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

**BERNARDO MENDIETA and CARLOS ZAPATA,
on behalf of themselves and all others similarly
situated,**

Plaintiffs,

-against-

**RICARDO LLC d/b/a RICARDO STEAK HOUSE,
2145 RICARDO LLC, JAMES "JIMMY" MATEUS,
and EDWARD "EDDIE" MATEUS,**

Defendants.

**CLASS ACTION
COMPLAINT**

Plaintiffs Bernardo Mendieta and Carlos Zapata (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, and statutory penalties for Plaintiffs and their similarly situated co-workers – servers, busboys, runners, bartenders, cocktail waiters/waitresses, and other "Tipped Workers" – who work or have worked at Ricardo Steak House ("RSH").

2. Owned and operated by Ricardo LLC, 2145 Ricardo LLC, James "Jimmy" Mateus, and Edward "Eddie" Mateus (collectively, "Defendants"), RSH is a decade-old Hispano-Caribbean steak house serving several steak, seafood, and traditional Latin dishes that has been profiled and reviewed in numerous print and online publications, including the New York Times, New York

Magazine, The Village Voice, and Zagat. With its burgeoning success, RSH has seen its profile grow from little known neighborhood hotspot to plans for a multi-floor New York City culinary and nightlife destination.¹

3. Despite having two corporate entities involved, Defendants have been part of a single integrated enterprise that has jointly employed Tipped Workers at RSH. This enterprise is centrally controlled by James “Jimmy” Mateus (“J. Mateus”) and Edward “Eddie” Mateus (“E. Mateus”), who own, manage, and oversee operations at RSH.

4. Since RSH’s inception, Defendants maintained a policy and practice whereby Tipped Workers are not properly compensated in accordance with the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”).

5. Throughout Plaintiffs’ employment, Defendants required and/or were aware that Tipped Workers at RSH were consistently working over 10 hours per day and over 40 hours per week.

6. Throughout Plaintiffs’ employment, Defendants failed to properly compensate Tipped Workers at the proper minimum wage rate for all hours worked up to 40 hours per week. Rather than pay Tipped Workers at the full minimum wage rate, Defendants provided Tipped Workers with a shift rate regardless of the number of hours worked per shift.

7. Furthermore, as a result of Defendants’ shift rate compensation structure, Defendants maintained a policy and practice whereby Tipped Workers were denied premium overtime wages for any and all hours worked in excess of 40 per workweek.

8. Additionally, throughout Plaintiffs’ employment, Defendants maintained a policy

¹ Keith Williams, *At Ricardo Steak House, They’re Gonna Party Like It’s Your Birthday*, N.Y. Times, Jan. 4, 2015, at MB3, available at http://www.nytimes.com/2015/01/04/nyregion/at-ricardo-steak-house-theyre-gonna-party-like-its-your-birthday.html?_r=0.

and practice whereby Tipped Workers were not paid spread-of-hours pay when the length of the interval between the beginning and end of their workday was greater than 10 hours.

9. Lastly, throughout Plaintiffs' employment, Defendants failed to furnish Tipped Workers with proper wage notices or wage statements.

10. Defendants apply the same employment policies, practices, and procedures to all Tipped Workers at RSH.

11. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former Tipped 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.

12. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former Tipped 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

Bernardo Mendieta

13. Plaintiff Bernardo Mendieta ("Mendieta") is an adult individual who is a resident of Brooklyn, New York.

14. Mendieta was employed by Defendants as a server at RSH from in or around 2007 to in or around February 2015.

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

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

Carlos Zapata

17. Plaintiff Carlos Zapata (“Zapata”) is an adult individual who is a resident of Bronx, New York.

18. Zapata was employed by Defendants as a server at RSH from in or around September 2014 to on or about April 28, 2015.

19. Zapata is a covered employee within the meaning of the FLSA and the NYLL.

20. A written consent form for Zapata is being filed with this Class Action Complaint.

Defendants

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

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

23. Defendants are part of a single integrated enterprise that has jointly employed Plaintiffs and similarly situated employees at all times relevant.

24. Defendants’ operations are interrelated and unified.

25. During all relevant times, RSH was centrally controlled and/or owned by Defendants.

26. During all relevant times, Defendants centrally controlled the labor relations of RSH.

Ricardo LLC d/b/a Ricardo Steak House

27. Together with the other Defendants, Defendant Ricardo LLC d/b/a Ricardo Steak House has owned and/or operated RSH during the relevant period.

28. Ricardo LLC is a domestic limited liability company organized and existing under the laws of New York.

29. According to the Entity Information provided by the New York State Department of State Division of Corporations (“DOS”), the address to which the DOS will mail process on behalf of Ricardo LLC is “2145 SECOND AVENUE, NEW YORK, NEW YORK, 10029,” the address of RSH.

