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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN AMASTAL, PAMELA BENN,)
JUAN CAMARILLO, JOSE CHECO, JORGE)
DIAZ, EDISON DELEG, EUSEBIO ESPINOZA,)
MIGUEL ESPINOZA, CHRISTIAN FLORES,)
VICTOR FONSECA, CAMERINO GALICIA,)
ALBERTO GONZALEZ, IVAN GONZALEZ,)
MARCO GUAMAN, DAVID JUNCAL,)
JONATHAN MARTINEZ, FERNANDO MORAN,)
CESAR MUNOZ, CHRISTIAN ONCE, NESTOR)
PALAQUIBAY, WILSON PORTOVIEJO,)
FABIAN QUIROGA, JAVIER RAMIREZ,)
FREDDY RICHARDS, HUGO ROSAS,)
RICHARD SHIN, KLEVER VIRI, CORNELIO)
XOCHIMTL, and ABRAHAM ZUMBA,)

10-CV-7748 (RJH)
ECF Case

**AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiffs,)

-against-)

PASTA RESOURCES INC., IL POSTO)
MANAGEMENT LLC d/b/a DEL POSTO)
RISTORANTE, MARIO BATALI, LIDIA)
MATTICCHIO BASTIANICH, and JOSEPH)
BASTIANICH,)

Defendants.)

Plaintiffs, by their attorneys LEWIS, CLIFTON & NIKOLAIDIS, P.C., allege as follows:

NATURE OF ACTION

Plaintiffs allege that the defendants, Pasta Resources, Inc., Il Posto Management LLC
d/b/a Del Posto Ristorante, Mario Batali, Lidia Matticchio Bastianich, and Joseph Bastianich,

(collectively “the employer”), violated and continue to violate the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and the New York State Labor Law §§ 650 *et seq.*, by employing them without paying them the minimum wage, spread-of-hours pay and overtime. Defendants instead pay plaintiffs “the tipped minimum wage,” a minimum wage that is based upon the tip credit allowance available under 29 U.S.C. § 203(m) and 12 N.Y.C.R.R. § 137-1.5. However, defendants are not entitled to pay the tipped minimum wage because they retain portions of plaintiffs’ tips, including a percentage of the restaurant’s nightly wine sales and a portion of the gratuities paid by banquet patrons. Plaintiffs also allege that defendants unlawfully retain gratuities added to banquet bills in violation of New York Labor Law §§196-d and 198. Plaintiffs further allege that defendants violate General Business Law § 349(h) because, as a direct consequence of defendants having misled patrons who attend banquets, plaintiffs are deprived of the gratuities they would have received directly from such patrons had the consumers not been misled into believing that plaintiffs’ gratuities had already been paid. Finally, plaintiffs allege that defendants have failed to pay them for the weekly cost of uniform laundering in violation of New York Labor Law § 193 and supporting New York State Department of Labor regulations.

JURISDICTION AND VENUE

1. This Court has original federal question jurisdiction under 28 U.S.C. §1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, (“FLSA”). The Court has supplemental jurisdiction over the New York State law claims.
2. Venue is proper in this District because the unlawful employment practices occurred within the Southern District of New York.

PARTIES

3. Plaintiff Juan Amastal is a resident of New York State and is currently employed by defendants as a Food Runner. During his employment he also held the position of Back Waiter.

4. Plaintiff Pamela Benn is a resident of Florida and was employed by defendants as a Captain from April 2006 to April 2008.

5. Plaintiff Juan Camarillo is a resident of New York State and was employed by defendants as a Food Runner, Back Waiter and Front Waiter from November 2007 to October 2009.

6. Plaintiff Jose Checo is a resident of New York State and was employed by defendants as a Front Waiter from April 2007 to December 2009.

7. Plaintiff Jorge Diaz is a resident of New York State and is currently employed by defendants as a Food Runner. During his employment he also held the position of Back Waiter.

