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*Attorneys for Plaintiff*

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

-----X  
DANIEL NAJERA GUEVARA, *individually  
and on behalf of others similarly situated,*

*Plaintiff,*

-against-

1317 RESTAURANT CO LLC (d/b/a  
FRATELLI PIZZA & WINE BAR),  
JONATHAN BASH, and MARK  
BASH,

*Defendants.*

-----X

**COMPLAINT**

**COLLECTIVE ACTION  
UNDER 29 U.S.C. § 216(b)**

**ECF Case**

Plaintiff Daniel Najera Guevara (“Plaintiff Najera” or “Mr. Najera”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., alleges upon information and belief, and as against each of defendants 1317 Restaurant Co LLC (d/b/a Fratelli Pizza & Wine Bar) (“Defendant Corporation”) Jonathan Bash, and Mark Bash (collectively, “Defendants”), as follows:

**NATURE OF ACTION**

1. Plaintiff Najera is a former employee of Defendants 1317 Restaurant Co LLC (d/b/a Fratelli Pizza & Wine Bar), Jonathan Bash, and Mark Bash.
2. Fratelli Pizza & Wine Bar is an Italian restaurant owned by Jonathan Bash and Mark Bash, located at 1317 First Avenue, New York, New York 10021.

3. Upon information and belief, Defendants Jonathan Bash and Mark Bash serve or served as owners, managers, principal or agents of Defendant Corporation and through this corporate entity operate the Italian restaurant.

4. Plaintiff Najera is a former employee of Defendants.

5. Plaintiff Najera was employed as a dishwasher, delivery worker and porter.

6. However, when ostensibly working as a delivery worker, Plaintiff Najera was required to spend several hours each day performing non-tipped duties unrelated to deliveries, including but not limited to dishwashing, washing the basement with a hose and mopping it, bringing up items from the basement for the cook, taking out the garbage, twisting and tying up cardboard boxes, transporting items such as avocados, salmon, garbage bags to and from the other restaurant and carrying down and stocking deliveries in the basement, (hereinafter, “non-delivery, non-tip duties”).

7. At all times relevant to this Complaint, Plaintiff Najera worked for Defendants in excess of 40 hours per week, without receiving the applicable minimum wage or appropriate overtime compensation for the hours over 40 per week that he worked.

8. Rather, Defendants failed to maintain accurate recordkeeping of his hours worked, failed to pay Plaintiff Najera the applicable minimum wage, and failed to pay him appropriately for any hours worked over 40, either at the straight rate of pay or for any additional overtime premium.

9. Further, Defendants failed to pay Plaintiff Najera the required “spread of hours” pay for any day in which he had to work over 10 hours a day.

10. Defendants employed and accounted for Plaintiff Najera as a delivery worker for three hours of each day in their payroll, but in actuality his duties included greater or equal time spent performing the non-delivery, non-tipped functions such as those alleged above.

11. At all times, regardless of duties, Defendants paid Plaintiff Najera and all other delivery workers at the lowered tip-credited rate.

12. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Najera's non-tipped duties exceeded 20% of each workday, or 2 hours per day (whichever was less in each day) (12 N.Y.C.R.R. § 146).

13. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Najera's actual duties in payroll records to avoid paying Plaintiff Najera at the minimum wage rate, and to enable them to pay Plaintiff Najera at the lower tip-credited rate by designating him as a delivery worker instead of a non-tipped employee.

14. Defendants' conduct extended beyond Plaintiff Najera to all other similarly situated employees.

15. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Najera and other employees to work in excess of forty (40) hours per week without providing them the minimum wage and overtime compensation required by federal and state law and regulations.

16. Plaintiff Najera now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA"), the New York Labor Law ("NYLL") §§190 and 650 *et seq.*, and "overtime wage order" respectively codified at N.Y.C.R.R. Tit. 12 §

146 and the “spread of hours” and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. tit. 12, § 142-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees and costs.

17. Plaintiff Najera seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

18. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1531 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Najera’s state law claims is conferred by 28 U.S.C. § 1367(a).

