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

**MELISSA ACEVEDO, MARITZA  
PANTOJA and SANDRA ROSERO,  
Individually and On Behalf of All Others  
Similarly Situated,**

**Plaintiffs,**

**-against-**

**ABCZ CORP., ABCZ II MGMT. CORP.,  
SUSHI FUN DINING & CATERING, INC.,  
PACIFIC CLUB HOLDINGS, INC.,  
PACIFIC CLUB HOLDINGS II, INC.,  
WEST 20TH ENTERPRISES CORP.,  
SELIM “SAM” ZHERKA, DOMINICA  
O’NEILL and MAURICE KAVANAUGH,  
Jointly and Severally,**

**Defendants.**

**CLASS & COLLECTIVE  
ACTION COMPLAINT**

**Jury Trial Demanded**

Plaintiffs Melissa Acevedo (“Acevedo”), Maritza Pantoja (“Pantoja”) and Sandra Rosero (“Rosero” and, collectively with Romero and Pantoja, the “Plaintiffs”), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves and upon information and belief and the investigation of their counsel as to other matters, allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs are former dancers for Defendants in their strip club located in the Flatiron district of Manhattan, New York. Plaintiffs as well as Defendants' other dancers were classified by Defendants as independent contractors and were not paid any wages for their work at Defendants' strip club but instead were compensated only by tips from the club's customers.

2. Plaintiffs bring this action to recover unpaid minimum wages and overtime premiums owed to them pursuant to both the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* and the New York Labor Law ("NYLL"), §§ 190 *et seq.* and §§ 650 *et seq.* Plaintiffs also bring claims for improper withholding of gratuities, illegal kickbacks, uniform purchase and maintenance, and failure to provide proper wage notices and wage statements, pursuant to the NYLL and the supporting regulations.

3. Plaintiffs bring their FLSA claims on behalf of themselves and all other similarly situated employees of Defendants, and their NYLL claims on behalf of themselves and a Federal Rule of Civil Procedure 23 class of all dancers who worked for Defendants in New York.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1343, and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this claim occurred in this district and Defendants' business is located in this district.

6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§

2201 and 2202.

**THE PARTIES**

**Plaintiffs:**

7. Plaintiff Acevedo is an adult individual currently residing in North Carolina.
8. Plaintiff Pantoja has been, at all relevant times, an adult individual residing in Queens County, New York.
9. Plaintiff Rosero has been, at all relevant times, an adult individual residing in Queens County, New York.
10. Throughout the relevant time period, Plaintiffs Acevedo, Pantoja and Rosero worked for Defendants at VIP Club, located at 20 West 20<sup>th</sup> Street, New York, New York 10011.
11. Plaintiffs Acevedo, Pantoja and Rosero consent in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b), and their written consent forms are attached hereto and incorporated by reference.

**Defendants:**

12. Upon information and belief, Defendant ABCZ Corp. (“ABCZ”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.
13. Upon information and belief, Defendant ABCZ II Mgmt. Corp. (“ABCZ II”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.
14. Upon information and belief, Defendant Sushi Fun Dining & Catering, Inc. (“Sushi Fun”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.
15. Upon information and belief, Defendant Pacific Club Holdings, Inc. (“Pacific

Club”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.

16. Upon information and belief, Defendant Pacific Club Holdings II, Inc. (“Pacific Club II”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.

17. Upon information and belief, Defendant West 20TH Enterprises Corp. (“West 20TH”) is an active domestic business corporation registered in New York with its principal place of business at 20 West 20<sup>th</sup> Street, New York, NY 10011.

18. Upon information and belief, the corporate entities listed in paragraphs 13 through 17 each perform business under the trade name “The New VIP Club New York” (hereinafter “VIP Club” or the “Corporate Defendants”).

19. Defendants Pacific Club, Pacific Club II, ABCZ, and Sushi Fun list in their corporate filings with the New York State Department of State Division of Corporations a principal executive office or DOS process address at 240 North Avenue, Suite 212, New Rochelle, New York 10801.

20. Defendants Pacific Club and ABCZ II in corporate filings with the New York Department of State, Division of Corporation list a DOS process address as P.O. Box 376, Great Neck, New York 11021.

21. Defendant Sushi Fun in its corporate filings with the New York Department of State, Division of Corporations lists its Chief Executive Officer as Sam Zherka with an address of 20 W. 20<sup>th</sup> Street, New York, New York 10011.

