

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

RAUL GARCIA, *on behalf of himself, FLSA
Collective Plaintiffs and the Class,*

Plaintiff,

v.

ROTI RESTAURANTS, LLC,

Defendant.

Case No. 1:18-cv-9820

NOTICE OF REMOVAL

Defendant Roti Restaurants, LLC (“Defendant”), by and through its attorneys, hereby gives notice of removal of a civil action, Case No. 157581/2018, from the Supreme Court of the State of New York, County of New York, to this United States District Court for the Southern District of New York. Removal of this action is proper under 28 U.S.C. §§ 1331, 1332(a), 1441(b), and 1446, for the reasons set forth below. In support of its Notice of Removal, Defendant states as follows:

BACKGROUND FACTS AND PROCEDURAL STATUS

1. On August 18, 2018, Plaintiff Raul Garcia (“Plaintiff”) filed a civil action and jury demand against Defendant captioned *Raul Garcia, on behalf of himself, FLSA Collective Plaintiffs and the Class, v. Roti Restaurants, Inc.*, Case No. 157518/2018, in the Supreme Court of the State of New York, County of New York. Attached as Exhibit 1 is a copy of the Class and Collective Action Complaint (the “Complaint”).

2. On September 24, 2018, Defendant was served with the Summons and the Complaint. See Exhibit 2 (notice of service from Defendant’s registered agent). The responsive pleading is due on October 31, 2018. However, after the removal of this action, the responsive

pleading will be due on October 30, 2017. Defendant has not yet answered the Complaint, and no other proceedings have occurred in the action.

3. The United States District Court for the Southern District of New York includes New York County.

**CITIZENSHIP OF THE PARTIES AND
BASIS FOR REMOVAL AND JURISDICTION**

4. This matter is removable on the grounds of subject matter jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 216, and diversity under 28 U.S.C. §1332(a)(1) in that the matter in controversy is between citizens of different States and exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. Count II of the Complaint asserts a claim under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* Compl. ¶¶ 56-69. Additionally, Plaintiff seeks to maintain a collective action under the FLSA. *Id.* ¶¶ 23-25. Under the FLSA, an action to recover wages against an employer may be brought in federal court. *See* 29 U.S.C. § 216(b). Therefore, the Court has original subject matter jurisdiction over Plaintiff’s FLSA claim.

6. Additionally, pursuant to 28 U.S.C. § 1367(b), the Court may exercise supplemental jurisdiction over Plaintiff’s related state law wage claims and his discrimination claim under the New York Labor Law, the New York Human Rights Law, New York Executive Law § 296 and the New York City Human Rights Law, Administrative Code of the City of New York. *See* Compl. § 3 and Counts I and III-V.

7. Second, there is complete diversity of citizenship among the parties for purposes of federal jurisdiction under 28 U.S.C. § 1332. Specifically, Plaintiff is a citizen of the State of New York and resides in Bronx County, New York. *See* Compl. ¶ 6. Plaintiff alleges that Defendant is a “foreign limited liability company organized under the laws of the State of

Delaware.” Compl. ¶ 7. Defendant’s principal place of business is 600 W. Fulton, Suite 101, Chicago, Illinois 60601. *See Exhibit 3* (Illinois Secretary of State document setting forth Defendant’s principal place of business as Chicago, Illinois). Therefore, there is complete diversity among the parties as Plaintiff is a citizen of New York and Defendant is a citizen of Illinois. 28 U.S.C § 1332(c)(1).

8. Second, the amount in controversy exceeds \$75,000, exclusive of interest and costs, based on the allegations and relief sought in the Complaint. The relief sought in the Complaint includes, but is not limited to, injunctions, unpaid wages, liquidated damages, punitive damages, call-in pay damages, back pay, compensatory damages, pre-judgment interest and post-judgment interest. Compl. Prayer for Relief (pp. 17-18). Plaintiff does not identify a specific amount of total damages sought by him, but the allegations in the Complaint alone show that he seeks at least \$20,000 in damages in back pay for his alleged unlawful termination (\$12.46 per hour x 35 hours per week x 46 weeks since his termination). *See e.g.*, Compl. ¶¶ 28-33. He also seeks over \$1,700 in unpaid wages, \$5,000 in wage statement penalties, \$5,000 in wage notice penalties, over \$800 in call-in pay damages, and liquidated damages. *Id.* These damages are based on what can be adduced from the bare allegations in the Complaint alone.

