

LAW OFFICES OF WILLIAM CAFARO  
William Cafaro (WC2730)  
19 West 44<sup>th</sup> Street, Ste. 1500  
New York, New York 10036  
(212) 583-7400  
File No. 52608

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Case No.: 11-CV-2112

WILLIAM TEJADA,

Plaintiff,

-against-

**PLAINTIFF'S RULE  
26(a)(1) INITIAL  
DISCLOSURES**

OTTOMANELLI'S CAFE FRANCHISING CORP.  
d/b/a OTTOMANELLI BROTHERS NY GRILL,  
NICOLO OTTOMANELLI and JOSEPH  
OTTOMANELLI,

Defendants,

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Plaintiff WILLIAM TEJADA, by and through his attorneys the LAW OFFICES OF WILLIAM CAFARO, submits this disclosure statement pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure. Please be advised that pursuant to Federal Rule of Civil Procedure 26(e), plaintiff reserves his right to supplement the disclosures made herein in anticipation of further investigation and the discovery process.

**I. POTENTIAL WITNESSES**

The names of potential witness, and their contact information, if known, are as follows:

1. The named plaintiff William Tejada. The plaintiff should be contacted only through his attorneys, the Law Offices of William Cafaro.

2. The named plaintiff (in the amended complaint) Eduardo Rosa, who should be contacted only through his attorneys, the Law Offices of William Cafaro.
3. The named defendant Nicolo Ottomanelli. His contact information is known to his attorneys.
4. The named defendant Joseph Ottomanelli. His contact information is known to his attorneys.
5. Others yet to be identified employees and/or agents of the defendants who are aware of plaintiff's work schedule and/or pay.

## **II. DOCUMENTS**

Most of the documents and information relevant to plaintiff's claims in this action are in the possession, custody and control of the defendants. In the event that plaintiff comes into possession of any additional documents, he will make available those non-privileged and relevant documents that come into his possession, custody or control.

## **III. DAMAGES**

Plaintiff seeks back wages and liquidated damages pursuant to the Fair Labor Standards Act ("FLSA") and New York State Labor Law ("NYLL"), the precise amount of which are subject to proof at trial. Damages are to be calculated on the basis of certain factors; namely, the duration of plaintiff's employment, plaintiff's weekly work schedules, his rate of pay, and the prevailing minimum wages. These factors can be gauged from the complaint. Plaintiff has overtime claims pursuant to 29 U.S.C §§ 207, 216(b) and New York Labor Law Article 6 & 19 §§ 198, 663 and 12 NYCRR § 141 *et. seq.* A preliminary calculation of damages is as follows:

OVERTIME CLAIM

i. STATE (period of 3/28/05 – 1/1/08)

Plaintiff's RRP was \$13.00 – Overtime Deficiency  $\$13.00 \div 2 = \$6.50$

$\$6.50/\text{hr} \times 32 \text{ hrs/wk} \times 144 \text{ weeks} = \$29,952$

**\$29,952 in back wages; Liquidated Damages - \$7,488 TOTAL \$37,440.**

ii. STATE (period of 1/2/08 – 3/27/08)

Plaintiff's RRP was \$13.00 – Overtime Deficiency  $\$13.00 \div 2 = \$6.50$

$\$6.50/\text{hr} \times 20 \text{ hrs/wk} \times 12 \text{ weeks} = \$1,560$

**\$1,560 in back wages; Liquidated Damages - \$390 TOTAL \$1,950.**

iii. SPREAD OF HOURS (period of 3/28/05 – 1/1/06)

$6 \text{ days/wk} \times \$6.00 \text{ St. Min. Wage} \times 40 \text{ weeks} = \$1,440$

**\$1,440 spread of hours + Liquidated Damages of \$360 = \$1,800**

iv. SPREAD OF HOURS (period of 1/1/06 – 1/1/07)

$6 \text{ days/wk} \times \$6.75 \text{ St. Min. Wage} \times 52 \text{ weeks} = \$2,106$

**\$2,106 Spread of Hours + Liquidated Damages + \$2,632**

v. SPREAD OF HOURS (period of 1/1/07 – 1/1/08)