22. Defendants Pacific Club and Pacific Club II in corporate filings with the New York Department of State, Division of Corporation list their Chief Executive Officer as Dominica

O'Neill.

23. Upon information and belief, the Corporate Defendants jointly operate the various components of VIP Club, including but not limited to the sushi bar and lounge.

24. The Corporate Defendants' operations are interrelated and unified.

25. Defendant Selim "Sam" Zherka ("Zherka") is an owner, operator and manager of the Corporate Defendants, who sets the Corporate Defendants' payroll policies, including the unlawful practices complained of herein. Throughout the relevant time period, Zherka was in charge of hiring and firing employees, setting schedules and wage rates, determining the Corporate Defendants' policies with respect to payroll, and otherwise running the business of VIP Club.

26. Defendant Dominica O'Neill ("O'Neill") is an owner, operator, and/or manager of the Corporate Defendants, who sets the Corporate Defendants' payroll policies, including the unlawful policies complained of herein. Throughout the relevant time period, O'Neill had authority to hire and fire employees, set schedules and wage rates, determine the Corporate Defendants' policies with respect to payroll, and otherwise run the business of VIP Club.

27. Defendant Maurice Kavanaugh ("Kavanaugh" and, collectively with Defendants Zherka and O'Neill, the "Individual Defendants" and collectively with the Corporate Defendants, the "Defendants") is an owner, operator and/or manager of the Corporate Defendants, who sets the Corporate Defendants' payroll policies, including the unlawful practices complained of herein. Throughout the relevant time period, Kavanaugh had authority to hire and fire employees, set schedules and wage rates, determine the Corporate Defendants' policies with respect to payroll, and otherwise run the business of VIP Club.

28. The Individual Defendants participated in the day-to-day operations of the Corporate Defendants and acted intentionally and maliciously in their direction and control of

Plaintiffs and the Corporate Defendants' other similarly situated employees, and are each an "employer" pursuant to the FLSA, 29 U.S.C. § 203(d) and regulations promulgated thereunder, 29 C.F.R. § 791.2, as well as the NYLL § 2 and the regulations thereunder, and are each jointly and severally liable with the Corporate Defendants.

29. At all relevant times, Defendants have been and continue to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

30. Upon information and belief, at all relevant times, the Defendants had gross revenues in excess of \$500,000.00.

31. At all relevant times, Defendants employed and/or continue to employ Plaintiffs and each Collective Action Member within the meaning of the FLSA, 29 U.S.C. § 203(d).

32. At all relevant times, Defendants employed and/or continue to employ Plaintiffs and each Class Member within the meaning of the NYLL, §§ 2 and 651.

### **PROCEDURAL BACKGROUND**

33. On May 21, 2014 Sheldon Romero filed a lawsuit against several of the Defendants in this Action in the Southern District of New York: *Romero v. ABCZ Corp., et al.*, No. 14-cv-3653 (AT) (the "Romero Action").

34. On October 3, 2014, Mr. Romero moved for conditional certification and authorization of notice of the Romero Action on behalf of disc jockeys and dancers.

35. The Court granted Mr. Romero's motion on April 28, 2015. Subsequently, Mr. Romero sent out notice to the collective action members.

36. A total of approximately twenty-six (26) dancers (the "Romero Opt-in Plaintiffs"), including the Named Plaintiffs in this Action, filed opt-in forms with the Romero Court to join the

Romero Action. One of the Romero Opt-in Plaintiffs filed an opt-out statement on July 23, 2015.

37. On or about December 16, 2016, in response to an order of the Romero Court, the Romero Opt-in Plaintiffs filed an opt-out statement in order to exclude themselves from the Romero Action.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

38. Pursuant to 29 U.S.C. §§ 206 & 207, Plaintiffs bring their First and Second Cause of Action as a collective action under the FLSA on behalf of themselves and the following collective:

All persons employed by Defendants at any time since May 21, 2011 and through the entry of judgment in this case (the “Collective Action Period”) who worked as dancers at VIP Club (the “Collective Action Members”).

