

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAYMOND I. EMANUELSON,
Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

No. _____

NY PIZZA SLICE HOUSE, LLC,
JESSIE CARREON, and CARLOS CARREON,

Defendants.

JURY TRIAL DEMANDED

**COLLECTIVE ACTION
PURSUANT TO 29 U.S.C. § 216(b)
(COUNT I ONLY)**

COMPLAINT

COMES NOW the Plaintiff, Raymond I. Emanuelson (hereinafter referred to in this document as “Plaintiff”), by and through his counsel, CARRILLO LAW FIRM, P.C. (Raúl A. Carrillo, Jr. and Steven E. Jones), and hereby submits his Complaint, on behalf of himself and all others similarly situated, as follows:

Summary

1. This is a collective action brought by Plaintiff Raymond I. Emanuelson, on behalf of himself and all others similarly situated, against Defendants to recover unpaid tips and unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”).

2. This is an action brought by Plaintiff, individually, under the New Mexico Minimum Wage Act, against Defendants for unpaid wages, unpaid tips, unpaid overtime compensation, and retaliation.

3. This is an action brought by Plaintiff, individually, under the common law of the State of New Mexico, against Defendants for retaliatory discharge in violation of public policy.

Jurisdiction and Venue

4. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the Fair Labor Standards Act, 29 U.S.C. § 216(b).

5. This Court has supplemental jurisdiction over the Plaintiff's state-law claims, pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendants.

7. Venue is proper under 28 U.S.C. § 1391 because all defendants are residents of the state in which this district is located; alternatively, a substantial part of the events or omissions giving rise to the claim occurred in this district; and, alternatively, defendants are subject to the Court's personal jurisdiction with respect to this action.

Parties

8. Plaintiff is a resident of Las Cruces, New Mexico.

9. Plaintiff was employed by Defendant, NY Pizza Slice House, LLC, from December 2014 to June 2016.

10. Other Defendants, Jessie Carreon and Carlos Carreon, were and are members of NYP Slice House.

11. Plaintiff brings Count I of this action on behalf of himself and all other similarly situated individuals ("Collective Action members") pursuant to 29 U.S.C. § 216(b).

12. Plaintiff and the Collective Action members were employed by Defendants during all or part of the applicable statutory period and were subject to the same illegal overtime and tip-pooling policy or practice.

13. Plaintiff and the Collective Action members are current and former employees of Defendants within the meaning of the FLSA.

14. Plaintiff and the Collective Action members were employed by Defendants within three years of the date the Complaint was filed. *See* 29 U.S.C. § 255.

15. Plaintiff's written consent is attached hereto as Exhibit A.

16. Defendant NY Pizza Slice House, LLC is a New Mexico limited liability company with its principal place of business in Las Cruces, New Mexico.

17. Upon information and belief, Defendant Jessie Carreon is a citizen and resident of the State of New Mexico.

18. Upon information and belief, Defendant Carlos Carreon is a citizen and resident of the State of New Mexico.

Factual Allegations Common to All Claims

19. Defendant NY Pizza Slice House, LLC is a business primarily engaged in restaurant operations, including table service and takeout of Italian-themed food.

20. Defendant NY Pizza Slice House, LLC states that its pizzas are baked in ovens imported from the State of New York.

21. Defendant NY Pizza Slice House, LLC is an "employer" for the purposes of the Fair Labor Standards Act and New Mexico Minimum Wage Act.

22. Defendant Jessie Carreon is a member of NY Pizza Slice House, LLC.

23. Defendant Jessie Carreon had the power to hire and fire employees.

24. Defendant Jessie Carreon supervised and controlled employee work schedules or conditions of employment.

25. Defendant Jessie Carreon determined the rate and method of payment of employees.

26. Defendant Jessie Carreon maintained employment records.

27. Defendant Jessie Carreon is an “employer” for the purposes of the Fair Labor Standards Act and New Mexico Minimum Wage Act.