8. Plaintiff Edison Deleg is a resident of New York State and was employed by defendants as a Polisher and Stocker from March 2006 until January 30, 2011.

9. Plaintiff Eusebio Espinoza is a resident of New York State and was employed by defendants as a Back Waiter from 2007 until March 2010.

10. Plaintiff Miguel Espinoza is a resident of New York State and is currently employed by defendants as a Back Waiter. During his employment he also held the positions of Stocker and Barrister.

11. Plaintiff Christian Flores is a resident of New York State and is currently

employed by defendants as a Front Waiter. During his employment he also held the positions of Food Runner and Expediter.

12. Plaintiff Victor Fonseca is a resident of New York State and was employed by defendants as a Front Waiter from June 2007 through July 2010.

13. Plaintiff Camerino Galicia is a resident of New York State and is currently employed by defendants as an Expediter. During his employment he also held the position of Food Runner.

14. Plaintiff Alberto Gonzalez is a resident of New York State and was employed by defendants as a Backwaiter (June 2006 to September 2009) and Food Runner (October to November 2009).

15. Plaintiff Ivan Gonzalez is a resident of New York State and is currently employed by defendants as a Food Runner. During his employment he also held the positions of Polisher and Busser.

16. Plaintiff Marco Guaman is a resident of New York State and was employed by defendants as a Back Waiter from April 2006 to September 2009.

17. Plaintiff David Juncal is a resident of New York State and is currently employed by defendants as a Front Waiter.

18. Plaintiff Jonathan Martinez is a resident of New York State and was employed by defendants as a Stocker from October 2008 to October 2009.

19. Plaintiff Fernando Moran is a resident of New York State and is currently employed by defendants as a Back Waiter.

20. Plaintiff Cesar Munoz is a resident of New York State and was employed by defendants as a Busser from January 2006 to May 2009.

21. Plaintiff Christian Once a/k/a Christian Ponce is a resident of New York State and is currently employed by defendants as a Front Waiter. During his employment he also held the positions of Back Waiter and Food Runner.

22. Plaintiff Nestor Palaquibay is a resident of New York State and is currently employed by defendants as a Food Runner.

23. Plaintiff Wilson Portoviejo is a resident of New York State and was employed by defendants as a Back Waiter from January 2006 to August 2010.

24. Plaintiff Fabian Quiroga is a resident of New York State and was employed by defendants from 2006 until November 2010. During his employment he held the positions of Food Runner, Expediter, Front Waiter and Bartender.

25. Plaintiff Javier Ramirez is a resident of New York State and is currently employed by defendants as a Back Waiter.

26. Plaintiff Freddy Richards is a resident of New York State and was employed by defendants as a Back Waiter (April 2006 to June 2006) and as a Front Waiter (July 2006 to November 2009).

27. Plaintiff Hugo Rosas is a resident of New York State and is currently employed by defendants as a Front Waiter.

28. Plaintiff Richard Shin is a resident of New York State and was employed by defendants as a Bartendar from May 2007 to November 2007.

29. Plaintiff Klever Viri is a resident of New York State and is currently employed by defendants as a Front Waiter. During his employment he also held the position of Busser.

30. Plaintiff Cornelio Xochimitl is a resident of New York State and is

currently employed by defendants as a Back Waiter. During his employment he also held the position of Stocker.

31. Plaintiff Abraham Zumba is a resident of New York State and was employed by defendants as a Back Waiter (April 2007 to November 2009) and Food Runner (December 2009 to August 2010).

32. Upon information and belief, defendant Pasta Resources, Inc. is a New York Corporation with its principal office located at 45 East 20th Street, New York, New York, 10003.

33. Upon information and belief, Pasta Resources, Inc. has an annual gross volume of sales in excess of \$500,000.

34. Upon information and belief, defendant Il Posto Management LLC is a New York limited liability corporation that operates and does business as Del Posto Ristorante. Il Posto Management LLC is located at 45 East 20th Street, 3rd Floor, New York, New York 10003 and Del Posto Ristorante is located at 85 Tenth Avenue, New York, NY 10011.

