

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CRISTELA HERNANDEZ,

Plaintiff, Index No.

- against -

PATRICIO FLORES, ANABEL FLORES, LUIS
HERNANDEZ, SIXTO MANUEL CIGARRA,
FAUSTO MENDOZA, and ENCUESTRO 103, CORP.
d/b/a ENCUESTRO LATINO and/or ENCUESTRO 103
RESTAURANT,

Defendants.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to submit to plaintiff's attorneys your answering papers to the Complaint in this action within 30 days after service of this summons. In case of your failure to submit answering papers, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
April 11, 2017

VIRGINIA & AMBINDER, LLP

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37-29 103rd Street
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PATRICIO FLORES
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FAUSTO MENDOZA
37-29 103rd Street
Corona, New York 11368

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CRISTELA HERNANDEZ,

Plaintiff, Index No.

- against -

COMPLAINT

PATRICIO FLORES, ANABEL FLORES, LUIS
HERNANDEZ, SIXTO MANUEL CIGARRA,
FAUSTO MENDOZA, and ENCUESTRO 103, CORP.
d/b/a ENCUESTRO LATINO and/or ENCUESTRO 103
RESTAURANT,

Defendants.

Plaintiff CRISTELA HERNANDEZ (“Plaintiff”), by her attorneys, Virginia & Ambinder, LLP alleges upon knowledge as to herself and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought against PATRICIO FLORES, ANABEL FLORES, LUIS HERNANDEZ, SIXTO MANUEL CIGARRA, FAUSTO MENDOZA (collectively “Individual Defendants”), and ENCUESTRO 103, CORP. d/b/a ENCUESTRO LATINO and/or ENCUESTRO 103 RESTAURANT (hereinafter “Encuentro”) (collectively “Defendants”) for sexual harassment, discrimination, and hostile work environment as a result of Plaintiff’s gender in violation of the New York State Human Rights Law, Executive Law § 296 *et seq.* (hereinafter “NYSHRL”) and the New York City Human Rights law, Administrative Code of the City of New York § 8-101 *et seq.* (herein after “NYCHRL”). This action is further brought pursuant to the New York Labor Law (“NYLL”) Article 19 §§ 650 *et seq.*, NYLL Article 6 §§ 190 *et seq.*, and 12 New York Codes, Rules, and Regulations (“NYCRR”) §§ 146-1.1 *et seq.* to recover for unlawful deductions, kickback of wages, retention of gratuities, recordkeeping violations, improperly withheld wages, and unpaid minimum wages, spread of hours compensation, and overtime

compensation owed to Plaintiff for work she performed for Defendants, and to recover for Defendants failure to furnish proper wage statements and wage notices.

2. Plaintiff has initiated this action seeking loss of past earnings, unpaid wages, compensatory, punitive and liquidated damages, civil action damages for wage and notice violations, interest, attorneys' fees, and costs.

PARTIES

3. Plaintiff Cristela Hernandez is a female who is currently a resident of the State of New York and was formerly employed by Defendants.

4. Upon information and belief, Defendant Encuentro is a business corporation incorporated under the laws of the State of New York, with its principal location at 37-29 103rd Street, Corona, New York 11368.

5. Upon information and belief, Defendants have employed more than 4 employees during all relevant times and are employers as defined under the NYCHRL, NYSHRL, and the NYLL and the supporting regulations.

6. Upon information and belief, Defendant PATRICIO FLORES was, at all relevant times, an officer, president, owner and/or shareholder of Encuentro.

7. Upon information and belief, Defendant ANABEL FLORES was, at all relevant times, an officer, president, owner and/or shareholder of Encuentro.

8. Upon information and belief, Defendant LUIS HERNANDEZ was, at all relevant times, an officer, president, owner and/or shareholder of Encuentro.

9. Upon information and belief, Defendant SIXTO MANUEL CIGARRA was, at all relevant times, an officer, president, owner and/or shareholder of Encuentro.

10. Upon information and belief, Defendant FAUSTO MENDOZA was, at all relevant times, an officer, president, owner and/or shareholder of Encuentro.

STATEMENT OF FACTS

11. Plaintiff worked for Defendants, performing work including serving and cleaning duties from approximately September 2013 until November 2016.

12. At all relevant times, Plaintiff was an employee of Defendants.

13. Plaintiff typically worked for Defendants approximately five (5) days per week from approximately 6:00 p.m. until 4:30 a.m. without a break.