28. Defendant Carlos Carreon is a member of NY Pizza Slice House, LLC.

29. Defendant Carlos Carreon had the power to hire and fire employees.

30. Defendant Carlos Carreon supervised and controlled employee work schedules or conditions of employment.

31. Defendant Carlos Carreon determined the rate and method of payment of employees.

32. Defendant Carlos Carreon maintained employment records.

33. Defendant Carlos Carreon is an “employer” for the purposes of the Fair Labor Standards Act and New Mexico Minimum Wage Act.

34. Plaintiff and all Collective Action members are non-exempt employees for the purposes of the Fair Labor Standards Act and New Mexico Minimum Wage Act.

35. Plaintiff and all Collective Action members are employees who customarily received tips as part of their employment.

36. Defendants withheld tips earned by Plaintiff and Collective Action members without distributing all of the tips to the employees, either individually or as part of a valid tip-pooling arrangement.

37. Defendants failed to keep a record of all tips earned by employees.

38. Defendants failed to keep a record of all tips paid out to employees.

39. Defendants failed to notify employees, in writing, of Defendants' tip-pooling policy or practice.

40. Defendants distributed some tips to staff that did not customarily receive tips, thus depriving Plaintiff and Collective Action members of their full tip amounts.

41. Defendants distributed some tips to themselves, despite the fact that they did not earn these tips and were not part of a valid tip-pooling arrangement.

42. Defendants distributed some tips to managerial staff as compensation for managerial duties.

43. Defendants distributed some tips to managerial staff, despite the fact that managerial staff were ineligible to earn tips and/or received a greater share of tips than other employees.

44. Defendants distributed as little as 40% of tips to employees, instead dividing the rest among management or Defendants, who were not eligible for these tips.

45. At times, Defendants kept tips earned by employees or misplaced information regarding tips earned by employees.

46. Defendants suffered or permitted non-exempt employees, including Plaintiff and Collective Action members, to work overtime in excess of 40 hours per week, without properly compensating these employees for overtime hours worked.

47. Defendants failed to keep accurate time records, due to computer “rounding” issues. For instance, Plaintiff’s time entries came up approximately 100 minutes short on his paycheck due to the computer rounding down his time entries. Other, similarly situated employees, including Collective Action members, encountered the same issues.

48. Defendants deducted money for payroll and income taxes, but, upon information and belief, did not apply these deductions to Plaintiff’s tax obligations. Other, similarly situated employees, including Collective Action members, encountered the same issues.

49. Defendants failed to keep an accurate record of tips earned and overtime hours worked, thereby depriving employees, including Plaintiff and Collective Action members, the opportunity to review these records as required by applicable state and federal laws.

50. All Collective Action members, including Plaintiff, were subject to the same illegal tip-pooling and overtime policies or practices.

Factual Allegations Specific to Plaintiff (Regarding Counts II and III Only)

51. Defendants failed to pay Plaintiff the legally required minimum wage for all straight-time hours worked. For instance, Defendants failed to pay Plaintiff for time reflected in his time records, Defendants failed to pay Plaintiff for time worked “off the clock,” and Defendants failed to pay Plaintiff for time reflected in his pay stubs.

52. Plaintiff was vocal about Defendants defrauding employees, including at least two other non-exempt employees. Plaintiff complained about this situation continuously during the three months preceding his termination.

53. During the three months preceding his termination, Plaintiff communicated to other employees information regarding their rights under state and federal wage and hour laws, including informing other employees to keep track of their time due to prior payroll discrepancies that Plaintiff had experienced with Defendants.

54. Plaintiff complained of safety concerns, including the employer's policy on washing dishes, which required floor surfaces to be covered in water. Surfaces were slippery and unsafe. Plaintiff complained about this situation in late-August 2016.

55. Defendants created dangerous conditions involving a wooden cabinet at the University location that obstructed employees' work paths. Plaintiff complained about this situation in late-August 2016.

56. Plaintiff noted that Defendants had not made changes required by the fire marshal, including a heavy-duty power line running along the floor in the middle of employees' work paths. Plaintiff complained about this situation in late-August 2016.

