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

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IPOLITA ESPINOZA MONDRAGON, *individually  
and on behalf of others similarly situated,*

*Plaintiff,*

-against-

EL PUERTO DE ACAPULCO BAR RESTAURANT  
INC. (d/b/a EL PUERTO DE ACAPULCO BAR &  
RESTAURANT), GONZALO JAVIER CAMPIS, and  
JOSE ANTONIO CAMPIS,

*Defendants.*

-----X

Plaintiff Ipolita Espinoza Mondragon, individually and on behalf of others similarly situated (hereinafter, "Plaintiff Espinoza") by and through her attorneys, Michael Faillace & Associates, P.C., upon her knowledge and belief, and as against El Puerto De Acapulco Bar Restaurant Inc. (d/b/a El Puerto de Acapulco Bar & Restaurant) ("Defendant Corporation"), Gonzalo Javier Campis, and Jose Antonio Campis (collectively, "Defendants"), alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Espinoza is a former employee of Defendants El Puerto De Acapulco Bar Restaurant Inc. (d/b/a El Puerto de Acapulco Bar & Restaurant), Gonzalo Javier Campis, and Jose Antonio Campis (collectively, "Defendants").

**COMPLAINT**

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

**ECF Case**

2. Defendants own, operate, or control a Mexican Restaurant located at 9316 A 37th Ave, Jackson Heights, NY 11372, under the name “El Puerto De Acapulco.”

3. Upon information and belief, Defendants Gonzalo Javier Campis and Jose Antonio Campis serve or served as owners, managers, principals, or agents of Defendant Corporation and, through this corporate entity, operate or operated the Mexican Restaurant as a joint or unified enterprise.

4. Plaintiff Espinoza was employed as a bartender and later, as a waitress.

5. Plaintiff Espinoza ostensibly was employed as a waitress, but she was required to spend several hours each day performing non-tipped duties unrelated to waitressing, including sweeping and mopping, taking phone orders, cashiering, cleaning tables, bathrooms, refrigerator, and counters, preparing food, placing chairs of the restaurants on the tables at closing time, cutting lemons, placing sodas and beers in the refrigerator, and filling small cups with sauces for delivery (hereinafter non-tip duties).

6. At all times relevant to this Complaint, Plaintiff Espinoza worked for Defendants in excess of 40 hours per week, without appropriate minimum wage or overtime compensation for the hours she worked.

7. Rather, Defendants failed to maintain accurate recordkeeping of the hours worked and failed to pay Plaintiff Espinoza appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

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

9. Defendants employed and accounted for Plaintiff Espinoza as a waitress in their payroll, but in actuality her duties included greater or equal time spent performing the non-tipped functions such as those alleged above.

10. At all times, regardless of duties, Defendants paid Plaintiff Espinoza and all other waitresses at a rate that was lower than the required tip-credited rate.

11. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Espinoza'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).

12. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Espinoza's actual duties in payroll records to avoid paying Plaintiff Espinoza at the minimum wage rate, and to enable them to pay Plaintiff Espinoza at the lower tip-credited rate (which they still failed to do) by designating her as a waitress instead of a non-tipped employee.

13. Defendants' conduct extended beyond Plaintiff Espinoza to all other similarly situated employees.

14. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Espinoza 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.

15. Plaintiff Espinoza now brings this action on behalf of herself, 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 §§ 142-2.2, 2.4), 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, § 146-1.6 (herein the "Spread of Hours Wage Order"), including applicable liquidated damages, interest, attorneys' fees, and costs.

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

### **JURISDICTION AND VENUE**

17. 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 Espinoza's state law claims is conferred by 28 U.S.C. § 1367(a).

18. 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 Espinoza was employed by Defendants in this district.

### **PARTIES**

#### *Plaintiff*

19. Plaintiff Ipolita Espinoza Mondragon ("Plaintiff Espinoza" or "Ms. Espinoza") is an adult individual residing in Queens County, New York.

20. Plaintiff Espinoza was employed by Defendants from approximately October 24, 2015 until on or about September 9, 2017.

21. At all relevant times to this Complaint, Plaintiff Espinoza was ostensibly employed by Defendants as a bartender for approximately 3 months, and as a waitress for approximately 21 months .

22. Plaintiff Espinoza 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 owned, operated, and/or controlled a Mexican Restaurant located at 9316 A 37th Ave, Jackson Heights, NY 11372.

24. Upon information and belief, El Puerto De Acapulco Bar Restaurant Inc. (d/b/a El Puerto De Acapulco Bar & Restaurant). is a corporation organized and existing under the laws of the State of New York.

25. Upon information and belief, it maintains its principal place of business at 9316 A 37th Ave, Jackson Heights, NY 11372.

26. Defendant Gonzalo Javier Campis is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Gonzalo Javier Campis is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation.

27. Defendant Gonzalo Javier Campis possesses or possessed operational control over Defendant Corporation, had an ownership interest in Defendant Corporation, and/or controlled significant functions of Defendant Corporation.

28. Defendant Gonzalo Javier Campis determined the wages and compensation of the employees of Defendants, including Plaintiff Espinoza, established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

29. Defendant Jose Antonio Campis is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Jose Antonio Campis is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation.