14. Defendants paid Plaintiff at a flat rate per shift, regardless of the amount of hours that she worked or the amount of tips that she received. Defendants typically paid Plaintiff approximately \$30 per shift three (3) days per week, for the shifts that she worked on Tuesdays, Wednesdays, and Thursdays, and approximately \$14 per shift two (2) days per week, for the shifts that she worked on Fridays and Saturdays.

15. Defendants paid Plaintiff less than the applicable minimum wage.

16. Plaintiff regularly worked more than forty (40) hours per week.

17. Despite regularly working in excess of forty (40) hours per week, Defendants did not pay Plaintiff overtime compensation at a rate of one and one-half times her lawfully earned rate of pay for hours worked in excess of forty (40) in a week.

18. Plaintiff regularly worked more than ten (10) hours per shift.

19. Defendants did not pay Plaintiff an additional one hour of pay at the minimum wage rate when she worked more than 10 hours in a day.

20. Defendants never provided Plaintiff with a wage notice or wage statement reflecting, among other things, the wages she was paid or the hours that she worked.

21. Defendants did not provide Plaintiff with a notification at any point during her employment containing information such as, her rate or rates of pay and the basis thereof, whether she was paid by the hour, shift, day, or week, or the regular pay day designated by the Defendants.

22. Upon information and belief, Defendants willfully disregarded and purposefully evaded the record keeping requirements under New York labor laws by failing to maintain proper and complete records of the hours Plaintiff worked.

23. Throughout her time of employment with Defendants, Plaintiff was subjected to harassment and discrimination as a result of her gender.

24. Upon information and belief, Defendants maintained a policy and practice of requiring Plaintiff to drink beer and dance with customers.

25. Defendants' policy of requiring Plaintiff to drink alcohol and dance with customers was a condition of her employment.

26. Plaintiff would be reprimanded if she did not drink enough beers with customers during a shift.

27. As a result of this unlawful policy, Plaintiff was frequently subjected to unwanted and inappropriate touching and grabbing by customers, who were often intoxicated.

28. Despite Plaintiff's unwillingness to dance and drink alcohol with customers, she understood that her employment would be terminated if she did not do so.

29. Upon information and belief, Defendants were aware that customers would inappropriately grab and touch Plaintiff, and nonetheless continued to require her to dance with them.

30. Approximately every shift that Plaintiff worked she was forced to drink beer and dance with customers as a condition of her employment.

31. Plaintiff was told by Defendant Patricio Flores that if she refused to drink beer and/or dance with customers, she “knew where the door was.”

32. As a result, Plaintiff understood that if she complained about this policy and practice of being required to drink beer and dance with customers, and/or refused to comply with it, her employment would be terminated.

33. Defendants did not provide any notices to Plaintiff informing her of the tip credit in accordance with 12 NYCRR § 146-2.2 as required by 12 NYCRR § 146-1.3.

34. Defendants also did not provide a notice to Plaintiff that extra pay is required if the tips are insufficient to bring the employee up to the basic minimum hourly rate.

35. Plaintiff did not receive enough tips to bring her pay up to the basic minimum hourly wage rate in violation of 12 NYCRR § 146-1.3.

36. Upon information and belief, some of the money that customers intended to leave as tips for Plaintiff, was retained by Defendants.

37. Accordingly, Defendants are not entitled to avail themselves of the tip credit pursuant to 12 NYCRR § 146-1.3.

38. Upon information and belief, Defendants required Plaintiff to purchase alcohol and/or Defendants deducted the cost of alcohol from Plaintiff’s pay.

39. Upon information and belief Patricio Flores, Anabel Flores, Luis Hernandez, Sixto Manuel Cigarra, and Fausto Mendoza are officers, presidents, owners and/or shareholders of Encuentro Latino.

40. Upon information and belief, Individual Defendants dominated the day-to-day operating decisions and made major personnel decisions for Encuentro Latino.

41. Upon information and belief, Individual Defendants supervised and controlled the work that Plaintiff performed on a daily basis.

42. Upon information and belief, Individual Defendants had the authority to set Plaintiff's schedule and had the power to hire and fire Plaintiff.

43. Upon information and belief, Individual Defendants had the authority to set Plaintiff's rate of pay, and were responsible for maintaining her employment records.

44. Upon information and belief, Defendants are employers within the meaning of the NYLL and the supporting New York State Department of Labor Regulations.