9. Plaintiff’s damages for unpaid wages, call-in pay, and wage statement and wage notice penalties are compounded because he also seeks to maintain his FLSA claim as a class and collective action. In doing so, Plaintiff alleges that the class has more than forty (40) individuals, and further alleges that they are all owed back wages, call-in premium pay, reimbursement for uniform costs and penalties for not providing proper wage statements and wage notices. Compl. ¶¶ 15, 17.

10. Although the allegations in the Complaint do not identify a specific or exact amount of damages sought by Plaintiff on behalf of himself and a class, the preponderance of the evidence shows that the alleged monetary damages sought exceeds \$75,000. *See* 28 U.S.C. § 1446(c). Accordingly, upon information and belief, based on the nature of the injuries alleged and Plaintiff's claims, the amount in controversy exceeds the sum of \$75,000.

THE REMOVAL IS PROCEDURALLY PROPER

11. This Notice of Removal is timely under 28 U.S.C. § 1446(a) and (b) because it is filed within thirty (30) days after receipt by Defendant of the Complaint and Summons, which were received by Defendant on September 24, 2018.

12. Defendant has filed this Notice of Removal in the Supreme Court of the State of New York, County of New York, under 28 U.S.C. § 1441(a), as New York County is within the venue of the U.S. District Court for the Southern District of New York.

13. Defendant's counsel will serve a written Notice of Filing of the Notice of Removal on Plaintiff's counsel and a written Notice of Removal to the Supreme Court of New York, as required by 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal.

RESERVATION OF RIGHTS/DENIAL OF LIABILITY

14. Nothing in this Notice of Removal is intended or should be construed as any type of express or implied admission by Defendant of any fact alleged by Plaintiff, of the validity or merits of any of Plaintiff's allegations, or of any liability for the same, each of which are hereby expressly denied, or as any type of express or implied waiver or limitation of any of Defendant's rights, claims, remedies, and defenses in connection with this action, all of which are hereby expressly reserved. Further, by filing this Notice of Removal, Defendant does not intend to

waive, and hereby reserves, any objection as to service, personal jurisdiction, and all other procedural and substantive defenses which are available to it.

WHEREFORE, Defendant respectfully requests that the above-captioned action now pending in Supreme Court of the State of New York, County of New York, be removed to the United States District Court for the Southern District of New York.

Dated: October 24, 2018

Respectfully submitted,

/s/ Anjanette Cabrera

Anjanette Cabrera

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, Anjanette Cabrera, certify that a true and correct copy of the foregoing **NOTICE OF REMOVAL** was served on October 24, 2018, by email and served a copy of same by overnight mail to the following address:

C.K. Lee
Anne Seelig
Lee Litigation Group, PLLC
30 East 39th Street, Second Floor
New York, New York 10016
ATTORNEYS FOR PLAINTIFF

/s/ Anjanette Cabrera
Anjanette Cabrera

Exhibit 1

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

RAUL GARCIA,
*on behalf of himself, FLSA Collective Plaintiffs
and the Class,*

Plaintiff,

v.

ROTI RESTAURANTS, LLC,

Defendants.

Index No.:

CLASS AND
COLLECTIVE ACTION
COMPLAINT

Jury Trial Demanded

Plaintiff, RAUL GARCIA (“Plaintiff”), on behalf of himself and others similarly situated, by and through his undersigned attorneys, hereby files this Class and Collective Action Complaint against Defendant, ROTI RESTAURANTS, LLC (“Defendant”), and states as follows:

INTRODUCTION

1. Plaintiff alleges that, pursuant to the New York Labor Law (“NYLL”), he is entitled to recover from Defendant: (1) unpaid wages due to time-shaving, (2) call-in pay, (3) unreimbursed uniform costs, (4) statutory penalties, (5) liquidated damages pursuant to the New York Labor Law, and (6) attorneys’ fees and costs.