30. Ricardo LLC is the corporate identity that has appeared on Tipped Workers’ paystubs for work performed at RSH.

31. Ricardo LLC is the “Premises Name” that appears on the active New York State Liquor License for the premises doing business as “RICARDO STEAKHOUSE” located at “2145 2ND AVENUE, 110TH & 11TH STREETS, NEW YORK, NY 10029.”

32. Ricardo LLC 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.

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

34. Ricardo LLC has applied the same employment policies, practices, and procedures to all Tipped Workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, and spread-of-hours pay.

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

2145 Ricardo LLC

36. Together with the other Defendants, Defendant 2145 Ricardo LLC (“2145”) has owned and/or operated RSH during the relevant period.

37. 2145 is a domestic limited liability company organized and existing under the laws of New York.

38. According to the deed filed with New York City Department of Finance, Office of the City Register, 2145 is the owner of the building located at 2145 Second Avenue, New York, NY 10029, which is the location of RSH.

39. According to the Entity Information provided by the DOS, the address to which the DOS will mail process on behalf of 2145 is "JIMMY MATEUS, 348 BEACH 74TH ST, ARVERNE, NEW YORK, 11692," which is a property owned by J. Mateus.

40. 2145 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.

41. At all relevant times, 2145 has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

42. 2145 has applied the same employment policies, practices, and procedures to all Tipped Workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, and spread-of-hours pay.

43. Upon information and belief, at all relevant times 2145's annual gross volume of sales made or business done was not less than \$500,000.00.

James "Jimmy" Mateus

44. Upon information and belief, J. Mateus is a resident of the State of New York.

45. At all relevant times, J. Mateus has been a founder, owner, and operator of RSH.

46. J. Mateus identified himself as well as his brother E. Mateus as the "founders" of RSH in a New York Times article profiling RSH.

47. J. Mateus is listed as a "Principal" on the New York State Liquor License for the premises doing business as "RICARDO STEAKHOUSE" located at "2145 2ND AVENUE, 110TH & 11TH STREETS, NEW YORK, NY 10029."

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

49. At all relevant times, J. Mateus has had power over payroll decisions at RSH, including the power to retain time and/or wage records.

50. At all relevant times, J. Mateus has been actively involved in managing the day to day operations of RSH. In fact, J. Mateus is a constant presence at RSH and regularly supervises Plaintiffs and all Tipped Workers at RSH.

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

52. At all relevant times, J. Mateus has had the power to transfer the assets and/or liabilities of RSH.

53. At all relevant times, J. Mateus has had the power to declare bankruptcy on behalf of RSH.

54. At all relevant times, J. Mateus has had the power to enter into contracts on behalf of RSH.

55. At all relevant times, J. Mateus has had the power to close, shut down, and/or sell RSH.

56. J. Mateus 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.

Edward “Eddie” Mateus

57. Upon information and belief, E. Mateus is a resident of the State of New York.

58. At all relevant times, E. Mateus has been a founder, owner, and operator of RSH.

59. E. Mateus was identified as one of the “founders” of RSH in a New York Times

article profiling RSH.

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

61. At all relevant times, E. Mateus has had power over payroll decisions at RSH, including the power to retain time and/or wage records.

62. At all relevant times, E. Mateus has been actively involved in managing the day to day operations of RSH. In fact, E. Mateus is a constant presence at RSH and regularly supervises Plaintiffs and all Tipped Workers at RSH.

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

64. At all relevant times, E. Mateus has had the power to transfer the assets and/or liabilities of RSH.

65. At all relevant times, E. Mateus has had the power to declare bankruptcy on behalf of RSH.

66. At all relevant times, E. Mateus has had the power to enter into contracts on behalf of RSH.

67. At all relevant times, E. Mateus has had the power to close, shut down, and/or sell RSH.

68. E. Mateus 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

69. 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.

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

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

72. 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

73. Plaintiffs bring the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who have worked as Tipped Workers at RSH in New York, who elect to opt-in to this action (the "FLSA Collective").

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

75. Consistent with Defendants' policy and pattern or practice, Plaintiffs and the FLSA Collective were not paid minimum wages for all hours worked, and Plaintiff Mendieta and the FLSA Collective were not paid premium overtime compensation for all hours worked beyond 40 per workweek.

76. 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.

77. 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.

78. 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.

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

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

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

82. There are many similarly situated current and former Tipped 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).

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

84. 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

85. Plaintiffs bring the Third, Fourth, Fifth, Sixth, and Seventh Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as Tipped Workers

and similar employees at RSH in New York between July 16, 2009 and the date of final judgment in this matter (the "Rule 23 Class").

86. 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.

87. 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.

88. 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.