19. Venue is proper in this district under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their businesses in this district, and Plaintiff Najera was employed by Defendants in this district.

### **PARTIES**

#### *Plaintiff*

20. Plaintiff Daniel Najera Guevara (“Plaintiff Najera” or “Mr. Najera”) is an adult individual residing in New York County, New York.

21. Plaintiff Najera was employed by Defendants from approximately August 19, 2012 until on or about November 27, 2016.

22. Plaintiff Najera consents to being a party pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

*Defendants*

23. At all times relevant to this complaint, Defendants own, operate, and/or control an Italian restaurant located at 1317 First avenue, New York, New York 10021, under the name “Fratelli Pizza & Wine Bar.”

24. Upon information and belief, 1317 Restaurant Co LLC (“Defendant Corporation”) is a Corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 1317 First Avenue, New York, New York 10021.

25. Defendant Jonathan Bash is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Jonathan Bash is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations.

26. Defendant Jonathan Bash possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

27. Defendant Jonathan Bash determined the wages and compensation of the employees of Defendants, including Plaintiff Najera, and established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

28. Defendant Mark Bash is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Mark Bash is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations.

29. Defendant Mark Bash possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

30. Defendant Mark Bash determined the wages and compensation of the employees of Defendants, including Plaintiff Najera, and established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

31. Defendants operate an Italian restaurant located in the Upper East Side section of Manhattan.

32. Individual Defendants Jonathan Bash and Mark Bash possess operational control over Defendant Corporation, possess an ownership interest in Defendant Corporation, and control significant functions of Defendant Corporation.

33. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method and share control over the employees.

34. Each Defendant possessed substantial control over Plaintiff Najera's (and other similarly situated employees') working conditions, and over the policies and practices with

respect to the employment and compensation of Plaintiff Najera, and all similarly situated individuals, referred to herein.

35. Defendants jointly employed Plaintiff Najera, and all similarly situated individuals, and are Plaintiff Najera's (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

36. In the alternative, Defendants constitute a single employer of Plaintiff Najera and/or similarly situated individuals.

37. Upon information and belief, individual defendants Jonathan Bash and Mark Bash operate Defendant Corporation as either an alter ego of themselves, and/or fail to operate Defendant Corporation as a legal entity separate and apart from themselves by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;
- (b) defectively forming or maintaining Defendant Corporation by, among other things, failing to hold annual meetings or maintaining appropriate corporate records;
- (c) transferring assets and debts freely as between all Defendants;
- (d) operating Defendant Corporation for their own benefit as the sole or majority shareholders;
- (e) operating Defendant Corporation for their own benefit and maintaining control over it as a closed Corporation or a closely controlled entity;
- (f) intermingling assets and debts of their own with Defendant Corporation;

- (g) diminishing and/or transferring assets of Defendant Corporation to protect their own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

38. At all relevant times, Defendants were Plaintiff Najera's employers within the meaning of the FLSA and NYLL.

39. Defendants had the power to hire and fire Plaintiff Najera, controlled the terms and conditions of his employment, and determined the rate and method of any compensation in exchange for Plaintiff Najera's services.

40. In each year from 2012 to 2016, Defendants, both individually and jointly, had gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

41. In addition, upon information and belief, Defendants and/or their enterprises were directly engaged in interstate commerce. For example, numerous items that were used in the Italian restaurant on a daily basis, such as wines and spirits, were produced outside of the State of New York.

*Individual Plaintiff*

42. Plaintiff Najera is a former employee of Defendants, employed in performing the duties of dishwasher, delivery worker, and porter.

43. Plaintiff Najera seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

*Plaintiff Daniel Najera Guevara*



44. Plaintiff Najera was employed by Defendants from approximately August 19, 2012 until on or about November 27, 2016.

45. Defendants employed Plaintiff Najera as a dishwasher, delivery worker, and porter.

46. However, when employed as a delivery worker, Plaintiff Najera was also required to spend a significant portion of his work day performing the non-tipped, non-delivery duties described above.