45. Plaintiff is an employee within the meaning of the NYLL and the supporting New York State Department of Labor Regulations.

46. As a result of the foregoing, Defendants unlawfully harassed and discriminated against Plaintiff.

47. Upon information and belief, Defendants treated Plaintiff negatively because of her sex.

48. Upon information and belief, Defendants created a hostile working environment which no reasonable person could be expected to tolerate.

49. Upon information and belief, During Plaintiff's employment with Defendants, Defendants regularly exposed her to a discriminatory, offensive, and hostile work environment.

50. Upon information and belief, the policies, practices, and actions of Individual Defendants were intended to harm Plaintiff.

51. As a result of the forgoing, Plaintiff suffered severe emotional distress, including experiencing fear, high stress levels and anxiety, embarrassment, and humiliation.

52. Plaintiff was unable to work for approximately four months, from approximately November 2016 until approximately March 2017 following her employment with Defendants due to the emotional distress that Defendants' behavior caused her.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
QUID PRO QUO SEXUAL HARASSMENT UNDER THE NYSHRL**

53. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

54. NYSHRL § 296(1) provides that “1. It shall be unlawful discriminatory practice: “(a) For an employer or licensing agency, because of an individual’s . . . sex, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

55. Pursuant to NYSHRL § 297(9), “[a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages . . . and such other remedies as may be appropriate...”

56. Pursuant to NYSHRL § 297(10), “with respect to a claim of employment . . . discrimination where sex is a basis of such discrimination, in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney’s fees attributable to such claim to any prevailing party . . .”

57. Plaintiff is a woman and therefore is a member of a protected class under NYSHRL.

58. Plaintiff was discriminated against because of her gender, in the form of repeated sexual harassment while employed by Defendants.

59. Upon information and belief, and at all relevant times to this action, Defendants were Plaintiff's "employers" within the meaning of NYSHRL § 296 *et seq.*

60. Defendants required Plaintiff to drink alcohol and dance with customers, despite her unwillingness to do so.

61. As a result of Defendants' unlawful policy of requiring Plaintiff to drink and dance with customers—who were often intoxicated—Plaintiff was inappropriately touched and grabbed by customers.

62. Upon information and belief, Defendants knew of, and condoned, the customers' conduct which included inappropriately touching and grabbing Plaintiff.

63. Plaintiff was told that drinking alcohol and dancing with customers—and tolerating the inappropriate and unwanted touching and grabbing—was a condition of her employment, and that she would be terminated if she refused to comply.

64. Defendants' unlawful discriminatory practice of requiring Plaintiff to dance, drink with, and submit to being sexually touched and grabbed by customers, constitutes quid pro quo sexual harassment in violation of NYSHRL § 296(1).

65. Defendants discriminated against Plaintiff based on her gender in violation of the NYSHRL.

66. As a proximate result of Defendants' discrimination, Plaintiff has suffered substantial loss of past earnings.

67. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anxiety, and mental anguish.

68. Defendants' conduct was undertaken in conscious disregard of Plaintiff's rights.

69. Judgment should be entered in favor of Plaintiff and against Defendants for all compensatory and emotional damages, along with lost pay, if applicable, and reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
QUID PRO QUO SEXUAL HARASSMENT UNDER THE NYCHRL**

70. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

71. NYCHRL § 8-107(1)(a) states that it shall be "an unlawful discriminatory practice (a) For an employer or an employee or agent thereof, because of the actual or perceived . . . gender . . . of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

72. Pursuant to NYCHRL § 8-502(a), "any person claiming to be aggrieved by an unlawful discriminatory practice . . . or an act of discriminatory harassment or violence . . . shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate"

73. Pursuant to NYCHRL § 8-502(g), "[i]n any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party reasonable attorney's fees, expert fees and other costs."

74. Plaintiff is a woman and therefore a member of a protected class under the NYCHRL.

75. Plaintiff was discriminated against because of her gender, in the form of repeated sexual harassment while employed by Defendants.

76. Upon information and belief, and at all relevant times to this action, Defendants were Plaintiff's "employer" within the meaning of the NYCHRL § 8-101 *et seq.*

77. Upon information and belief, Defendants required Plaintiff to drink alcohol and dance with customers, despite her unwillingness to do so.

78. Upon information and belief, as a result of Defendants' unlawful policy of requiring Plaintiff to drink and dance with customers, Plaintiff was inappropriately touched and grabbed by customers, who were often intoxicated.