30. Defendant Jose Antonio Campis possesses or possessed operational control over Defendant Corporation, had an ownership interest in Defendant Corporation, and/or controlled significant functions of Defendant Corporation.

31. Defendant Jose Antonio Campis determined the wages and compensation of the employees of Defendants, including Plaintiff Espinoza, established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

32. Defendants operate a Mexican Restaurant located in the Jackson Heights area of Queens.

33. Individual Defendants Gonzalo Javier Campis and Jose Antonio Campis possess operational control over Defendant Corporation, possess an ownership interest in Defendant Corporation, and control significant functions of Defendant Corporation.

34. 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.

35. Each Defendant possessed substantial control over Plaintiff Espinoza's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Espinoza, and all similarly situated individuals, referred to herein.

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

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

38. Upon information and belief, individual defendants Gonzalo Javier Campis and Jose Antonio Campis, 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 closely controlled entity;
- (f) intermingling assets and debts of their own with those of 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.

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

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

41. In each year from 2015 to 2017, 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).

42. In addition, upon information and belief, Defendants and/or their enterprises were directly engaged in interstate commerce. For example, numerous items that were sold in the Mexican Restaurant on a daily basis, were produced outside of the State of New York.

*Individual Plaintiff*



43. Plaintiff Espinoza is a former employee of Defendants, employed as a bartender and ostensibly employed as a waitress, but who spent more than 20% of the time she worked each day performing the non-waitress non-tip duties outlined above.

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

*Plaintiff Ipolita Espinoza Mondragon*

47. Plaintiff Espinoza was employed by Defendants from approximately October 24, 2015 until on or about September 9, 2017.

48. Defendants employed Plaintiff Espinoza as a bartender from approximately October 2015 until on or about January 2016, and ostensibly employed her as a waitress from approximately January 2016 until on or about September 2017. However, Plaintiff Espinoza spent more than 20% of each work day performing the non-waitressing, non-tip duties outlined above.

49. Plaintiff Espinoza regularly handled goods in interstate commerce produced outside of the State of New York.

50. Plaintiff Espinoza's work duties required neither discretion nor independent judgment.

51. Throughout her employment with Defendants, Plaintiff Espinoza regularly worked in excess of 40 hours per week.

52. From approximately October 24, 2015 until on or about January 24, 2016, Plaintiff Espinoza worked as a bartender from approximately 6:00 p.m. until on or about 4:00 to 4:30 a.m. Fridays through Mondays (typically 40 to 42 hours per week).

53. From approximately January 25, 2016 until on or about July 2017, Plaintiff Espinoza worked as a waitress from approximately 5:00 p.m. until on or about 4:00 to 5:00 a.m. Tuesdays through Sundays (typically 66 to 72 hours per week).

54. From approximately July 2017 until on or about September 9, 2017, Plaintiff Espinoza worked as a waitress from approximately 5:00 p.m. until on or about 2:00 a.m. Saturdays through Tuesdays (typically 36 hours per week).

55. From approximately March 2016 until on or about August 2016, Plaintiff Espinoza had a serious medical condition which required an operation and medical appointments. Defendants would suspend her for a week of work whenever she went to these appointments, amounting to seven weeks of suspension for attending appointments that lasted approximately an hour each.

56. Throughout her employment with defendants, Plaintiff Espinoza was paid her wages in cash.

57. Throughout her employment, Defendants paid Plaintiff Espinoza a fixed salary of \$35 per day.

58. However, on one occasion, from approximately July 2017 until on or about September 9, 2017, Defendants required that Plaintiff Espinoza pay for a cash deficit in the register, costing her approximately \$28. On another occasion in this time period, Defendants requested that Plaintiff Espinoza pay \$25 for a cash deficit in the register. Plaintiff Espinoza was then let go for refusing to pay this amount.

59. Plaintiff Espinoza's wages did not vary regardless of how many additional hours she worked in a day or week.

60. In fact, defendants required Plaintiff Espinoza to work 30 minutes to an hour past her scheduled departure time every day and did not compensate her for the additional time they required her to work.

61. Defendants never granted Plaintiff Espinoza any breaks or meal periods of any kind.

62. Plaintiff Espinoza was never notified by Defendants that her tips would be included as an offset for wages.

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

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

65. Plaintiff Espinoza was not required to keep track of her time, nor to her knowledge did the Defendants utilize any time tracking device, such as punch cards, that accurately reflected her actual hours worked.

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

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

68. Defendants required Plaintiff Espinoza to purchase "tools of the trade" with her own funds—including approximately seven polo shirts with the restaurant name, four pairs of black pants and four black skirts.

*Defendants' General Employment Practices*

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

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

71. At no time did Defendants inform Plaintiff Espinoza that they had reduced her hourly wage by a tip allowance.

72. Defendants required Plaintiff Espinoza, and all other waitresses, to perform general non-tipped restaurant tasks in addition to their primary duties as waitresses. Plaintiff Espinoza 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.