35. Upon information and belief, Il Posto Management LLC d/b/a Del Posto Ristorante, (“Del Posto” or “the restaurant”) has annual gross volume of sales in excess of \$500,000.

36. Upon information and belief, defendant Mario Batali is an owner and operator of Del Posto. Upon information and belief, Batali exercises sufficient control over the restaurant’s day-to-day operations to be considered an employer of plaintiffs.

37. Upon information and belief, defendant Lidia Matticchio Bastianich is an

owner and operator of Del Posto. Upon information and belief, Lidia Matticchio Bastianich exercises sufficient control over the restaurant's day-to-day operations to be considered an employer of plaintiffs.

38. Upon information and belief, defendant Joseph Bastianich is an owner and operator of Del Posto. Upon information and belief, Joseph Bastianich exercises sufficient control over the restaurant's day-to-day operations to be considered an employer of plaintiffs.

PLAINTIFFS' FACTUAL ALLEGATIONS

39. Plaintiffs are present and former employees of Del Posto. Del Posto has regular dining rooms and separate dining rooms for banquets. The restaurant is open for dinner seven days a week and is open for lunch on weekdays. Plaintiffs work a combination of single and double shifts. A typical double shift exceeds ten hours in duration.

40. Plaintiffs are paid the statutory tipped minimum wage plus gratuities paid by the patrons. Prior to March or April 2011, defendants had never informed the plaintiffs about the tip-credit provisions of the FLSA. The tips are pooled and plaintiffs are given a percentage of the total tip pool. This percentage is based upon a point system which provides that Captains receive 6 points, Bartenders receive 5 points, Front Waiters and Expeditors receive 4 points, Food Runners receive 3 points, Back Waiters receive 2.5 points and Stockers receive 2 points. The amount of tips each employee receives per shift is indicated on a tip sheet. The tip sheet is prepared jointly by a Del Posto Captain and manager.

41. Not all of the tips are given to the tipped employees. Defendants currently retain for themselves an amount equal to 8% - 9% of the retail price paid by restaurant customers each night for wine. From December 2005 until June 2006, defendants also retained a percentage of the retail price paid by restaurant customers each night for chocolate and cheese.

42. Defendants unlawfully paid each of the plaintiffs an hourly rate below the federal and New York State minimum wage for regular and overtime hours worked.

43. Defendants were not entitled to reduce the minimum wage by applying the tip credit allowance that is available under 29 U.S.C. § 203(m) and 12 N.Y.C.R.R. §137-1.5 because defendants did not inform plaintiffs of the tip-credit provisions of the FLSA and retained portions of plaintiffs' tips, including but not limited to, an amount equal to 8% - 9% of the restaurant's nightly wine sales and a percentage of the nightly chocolate and cheese sales.

44. Every plaintiff worked 10 hours per day or more on at least one occasion during their employment at Del Posto. Many of the plaintiffs have worked double shifts one or more days per week. Each double shift exceeds 10 hours per day. Defendants did not compensate plaintiffs by paying them New York's "spread of hours" premium equal to one hour's pay at the minimum wage for each such workday.

45. Defendants require every member of the service staff to wear a uniform. Defendants do not clean or maintain such uniforms for the plaintiffs, nor do they pay plaintiffs for the cost of laundering their uniforms.

Banquets

46. It is defendants' practice to offer private rooms to accommodate dining for groups of 20 to 350 people for social and business events. These events, referred to as "banquets," are booked by both individuals and corporate patrons.