39. A collective action is appropriate in this circumstance because Plaintiffs and the Collective Action Members are similarly situated, in that they were all subjected to Defendants’ illegal policies including, but not limited to, (i) classifying their employees as independent contractors notwithstanding the fact that, *inter alia*, Defendants exercise significant control over the work of these individuals and treats them like regular employees of the club, and (ii) failing to compensate them any wages, let alone minimum wages or overtime premiums, for their work for Defendants. As a result of this policy, Plaintiffs and the Collective Action Members did not receive the legally-required minimum wage payments for all hours worked each week.

40. Plaintiffs and Defendants’ other dancers had substantially similar conditions of employment and compensation structures.

**RULE 23 CLASS ALLEGATIONS**

41. Pursuant to the NYLL, Plaintiffs bring their Third through Ninth Causes of Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the following class:

All persons employed by Defendants at any time since May 21, 2008 and through the entry of judgment in this case (the “Class Period”) who worked as dancers at VIP Club (the “Class Members”).

42. The Class Members are readily ascertainable. The number and identify of the Class Members are determinable from the records of Defendants. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Rule 23.

43. The Class Members are so numerous that joinder of all members is impracticable.

44. Although the precise number of Class Members is unknown to Plaintiff, upon information and belief, there are well in excess of forty (40) Class Members.

45. Common questions of law and fact exist as to all Class Members and predominate over any questions solely affecting individual Class Members. These common questions include, but are not limited to:

- a. whether Defendants employed Plaintiffs and the Class Members within the meaning of the NYLL;
- b. whether Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs and the Class Members;
- c. whether Defendants failed and/or refused to pay Plaintiffs and the Class Members any wages, including minimum wages, for all hours worked each workweek;
- d. whether Defendants failed and/or refused to pay Plaintiffs and the Class Members overtime premiums when they worked more than forty (40) hours in a given



- workweek;
- e. whether Defendants required Plaintiffs and the Class Members to pay to Defendants a portion of gratuities earned;
  - f. whether Defendants took unlawful deduction from Plaintiffs' and the Class Members' wages/and or required kickbacks;
  - g. whether Defendants required Plaintiffs and the Class Members to wear certain attire and failed to pay the expenses of purchasing and maintaining such uniforms;
  - h. whether Defendants misclassified Plaintiffs and the Class Members as independent contractors;
  - i. whether Defendants' decision to classify Plaintiffs and the Class Members as independent contractors was made without regard to the necessary criteria for such a classification for employees;
  - j. whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law;
  - k. whether Defendants failed to provide Plaintiffs and the Class Members with a proper wage notice at the beginning of their employment and/or on February 1 of each year, as required by the NYLL;
  - l. whether Defendants failed to provide Plaintiffs and the Class Members with a proper wage statement with each wage payment, as required by the NYLL; and
  - m. whether Defendants are liable for all damages claimed hereunder, including but not limited to compensatory damages, liquidated damages, interest, costs and disbursements and attorneys' fees.
46. The answers to these questions would drive resolution of the litigation. If a judge

and/or jury agrees with Plaintiffs on these issues, Defendants would be liable to all Class Members for their NYLL wage and hour violations.

47. Plaintiffs' claims are typical of the Class Members' claims. Plaintiffs, like all Class Members, were dancers of Defendants who worked for Defendants pursuant to their corporate policies. Plaintiffs, like all Class Members, were not paid any wages at all, let alone minimum wage or overtime premiums, were classified as independent contractors, did not receive proper wage notices or wage statements, had a portion of their gratuities confiscated, were required to wear certain uniforms of which Defendants did not pay purchase or maintenance expenses, and were required to pay kickbacks or required fees in order to work for Defendants.

48. Plaintiffs and their Counsel will fairly and adequately represent the Class. There are no conflicts between Plaintiffs and the Class Members, and Plaintiffs bring this lawsuit out of a desire to help all Class Members, not merely out of a desire to recover their own damages.

49. Plaintiffs' counsel are experienced class action litigators who are well-prepared to represent the interests of the Class Members.

50. A class action is superior to other available methods for the fair and efficient adjudication of this litigation.

51. Defendants are sophisticated parties with substantial resources. The individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants. The individual members of the Class have no interest or capacity to bring separate actions; Plaintiffs are unaware of any other pending litigation concerning this controversy; it is desirable to concentrate the litigation in one case; and there are no likely difficulties that will arise in managing the class action.