2. Plaintiff further alleges, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§201 *et. seq.* (“FLSA”), that he is entitled to recover from Defendant: (1) unpaid wages due to time-shaving, (2) unreimbursed uniform costs, (3) liquidated damages and (4) attorneys’ fees and costs.

3. Plaintiff further alleges that he was deprived his statutory rights as a result of Defendant’s unlawful discrimination practices under New York State Human Rights Law, New

York Executive Law § 296 (“NYSHRL”), and New York City Human Rights Law, Administrative Code of the City of New York § 8-502 (“NYCHRL”) and brings this action against Defendant for discrimination based on national origin to recover: (1) back pay, (2) compensatory damages, (3) punitive damages and (4) attorneys’ fees and costs.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this controversy pursuant to New York CPLR § 301 because Defendants transacted business and committed the alleged acts in New York State. Defendants also maintain principal places of business in New York County, New York.

5. Venue is proper under New York CPLR § 503. The circumstances giving rise to this action occurred in whole or in part in the county in which this Court sits.

PARTIES

6. Plaintiff, RAUL GARCIA, is a resident of Bronx County, New York.

7. Defendant ROTI RESTAURANTS, LLC is a foreign limited liability company organized under the laws of the State of Delaware, with an address for service of process located at c/o Corporate Creations, 15 North Mill Street, Nyack, New York 10960. Defendant’s headquarter is located at 600 West Fulton #101, Chicago, IL 60661. Defendant operates two Roti Modern Mediterranean restaurants in New York City with addresses for principal place of business located at 142 E 43rd Street, New York, New York 10017 (“Chrysler East”) and 100 Maiden Lane, New York, New York 10038 (“Maiden”).

8. ROTI RESTAURANTS, LLC operates a food services enterprise under the trade name “Roti Modern Mediterranean,” or simply “Roti.” ROTI RESTAURANTS, LLC has owned and/or operated each of the Roti restaurants nationwide.

9. Defendant’s food services enterprise includes operating two (2) Roti restaurants throughout New York City. Employees were freely interchangeable among the two (2) restaurants in New York City, and the stores were marketed as a common enterprise. All employees were paid by the same payroll methods, and checks were paid by the same corporate entity. All employees are placed and promoted along the same career ladder, starting from “team members,” who are paid hourly wages.

10. At all relevant times, Defendant was and continues to be an “enterprise engaged in commerce” within the meaning of the FLSA, New York Labor Law, and the Regulations thereunder.

11. At all relevant times, Defendant was and continues to be an employer within the meaning of the New York State Human Rights Law, the New York City Human Rights Law, and the Regulations thereunder.

12. At all relevant times, Defendant was and continues to be an employer within the meaning of the New York State Human Rights Law, the New York City Human Rights Law, and the Regulations thereunder

CLASS ACTION ALLEGATIONS

13. Pursuant to Article 9 of the CPLR, Plaintiff brings this action on behalf of all non-exempt persons (including team members) employed at Maiden or Chrysler East by Defendant on or after the date that is six years before the filing of the Complaint in this case as defined herein (the “Class Period”).

14. Excluded from the Class are Defendant, Defendant’s legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and

any member of the Judge's immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Class.

15. The proposed Class is so numerous that a joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown, the facts on which the calculation of that number are presently within the sole control of Defendant, there is no doubt that there are more than forty (40) members of the Class.