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

74. New York State regulations provide that an employee cannot be classified as a tipped employee "on any day . . . in which she 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.

75. Plaintiff Espinoza's duties were not incidental to her occupation as waitress, but instead constituted entirely unrelated general restaurant work with duties including the non-tipped duties described above.

76. In violation of federal and state law as codified above, Defendants classified Plaintiff Espinoza and other waitresses as tipped employees and did not even pay them at the required tip-credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

77. Defendants' pay practices resulted in Plaintiff Espinoza not receiving payment for all her hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum and overtime wage rate.

78. At no time did Defendants inform Plaintiff Espinoza that they had reduced her hourly wage by a tip allowance.

79. Defendants failed to inform Plaintiff Espinoza that they intended to take a deduction against Plaintiff Espinoza's earned wages for tip income, as required by the NYLL before any deduction may be taken.

80. Defendants failed to inform Plaintiff Espinoza that her tips would be credited towards the payment of the minimum wage.

81. Defendants failed to maintain a record of tips earned by Plaintiff Espinoza for the alcoholic drinks she sold to customers.

82. Plaintiff Espinoza was paid her 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 Espinoza the minimum wage for her regular hours and overtime compensation of time and a half for all of her hours worked in excess of forty (40) hours per week.

85. Defendants failed to post required wage and hour posters in the Mexican Restaurant, and did not provide Plaintiff Espinoza with statutorily required wage and hour records or statements of her pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Espinoza'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 Espinoza (and similarly situated individuals) worked, and to avoid paying Plaintiff Espinoza properly for (1) her full hours worked, (2) minimum wage, (3) overtime wages, and (4) spread of hours pay.

87. Defendants failed to provide Plaintiff Espinoza 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 Espinoza 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 Espinoza brings her FLSA minimum wage, overtime compensation 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 her case (the "FLSA Class Period"), as employees of Gonzalo Javier Campis, ERASE, and Jose Antonio Campis (the "FLSA Class").

90. At all relevant times, Plaintiff Espinoza 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 her regular rates for work in excess of forty (40) hours per workweek under the FLSA and willfully failing to keep records required by the FLSA.

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

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

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

93. At all times relevant to this action, Defendants were Plaintiff Espinoza'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 Espinoza (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 Espinoza (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 Espinoza (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 Espinoza (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 Espinoza repeats and realleges all paragraphs above as though fully set forth herein.

100. At all times relevant to this action, Defendants were Plaintiff Espinoza'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 Espinoza (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for her 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 Espinoza (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 Espinoza (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

105. Plaintiff Espinoza (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 Espinoza repeats and realleges all paragraphs above as though fully set forth herein.

107. At all times relevant to this action, Defendants were Plaintiff Espinoza's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Espinoza (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 Espinoza (and the FLSA Class members) less than the minimum wage.

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

110. Plaintiff Espinoza (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 Espinoza 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 Espinoza (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 Espinoza (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 Espinoza (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

115. Plaintiff Espinoza (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 Espinoza repeats and realleges all paragraphs above as though fully set forth herein.

117. Defendants failed to pay Plaintiff Espinoza one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Espinoza's spread of hours exceeded ten hours in violation of NYLL §§ 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 Espinoza an additional hour's pay for each day Plaintiff Espinoza's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

119. Plaintiff Espinoza 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 Espinoza repeats and realleges all paragraphs above as though fully set forth herein.

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

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

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

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

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

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

**EIGHTH CAUSE OF ACTION**  
**RECOVERY OF EQUIPMENT COSTS**

126. Plaintiff Espinoza repeats and realleges all paragraphs above as though set forth fully herein.

127. Defendants required Plaintiff Espinoza to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to

perform her job, such as polo shirts with the restaurant name, further reducing her wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

128. Plaintiff Espinoza was damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Espinoza respectfully request 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 FLSA class members in the FLSA claims in this action;

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

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

(d) Declaring that Defendants have violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Espinoza'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 Espinoza and the FLSA class members;

(f) Awarding Plaintiff Espinoza 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 Espinoza and the FLSA class members liquidated damages in an amount equal to 100% of her 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 have violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Espinoza and the members of the FLSA Class;

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

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

(k) Declaring that Defendants have violated the timely payment provisions of the NYLL as to Plaintiff Espinoza and the members of the FLSA Class;

(l) Declaring that Defendants have violated the notice, recordkeeping, and wage statement requirements of the NYLL with respect to Plaintiff Espinoza'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 Espinoza and the FLSA Class members;

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

(p) Awarding Plaintiff Espinoza and the FLSA class members damages for Defendants' failure to pay Plaintiff in a timely fashion, as required by NYLL § 191;

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

(r) Declaring that Defendants' violations of the NYLL was willful as to Plaintiff Espinoza and the FLSA class members;

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

(t) Awarding Plaintiff Espinoza and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(u) 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





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Faillace@employmentcompliance.com

September 13, 2017

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: Ipolita Espinoza Mondragon

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: *Ipolita Espinoza*

Date / Fecha: 13 de septiembre de 2017

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Collective Action Over Allegedly Improper Wages Hits NY Mexican Eatery](#)

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