57. Defendants terminated Plaintiff shortly thereafter, in late-August 2016.

58. Defendants failed to keep an accurate record of straight-time hours worked, tips earned and overtime hours worked, thereby depriving employees, including Plaintiff, the opportunity to review these records as required by applicable state minimum wage laws.

FLSA Coverage Allegations

59. At all relevant times, Defendants have been an employer within the meaning of the Fair Labor Standards Act. *See* 29 U.S.C. § 203(d).

60. At all relevant times, Defendants have been part of an enterprise engaged in commerce or in the production of good for commerce, or have employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

61. Defendant NY Pizza Slice House, LLC routinely receives deliveries of goods in interstate commerce, including beverages, produce, and other interstate deliveries.

62. At all relevant times, Defendants have been part of an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

FLSA Collective Action Allegations

63. Plaintiff brings this suit as an FLSA collective action pursuant to 29 U.S.C. § 216(b) on behalf of all the following:

All non-exempt current or former employees of NY Pizza Slice House, LLC that received tips or that worked over 40 hours per week without being fully compensated during the period of December 1, 2013 to the present.

Specifically excluded from the collective action are FLSA-exempt employees and employees that did not spend any of their time working in a position in which employees customarily earned tips.

64. Plaintiff has actual knowledge, through conversations with and personal observations of other employees, that a class of similarly situated workers exists who have been

denied rightfully earned wages for tips, have been denied overtime pay for hours worked in excess of 40 hours per week, and have been subjected to the same illegal pay practices or policies described above.

65. The Collection Action members are similarly situated to Plaintiff in that they were non-exempt employees who customarily received tips or worked overtime, and were subject to Defendants' illegal policies and practices as described above.

66. Defendants used the same compensation structure with regard to the employees described above.

67. Defendants used the same compensation structure regardless of the supervisor of a particular Collective Action member.

68. The names, addresses, and phone numbers of the Collective Action members are available from Defendants' records.

69. The Collective Action members should be allowed to receive notice via First Class Mail, email and/or via a website with basic information about the lawsuit or by use of techniques and a form of notice similar to those customarily used in Collective Actions.

**Count I: Violations of the Fair Labor Standards Act
(Plaintiff Individually and on Behalf of All Others Similarly Situated)**

70. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs.

71. Defendants' policy and/or practice of failing to pay Plaintiff and the Collective Action members their properly earned tips violates the law. *See* 29 U.S.C. § 203(m).

72. Additionally, Defendants' policy and/or practice of failing to Pay Plaintiff and the Collective Action members at a rate not less than one and one-half times the regular rate of pay for all hours worked above 40 hours per week violates the law. *See* 29 U.S.C. § 207.

73. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime are applicable to Plaintiff or the Collective Action members.

74. Defendants were aware (or alternatively, should have been aware) that employees' tips were improperly credited and that employees worked overtime without adequate compensation.

75. Due to their violations of the FLSA, Defendants are liable to Plaintiff and the Collective Action members for their unpaid tips, unpaid overtime, an equal amount in liquidated damages, as well as court costs and attorney's fees.

76. Defendants failed to keep accurate records and to provide employees with accurate records of tips earned, tips paid, overtime earned, overtime paid, and other recordkeeping requirements, thus entitling Plaintiff and Collective Action members to a presumption of wrongdoing on the part of the employer.

77. Defendants' actions were willful, thus subjecting Defendants to liability for three years' worth of back wages, pursuant to 29 U.S.C. § 255.

**Count II: Violations of the New Mexico Minimum Wage Act
(Plaintiff Raymond I. Emanuelson Only)**

78. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs.

79. At all relevant times, Defendants have been, and continue to be, employers within the meaning of the New Mexico Minimum Wage Act.

80. The NMMWA requires that an employer pay an employee the minimum wage rate of \$7.50 per hour. *See* § 50-4-22(A) NMSA 1978.

81. The NMMWA requires payment of one and one-half times the employee's regular rate for each hour worked per week over 40 hours. *See* § 50-4-22 NMSA 1978.

82. The NMMWA requires that all tips received by an employee shall be retained by the employee, subject to tip-pooling arrangements. *See* § 50-4-22 NMSA 1978.