16. Defendant has acted or has refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

17. Plaintiff's claims are typical of those claims, which could be alleged by any member of the Class, and the relief sought is typical of the relief, which would be sought by each member of the Class in separate actions. All the Class members were subject to the same corporate practices of Defendant, as alleged herein, of (i) failing to pay proper wages due to time shaving, (ii) failing to pay call-in pay; (iii) failing to reimburse uniform costs, (iv) failing to provide proper wage statements that were in compliance with the requirements under the New York Labor Law, and (v) failing to provide proper wage and hour notice to Class members, at date of hiring and annually, per requirements of the New York Labor Law.

18. Defendant's corporate-wide policies and practices affected all Class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiff and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

19. Plaintiff is able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

20. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of the wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because losses, injuries and damages suffered by each of the individual Class members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for Defendant and resulting in the impairment of class members’ rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

21. Defendant and other employers throughout the state violate the New York Labor Law. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the Complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

22. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including:

- a) Whether Defendant employed Plaintiff and the Class within the meaning of the New York law;
- b) What are and were the policies, practices, programs, procedures, protocols and plans of Defendant regarding the types of work and labor for which Defendant did not pay the Class members properly;
- c) At what common rate, or rates subject to common methods of calculation, was and is Defendant required to pay the Class members for their work;
- d) Whether Defendant properly notified Plaintiff and the Class members of their hourly rate and overtime rate;
- e) Whether Defendant provided proper wage statements to Plaintiff and the Class members per requirements of the New York Labor Law;
- f) Whether Defendant provided proper wage and hour notice, at date of hiring and annually, to all employees per requirements of the New York Labor Law;
- g) Whether Defendant properly compensated Plaintiff and Class members for all hours worked under state and federal law;

- h) Whether Defendant caused time shaving by forcing employees to clock out and keep working;
- i) Whether Defendant failed to provide call-in pay to Plaintiff and Class members under state law; and
- j) Whether Defendant failed to reimburse or illegally deducted the wages of Plaintiff and Class members for uniform expenses.

FLSA COLLECTIVE ACTION ALLEGATIONS

23. Plaintiff brings claims for relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all non-exempt employees (including team members), employed at Maiden or Chrysler East by Defendant on or after the date that is six years before the filing of the Complaint in this case as defined herein (“FLSA Collective Plaintiffs”).

24. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subjected to Defendant’s decisions, policies, plans, programs, practices, procedures, protocols, routines, and rules, all culminating in a willful failure and refusal to pay them proper wages due to time shaving and to reimburse them for uniform costs. The claims of Plaintiff stated herein are essentially the same as those of other FLSA Collective Plaintiffs.

25. The claims for relief are properly brought under and maintained as an opt-in collective action pursuant to §16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from the Defendant. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Defendant.

STATEMENT OF FACTS

26. In or around September 2014, Plaintiff RAUL GARCIA, was hired by Defendant to work as a grill person and food preparer for Defendant’s “Maiden” Roti restaurant, located at 100 Maiden Lane, New York, New York 10038. Throughout his employment with Defendant, Plaintiff GARCIA’s employee title was “team member.” Approximately two months after his start date with Defendant, Defendant transferred Plaintiff GARCIA to work at Defendant’s “Chrysler East” Roti restaurant, located at 142 E 43rd Street, New York, New York 10017. Plaintiff’s employment was wrongfully terminated by Defendant in or around November 2017.

27. From the start of Plaintiff’s employment with Defendant until in or around August 2017, Plaintiff’s regular working hours were from 7:00 a.m. until 2:00 p.m., for five (5) days per week. Throughout this period, Plaintiff worked a total of approximately thirty-five (35) hours per week throughout his employment by Defendants. FLSA Collective Plaintiffs and Class members worked similar hours as Plaintiff.

28. From in or around August 2017 until Plaintiff was wrongfully terminated in or around November 2017, Plaintiff’s regular working hours were reduced to twenty (20) hours per workweek, from 10:00 am until 2:00 pm, for five (5) days per week.

