

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICARDO BARCENAS, *on behalf of himself,
FLSA Collective Plaintiffs and the Class,*

Plaintiff,

v.

ERMINIA RESTAURANT a/k/a ERMINIA
CORP. d/b/a LATTANZI RESTAURANT,
VITTORIO LATTANZI, and FRANCO PAUL
LATTANZI,

Defendants.

Case No.: 1: 20-cv-01924-LGS

~~PROPOSED~~ ORDER
GRANTING CONDITIONAL
COLLECTIVE CERTIFICATION
PURSUANT TO 29 U.S.C. 216(b)

It is hereby ORDERED as follows:

(1) The Court grants conditional certification of Plaintiff's claims pursuant to the Fair Labor Standards Act ("FLSA") as a representative collective action pursuant to 29 U.S.C. § 216(b) on behalf of all current and former non-exempt tipped employees, including but not limited to waiters runners, bussers, and bartenders persons, and all persons who underwent a training period while employed by Lattanzi Restaurant on or after the date that is three (3) years and one hundred and eight days (calculated to reflect the below tolling) before the filing of the Complaint ("Covered Employees").

(2) The Court approves the distribution of the notice of this FLSA action to Covered Employees, and including a consent form (or opt-in form) as authorized by the FLSA.

(3) The Court approves the proposed FLSA notice of this action and the consent form, attached as **EXHIBIT A**, to be sent to all non-exempt personnel who have worked at Lattanzi Restaurant on or on or after the date that is three (3) years and one hundred and eight days before the filing of the Complaint.

(4) The Court approves the consent forms of opt-in plaintiffs to be sent directly to Plaintiff's counsel.

(5) Within 30 days of this Order, Defendants are to produce in Microsoft Excel or Microsoft Word format the names, last known mailing addresses, email addresses and all known telephone numbers of all non-exempt employees (including front and back of house staff) who have worked at Lattanzi Restaurant and who were either tipped and/or underwent training on or after the date that is three (3) years and one hundred and eight days before the filing of the Complaint in this action.

(6) The Court approves the posting of the notice, along with the consent forms, in Lattanzi Restaurant where Covered Employees are employed, by Plaintiff's counsel at a mutual agreeable time during regular business hours.

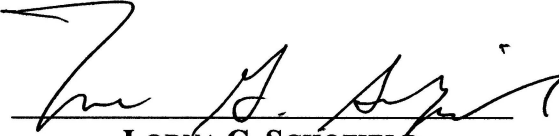
(7) The Court approves equitable tolling of the FLSA statute of limitations between the dates of March 20, 2020 and July 6, 2020.

(8) All potential collective action members must opt-in by mailing or returning the executed consent form within sixty (60) days following the date of mailing of the notice, which shall be filed by Plaintiff with the Clerk of the Court.

The Clerk of Court is respectfully directed to close the motion at Docket No. 33.

So Ordered.

Dated: December 9, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

,UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RICARDO BARCENAS, *on behalf of himself, FLSA Collective Plaintiffs and the Class,*

Plaintiff,

v.

ERMINIA RESTAURANT a/k/a ERMINIA CORP. d/b/a LATTANZI RESTAURANT, VITTORIO LATTANZI, and FRANCO PAUL LATTANZI,

Defendants.

Case No.: 1: 20-cv-01924-LGS

Please read this notice if you are (1) a former or current employee who underwent a training period (including but not limited to kitchen employees and tipped employees who underwent a training period), OR (2) a former and current tipped employee (including but not limited to waiters runners, bussers, and bartenders), employed by LATTANZI RESTAURANT at any time between November 29, 2016 and the present

Former employee RICARDO BARCENAS (“Plaintiff”) has sued ERMINIA RESTAURANT a/k/a ERMINIA CORP. d/b/a LATTANZI RESTAURANT (“Lattanzi”), VITTORIO LATTANZI, and FRANCO PAUL LATTANZI, (collectively, “Defendants”), alleging (1) unpaid wages, (2) unpaid wages due to invalid tip credit, (3) illegally retained gratuities, (4) failure to provide valid notice of the tip credit allowance claimed, (5) statutory penalties, (6) liquidated damages and (7) attorneys’ fees and costs.

The purpose of this Notice is to advise you of your right to participate in this lawsuit under the Fair Labor Standards Act (“FLSA”). This Notice applies only to the FLSA collective action claims, not to the class action claim brought under the New York Labor Law (“NYLL”).

