect your claims, they diminish.</p> |

- Your options are explained in this notice. To ask to be included in the lawsuit, you must act before _____ (insert 75 days from date notice is sent out) _____.

This notice contains information that affects your rights. Please read it carefully.

Why did I get this notice?

You are getting this notice because Defendants' records show that you work or worked at Nick's Pizzabar as a delivery worker between November 1, 2014 and the present, have been paid less than the full statutory minimum wage rate.

What is this lawsuit about?

This lawsuit is about whether the Nick's Pizzabar properly paid delivery workers in accordance with federal and New York State labor law. In the portion of the lawsuit brought under the FLSA, the Complaint alleges that the Nick's Pizzabar was not entitled to pay Plaintiff and other delivery workers the tip credit minimum wage because the Nick's Pizzabar: (a) failed to provide delivery workers with notification of the tipped minimum wage rate or tip credit provisions of the FLSA; and (b) required delivery workers to spend more than 20% of their time performing non-tip producing side work.

Questions?

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What damages is the lawsuit seeking?

The lawsuit is seeking to recover unpaid minimum wages, overtime pay, deductions from wages, uniform-related expenses, and “liquidated damages,” which doubles the amount of wages owed. The lawsuit is also seeking recovery of costs and attorneys’ fees.

What happens if I join the lawsuit?

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective.

By joining this lawsuit, you designate Plaintiff Jose Luis Ortiz as your representative, and to the fullest extent possible, you designate Plaintiff and his counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiff relating to the lawsuit will be binding on you if you join the lawsuit.

While this suit is pending, as part of the discovery process you will be asked to provide documents or information relating to your employment at the Nick’s Pizzabar. For this reason, if you join the lawsuit you should preserve all documents relating to your employment currently in your possession.

Can the Nick’s Pizzabar and/or my current employer retaliate or fire me if I join the lawsuit?

No. It is a violation of Federal law for the Nick’s Pizzabar to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

Can I participate in this lawsuit even though, due to my immigration status, I did not work or am not working at the Nick’s Pizzabar legally?

Yes. Your immigration status does not affect your entitlement to recover back wages or to participate in this lawsuit.

How do I ask the Court to include me in the case?

Enclosed is a form called “Plaintiff Consent Form.” **If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Plaintiff Consent Form.** An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Plaintiff Consent Form must be sent to the following address:

**Fitapelli & Schaffer, LLP
28 Liberty Street, 30th Floor
New York, New York 10005**

Questions?

Contact Armando A. Ortiz of Fitapelli & Schaffer, LLP • (212) 300-0375 • Info@fslawfirm.com

You can also fax the Plaintiff Consent Form to (212) 564-5468 or e-mail the Plaintiff Consent Form to Info@Fslawfirm.com. The signed Plaintiff Consent Form must be postmarked by (75 days from mailing of Notice). **If your signed Plaintiff Consent Form is not postmarked by (75 days from mailing of Notice), you may not be able to participate in the federal law portion of this lawsuit or share in a monetary recovery.**

Do I have a lawyer in this case?

The Plaintiff in this lawsuit is represented by Fitapelli & Schaffer, LLP, 28 Liberty Street, 30th Floor, New York, New York 10005, (212) 300-0375, www.fslawfirm.com. If you submit a signed Consent Form, you will be represented by Fitapelli & Schaffer, LLP.

How will the lawyers be paid?

The named Plaintiff has entered into a contingency fee agreement with Plaintiff's counsel. Under this agreement, you are not responsible for paying any of the attorneys' fees or costs expended in the lawsuit. Plaintiff's counsel will be paid as follows: if there is a settlement, Plaintiff's counsel may ask the Court to award it up to 1/3 of any recovery obtained or may attempt to negotiate payment of attorneys' fees separate from and in addition to the Collective's recovery. If there is no recovery, you pay nothing.

What happens if I do nothing at all?

If you choose to not join this lawsuit, you will not be affected by any settlement or judgment rendered in this case, whether favorable or unfavorable.

This notice has been authorized by the Court.

This notice and its contents have been authorized by Magistrate Judge Katharine H. Parker of the United States District Court for the Southern District of New York. The Court has not yet ruled on whether Plaintiff's claims or Defendants' defenses have any merit.

Please do not write or call the Court about this notice.

Although the Court has approved the sending of this notice, the Court expresses no opinion on the merits of this lawsuit.

Questions?

Contact Armando A. Ortiz of Fitapelli & Schaffer, LLP • (212) 300-0375 • Info@fslawfirm.com

PLAINTIFF CONSENT FORM

1. I consent to be a party plaintiff in the lawsuit *JOSE LUIZ ORTIZ, v. GRACE 365 GROUP, LLC, et al.*, U.S. District Court, Southern District of New York, Civil Action No. 17 Civ. 1848 (RMB)(KHP), 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 Plaintiff Jose Luiz Ortiz and their counsel 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.

Name (printed)

Signature

Date

Best Telephone Number(s)

Email Address

Mailing Address

Mail, Fax or Email to:

Fitapelli & Schaffer, LLP
28 Liberty Street, 30th Floor
New York, New York 10005
Fax: (212) 564-5468
E-mail: Info@fslawfirm.com

Questions?

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