47. Upon information and belief, it is defendants' practice to memorialize an agreement with a banquet patron regarding the cost of food and beverages that will be served, the number of guests and any other special arrangements such as flowers, music and entertainment, in a Banquet Event Order form and a one-page contract. Upon information and belief, before

March 2010, the contract routinely stated in relevant part that “a service charge of twenty-three percent of the total food and beverage charge will be added to the patron’s bill, 18% of which is distributed to wait staff and other floor staff, the balance of which is distributed to sales, administrative, or supervisory personnel at the discretion of Del Posto.”

48. Upon information and belief, patrons reasonably believed that the service charge would be paid as a gratuity to each of the plaintiffs.

49. In March 2010, the Del Posto website advised the public that a 23% gratuity would be added to all food and beverage sales for banquets. However, shortly after plaintiffs advised the restaurant in writing of its unlawful wage and hour practices, defendants removed the words “23% gratuity” from its website.

50. Plaintiffs do not receive an hourly wage nor do they receive any tips for the work they perform on banquets. Instead, defendants pay plaintiffs a flat rate for each shift they work. Defendants typically pay Runners \$150, Back Waiters \$150, Front Waiters \$200 and Captains \$250 per shift. Defendants pay plaintiffs the same flat rate whether they are working one, two or three banquets per shift.

51. None of the plaintiffs has ever received a tip directly from a banquet patron.

52. Plaintiffs receive no compensation other than the flat rate for banquet work. Nor are plaintiffs paid overtime for work performed at banquets even if they have worked 40 or more hours per work week.

53. Upon information and belief, Del Posto’s banquet contract now states that: “A private dining fee of twenty-three percent (23%) of the total food and beverage charge will be added to the Patron’s bill, which will be distributed in such amounts at the discretion of

management to wait staff, other floor and back of the house staff, sales, administrative and supervisory personnel.”

54. Consent to sue forms for plaintiffs Eusubio Espinoza and Hugo Rosas are attached hereto as Exhibit A.

FACTS UNDERLYING RETALIATION CLAIMS

Edison Deleg

55. Edison Deleg was hired by Del Posto in March 2006 to fill the position of Polisher and Stocker. Deleg was responsible for cleaning the restaurant’s glassware, silverware and specialty dishware, stocking glasses and staffing the bread station. Deleg also frequently performed the work of Food Runner by transporting food from the kitchen to the dining room. On occasion he also prepared and served coffee. Deleg performed his job well.

56. In or around December 2009, Deleg began to meet with other Del Posto employees to discuss the restaurant’s unfair wage policies, verbal and physical abuse, and discrimination against Latino workers. Deleg and other workers complained to Del Posto’s General Manager, Jeffrey Katz, about wage theft and discrimination. These complaints did not resolve the problems the workers were raising and at times resulted in retaliation against those who complained.

57. Shortly thereafter, Deleg and other Del Posto employees met with the Restaurant Opportunities Center of New York, Inc. (“ROC-NY”), a not-for-profit restaurant employee advocacy group located in New York City. Through its “workplace justice” efforts, ROC-NY supports restaurant workers in seeking redress for violations of their rights under state and federal labor laws. In February 2010, Rekha Eanni-Rodriguez, Co-Director of ROC-NY,

drafted a letter to Del Posto which demanded an end to wage theft, verbal abuse and discrimination (“the February letter”). Deleg and others signed the letter.

58. On August 4, 2010, current and former Del Posto employees and supporters of Del Posto employees began distributing flyers and protesting outside of the restaurant to raise awareness about wage theft, discrimination and other problems in the restaurant. Deleg was present at this demonstration and his participation was highly visible because he recorded the protest with a video camera.