## STATEMENT OF FACTS

### VIP Club

52. At all relevant times, Defendants have been in the adult entertainment business. According to VIP Club's website, "The VIP is a first class adult entertainment, Sushi Bar, and lounge in business since 1991. . . Known all over the Northeast for the 100s of the world's most beautiful entertainers . . ." Defendants' website further provides that VIP Club is "One of America's most upscale and highest grossing cabarets". (<http://www.thevipclubnewyork.com/about/>)

53. VIP Club is open Monday, Tuesday, Wednesday and Friday from 7:00 pm until 4:00 am, Thursday from 6:00 pm until 4:00 am, and Saturday from 8:00 pm until 4:00 am.

54. According to a declaration Defendant Zherka executed in another action against Defendant West 20TH, Defendant Zherka is the "Acting President" of Defendant West 20<sup>TH</sup>, and the sole asset of West 20TH is VIP Club.

55. According to a declaration Defendant Kavanaugh executed in the Romero Action setting forth the terms and conditions of the employment of Mr. Romero, a disc jockey at VIP Club, Kavanaugh is a "part owner" of VIP Club.

56. Defendant Zherka is typically present at VIP Club several times per month to discuss the operations of the club with Defendant O'Neill and VIP Club's general manager, Sam Kaldas, and to ensure that the club is being operated in accordance with Defendant Zherka's practices and policies.

57. The Individual Defendants, through and in conjunction with their employees, including Sam Kaldas, are active in the operations of VIP Club and are fully aware of the unlawful policies and practices complained of herein.

**Plaintiffs' Work for Defendants**

58. Plaintiff Acevedo was employed by Defendants as a dancer from on or about July 1, 2012 to on or about September 1, 2013 (the "Acevedo Employment Period").

59. Acevedo typically worked approximately three or four (3-4) days per week. Acevedo typically arrived between approximately 7:15 pm and 7:30 pm in order to change and be ready to start her shift at 8:00 pm. Acevedo's shifts typically lasted until approximately 4:00 am, and sometimes she stayed later when customers were in private rooms. Acevedo typically worked between twenty-four and thirty-four (24-34) hours per week and sometimes more.

60. Plaintiff Pantoja was employed by Defendants as a dancer from in or around 2001 to 2006 and in or around May 2009 to in or around March 2012 (the latter period the "Pantoja Employment Period").

61. Pantoja typically worked between four (4) and six (6) days per week. Pantoja's shifts lasted from 8:00 pm to 4:00 am, and she typically arrived at VIP Club approximately fifteen to twenty (15-20) minutes early to touch up her hair and make-up, apply lotion or perfume and change into her stage outfit. Pantoja typically worked a total of between thirty-two and fifty (32-50) hours per week.

62. Plaintiff Rosero was employed by Defendants from in or around 2009 through in or around 2013. Plaintiff Rosero did not work for Defendants continuously during this time but rather worked for Defendants on and off.

63. Rosero typically worked three (3) or four (4) days per week, and her shifts typically lasted from approximately 8:00 pm to approximately 4:00 am. Although scheduled shifts ended at 4:00 am, Rosero was sometimes required to stay up to one (1) hour later if she had a customer who paid for more time. On average, Rosero typically worked between twenty-four and thirty-four

(24-34) hours per week and sometimes more.

64. Plaintiffs were required to work a minimum of three (3) or four (4) days per week, and Defendants frequently required Plaintiffs to work one “slow” day and/or one weekend day.

65. Throughout Plaintiffs’ employment with Defendants, they were not paid any wages. Their sole compensation consisted of tips that they received from clients. They were required to pay a “house fee” to Defendants each time she performed, of between approximately one hundred and one hundred and fifty dollars (\$100-\$150).

66. Particularly on slow nights, Plaintiffs sometimes did not earn minimum wage in their tips and were unable to pay all the fees and fines required by Defendants.

67. Plaintiffs were required to tip out at least twenty dollars (\$20.00) per shift to both the disc jockey and the house mom on duty during a given shift. They also frequently tipped the on-site hair and make-up stylists as well as managers and room hosts when they were in a private room with a customer. Plaintiffs often paid additional tips to the disc jockey and/or the host of the room in order to receive preferential treatment that would result in greater tips from clients.

68. Dancers could receive fines for numerous infractions against Defendants’ rules, including calling out when they were scheduled to work a shift, being late to a shift, and refusing to go on stage when the disc jockey called their names.