89. 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 Plaintiff Mendieta and the Rule 23 Class for hours worked in excess of 40 per workweek;
- (d) whether Defendants failed to provide Plaintiff Mendieta and the Rule 23 Class with spread-of-hours pay when the length of their workday was greater than 10 hours;
- (e) 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;

- (f) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper wage notices, as required by the NYLL;
- (g) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with a proper statement with every payment of wages, as required by the NYLL;
- (h) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (i) the nature and extent of class-wide injury and the measure of damages for those injuries.

90. 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 Tipped Workers at RSH 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, 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.

91. 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.

92. 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.

93. 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.

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

PLAINTIFFS' FACTUAL ALLEGATIONS

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

Bernardo Mendieta

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

97. Throughout the duration of his employment at RSH, Mendieta received either cash payments or paychecks from Defendants that did not properly record or compensate him for all of the hours that he worked.

98. Defendants did not record the total number of hours Mendieta worked.

99. Throughout the entire duration of his employment, Defendants generally paid Mendieta \$30.00 (thirty dollars) per shift regardless of the number of hours actually worked. From in or around 2008 to in or around 2013, if Plaintiff Mendieta worked a shift on a Friday or Saturday, he received zero wages from Defendants.

100. At all times relevant, Mendieta was entitled to receive the full statutory minimum wage rate for the first 40 hours of work each week.

101. Defendants suffered or permitted Mendieta to work over 40 hours per week as a server. During such workweeks, Defendants failed to compensate Mendieta at time and one-half the full statutory minimum wage rate for all hours worked beyond 40.

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

- (a) In or around 2007 to in or around 2010: Mendieta worked five days per week. Sundays, Wednesdays, and Thursdays from approximately 2:30 p.m. to 12:00/1:00 a.m., and Fridays and Saturdays from approximately 2:30 p.m. to 1:00/2:00 a.m. (averaging approximately 51 hours per workweek);
- (b) In or around 2010 to in or around 2013: Mendieta worked five days per week. Sundays, Wednesdays, and Thursdays from approximately 2:30 p.m. to 12:00/1:00 a.m., and Fridays and Saturdays from approximately 11:00 a.m. to 1:00/2:00 a.m. (averaging approximately 59 hours per workweek); and
- (c) In or around 2013 to in or around February 2015: Mendieta worked five days per week. Sundays, Wednesdays, and Thursdays from approximately 2:30 p.m. to 12:00/1:00 a.m., and Fridays and Saturdays from approximately 2:30 p.m. to 1:00/2:00 a.m. (averaging approximately 51 hours per workweek).

103. Defendants have been required to pay Mendieta at the full statutory minimum wage rate for all hours up to and including 40 hours per workweek and at time and one-half the full statutory minimum wage rate for all hours worked beyond 40 per workweek. Defendants' shift rate compensation structure was intended to compensate Mendieta for work performed during a shift regardless of the number of hours worked. Thus, during an average week in January 2015, Mendieta would have earned \$150.00 (\$30.00 multiplied by 5) for all hours worked during that workweek. However, Mendieta should have received a total of \$494.38 in hourly compensation (\$8.75 per hour multiplied by 40 hours in regular pay plus \$13.125 per hour multiplied by 11 hours in premium overtime pay).

104. Defendants suffered or permitted Mendieta to work over 10 hours per day. Defendants did not pay Mendieta 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.

105. Defendants did not keep accurate records of wages earned, or of hours worked by Mendieta. Defendants did not require Mendieta to punch in or out using a time recording system while at RSH. As such, Mendieta has not been compensated for all of the hours he suffered or has been permitted to work.

106. Defendants have failed to furnish Mendieta with annual wage notices, as required by the NYLL.

107. Defendants have failed to furnish Mendieta with accurate statements of wages, hours worked, rates paid, and gross wages with every payment of wages, as required by the NYLL.

Carlos Zapata

108. Defendants have not paid Zapata the proper minimum wage for all of the time that he suffered or has been permitted to work each workweek.

109. Throughout the duration of his employment, Zapata received either cash payments or paychecks from Defendants that did not properly record or compensate him for all of the hours that he worked.

110. Defendants did not record the total number of hours Zapata worked.

111. Throughout the entire duration of his employment, Defendants generally paid Zapata \$30.00 (thirty dollars) per shift regardless of the number of hours actually worked.

112. At all times relevant, Zapata was entitled to receive the full statutory minimum wage rate for the first 40 hours of work each week.

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

(a) In or around September 2014 to on or about April 28, 2015: Mondays, Tuesdays, and Wednesdays from approximately 3:00 p.m. to 12:00/1:00 a.m. (averaging approximately 28.5 hours per workweek after deducting daily half-hour meal breaks).