59. After the August 4, 2010 protest, Del Posto managers escalated their retaliation against Deleg and other plaintiffs as follows:

- a. On or about September 9, 2010, Deleg advised manager Maria Gabriella Naranjo that he wanted to update his address on his W-4 form. Naranjo told Deleg that he needed to provide Del Posto with a copy of his social security card and identification. Deleg correctly noted that the restaurant already had copies of these documents on file. Naranjo sent Deleg home and told him that if he did not return with these documents, he would not be allowed to work. After ROC-NY’s intervention, Deleg was allowed to return to work.
- b. On September 20, 2010, Deleg underwent emergency oral surgery. He promptly contacted Naranjo and another shift manager to advise them that he was unable to work for three days. When Deleg returned to work on September 24, 2010, Naranjo fired him. Deleg subsequently obtained a note from his doctor and was permitted to return to work.
- c. Deleg’s schedule rarely changed during the first four years of his employment. After he spoke out about wage theft and discrimination, Del Posto began changing his schedule. One schedule change in the fall of 2010 directly conflicted with classes Deleg was taking to improve his English language abilities, which class defendants were aware Deleg was taking.
- d. After August 2010, Del Posto managers issued frequent warnings to the employees who signed the February letter for violations of work rules, no matter how small the violation. The number of warnings increased even further after Deleg and other workers filed the complaint in this action on October 12, 2010.

- e. Shortly after October 12, 2010, a Del Posto manager, Andres Sbrizzo, asked Deleg, "Aren't you ashamed you get your living here and you are suing us?"
- f. Shortly after a protest, Jeffrey Katz, Del Posto's General Manager, told a group of employees: "If you don't like this job, you can leave."
- g. Other plaintiffs in this case were subjected to retaliation. In November 2010, Del Posto fired Fabian Quiroga and reduced or eliminated the shifts of several plaintiffs in this case including Fernando Moran, Christian Ponce, David Juncal and Nestor Palaquibay.
- h. On December 20, 2010 and January 14, 2010, plaintiffs' counsel wrote to Del Posto's attorneys informing them of multiple acts of retaliation against the Del Posto employees who had filed a lawsuit in this case, and advised them that if the retaliation did not cease, plaintiffs would seek the court's intervention.

60. On January 30, 2011, Naranjo advised Deleg that his English abilities were no longer sufficient and that he could not work on the regular floor of the restaurant. She told Deleg that he could only work banquets. At the time, Deleg was working one banquet shift per month, thus Del Posto had effectively terminated his employment.

61. On February 14, 2011, Deleg participated in a protest outside of Del Posto. During the protest, Naranjo stood and watched the protest through the glass window of the restaurant's front door. At one point, Naranjo looked directly at Deleg and made a throat cutting gesture, to which Deleg did not respond.

Fabian Quiroga

62. Fabian Quiroga was hired by Del Posto in 2006 as a Food Runner. After a few months, he was promoted to the position of Expediter. In mid-2009, Quiroga worked as a Front Waiter and in April 2010 as a Bartender. Del Posto terminated his employment in November 2010, just weeks after he filed the complaint in this action.

63. Like Deleg, Quiroga began meeting with ROC-NY in December 2009,

and signed the February letter. Shortly thereafter, Katz began changing Quiroga's schedule, giving him fewer banquet shifts. When Quiroga filed the instant complaint on October 12, 2010, Del Posto further reduced his schedule.

64. On or about November 13, 2010, Quiroga was at work when supporters of Del Posto employees began protesting outside Del Posto. Quiroga had just received his schedule for the following week, and was scheduled to work five days. While the protest was being held, Katz said, in the presence of a number of employees, "I know who's doing this in the restaurant. I want them gone." He was referring to the employees involved in this lawsuit. During the course of the evening, Katz moved Quiroga from the bar to the back of the restaurant. When Quiroga checked his schedule at the end of the evening, he saw that all five days had been removed. Another manager subsequently put Quiroga back on the schedule for one day. Although Del Posto never gave Quiroga a notice of termination, after the week of November 20, 2010, Del Posto did not assign him any more shifts.

AS AND FOR A FIRST CAUSE OF ACTION
(FLSA Minimum Wage Claims)

65. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 64 above.