29. From the start of Plaintiff’s employment through the end of June 2016, Plaintiff was compensated at a regular rate of \$9.00 per hour. From in or around July 2016, Plaintiff was compensated at a regular rate of \$12.46 per hour. FLSA Collective Plaintiffs and Class members were similarly compensated as Plaintiff at hourly rates.

30. Throughout his entire employment, Plaintiff was not properly compensated his proper wages for all hours worked, due to Defendant’s policy of time-shaving. Plaintiff, FLSA Collective Plaintiffs and the Class were regularly required to work after clocking-out. Specifically, after

Plaintiff and Class members were clocked-out and changed out of their uniform, the manager would instruct them to work off-the-clock, including cleaning the restaurant, moving boxes and restocking supplies. This would take at least fifteen (15) minutes per day, and it happened three to four times per week. Defendant's policy resulted in Defendant's time-shaving of one hour per week for each Class member. This sum was never correctly reflected in employees' work hours as Plaintiff, FLSA Collective Plaintiffs and Class members were required to clock-out before performing this work.

31. From in or around August 2017 until the end of Plaintiff's employment with Defendant, on a regular basis, when Roti was not busy, Plaintiff was sent home at or around 11:30 am, after arriving to begin work at 10:00 am. On such days when Plaintiff was sent home before the end of his shift, Defendant failed to provide call-in pay premium. Other employees suffered from the same policies.

32. At all relevant times, Defendant knowingly and willfully operated their business with a policy and practice that unlawfully failed to pay Plaintiff and Class members their call-in pay premium on days when they were sent home after shortly arriving for their shift.

33. Plaintiff, FLSA Collective Plaintiffs and Class members were deducted \$45 for each pair of slip proof shoes provided by Defendant. Throughout Plaintiff's employment with Defendant, he was deducted several times for such uniform costs. Such deductions were deducted from their wages and they were not reimbursed. Defendant unlawfully failed to reimburse Plaintiff, FLSA Collective Plaintiffs and Class members for their uniform costs.

34. At all relevant times, Defendant knowingly and willfully operated their business with a policy and practice that deducted and failed to reimburse or compensate Plaintiff, FLSA Collective Plaintiffs and Class members for uniform costs.

35. Defendant failed to maintain proper employment records, as required by the FLSA and NYLL. At all relevant times, Defendant provided fraudulent wage statements to Plaintiff, which failed to accurately show the number of hours worked by Plaintiff in a given workweek. Class Members received similar fraudulent wage statements due to Defendant's policy of time shaving.

36. Defendant never provided Plaintiff and Class Members with proper wage notices, as required by the NYLL.

37. Defendant knowingly and willfully operated their business with a policy of not paying either the FLSA minimum wage or the New York State minimum wage to Plaintiff, FLSA Collective Plaintiffs and Class members due to Defendant's policy of time-shaving.

38. Defendant knowingly and willfully operated their business with a policy of not providing proper wage statements as required under the New York Labor Law.

39. Defendant failed to provide proper wage notices to employees, at the beginning of employment and annually thereafter, pursuant to the requirements of the New York Labor Law.

40. During Plaintiff's employment by Defendant, Defendant permitted managerial employees to foster a hostile work environment. From in or around August 2017, Defendant's new manager for Roti (Chrysler East), informed all employees that no one was allowed to speak Spanish. If any employee was found to speak Spanish, they were reprimanded and sent home. The new manager also reduced the work hours of only those employees of Hispanic or Latino origin or those employees who appeared to be Hispanic or Latino. Plaintiff was included in this subclass of individuals who were subjected to a reduction in their work schedules on the basis of his national origin. The manager's discriminatory behavior was directed towards only those of Hispanic and/or Latino origin as employees of other races, ethnicities and national origins were given more hours to supplement the reduced work hours of Plaintiff and other employees of Hispanic or Latino

origin. In or around November 2017, Defendant terminated Plaintiff and others of Hispanic or Latino origin on no grounds other than their national origin.

41. Defendant fostered a hostile work environment against Plaintiff by adversely reducing his work hours and terminating his employment due to his national origin.