79. Upon information and belief, Defendants knew of, and condoned, customers behavior of inappropriately touching and grabbing Plaintiff.

80. Upon information and belief, Plaintiff was told that drinking alcohol and dancing with customers was a condition of her employment, and that she would be terminated if she refused to comply.

81. Upon information and belief, Defendants' unlawful discriminatory practice of requiring Plaintiff to dance, drink with, and submit to being sexually touched and grabbed by customers, constitutes quid pro quo sexual harassment in violation of NYCHRL § 8-107(a).

82. Accordingly, Plaintiff was discriminated against and harassed due to her gender in violation of the NYCHRL.

83. As a proximate result of Defendants' discrimination and harassment, Plaintiff has suffered and continues to suffer substantial loss of past and future earnings, and other employment benefits.

84. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anxiety, and mental anguish.

85. Defendants' conduct was undertaken in conscious disregard of Plaintiff's rights.

86. Judgment should be entered in favor of Plaintiff and against Defendants for all punitive damages, compensatory and emotional damages, along with lost pay, if applicable, and reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
HOSTILE WORK ENVIRONMENT UNDER THE NYSHRL**

87. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

88. Defendants engaged in a course of unlawful conduct, as stated above, which created a hostile work environment on the basis of Plaintiff's gender in violation of § 296(1)(a) of the NYSHRL.

89. Plaintiff is a woman and therefore is a member of a protected class under NYSHRL.

90. Plaintiff was discriminated against because of her gender, in the form of repeated sexual harassment while employed by Defendants.

91. Upon information and belief, and at all relevant times to this action, Defendants were Plaintiff's "employers" within the meaning of NYSHRL § 296 *et seq.*

92. Defendants created a work environment that was permeated with discriminatory intimidation and was sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment.

93. As a proximate result of Defendants' sexual harassment and discrimination, Plaintiff has suffered and continues to suffer substantial loss of past and future earnings.

94. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anxiety, and mental anguish.

95. The conduct of Defendants was done in conscious disregard of Plaintiff's rights.

96. Judgment should be entered in favor of Plaintiff and against Defendants for all compensatory and emotional damages, if applicable, along with lost pay, reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
HOSTILE WORK ENVIRONMENT UNDER NYCHRL**

97. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

98. Defendants engaged in a course of unlawful conduct, as stated above, which created a hostile work environment on the basis of Plaintiff's gender in violation of § 8-107(1)(a) of the NYCHRL.

99. Plaintiff is a woman and therefore a member of a protected class under NYCHRL.

100. Plaintiff was discriminated against because of her gender, in the form of repeated sexual harassment while employed by Defendants.

101. At all relevant times to this action, Defendants were Plaintiff's "employer[s]" within the meaning of NYCHRL § 8-101 *et seq.*

102. Defendants created a work environment that was permeated with discriminatory intimidation and was sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment.

103. As a proximate result of Defendants' sexual harassment and discrimination, Plaintiff has suffered and continues to suffer substantial loss of past and future earnings, and other employment benefits.

104. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anxiety, and mental anguish.

105. The conduct of Defendants was done in conscious disregard of Plaintiff's rights.

106. Judgment should be entered in favor of Plaintiff and against Defendants for all punitive damages, compensatory and emotional damages, if applicable, along with lost pay, reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION AGAINST DEFENDANTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

107. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

108. Defendants' conduct of requiring her to drink alcohol and dance with customers, and tolerate being inappropriately grabbed by customers, constitutes extreme and outrageous conduct.

109. Upon information and belief, Defendants intended to cause, and/or disregarded a substantial probability of causing Plaintiff to suffer severe emotional distress.

110. There exists a causal connection between the Defendants' conduct and the injury sustained by Plaintiff.

111. As result of said conduct, Plaintiff suffered and continues to suffer from severe mental, emotional, and psychological distress.

112. As a further proximate result of Defendants' actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anxiety, and mental anguish.

113. The conduct of Defendants was done in conscious disregard of Plaintiff's rights.

114. Judgment should be entered in favor of Plaintiff and against Defendants for all punitive damages, compensatory and emotional damages, along with lost pay, if applicable, in addition to punitive damages, and reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

115. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

116. Defendants' discriminatory and harassing treatment towards Plaintiff was negligent, reckless, extreme and outrageous.