47. Plaintiff Najera regularly handled goods in interstate commerce, such as dishwashing liquids and cleaning utensils produced outside of the State of New York.

48. Plaintiff Najera's work duties required neither discretion nor independent judgment.

49. Throughout his employment with Defendants, Plaintiff Najera regularly worked in excess of 40 hours per week.

50. From approximately August 19, 2012 until on or about August 2015, Plaintiff Najera worked from approximately 7:00 p.m. until on or about 6:00 a.m. Thursdays through Tuesdays (typically 66 hours per week).

51. From approximately August 2015 until on or about July 2016, Plaintiff Najera worked from approximately 7:00 p.m. until on or about 6:00 a.m. seven days a week (typically 77 hours per week).

52. From approximately July 2016 until on or about October 2016, Plaintiff Najera worked from approximately 7:00 p.m. until on or about 6:00 a.m. six days a week (typically 66 hours per week).

53. From approximately October 2016 until on or about November 27, 2016, Plaintiff Najera worked from approximately 7:00 p.m. until on or about 3:30 a.m. six days a week (typically 51 hours per week).

54. From approximately August 2012 until on or about October 2016, defendants paid Plaintiff Najera his wages in cash.

55. From approximately October 2016 until on or about November 27, 2016, defendants paid Plaintiff Najera his wages by check.

56. From approximately August 19, 2012 until on or about August 2014, defendants paid Plaintiff Najera a fixed salary of \$420 per week.

57. From approximately August 2014 until on or about July 2015, defendants paid Plaintiff Najera a fixed salary of \$470 per week.

58. From approximately July 2015 until on or about July 2016, defendants paid Plaintiff Najera a fixed salary of \$550 per week.

59. From approximately July 2016 until on or about October 2016, defendants paid Plaintiff Najera a fixed salary of \$580 per week.

60. From approximately October 2016 until on or about November 27, 2016, defendants paid Plaintiff Najera \$12 per hour for the first 40 hours he worked.

61. From approximately October 2016 until on or about November 27, 2016, Defendants failed to pay Plaintiff Najera the wages he was due for the hours he worked in a week.

62. In fact, defendants required Plaintiff Najera to work 51 hours per week but only compensated him for the first 40 hours.

63. Defendants never granted Plaintiff Najera any breaks or meal periods of any kind.

64. Plaintiff Najera was never notified by Defendants that his tips would be included as an offset for wages.

65. Defendants did not account for these tips in any daily, weekly or other accounting of Plaintiff Najera's wages.

66. Defendants did not provide Plaintiff Najera with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

67. Plaintiff Najera was not required to keep track of his time, nor to his knowledge did the Defendants utilize any time tracking device, such as a time clock or punch cards, that accurately reflected his actual hours worked.

68. On or about November 27, 2016, the date of Plaintiff Najera's termination, defendants forced Plaintiff Najera to sign a blank document by threatening to call the police if he did not sign it.

69. Defendants never provided Plaintiff Najera with a written notice, in English and in Spanish (Plaintiff Najera's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

70. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Najera regarding overtime and wages under the FLSA and NYLL.

*Defendants' General Employment Practices*

71. Defendants regularly required Plaintiff Najera to work in excess of forty (40) hours per week without paying him the proper minimum wage, spread of hours pay and overtime compensation.

72. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Najera (and all similarly situated employees) to work in excess of forty (40) hours per week without paying him appropriate minimum wage and/or overtime compensation, as required by federal and state laws.

73. At no time did Defendants inform Plaintiff Najera that they had reduced his hourly wage by a tip allowance.

74. From approximately October 2016 until on or about November 27, 2016, Defendants habitually required Plaintiff Najera, to work additional hours beyond his regular shifts, but did not provide him with any additional compensation.

75. Defendants required Plaintiff Najera, and all other delivery workers, to perform general non-delivery, non-tipped tasks in addition to their primary duties as delivery workers.