42. Plaintiff retained Lee Litigation Group, PLLC to represent Plaintiff, FLSA Collective Plaintiffs and Class members, in this litigation and have agreed to pay the firm a reasonable fee for its services.

STATEMENT OF CLAIM

COUNT I

**VIOLATION OF THE NEW YORK LABOR LAW
ON BEHALF OF PLAINTIFF AND CLASS MEMBERS**

43. Plaintiff realleges and reavers Paragraphs 1 through 42 of this Class and Collective Action Complaint as if fully set forth herein.

44. At all relevant times, Plaintiff and Class members were employed by Defendant within the meaning of the New York Labor Law, §§2 and 651.

45. Defendant willfully violated Plaintiff's and Class members' rights by failing to pay them wages in the lawful amount for all hours worked due to time shaving.

46. Defendant violated Plaintiff's and Class members' rights by failing to pay them their call-in pay premium.

47. Defendant knowingly and willfully operated their business with a policy of not paying the call-in pay premium as required under the New York Labor Law.

48. Defendant violated Plaintiff's and Class member's rights by deducting uniform costs from their wages and failing to pay, compensate, or reimburse Plaintiff and Class members for uniform costs.

49. Defendant knowingly and willfully operated their business with a policy of deducting uniform costs and failing to reimburse Plaintiff and Class members for uniform costs.

50. Defendant knowingly and willfully operated their business with a policy of not providing proper wage statements as required under the New York Labor Law.

51. Defendant knowingly and willfully failed to provide proper wage and hour notices to employees at the beginning of employment and annually thereafter pursuant to the requirements of the New York Labor Law.

52. Defendant failed to properly notify employees of their hourly pay rate and overtime rate, in direct violation of the New York Labor Law.

53. Defendant failed to provide a proper wage and hour notice, at the date of hiring and annually, to all non-exempt employees per requirements of the New York Labor Law.

54. Defendant failed to provide proper wage statements with every payment as required by New York Lab. Law § 195(3).

55. Due to the Defendant's New York Labor Law violations, Plaintiff and Class members are entitled to recover from Defendant unpaid wages due to time-shaving, call-in pay premium, unreimbursed uniform costs, reasonable attorneys' fees, liquidated damages, statutory penalties and costs and disbursements of the action, pursuant to New York Labor Law .

COUNT II

VIOLATION OF THE FAIR LABOR STANDARDS ACT ON BEHALF OF PLAINTIFF AND FLSA COLLECTIVE PLAINTIFFS

56. Plaintiff realleges and reavers Paragraphs 1 through 55 of this Class and Collective Action Complaint as if fully set forth herein.

57. At all relevant times, Defendant were and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the

FLSA, 29 U.S.C. §§ 206(a) and 207 (a). Further, Plaintiff and FLSA Collective Plaintiffs are covered individuals within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207 (a).

58. At all relevant times, Defendant employed Plaintiff and FLSA Collective Plaintiffs within the meaning of the FLSA.

59. At all relevant times, the Defendant had gross annual revenues in excess of \$500,000.

60. At all relevant times, the Defendant had a policy and practice of refusing to pay Plaintiff and FLSA Collective Plaintiffs for all of their hours worked due to Defendant's policy of time shaving.

61. Defendant failed to pay Plaintiff and FLSA Collective Plaintiffs their wages in the lawful amount for their hours worked due to Defendant's policy of time shaving.

62. At all relevant times, Defendant engaged in a policy and practice of deducting uniform costs from Plaintiff and FLSA Collective Plaintiffs, thereby receiving a kick-back for uniform costs.

63. Defendant failed to pay, compensate, or reimburse Plaintiff and FLSA Collective Plaintiffs for the cost of uniforms.

64. Records, if any, concerning the number of hours worked by Plaintiff and FLSA Collective Plaintiffs and the actual compensation paid to Plaintiff and FLSA Collective Plaintiffs should be in the possession and custody of the Defendant. Plaintiff intends to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, will then seek leave of Court to amend this Complaint to set forth the precise amount due.