69. If the house mom did not approve of a garment Plaintiffs or other dancers were wearing, they were often required to buy a new garment from VIP Club. These items ranged from twenty-five dollars (\$25.00) for undergarments and fifty dollars (\$50.00) for garters to one hundred and fifty dollars (\$150.00) for dresses.

70. Clients of Defendants often paid for dancers and private rooms in “VIP Dollars” or “funny money,” which they purchased with a credit card. When Plaintiffs received “VIP Dollars”

from clients and exchanged them at the end of the night, Defendants withheld at least ten percent (10%) of the value of the vouchers.

71. If dancers were required to pay a fee but was unable to do so because they had not earned enough money, they could either pay out of pocket or Defendants withheld a portion of her subsequent earnings equal to the amount she was supposed to pay.

72. Acevedo observed other dancers being suspended and unable to work for a certain number of days if they called out and did not want to work a shift too many times.

73. Defendants required Plaintiffs to sign in on a sheet of paper when they arrived for a shift or let the house mom know when they arrived. Aside from the sign-in sheet, Defendants failed to maintain accurate records of the actual hours that Plaintiffs and other dancers worked.

74. Plaintiffs were required to let the house mom on duty know when they left, and at times Plaintiffs were not permitted by the house mom to leave and were required to stay until the end of their shift, even if they were tired or in pain after dancing.

75. Defendants posted in the dressing room and enforced via house moms certain rules that dancers including Plaintiffs and other dancers were required to follow. Defendants regulated numerous aspects of the employment of Plaintiffs and other dancers, including: the minimum number of days they were required to work each week; specific days they were required to work; the types of dresses they were required to wear, specifically gowns on weekdays and short dresses on weekends; how they were required to style their hair, fingernails and toenails; and the types of shoes they were required to wear.

76. Defendants exercised particularly strict control over the garments, styling and appearance of the dancers because they sought to present a sophisticated atmosphere to customers. If dancers wore attire that violated Defendants' rules, they were required to buy an appropriate

outfit from Defendants, change their hairstyle or make-up or get a manicure before they would be permitted to perform. The house mom on duty inspected each dancer to ensure that they conformed with Defendants' policies and did not permit dancers to perform if they did not meet Defendants' requirements. In accordance with Defendants' policies, house moms would require dancers to either go home or buy new garments from Defendants.

77. Defendants required Plaintiffs and other dancers to sign a document called a "Non-Exclusive Lease of Entertainment Facilities," typically at the beginning of their employment and sometimes at other times as well and frequently required Plaintiffs and other dancers to sign additional documents, including but not limited to confidentiality agreements and lists of Defendants' rule.

78. These documents purported to set forth certain terms and conditions of Plaintiffs' employment, some of which accurately reflected their experiences and others which did not. The documents set forth that Plaintiffs were classified as a "tenant" and not an employee, was required to pay one hundred dollars (\$100) per performance date to Defendants, would keep all tips received, and that Defendants would keep twenty percent (20%) of the value of "funny money."

79. Plaintiffs and other dancers typically applied to work on the same day that they began working. When Plaintiffs applied to work, they were required to sign certain documents during the interview process. One member of Defendants' staff typically briefly reviewed portions of the documents with the applications. None of the Plaintiffs were told about the arbitration provision. Plaintiffs were not given an opportunity to take the documents home to review and were required to sign them before they could begin working. Plaintiffs were not given a copy of the materials she had signed.

80. On several occasions, Rosero asked if she could receive a copy of the papers she

signed. In response, she was told that she could not have a copy or the request was simply forgotten and ignored.

81. At no time did Plaintiffs receive a wage notice or wage statement pursuant to the NYLL.

82. Plaintiffs have spoken with and observed other dancers regarding Defendants' pay policies. Plaintiffs are aware that Defendants' other dancers were not paid any wages for their work but received as compensation only tips from clients and were classified by Defendants as independent contractors or "tenants" even though they were subject to extensive rules about conduct and appearance by Defendants.

#### **Defendants' Unlawful Corporate Policies**

83. Defendants failed to pay Class Members any wages, let alone minimum wage, for hours worked by Class Members. Defendants' failure to pay Plaintiffs and Class Members wages was a corporate policy that applied to all of Defendants' dancers.

84. Defendants failed to pay Class Members overtime premiums when they worked in excess of forty (40) hours per week. Defendants' failure to pay Plaintiffs and Class Members overtime premiums was a corporate policy that applied to all of Defendants' dancers.