66. At all relevant times, each defendant has been, and continues to be, an "employer" engaged in "commerce" and/or in the production of "goods" for "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, each defendant has employed "employees," including plaintiffs.

67. Defendants were required to pay directly to each plaintiff the applicable federal minimum wage rate for all hours worked.

68. Defendants were not entitled to reduce the minimum wage by applying the

tip credit allowance that is available under the FLSA, 29 U.S.C. § 203(m), and supporting federal regulations, including but not limited to 29 C.F.R. § 531.50 *et seq.*, because defendants did not inform plaintiffs of the tip-credit provisions of the FLSA and did not allow plaintiffs to retain all tips they received, in violation of the FLSA, 29 U.S.C. § 203(m).

69. Upon information and belief, defendants unlawfully retained portions of the tips received by plaintiffs in violation the FLSA, 229 U.S.C. § 203(m), and supporting regulations.

70. Throughout the limitations period covered by these claims, defendants knowingly failed to pay plaintiffs the applicable minimum wage for each hour worked.

71. Defendants' failure to pay plaintiffs the minimum wage was willful within the meaning the FLSA.

72. Plaintiffs seek damages in the amount of their respective unpaid compensation, liquidated damages, attorney's fees and costs, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION
(New York Labor Law Minimum Wage Claims)

73. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 72 above.

74. Defendants knowingly paid plaintiffs less than the New York State minimum wage, as established in Labor Law § 652 and supporting regulations of the New York State Department of Labor.

75. Defendants' failure to pay plaintiffs the minimum wage was willful within the meaning of Labor Law § 663.

76. As a result of defendants' willful violations of the Labor Law, plaintiffs are entitled to recover their unpaid compensation, liquidated damages as provided by the Labor Law, attorney's fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A THIRD CAUSE OF ACTION
(FLSA Overtime Claims)

77. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 76 above.

78. Throughout the limitations period covered by these claims, defendants knowingly failed to pay plaintiffs at one and one half times their regular hourly rate of pay for all hours worked in excess of 40 hours per workweek.

79. Defendants' failure to pay plaintiffs overtime was willful within the meaning of the FLSA.

80. Plaintiffs seek damages in the amount of their respective unpaid overtime compensation, liquidated damages as provided in the FLSA, attorney's fees and costs, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A FOURTH CAUSE OF ACTION
(New York Labor Law Overtime Claims)

81. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 80 above.

82. Defendants knowingly failed to pay plaintiffs the New York State overtime rate of one and one half times their regular hourly rate of pay for all hours worked in excess of 40 hours per workweek.

83. Defendants' failure to pay overtime was willful within the meaning of Labor Law § 663.

84. As a result of defendants' willful violations of the Labor Law, plaintiffs are entitled to recover their unpaid compensation, liquidated damages as provided by the Labor Law, attorneys' fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A FIFTH CAUSE OF ACTION
(Illegal Deductions from Gratuities, New York Labor Law § 196-d)

85. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 84 above.

86. Defendants retained portions of plaintiffs' tips by:

(a) Deducting a percentage of their tips each shift and using such tips to support the restaurant's wine and/or beverage programs;

(b) Deducting a percentage of their tips each shift and using such tips to offset the cost of the restaurant's chocolate and cheese service.

(c) Paying plaintiffs a flat rate for banquet work instead of a percentage of the total food and beverage charge as provided in banquet contracts.

87. Defendants unlawfully distributed the tips earned by plaintiffs to ineligible employees.

88. As a result of defendants willful violations of the Labor Law, plaintiffs are entitled to recover their respective unpaid compensation, liquidated damages as provided by Labor Law § 198, attorney's fees and costs, pre-and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A SIXTH CAUSE OF ACTION
(New York Spread of Hours Claims)

89. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 88 above.

90. Plaintiffs regularly worked more than 10 hours in a workday.

91. Defendants willfully and intentionally failed to compensate plaintiffs one hour's pay at the New York State minimum hourly wage rate on days in which they worked more than 10 hours, as required by New York law.