83. Defendants failed to pay Plaintiff "straight time" minimum wages for all hours worked.

84. Defendants failed to pay Plaintiff one and one-half times the employee's regular rate of pay for each hour worked per week over 40 hours.

85. Defendants failed to pay Plaintiff all of his rightfully earned tips.

86. None of the exemptions provided by the NMMWA regulating the duty of employers to pay minimum wages or overtime are applicable to Plaintiff.

87. Defendants were aware (or alternatively, should have been aware) that employees' tips were improperly credited and that employees worked overtime without adequate compensation.

88. Due to their violations of the NMMWA, Defendants are liable to Plaintiff for his unpaid wages, unpaid tips, unpaid overtime, and an additional amount equal to twice the unpaid or underpaid wages (including unpaid tips and overtime), as well as court costs and attorney's fees.

89. Due to its violations of the NMMWA, Plaintiff is entitled to appropriate injunctive relief, including requiring the employer to post in the place of business a notice

describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employee.

90. The employer failed to keep accurate records and to provide employees with accurate records of tips earned, tips paid, overtime earned, overtime paid, and other recordkeeping requirements, thus entitling Plaintiff to a presumption of wrongdoing on the part of the employer.

**Count III: New Mexico Minimum Wage Act Retaliation
(Plaintiff Raymond I. Emanuelson Only)**

91. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs.

92. The NMMWA prohibits an employer or any other person from discharging or in any other way discriminating against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law.

93. Defendants discharged Plaintiff, in significant part, due to Plaintiff's questioning of Defendants' pay practices.

94. Due to their violations of the NMMWA, Defendants are liable to Plaintiff for lost wages (including front pay and back pay), incidental and consequential damages, and an additional amount equal to twice the unpaid or underpaid wages (including unpaid tips and overtime), as well as court costs and attorney's fees.

95. Due to Defendants' violations of the NMMWA, Plaintiff is entitled to appropriate injunctive relief, including requiring the employer to post in the place of business a notice

describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employee.

**Count IV: Common-Law Retaliatory Discharge
(Plaintiff Ray Emanuelson Only)**

96. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs.

97. The public policy of the State of New Mexico prohibits the discharge of an employee because he performed an act that public policy has authorized or would encourage, or because he refused to do something required of him by his employer that public policy would condemn.

98. Defendants discharged Plaintiff, in significant part, due to Plaintiff's questioning of Defendants' pay practices.

99. Defendants discharged, Plaintiff, in significant part, due to Plaintiff's questioning of Defendants' health and safety practices.

100. Defendants discharged Plaintiff, in significant part, due to Plaintiff's informing other employees of workers' rights under federal and state laws.

101. A sufficient nexus exists between the public policy asserted by the employee and the reasons for his or her discharge.

102. Due to their violations of the public policy of the State of New Mexico, Defendants are liable to plaintiff for damages including front pay, back pay, incidental damages, consequential damages, and other damages allowed by law.

103. **Request for Punitive Damages:** Defendants' actions were willful, wanton, reckless, fraudulent, and in bad faith, thus entitling Plaintiff to an award of punitive damages for the limited purposes of punishment in order to deter others from the commission of like offenses.

Jury Demand

Plaintiff hereby requests and demands a trial by jury of 12 persons, for all claims that may be tried before a jury.

Conclusion

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. For an order requiring prompt issuance of notice pursuant to 29 U.S.C. § 216 to all those similarly situated apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms;
2. For an order certifying this case as a collective action for the purposes of Count I;
3. For a declaratory judgment that the practices complained of herein are unlawful under the Fair Labor Standards Act and New Mexico Minimum Wage Act;
4. For an order finding Defendants liable for willful violations of the Fair Labor Standards Act with respect to Plaintiff and all Collective Action members;
5. For an order finding Defendants liable for willful violations of the New Mexico Minimum Wage Act with respect to Plaintiff;
6. For an order finding Defendants liable for retaliation under the New Mexico Minimum Wage Act with respect to Plaintiff;
7. For an order finding Defendants liable for retaliatory discharge in violation of public policy under the laws of the State of New Mexico;