85. Defendants classified Plaintiffs and the Class Members as independent contractors or "tenants" even though Defendants had extensive rules regulating the manner in which these individuals performed their work for Defendants. Defendants' classification of Plaintiffs and the Class Members as independent contractors or "tenants" was a corporate policy that applied to all of Defendants' dancers.

86. Although Class Members were paid solely in tips from Defendants' customers, Class Members were required to pay a significant amount from their gratuities to Defendants for



performance fees, fees for breaking any of Defendants' rules, tips to employees of Defendants and "VIP Dollars" exchange fees.

87. Defendants required Plaintiffs and the Class Members to sign numerous agreements purporting to classify Plaintiffs and the Class Members as independent contractors or tenants even though Defendants exercised significant control over the terms and conditions of Plaintiffs and the Class Members' employment.

88. The work performed by Plaintiffs was performed in the normal course of Defendants' business, was integrated into the business of Defendants and required little skill and no capital investment.

89. Throughout the Class Period and, upon information and belief, continuing until today, Defendants employed other individuals like Plaintiffs in positions that required little skill and no capital investment. Upon information and belief, such individuals were not paid any wages or provided with proper wage notices or wage statements.

90. Upon information and belief, throughout the Class Period and continuing until today, Defendants failed to maintain accurate and sufficient time and payroll records or provide such records to employees.

**FIRST CAUSE OF ACTION**  
**FAIR LABOR STANDARDS ACT – UNPAID MINIMUM WAGE**  
**(Brought on behalf of Plaintiffs and the Collective Action Members)**

91. Plaintiffs, on behalf of themselves and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

92. By failing to pay minimum wage for all hours worked, Defendants have violated and continue to violate the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 206 and 215(a)(2).

93. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

94. Defendants' failure to pay minimum wages for all hours worked caused Plaintiffs and the Collective Action Members to suffer loss of wages and interest thereon. Plaintiffs and the Collective Action Members are entitled to recover from Defendants their unpaid minimum wages, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**  
**FAIR LABOR STANDARDS ACT – UNPAID OVERTIME**  
**(Brought on behalf of Plaintiffs and the Collective Action Members)**

95. Plaintiffs, on behalf of themselves and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

96. By failing to pay overtime at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours per week, Defendants have violated and continue to violate the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a)(2).

97. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

98. Defendants' failure to pay overtime caused Plaintiffs and the Collective Action Members to suffer loss of wages and interest thereon. Plaintiffs and the Collective Action Members are entitled to recover from Defendants their unpaid overtime premium compensation, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

**THIRD CAUSE OF ACTION**  
**NEW YORK LABOR LAW – UNPAID MINIMUM WAGE**  
**(Brought on behalf of Plaintiffs and the Class Members)**

99. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

100. Defendants willfully violated Plaintiffs' and the Class Members' rights by failing to pay minimum wage for all hours worked, in violation of the NYLL and regulations promulgated thereunder.

101. Defendants' failure to pay minimum wage for all hours worked caused Plaintiff and the Class Members to suffer loss of wages and interest thereon. Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid minimum wages, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) et al.

**FOURTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – UNPAID OVERTIME**  
**(Brought on behalf of Plaintiffs and the Class Members)**

102. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

103. Defendants willfully violated Plaintiff's and the Class Members' rights by failing to pay overtime compensation at a rate of not less than one and one-half times the regular rate of pay for hours worked in excess of 40 each week, in violation of the NYLL and regulations promulgated thereunder.

104. Defendants' failure to pay overtime premium compensation caused Plaintiffs and the Class Members to suffer loss of wages and interest thereon. Plaintiffs and the Class Members

are entitled to recover from Defendants their unpaid overtime compensation, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq.*

**FIFTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – FAILURE TO PROVIDE WAGE NOTICE**  
**(Brought on behalf of Plaintiffs and the Class Members)**

105. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

106. Defendants have willfully failed to supply Plaintiffs and the Class Members notice as required by Article 6, § 195, in English or in the language identified by Plaintiffs and the Class Members as their primary language, containing Plaintiffs' and Class Members' 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 the NYLL, Article 6, § 191; the name of the employer; or 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.

107. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants fifty dollars (\$50) per employee for each workweek that the violations occurred or continue to occur, up to a maximum of twenty-five hundred dollars (\$2,500) per employee, as provided for by NYLL, Article 6, §§ 190, *et seq.*, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-

judgment interest, and injunctive and declaratory relief.

**SIXTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – FAILURE TO PROVIDE WAGE STATEMENT**  
**(Brought on behalf of Plaintiffs and the Class Members)**

108. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

109. Defendants have willfully failed to supply Plaintiffs and Class Members with an accurate statement of wages as required by NYLL, Article 6, § 195, 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.

110. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants one hundred dollars (\$100) per employee for each workweek that the violations occurred or continue to occur, up to a maximum of twenty-five hundred dollars (\$2,500) per employee, as provided for by NYLL, Article 6, §§ 190 *et seq.*, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and injunctive and declaratory relief.

**SEVENTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – UNLAWFUL WITHHOLDING OF GRATUITIES**  
**(Brought on behalf of Plaintiffs and the Class Members)**

111. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

112. Defendants have willfully failed to compensate Plaintiffs and the Class Members for all gratuities earned by demanding that Plaintiffs and Class Members pay a portion of gratuities left by customers for Plaintiff and the Class to Defendants, in violation of § 196-d of the New York Labor Law. Accordingly, Defendants are required to compensate Plaintiffs and the Class Members for all gratuities withheld by Defendants.

113. Due to the Defendants' New York Labor Law violations, Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid gratuities, damages for unreasonably delayed payment of wages liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et al.*, 196-d.

**EIGHTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – UNIFORM VIOLATIONS**  
**(Brought on behalf of Plaintiffs and the Class Members)**

114. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

115. Defendants willfully violated the rights of Plaintiffs and the Class Members by failing to reimburse them for the purchase of their required uniforms, and by failing to provide them with uniform maintenance pay, in violation of the NYLL §§ 650, *et seq.* and the regulations promulgated thereunder including N.Y. Comp. Code. R. & Regs. tit. 12, §§ 137-1.8 (2009), 146-1.7 & 1.8 (2011).

116. Defendants' uniform violations caused Plaintiffs and the Class Members to suffer loss of wage and interest thereon. Plaintiffs and the Class Members are entitled to recover from Defendants the amount that Defendants failed to reimburse Plaintiffs and the Class Members for the purchase of their uniforms and the amount that they failed to pay Plaintiffs and the Class Members for the maintenance of such uniforms, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL § 663(1), *et al.*

**NINTH CAUSE OF ACTION**  
**NEW YORK LABOR LAW – UNLAWFUL WAGE DEDUCTIONS/KICKBACKS**  
**(Brought on behalf of Plaintiffs and the Class Members)**

117. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

118. Defendants have made unlawful deductions and required kickbacks from the wage of Plaintiffs and the Class Members, including but not limited to, deductions for house fees, fines, club scrip cash out fees, attire, and mandatory tip-outs.

119. The deductions made from the wages of Plaintiffs and the Class Members have not been authorized or required by law.

120. The deductions made from the wages of Plaintiffs and the Class Members have not been expressly authorized in writing by Plaintiffs and the Class Members, and have not been for the benefit of Plaintiffs and the Class Members.

121. Through their knowing or intentional efforts to permit unauthorized deductions from the wages of Plaintiffs and the Class Members, Defendants have willfully violated the NYLL, Article 6 §§ 190 *et seq.* and the supporting regulations.

122. Due to Defendants' willful violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendant the amounts of any unlawful deductions, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs, on behalf of themselves and all other similarly situated Collective Action Members and Class Members, respectfully request that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and ordering the prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b) and appointing Plaintiff and his counsel to represent the Collective Action Members;
- b. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) on behalf of the Class Members and appointing Plaintiff and his counsel to represent the Class;
- c. An order tolling the statute of limitations;
- d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NYLL;
- e. An injunction against Defendants and its officers, agents, successors, employees, representatives and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- f. An award of compensatory damages as a result of the Defendants' willful failure to pay