92. As a result of defendants' willful violations of the Labor Law, plaintiffs are entitled to recover their respective unpaid compensation, liquidated damages as provided by Labor Law § 198, attorney's fees and costs, pre-and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR A SEVENTH CAUSE OF ACTION
(General Business Law § 349(h) Claims)

93. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 92 above.

94. Defendants charged banquet patrons a 23% gratuity on the total food and beverage cost, which gratuity banquet patrons reasonably believed would be paid to each of the plaintiffs.

95. Defendants violated General Business Law § 349(h) because as a direct consequence of defendants having misled consumers who attend banquets, plaintiffs were deprived of the gratuities they would have received directly from such patrons had they not been misled into believing that plaintiffs' gratuity had not already been paid.

96. Defendants willfully and knowingly violated General Business Law § 349(h).

97. As a result of defendants' violations of General Business Law § 349(h), plaintiffs are entitled to recover their actual damages, attorney's fees, pre-and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(New York Labor Law Uniform Violations)

98. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 98 above.

99. Defendants failed to reimburse plaintiffs for the cost of laundering required uniforms in violation of Labor Law § 193 and supporting New York State Department of Labor regulations.

100. As a result of defendants' violation of the Labor Law, defendants are liable to plaintiffs for the cost of cleaning and maintaining such required uniforms.

AS AND FOR A NINTH CAUSE OF ACTION
(Deleg and Quiroga Retaliation Claims under the FLSA)

101. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 100 above.

102. By their aforescribed actions, defendants violated the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3) by terminating Deleg's and Quiroga's employment in retaliation for the exercise of their rights under the FLSA.

103. As a result of defendants' willful and unlawful conduct, Deleg and Quiroga are entitled to reinstatement and damages.

AS AND FOR A TENTH CAUSE OF ACTION
(Deleg and Quiroga Retaliation Claims under New York Labor Law)

104. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 103 above.

105. By their aforescribed actions, defendants violated Labor Law, § 215 by terminating Deleg's and Quiroga's employment in retaliation for the exercise of their rights under the Labor Law.

106. As a result of defendants' willful and unlawful conduct, plaintiffs Deleg and Quiroga are entitled to reinstatement and damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for a judgment against defendants awarding the following relief:

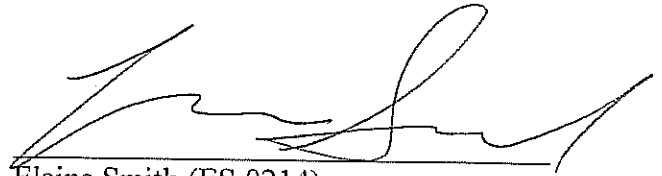
- a) An award of backpay;
- b) Liquidated damages;
- c) Attorney's fees and costs;
- d) Front pay to Deleg and Quiroga, or in the alternative, reinstatement to an appropriate position;
- e) Emotional distress damages to Deleg and Quiroga;
- f) Punitive damages;
- g) Pre-judgment and post-judgment interest; and
- h) Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues.

Dated: New York, New York
April 8, 2011

LEWIS, CLIFTON & NIKOLAIDIS, P.C.

A handwritten signature in black ink, appearing to read 'Elaine Smith', written over a horizontal line.

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EXHIBIT A

CONSENT TO SUE

I, Eusebio Espinoza, am a former employee of the defendants in this action. I consent to be the plaintiff in this action and understand that I have minimum wage and overtime claims under the Fair Labor Standards Act.

Eusebio Espinoza
EUSEBIO ESPINOZA

04/08/2011
Date

CONSENT TO SUE

I, Hugo Rosas, am a current employee of the defendants in this action. I consent to be the plaintiff in this action and understand that I have minimum wage and overtime claims under the Fair Labor Standards Act.


HUGO ROSAS

02/07/2011
Date