8. For a judgment against Defendants and in favor of Plaintiff (and Collective Action members, as appropriate) awarding all unpaid wages (including front pay and back pay), liquidated damages under federal law, treble damages under state law, punitive damages, and all other damages allowed by federal law, state law, or the common law of the State of New Mexico;

9. For a judgment awarding Plaintiff and all Collective Action members covered by this case their costs of suit in this action;

10. For a judgment awarding Plaintiff and all Collective Action members covered by this case their reasonable attorney's fees;

11. For pre-judgment and post-judgment interest at the maximum rates allowed by law;

12. For injunctive relief as determined by the Court; and

13. For all such other relief as the Court deems just and proper.

Respectfully submitted,

CARRILLO LAW FIRM, P.C.

By 

Raúl A. Carrillo, Jr. (raul@carrillolaw.org)

Steven E. Jones (sjones@carrillolaw.org)

Post Office Box 457

Las Cruces, New Mexico 88004-0457

(575) 647-3200 (office)

(575) 647-1463 (facsimile)

Attorneys in Charge for Plaintiff

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Raymond I. Emanuelson, Individually and Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Dona Ana
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Raúl A. Carrillo, Jr. and Steven E. Jones (Carrillo Law Firm, P.C., P.O. Box 457, Las Cruces, NM 88004), 575-647-3200

DEFENDANTS
 NY Pizza Slice House, LLC, Jessie Carreon, and Carlos Carreon

County of Residence of First Listed Defendant Dona Ana
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 H/A (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

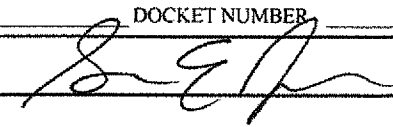
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201 et seq.

Brief description of cause:
Fair Labor Standards Act (Collective Action), Supplemental State Claims (Individual)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 11/30/2016 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation -- Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation -- Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

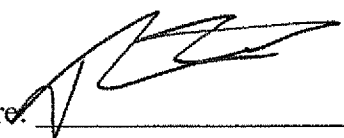
EXHIBIT 2

Plaintiff Ray Emanuelson's Consent to Join FLSA Collective Action Wage Claim

CONSENT TO JOIN WAGE CLAIM

Print Name: Raymond I. Emanuelson

1. I am a current or former employee of NY Pizza Slice House, LLC.
2. During my employment, I worked in a position where employees customarily received tips.
3. I was not employed solely as a janitor, dishwasher, cook, chef, or manager, although I may (or may not) have performed such duties occasionally.
4. During the period of December 1, 2013 to the present (or any portion thereof), I believe that I participated in a tip-pooling arrangement or worked overtime in excess of 40 hours per week without being fully compensated.
5. I hereby consent to participate in a collective action lawsuit against NY Pizza Slice House, LLC, Jessie Carreon, and Carlos Carreon, to pursue my claims of unpaid compensation for tips and overtime during the time that I worked with the company and members of the company.
6. I understand that this lawsuit is brought under the Fair Labor Standards Act, and I fully consent to be bound by the Court's decision.
7. I designate the law firm and attorneys at CARRILLO LAW FIRM, P.C., 1001 E. Lohman Ave., Las Cruces, NM 88001, as my attorneys to prosecute my wage claims. This designation includes both an investigation of the validity of claims and any resulting litigation concerning such claims. The attorneys are authorized to file this consent on my behalf, including the filing of complaints, amended complaints, and other pleadings, and the settlement and collection of any and all such claims.
8. I hereby request that the court assess any costs and expenses of this action and reasonable attorney's fees against my employer, and award said costs, expenses and fees to my above-named counsel.
9. I authorize the law firm and attorneys at CARRILLO LAW FIRM, P.C. to use this consent to file my claim in a separate lawsuit, collective action, or arbitration against the company and members of the company.

Signature: 

Date: 11-30-16

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pizza Restaurant Slapped with FLSA Suit](#)