- minimum wages pursuant to the FLSA and the NYLL and supporting regulations;
- g. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay minimum wages pursuant to the FLSA and the NYLL and supporting regulations;
  - h. Fifty dollars (\$50) per Plaintiff and each of the Class Members for each workweek that the violations of NYLL, Article 6 § 195 occurred or continue to occur, or a total of twenty-five hundred dollars (\$2,500) per Plaintiff and each of the Class Members as provided for by NYLL, Article 6 § 198(1)-b;
  - i. One hundred dollars (\$100) per Plaintiff and each of the Class Members for each workweek that the violations of NYLL, Article 6 § 195 occurred or continue to occur, or a total of twenty-five hundred dollars per Plaintiff and each of the Class Members as provided for by NYLL, Article 6 § 198(1)-d;
  - j. An award of compensatory damages as a result of the Defendants' willful non-payment of gratuities;
  - k. An award of liquidated and/or punitive damages as a result of Defendants' willful non-payment of gratuities;
  - l. An award of compensatory damages as a result of Defendants' unlawful deductions;
  - m. An award of liquidated and/or punitive damages as a result of Defendants' unlawful deductions;
  - n. An award of compensatory damages as a result of Defendants' failure to pay Plaintiffs the expenses of purchasing and maintaining required uniforms;
  - o. An award of liquidated and/or punitive damages as a result of Defendants' failure to pay Plaintiffs the expenses of purchasing and maintaining required uniforms;


- p. An award of prejudgment and post-judgment interest;
- q. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- r. Such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

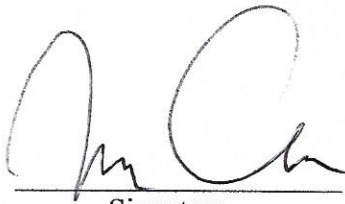
Dated: New York, New York  
December 16, 2016

**PELTON GRAHAM LLC**

By:   
Brent E. Pelton (BP 1055)  
Taylor B. Graham (TG 9607)  
111 Broadway, Suite 1503  
New York, New York 10006  
Telephone: (212) 385-9700  
Facsimile: (212) 385-0800

*Attorneys for Plaintiffs, the putative Collective  
and Class*

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of ABCZ Corp. d/b/a VIP Club, ABCZ II Mgmt. Corp., Sushi Fun Dining & Catering, Inc., Pacific Club Holdings, Inc., West 20th Enterprises Corp., and/or their respective owners, affiliated companies, subsidiaries, contractors, directors, officers, franchisees and/or affiliates to pay me prevailing wages and overtime wages as required under state and/or federal law, and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being **named as the representative plaintiff** in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. I understand that I will be represented by Pelton Graham LLC without prepayment of costs or attorneys' fees. I understand that if plaintiffs are successful, costs expended by attorneys on my behalf will be deducted from my settlement or judgment first. I understand that my attorneys may petition the court for an award of fees and costs to be paid by defendants on my behalf. I understand that the fees retained by the attorneys will be either the amount received from the defendants or approximately 1/3 (33.33%) of my total settlement or judgment amount (including fees), whichever is greater.

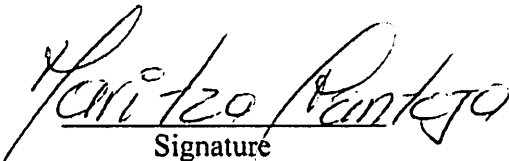


Signature

Melissa Acevedo  
Printed Name

**CONSENT TO BECOME PARTY PLAINTIFF**

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of ABCZ Corp. d/b/a VIP Club, and/or their respective owners, affiliated companies, subsidiaries, contractors, directors, officers, franchisees and/or affiliates to pay me minimum wages as required under state and/or federal law, and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being **named as the representative plaintiff** in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. I understand that I will be represented by Pelton & Associates PC without prepayment of costs or attorneys' fees. I understand that if plaintiffs are successful, costs expended by attorneys on my behalf will be deducted from my settlement or judgment first. I understand that my attorneys may petition the court for an award of fees and costs to be paid by defendants on my behalf. I understand that the fees retained by the attorneys will be either the amount received from the defendants or approximately 1/3 (33.33%) of my total settlement or judgment amount (including fees), whichever is greater.

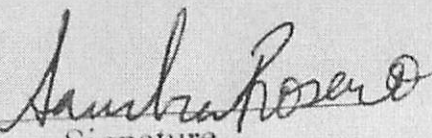
  
Signature

  
Printed Name

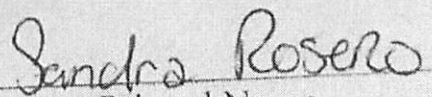


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Signature



  
Printed Name

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Owners of VIP Club Facing Fmr. Dancers' Wage and Hour Class Action](#)

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