Defendants deny that Plaintiff’s claims have merit and maintain that all employees, including Plaintiff, were paid appropriately for all hours worked. The Court has not decided the merits of any claims or any defenses asserted by any party to this lawsuit or whether any party is right or wrong. This Notice should not be taken as an indication that you should or should not join the lawsuit.

YOUR LEGAL RIGHTS

If you worked for Lattanzi Restaurant as a non-exempt tipped employee at any time between March 4, 2017 and the present and believe that you may be able to assert any of the claims described above, you have the right to participate in this lawsuit. It is your right to join or not to join this lawsuit. If you decide to join this lawsuit, it is illegal for Defendants to retaliate, discharge, take any adverse action, or discriminate against you in any way for participating in this lawsuit.

If you participate in this lawsuit’s FLSA claims, you will be required to provide information and answer questions, and you may be required to testify at a deposition and in court and to produce

documents. You will also be bound by the outcome of this lawsuit's FLSA claims, whether it is favorable or unfavorable to the plaintiffs.

To join this lawsuit, you must sign a "Consent to Sue" form, which is enclosed with this Notice, and send it on or before **[60 days from the date notice is sent out]**:

C. K. Lee, Esq.
Lee Litigation Group, PLLC
148 West 24th Street, 8th Floor
New York, NY 10011
Tel: (212) 465-1180
Fax: (212) 465-1181
Email: cklee@leelitigation.com

Alternatively, you can do nothing if you do not wish to bring claims against Defendants or you may hire your own lawyer to represent you at your own expense. You should be aware that the lawsuit must be brought within a specific period of time. Generally, the statute of limitations under the FLSA is two or three years from the date of the violation, and the statute of limitations under the NYLL is six years from the date of the violation. If you choose not to join this lawsuit, you do not need to do anything. If you do not join this lawsuit, you will not be a part of the case in any way and you will not be eligible to receive any benefits in the event that a settlement or judgment is obtained.

THE LAWYERS REPRESENTING PLAINTIFF

If you join this lawsuit and agree to be represented by Plaintiff through his attorneys, you will be represented by Lee Litigation Group, PLLC. The firm is handling the lawsuit on a "contingency fee" basis, which means that you do not have to pay any attorneys' fees or expenses for this lawsuit. If the plaintiff wins a favorable judgment, Lee Litigation Group, PLLC may ask the Court to award it up to one-third of the monetary recovery. You are not required to have Lee Litigation Group, PLLC represent you. If you want your own attorney to represent you in this lawsuit, however, you will be responsible for paying that attorneys' fees and expenses.

GETTING MORE INFORMATION

You can obtain more information about this lawsuit by contacting C.K. Lee, Esq.:

C. K. Lee, Esq.
Lee Litigation Group, PLLC
148 West 24th Street, 8th Floor
New York, NY 10011
Tel: (212) 465-1180
Fax: (212) 465-1181
Email: cklee@leelitigation.com

You can also contact Defendants' counsel by contacting Jason S. Giaimo, Esq.:

Jason S. Giaimo, Esq.
McLaughlin & Stern, LLP
260 Madison Avenue
New York, NY 10016
Tel.: (212) 448-1100
Fax: (212) 448-0066
Email: jgiaimo@mclaughlinstern.com

Do not call or write the Court or the Clerk's Office with questions.

Dated: New York, New York, _____, 2020.

"CONSENT TO SUE" FORM

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICARDO BARCENAS, *on behalf of himself, FLSA Collective Plaintiffs and the Class,*

Plaintiff,

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ERMINIA RESTAURANT a/k/a ERMINIA CORP. d/b/a
LATTANZI RESTAURANT, VITTORIO LATTANZI, and
FRANCO PAUL LATTANZI,

Defendants.

Case No.: 1: 20-cv-01924-LGS

If you are or were employed as a former or current non-exempt (1) who underwent a training period (including but not limited to kitchen employees and tipped employees who underwent a training period), OR (2) a tipped employee (including but not limited to waiters runners, bussers, and bartenders), employed by Lattanzi Restaurant at any time between November 29, 2016 and the present, complete and mail this "Consent to Sue" Form by [60 days from the date of notice] to:

C. K. Lee, Esq.
Lee Litigation Group, PLLC
148 West 24th Street, 8th Floor
New York, NY 10011
Tel: (212) 465-1180
Fax: (212) 465-1181

I hereby consent to join this lawsuit as a party plaintiff. By signing and returning this consent form, I hereby designate Lee Litigation Group, PLLC to represent me and make decisions on my behalf concerning the litigation and any settlement.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: _____

E-mail Address: _____

Dates of Employment at Lattanzi Restaurant

SIGNATURE: _____ Date: _____