114. Defendants have been required to pay Zapata at the full statutory minimum wage rate for all hours up to and including 40 hours per workweek. Defendants' shift rate compensation structure was intended to compensate Zapata for work performed during a shift regardless of the number of hours worked. Thus, during an average week in January 2015, Zapata would have earned \$90.00 (\$30.00 multiplied by 3) for all hours worked during that workweek. However, Zapata should have received a total of \$249.38 in hourly compensation (\$8.75 per hour multiplied by 28.5 hours).

115. Defendants did not keep accurate records of wages earned, or of hours worked by Zapata. Defendants did not require Zapata to punch in or out using a time recording system while at RSH. As such, Zapata has not been compensated for all of the hours he suffered or has been permitted to work.

116. Defendants have failed to furnish Zapata with annual wage notices, as required by the NYLL.

117. Defendants have failed to furnish Zapata with accurate statements of wages, hours worked, rates paid, and gross wages 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)

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

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

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

121. 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.*

122. 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.*

123. 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.*

124. 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.

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

126. 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.

127. 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.

128. 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.

129. 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.*

130. 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 Plaintiff Mendieta and the FLSA Collective)

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

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

133. Plaintiff Mendieta has consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b).

134. At all times relevant, Plaintiff Mendieta 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.*

135. At all times relevant, Plaintiff Mendieta and the members of the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 201 *et seq.*

136. At all times relevant, Defendants have been employers of Plaintiff Mendieta 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.*

137. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff Mendieta and the members of the FLSA Collective.

138. Defendants have failed to pay Plaintiff Mendieta and the members of the FLSA Collective overtime wages to which they have been entitled under the FLSA.

139. Defendants have failed to pay Plaintiff Mendieta 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.

140. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith

effort to comply with the FLSA with respect to the compensation of Plaintiff Mendieta and the members of the FLSA Collective.

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

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

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

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

145. 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.

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

147. 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.

148. 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.

149. 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 Plaintiffs 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 August 22, 2008 through July 23, 2009; (b) \$7.25 per hour for all hours worked from July 24, 2009 through December 30, 2013; (c) \$8.00 per hour for all hours worked from December 31, 2013 through December 30, 2014; and (d) \$8.75 per hour for all hours worked from December 31, 2014 to the present.

150. Prior to January 1, 2011, Defendants failed to furnish with every payment of wages to Plaintiff and the members of the Rule 23 Class a statement listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, 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 were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

151. Prior to January 1, 2011, Defendants 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 were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

152. Since January 1, 2011, Defendants have failed to notify Plaintiffs and the members of the Rule 23 Class of the tip credit in writing 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 during this time period.

153. 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.

154. 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 Plaintiff Mendieta and the members of the Rule 23 Class)

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

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

157. At all times relevant, Plaintiff Mendieta and the members of the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiff Mendieta and the members of the Rule 23 Class within the meaning of the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

158. At all times relevant, Plaintiff Mendieta and the members of the Rule 23 Class have been covered by the NYLL.

159. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff Mendieta and the members of the Rule 23 Class.

160. Defendants have failed to pay Plaintiff Mendieta 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.

161. Defendants have failed to pay Plaintiff Mendieta and the members of the Rule 23 Class overtime at a rate of time and one-half their regular hourly wage rate for all hours worked in excess of 40 per workweek.

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

163. Through their knowing or intentional failure to pay Plaintiff Mendieta 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.

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

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

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

166. Defendants have willfully failed to pay Plaintiff Mendieta 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.

167. Through their knowing or intentional failure to pay Plaintiff Mendieta 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.

168. Due to Defendants' violations of the NYLL, Plaintiff Mendieta 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 – Failure to Provide Proper Wage Notices
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

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

170. Defendants have willfully failed to supply 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 Plaintiffs and the members of the Rule 23 Class as their primary language, containing Plaintiffs' and the members of the Rule 23 Class' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; 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.

171. 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.

172. 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 each day that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

SEVENTH 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)**

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

174. Defendants have willfully failed to supply Plaintiffs and the members of the Rule 23 Class with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

175. Through their knowing or intentional failure to provide Plaintiffs and the members of the Rule 23 Class with the accurate 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.

176. 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 two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with accurate wage statements, or a total of five thousand 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 Tipped 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 RSH in New York. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid minimum wages, overtime 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, 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 day that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with wage notices, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

I. Statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with accurate wage statements, or a total of five thousand 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;

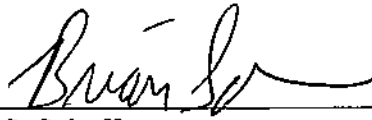
L. Reasonable attorneys' fees and costs of the action; and

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

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Dated: New York, New York
July 16, 2015

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brian S. Schaffer", written over a horizontal line.

Brian S. Schaffer

FITAPELLI & SCHAFFER, LLP

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*Attorneys for Plaintiffs and
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