65. Defendant knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by their failure to compensate Plaintiff and FLSA Collective Plaintiffs for all hours worked when Defendant knew or should have known such was due.

66. Defendant failed to properly disclose or apprise Plaintiff and FLSA Collective Plaintiffs of their rights under the FLSA.

67. As a direct and proximate result of Defendant’s willful disregard of the FLSA, Plaintiff and FLSA Collective Plaintiffs are entitled to liquidated (i.e., double) damages pursuant to the FLSA.

68. Due to the intentional, willful and unlawful acts of Defendant, Plaintiff and FLSA Collective Plaintiffs suffered damages in an amount not presently ascertainable of unpaid wages, unreimbursed uniform costs, and an equal amount as liquidated damages.

69. Plaintiff and FLSA Collective Plaintiffs are entitled to an award of his reasonable attorneys’ fees and costs pursuant to 29 U.S.C. §216(b).

COUNT III

VIOLATION OF THE NEW YORK STATE HUMAN RIGHTS LAW

70. Plaintiff realleges and reavers Paragraphs 1 through 69 of this Class and Collective Action Complaint as if fully set forth herein.

71. The New York State Human Rights Law (“NYSHRL”) prohibits discrimination in the terms, conditions, and privileges of employment, and the retaliation thereof, on the basis of an individual’s national origin.

72. Plaintiff is an employee and a qualified person within the meaning of NYSHRL and Defendant is a covered employer under the NYSHRL.

73. Defendant operated a business that discriminated against Plaintiff in violation of the NYSHRL by subjecting Plaintiff to a hostile work environment, in the form of reducing his work hours while increasing the work hours of employees of other national origins and terminating his employment on the basis of his national origin.

74. Defendant’s conduct was intentional, malicious and in reckless disregard of Plaintiff’s protected rights under the New York Executive Law § 296.

75. As a result of Defendant’s unlawful discriminatory practices, Plaintiff sustained injury, including economic damages and past and future physical and emotional distress.

76. Due to Defendant’s violations under the New York State Human Rights Law, Plaintiff is entitled to recover from Defendant: (1) back pay and (2) compensatory damages.

COUNT IV

VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW

77. Plaintiff realleges and reavers Paragraphs 1 through 76 of this Class and Collective Action Complaint as if fully set forth herein.

78. The New York City Human Rights Law (“NYCHRL”) prohibits discrimination in the terms, conditions, and privileges of employment, and the retaliation thereof, on the basis of an individual’s national origin.

79. Defendant has and has had at all relevant times herein, at least four (4) persons in their employ. Plaintiff is an employee and a qualified person within the meaning of NYCHRL and Defendant is a covered employer under the NYCHRL.

80. Defendant operated a business in New York City that discriminated against Plaintiff in violation of the NYCHRL by subjecting Plaintiff to a hostile work environment, in the form of reducing his work hours while increasing the work hours of employees of other national origins and terminating his employment on the grounds of his race and national origin.

81. As a result of Defendant’s unlawful employment practice, Plaintiff sustained injury, including economic damages, the past and future physical and emotional distress and the costs of bringing this action.

82. Due to Defendant's violations under the New York City Human Rights Law, as amended, based on discrimination on the basis of national origin, Plaintiff is entitled to recover from Defendant: (1) back pay, (2) compensatory damages, (3) punitive damages, and (4) attorneys' fees and costs.

COUNT V

DISCRIMINATION UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
(SUPERVISOR LIABILITY)

83. Plaintiff realleges and reavers Paragraphs 1 through 82 of this Class and Collective Action Complaint as fully set forth herein.

84. Under, New York City Administrative Code Title 8-107(13), an employer is liable for the discriminatory conduct by an employee, agent or independent contractor. The relevant code provides:

(a) An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

(b) An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

(1) the employee or agent exercised managerial or supervisory responsibility; or

(2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

85. Defendant violated the section cited herein as set forth. Defendant's manager was a supervisor in a managerial capacity. He discriminated against Plaintiff based on Plaintiff's national origin and wrongfully terminated Plaintiff on those grounds.