76. Plaintiff Najera and all other similarly situated employees, were employed ostensibly as tipped employees by Defendants, although their actual duties included greater or equal time spent performing non-tipped duties.

77. Plaintiff Najera and all other delivery workers were paid at a rate that was lower than the minimum wage by Defendants; however, under state law Defendants were not entitled to a tip credit because Plaintiff Najera's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less) (12 N.Y.C.R.R. § 146).

78. New York State regulations provide that an employee cannot be classified as a tipped employee "on any day . . . in which he has been assigned to work in an occupation in which tips are not customarily received." (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly,

under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

79. Plaintiff Najera's duties were not incidental to his occupation as delivery worker, but instead constituted entirely unrelated general restaurant work with duties including the non-tipped duties described above.

80. In violation of federal and state law as codified above, Defendants classified Plaintiff Najera and other delivery workers as tipped employees and paid them at a rate that was lower than the minimum wage when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

81. From approximately October 2016 until on or about November 27, 2016, defendants' pay practices resulted in Plaintiff Najera, not receiving payment for all his hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum and overtime wage rate.

82. Prior to October 2016, Plaintiff Najera was paid his wages entirely in cash.

83. Defendants willfully disregarded and purposefully evaded record keeping requirements of the Fair Labor Standards Act and New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

84. By employing these practices, Defendants avoided paying Plaintiff Najera the minimum wage for his regular hours and overtime compensation of time and a half for all of his hours worked in excess of forty (40) hours per week.

85. Defendants failed to post required wage and hour posters in the Italian restaurant, and did not provide Plaintiff Najera with statutorily required wage and hour records

or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Najera's relative lack of sophistication in wage and hour laws.

86. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Najera (and similarly situated individuals) worked, and to avoid paying Plaintiff Najera properly for (1) his full hours worked and (2) for overtime due.

87. Defendants failed to provide Plaintiff Najera and other employees with wage statements at the time of payment of wages, 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; deductions; allowances, if any, claimed as part of the minimum wage; net wages; 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, as required by NYLL §195(3).

88. Defendants failed to provide Plaintiff Najera and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language of Spanish, containing: 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; 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; and the telephone number of the employer, as required by New York Labor Law §195(1).

**FLSA COLLECTIVE ACTION CLAIMS**

89. Plaintiff Najera brings his FLSA minimum and overtime wages, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants, or any of them, on or after the date that is three years before the filing of the complaint in his case (the “FLSA Class Period”), as employees of Defendants (the “FLSA Class”).

90. At all relevant times, Plaintiff Najera and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required minimum wage, overtime pay of one and one-half times his regular rates for work in excess of forty (40) hours per workweek under the FLSA, willfully taking improper wage deductions and other improper credits against Plaintiff Najera’s wages for which Defendants did not qualify under the FLSA, and willfully failing to keep records required by the FLSA.

91. The claims of Plaintiff Najera stated herein are similar to those of the other employees.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FLSA MINIMUM WAGE PROVISIONS**

92. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

93. At all times relevant to this action, Defendants were Plaintiff Najera's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Najera (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

94. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

95. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

96. Defendants failed to pay Plaintiff Najera (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

97. Defendants' failure to pay Plaintiff Najera (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

98. Plaintiff Najera (and the FLSA Class members) were damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF THE FLSA OVERTIME PROVISIONS**

99. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

100. At all times relevant to this action, Defendants were Plaintiff Najera's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Najera



(and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for his employment.

101. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

102. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

103. Defendants, in violation of 29 U.S.C. § 207 (a)(1) of the FLSA, failed to pay Plaintiff Najera (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

104. Defendants' failure to pay Plaintiff Najera (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

105. Plaintiff Najera (and the FLSA Class members) were damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE NEW YORK MINIMUM WAGE RATE**

106. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

107. At all times relevant to this action, Defendants were Plaintiff Najera's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Najera (and the FLSA Class members), controlled terms and conditions of employment, and determined the rates and methods of any compensation in exchange for employment.

108. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff Najera (and the FLSA Class members) less than the minimum wage.

109. Defendants' failure to pay Plaintiff Najera (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

110. Plaintiff Najera (and the FLSA Class Members) were damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF THE NEW YORK STATE**  
**LABOR LAW'S OVERTIME PROVISIONS**

111. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

112. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Najera (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

113. Defendants failed to pay Plaintiff Najera (and the FLSA Class members) in a timely fashion, as required by Article 6 of the New York Labor Law.

114. Defendants' failure to pay Plaintiff Najera (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

115. Plaintiff Najera (and the FLSA Class Members) were damaged in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**  
**OF THE NEW YORK COMMISSIONER OF LABOR)**

116. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

117. Defendants failed to pay Plaintiff Najera one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Najera's spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.* and 650 *et seq.* and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 142-1.6.

118. Defendants' failure to pay Plaintiff Najera an additional hour's pay for each day Plaintiff Najera's spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

119. Plaintiff Najera was damaged in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF THE NOTICE AND RECORDKEEPING**  
**REQUIREMENTS OF THE NEW YORK LABOR LAW**

120. Plaintiff Najera repeats and realleges all paragraphs above as though fully set forth herein.

121. Defendants failed to provide Plaintiff Najera with a written notice, in English and in Spanish (Plaintiff Najera's primary language), of his rate of pay, regular pay day, and such other information as required by NYLL §195(1).

122. Defendants are liable to Plaintiff Najera in the amount of \$5,000, together with costs and attorneys' fees.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF THE WAGE STATEMENT PROVISIONS**  
**OF THE NEW YORK LABOR LAW**

123. Plaintiff Najera repeats and realleges all paragraphs above as though set forth fully herein.

124. Defendants did not provide Plaintiff Najera with a statement of wages with each payment of wages, as required by NYLL 195(3).

125. Defendants are liable to Plaintiff Najera in the amount of \$5,000, together with costs and attorneys' fees.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Najera respectfully requests that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the pendency of this action, and permitting them promptly to file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Najera and the FLSA class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Najera and the FLSA class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Najera's, and the FLSA class members', compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Najera and the FLSA class members;

(f) Awarding Plaintiff Najera and the FLSA class members damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA, as applicable;

(g) Awarding Plaintiff Najera and the FLSA class members liquidated damages in an amount equal to 100% of his damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Najera and the members of the FLSA Class;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Najera and the members of the FLSA Class;

(j) Declaring that Defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiff Najera and the members of the FLSA Class;

(k) Declaring that Defendants violated the notice, recordkeeping, and wage statement requirements of the NYLL with respect to Plaintiff Najera's, and the FLSA Class members',

compensation, hours, wages; and any deductions or credits taken against wages;

(l) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Najera's, and the FLSA Class members', compensation, hours, wages; and any deductions or credits taken against wages;

(m) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Najera and the FLSA Class members;

(n) Awarding Plaintiff Najera and the FLSA class members damages for the amount of unpaid minimum and overtime wages, damages for any improper deductions or credits taken against wages as well as awarding spread of hours pay under the NYLL as applicable;

(o) Awarding Plaintiff Najera damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(p) Awarding Plaintiff Najera and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the minimum wage, spread of hours pay and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(q) Awarding Plaintiff Najera and the FLSA class members pre-judgment and post-judgment interest as applicable;

(r) Awarding Plaintiff Najera and the FLSA class members the expenses incurred in this action, including costs and attorneys' fees;

(s) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

- (t) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Najera demands a trial by jury on all issues triable by a jury.

Dated: New York, New York  
December 6, 2016

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace

By: Michael A. Faillace [MF-8436]  
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*Attorneys for Plaintiff*

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

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New York, New York 10165

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Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

November 29, 2016

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

**(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)**

Name / Nombre:

**Daniel Najera Guevara**

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

29 de noviembre de 2016



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fratelli Pizza & Wine Bar Sliced with Class Action Over Unpaid Wages](#)

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