$6 \text{ days/wk} \times \$7.15 \text{ St. Min. Wage} \times 52 \text{ weeks} = \$2,231$

**\$1,859 Spread of Hours + Liquidated Damages = \$2,789**

vi. SPREAD OF HOURS (period of 1/1/08 – 1/1/09)

$5 \text{ days/wk} \times \$7.15 \text{ St. Min. Wage} \times 52 \text{ weeks} = \$1,859$

**\$1,859 Spread of Hours + Liquidated Damages = \$2,324**

vii. SPREAD OF HOURS (period of 1/1/09 – 11/24/10)

5 days/wk x \$7.25 St. Min. Wage x 99 weeks = \$3,589

**\$3,589 Spread of Hours + Liquidated Damages = \$4,486**

**Total Spread of Hours Claim = \$14,031**

viii. FLSA (period of 3/28/08 – 11/24/10)

Plaintiff's RRP was \$13.00 – Overtime Deficiency  $\$13.00 \div 2 = \$6.50$

\$6.50/hr x 20 hrs/wk x 135 weeks = \$17,550

**\$17,550 in back wages; Liquidated Damages - \$17,550 TOTAL \$35,100.**

TOTAL STATE OVERTIME \$39,390

TOTAL SPREAD OF HOURS \$14,031

TOTAL FED OVERTIME \$35,100

**TOTAL CLAIM \$88,521**

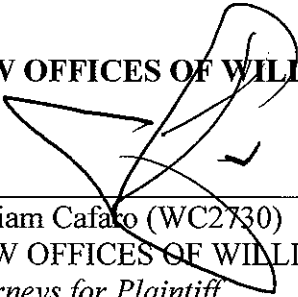
In addition, plaintiff seeks pre and post judgment interest, and a statutory right to reasonable attorneys' fees that are being incurred on an ongoing basis, as well as the costs and disbursements of this action, and reserves the right to aggregate federal and state liquidated damages, and any other further relief as the Court deems just, proper and equitable. Plaintiff's counsel has accrued approximately \$3,500 in attorney's fees to date. Plaintiff reserves the right to supplement the types of damages sought prior to trial based on discovery.

**IV. INSURANCE AGREEMENTS**

Plaintiff has no insurance agreement, and is unaware of whether the defendant has insurance which would provide coverage in this action.

Dated: New York, New York  
May 18, 2011

**LAW OFFICES OF WILLIAM CAFARO**



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William Cafaro (WC2730)  
LAW OFFICES OF WILLIAM CAFARO  
*Attorneys for Plaintiff*  
19 West 44<sup>th</sup> Street, Ste. 1500  
New York, New York 10036  
(212) 583-7400  
File No. 52608

TO:

Allen Breslow, Esq  
LAW OFFICE OF ALLEN B. BRESLOW  
6165 Jericho Turnpike  
Commack. NY 11725

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SOUTHERN DISTRICT OF NEW YORK

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-against-

**AFFIDAVIT OF SERVICE**

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NICOLO OTTOMANELLI and JOSEPH  
OTTOMANELLI,

Defendants,

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STATE OF NEW YORK  
COUNTY OF NEW YORK

Nicholas Duran, being duly sworn, says:

I am not a party to the action; I reside at Queens, NY and I am over 18 years of age.

On May 18, 2011, I served the within **PLAINTIFF'S RULE 26(a)(1) INITIAL DISCLOSURES** by depositing true copies thereof, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following at the last known address set forth below:

Allen Breslow, Esq  
LAW OFFICE OF ALLEN B. BRESLOW  
6165 Jericho Turnpike  
Commack. NY 11725

Sworn to before me  
on May 18, 2011

NOTARY PUBLIC

**WILLIAM CAFARO**  
Notary Public, State of New York  
No. 31-4869936  
Qualified in New York County  
Commission Expires Jan. 22, 2015

  
\_\_\_\_\_  
Nicholas Duran

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**PLAINTIFF'S RULE 26(a)(1) INITIAL DISCLOSURES**

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