117. Defendants breached a duty owed directly to Plaintiff that endangered Plaintiff's physical safety and/or caused Plaintiff to fear for her own safety, by engaging in conduct, including but not limited to, requiring Plaintiff to dance and drink alcohol with customers—who were often intoxicated—which resulted in Plaintiff being inappropriately grabbed and touched.

118. There exists a causal connection between Defendants' conduct and the injury sustained by Plaintiff.

119. As result of said conduct, Plaintiff suffered and continues to suffer from severe mental, emotional, and psychological distress.

120. Defendants' course of conduct was undertaken in conscious disregard of Plaintiff's rights.

121. Judgment should be entered in favor of Plaintiff and against Defendants for all punitive damages, compensatory and emotional damages, along with lost pay, if applicable, in addition to punitive damages, and reasonable attorney's fees, the costs and disbursements of this action and any other damages permitted by law in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK LABOR LAW MINIMUM WAGE**

122. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

123. Title 12 NYCRR § 146-1.2 states that, "(a) [t]he basic minimum hourly rate, except for fast food employees, shall be: (1) \$7.25 per hour on and after January 1, 2011; (2) \$8.00 per hour on and after December 31, 2013; (3) \$8.75 per hour on and after December 31, 2014; (4) \$9.00 per hour on and after December 31, 2015"

124. NYLL § 663 provides that, "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

125. At all relevant times, Plaintiff was Defendants' employee within the meaning of New York Labor Law §§ 190(2) and 651(5) and 12 NYCRR § 146-3.2.

126. Upon information and belief, and at all relevant times to this action, Defendants were Plaintiff's employers within the meaning of the New York Labor Laws § 190(3) and 651(6).

127. Defendants are not entitled to avail themselves of the New York tipped minimum wage rate under 12 NYCRR § 146-1.3.

128. Any tips that Plaintiff received while working for Defendants did not result in Plaintiff being paid at or above the lawful minimum wage rate.

129. Upon information and belief, Defendants took and retained some tips from Plaintiff that customers intended for, and understood to be given to, Plaintiff.

130. Defendants failed to provide Plaintiff with the mandatory notice regarding the tip credit as required by 12 NYCRR § 146-2.2.

131. Defendants also did not provide a notice to Plaintiff that extra pay is required if the tips are insufficient to bring the employee up to the basic minimum hourly rate, in violation of 12 NYCRR §§ 146-1.3, 146-2.2.

132. Defendants violated 12 NYCRR §§ 146-1.1 and 146-1.2 by failing to pay Plaintiff minimum wages for hours worked.

133. Upon information and belief, Defendants' failure to pay Plaintiff her lawfully owed wages at the minimum wage rate was willful.

134. New York Labor Law § 663, provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

135. As a result of Defendants' unlawful acts, Plaintiff has been deprived of minimum wages in amounts to be determined at trial, plus interest, liquidated damages, attorney's fees, costs and any other damages permitted under the NYLL and accompanying regulations.

**EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK OVERTIME COMPENSATION**

136. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

137. 12 NYCRR § 146-1.4 requires that “[a]n employer shall pay an employee for overtime at a wage rate of 1 ½ times the employee’s regular rate for hours worked in excess of 40 hours in one workweek.”

138. Plaintiff routinely worked in excess of forty (40) hours in a workweek.

139. Defendants failed to pay Plaintiff earned overtime wages at the rate of one and one half times the regular rate of pay for the time Plaintiff worked after the first forty hours in any given workweek.

140. Defendants’ failure to pay Plaintiff her rightfully earned overtime compensation was willful.

141. As a result of Defendants’ unlawful acts, Plaintiff has been deprived of overtime compensation and other wages in amounts to be determined at trial, plus interest, liquidated damages, attorney’s fees, costs and any other damages permitted under the NYLL and accompanying regulations.

**NINTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK SPREAD OF HOURS COMPENSATION**

142. Plaintiff repeats and re-alleges the allegations set forth in preceding paragraphs.

143. Title 12 NYCRR § 146-1.6 requires that “[o]n each day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum hourly rate.”

144. When Plaintiff worked more than ten (10) hours in a day, she did not receive an additional hour of pay at the minimum wage rate.

145. Defendants' failure to pay Plaintiff her spread of hours compensation under the NYLL and NYCRR was willful.

146. As a result of Defendants' unlawful acts, Plaintiff has been deprived of spread of hours compensation in an amount to be determined at trial, plus interest, liquidated damages, attorney's fees, costs and any other damages permitted under the NYLL and accompanying regulations.

**TENTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK UNLAWFUL DEDUCTIONS AND CHARGES LAW**

147. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

148. Pursuant to NYLL § 193(1), “[n]o employer shall make any deduction from the wages of an employee, except deductions which . . . are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency including regulations . . . [or] are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made”

149. Additionally, NYLL § 193(3)(a) provides that, “[n]o employer shall make any charges against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages”

150. 12 NYCRR § 146-2.7 further provides that, “[e]mployers may not make any deductions from wages, except for credits authorized . . . and deductions authorized or required by law, such as for social security or taxes. . . . employers may not charge

employees separately for items prohibited as deductions from wages . . . [i]f an employee must spend money to carry out duties assigned by his or her employer, those expenses must not bring the employee's wage below the required minimum wage.”

151. Upon information and belief, Defendants are employers, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190(3) and the supporting regulations.

152. Plaintiff is an employee, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190(2) and the supporting regulations.

153. Defendants unlawfully charged and/or deducted from Plaintiff's pay, money for alcohol that Plaintiff was required to purchase.

154. The foregoing deductions and/or charges were not made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency including regulations, were not expressly authorized in writing by Plaintiff, and were not made for the benefit of Plaintiff.

155. Furthermore, the aforementioned unlawful deductions and/or required payments, and any other deductions from wages earned by Plaintiff, or payments required to be made by Plaintiff, are not similar to the “authorized deductions” delineated in NYLL § 193, such as payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, or payments for dues or assessments to a labor organization.

156. Additionally, the aforementioned unlawful deductions and/or charges brought Plaintiff's pay below the minimum wage rate.

157. Therefore, Defendants violated NYLL § 193 and 12 NYCRR § 146-2.7 by unlawfully making deductions and/or charges.

158. Upon information and belief, Defendants' violation of NYLL § 193 and 12 NYCRR § 146-2.7 was willful.

159. By the foregoing reasons, Defendants have violated NYLL § 193 and 12 NYCRR § 146-2.7 and are liable to Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**ELEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK UNLAWFUL "KICK-BACK" OF WAGES LAW**

160. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

161. Pursuant to New York Labor Law Article 6 § 198-b, Defendants are prohibited from requesting, demanding, or receiving, either before or after an employee is engaged to work, a return, donation, or contribution of any part or all of the employee's wages, salary, supplements, or other thing of value, upon the statement, representation or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment.

162. Upon information and belief, Defendants are employers, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190, *et seq.*

163. Plaintiff is an employee, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190 *et seq.*

164. In violation of NYLL § 198-b, Defendants maintained a policy and practice of unlawfully requesting, demanding, or receiving, a return, donation or contribution of a part of the wages, supplements, or other things of value, earned by Plaintiff, upon the statement, representation, or understanding that failure to comply with such request or demand would prevent Plaintiff from procuring or retaining employment.

165. Defendants' violation of NYLL § 198-b was willful.

166. By the foregoing reasons, Defendants have violated New York Labor Law § 198-b and are liable to Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**TWLEFTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK UNLAWFUL RETENTION OF GRATUITIES LAW**

167. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

168. Pursuant to New York Labor Law Article 6 § 196-d, "No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

169. Defendants are employers, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190(3).

170. Plaintiff is an employee, within the meaning contemplated, pursuant to New York Labor Law Article 6 § 190(2).

171. Upon information and belief, Defendants unlawfully withheld, and personally retained, portions of gratuities provided to Plaintiff.

172. Upon information and belief, Defendants unlawfully required Plaintiff to pay for alcohol as a condition of her employment.

173. Defendants therefore violated New York Labor Law § 196-d by withholding, and personally retaining, portions of Plaintiff's gratuities and/or requiring Plaintiff to purchase alcohol as a condition of her employment.

174. Upon information and belief, Defendants' violation of New York Labor Law § 196-d and supporting New York State Department of Labor Regulations was willful.

175. By the foregoing reasons, Defendants have violated New York Labor Law § 196-d and are liable to Plaintiff in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

**THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK § 195(1) WAGE NOTICE VIOLATION**

176. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

177. Pursuant to Section 195(1) of the NYLL, an employer is required to provide its employees, at the time of hiring, in writing in English and in the language identified by each employee as the primary language of such employee, a notice containing information such as, "the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any claimed as part of the minimum wage, including tip, meal or lodging allowances; the regular pay day designated by the employer . . .; the name of the employer [;]. . . [f]or all employees who are not exempt from overtime compensation . . ., the notice must state the regular hourly rate and overtime rate of pay."

178. Prior to February 2015, Section 195(1) also required an employer to provide a wage notice to its employees on or before February first of each year.

179. Pursuant to Section 198(1-b) of the NYLL, an employee that does not receive a wage notification, as required by NYLL § 195(1), may bring a civil action to recover damages of \$50 for each work day that the violation occurs or continues to occur, but not to exceed \$5,000.

180. Prior to February 2015, the maximum recovery under Section 198 (1-b) for a § 195(1) violation was \$2,500.

181. During Plaintiff's entire employment, Defendants did not provide Plaintiff with a wage notification informing Plaintiff of, among other things, (1) her regular rate of pay, (2) the basis of her rate of pay (e.g., whether she was paid by the hour, shift, or day), (3) whether tips were claimed as part of the minimum wage, (4) her overtime rate of pay, or (5) the regular pay day designated by Defendants.

182. Defendants did not provide any wage notification to Plaintiff.

183. Defendants violated NYLL § 195(1) by failing to provide Plaintiff with wage notifications containing the information required by NYLL § 195, *et seq.*

184. Defendants' failure to provide Plaintiff with wage notifications in violation of NYLL § 195(1) was willful.

185. As a result of Defendants' unlawful acts, Plaintiff has been deprived of the appropriate wage notices, and Defendants are liable to Plaintiff in the statutory amounts, plus attorney's fees, costs and any other damages permitted under the NYLL.

FOURTEENTH CAUSE OF ACTION AGAINST DEFENDANTS
NEW YORK § 195(3) WAGE STATEMENT VIOLATION

186. Plaintiff repeats and re-alleges the allegations set forth in the preceding paragraphs.

187. Pursuant to Section 195(3) of the New York Labor Law, every employer shall furnish each employee with a statement with every payment of wages that identifies, among other things, "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; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. For employees who are not exempt from overtime compensation . . . the statement shall the regular hourly rate or rates of pay; the

overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.”

188. Pursuant to Section 198(1-d) of the New York Labor Law, an employee that does not receive a wage statement, as required by NYLL § 195(3), may bring a civil action to recover damages of \$250 for each work day that the violation occurs or continues to occur, but not to exceed \$5,000.

189. Defendants did not furnish Plaintiff with any wage statements during her employment.

190. Defendants violated NYLL § 195(3) by failing to provide Plaintiff with wage statements containing the information required by NYLL § 195(3).

191. Defendants’ repeated failure to provide Plaintiff with wage statements in violation of NYLL § 195 was willful.

192. As a result of Defendants’ unlawful acts, Plaintiff has been deprived of the appropriate wage statements, and Defendants are liable to Plaintiff in the statutory amounts, plus attorney’s fees, costs and any other damages permitted under the NYLL.

WHEREFORE, Plaintiff demands judgment against Defendants:

- (1) on the first cause of action against Defendants, compensatory damages and damages for mental anguish and emotional distress, plus attorneys’ fees and costs;
- (2) on the second cause of action against Defendants, punitive damages, compensatory damages and damages for mental anguish and emotional distress, plus attorneys’ fees and costs;
- (3) on the third cause of action against Defendants, compensatory damages and damages for mental anguish and emotional distress, plus attorneys’ fees and costs;

(4) on the fourth cause of action against Defendants, punitive damages, compensatory damages and damages for mental anguish and emotional distress, plus attorneys' fees and costs;

(5) on the fifth cause of action against Defendants, punitive damages, compensatory damages and damages for mental anguish and emotional distress, plus attorneys' fees and costs;

(6) on the sixth cause of action against Defendants, punitive damages, compensatory damages and damages for mental anguish and emotional distress, plus attorneys' fees and costs;

(7) on the seventh cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(8) on the eighth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(9) on the ninth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(10) on the tenth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(11) on the eleventh cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(12) on the twelfth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

(13) on the thirteenth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;

- (14) on the fourteenth cause of action against Defendants, Plaintiff seeks all statutory damages permitted under the NYLL plus attorneys' fees and costs;
- (15) Awarding Plaintiff pre- and post-judgment interest on all causes of action;
- (16) Awarding Plaintiff reasonable attorneys' fees and costs; and
- (17) Awarding such other and further relief as the court deems just and proper.

Dated: New York, New York
April 11, 2017

VIRGINIA & AMBINDER, LLP

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