86. At all relevant times, Defendant operated a business that discriminated against Plaintiff on the basis of his national origin.

87. Defendant willfully violated the New York City Human Rights Law, as amended.

88. Due to Defendant's violation of New York City Human Rights Law, as amended, on the basis of Defendant's discriminatory practices, Plaintiff is entitled to recover from Defendant:

(1) back and front pay, (2) compensatory and punitive damages and (3) attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself, FLSA Collective Plaintiffs and Class members, respectfully request that this Court grant the following relief:

- a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, the New York Labor Law, the New York State Human Rights Law, and the New York City Human Rights Law;
- b. An injunction against Defendant and its officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- c. An award of unpaid wages due under the New York Labor Law and the FLSA, including those due to Defendant's policy of time shaving;
- d. An award of liquidated and/or punitive damages as a result of Defendant's willful failure to pay wages for all hours worked pursuant to the New York Labor Law;
- e. An award of liquidated and/or punitive damages as a result of Defendant's willful failure to pay wages for all hours worked pursuant to 29 U.S.C. § 216;
- f. An award of damages representing Defendant's failure to pay call-in pay premium under the NYLL;

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

-----X
Plaintiff/Petitioner,

- against -

Index No. 157 518/2018

Defendant/Respondent.
-----X

**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 211.1 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

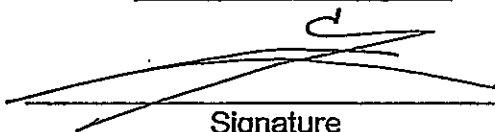
Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: _____



Signature

C.K. Lee Esq.

Name

Lee Litigation Group, PLLC

Firm Name

30 East 39th Street, Second Floor

Address

New York, New York 10016

212-465-1180

Phone

cklee@leelitigation.com

E-Mail

To: ROTI RESTAURANTS, LLC
C/O CORPORATE CREATIONS
15 NORTH MILL STREET
NYACK, NEW YORK 10960

9/3/15

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

-----X

Plaintiff/Petitioner,

- against -

Index No. 157518/2018

Defendant/Respondent.

-----X

**NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING
SUPREME COURT CASES**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as allowed by CPLR § 2111 and Uniform Rule § 202.5-b (consensual electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

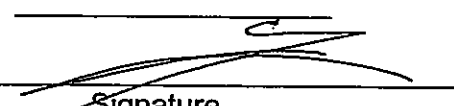
The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

1) Parties represented by an attorney: An attorney representing a party who is served with this Notice must promptly either consent or decline consent to electronic filing and service through NYSCEF for this case. Attorneys registered with NYSCEF may record their consent electronically in the manner provided at the NYSCEF site. Attorneys not registered with NYSCEF but intending to participate in e-filing must first create a NYSCEF account and obtain a user ID and password prior to recording their consent by going to www.nycourts.gov/efile. Attorneys declining to consent must file with the court and serve on all parties of record a declination of consent.

2) Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file all documents in paper form and must be served with all documents in paper form. However, an unrepresented litigant may consent to participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efile-unrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: _____


Signature

C.K. Lee, Esq.

Name

Lee Litigation Group, PLLC

Firm Name

30 East 39th Street, Second Floor

Address

New York, New York 10016

212-465-1180

Phone

cklee@leelitigation.com

E-Mail

To: DOTI RESTAURANTS, LLC
c/o CORPORATE CREATIONS
15 NORTH MILL STREET
NYACK, NEW YORK 10960

9/3/15

SEP 24 2018

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374

Exhibit 2



Registered Agent • Director • Incorporation

Corporate Creations Network Inc.
 11380 Prosperity Farms Road #221E, Palm Beach Gardens, FL 33410

September 25, 2018

ROTI RESTAURANTS, LLC
 Jon Reepmeyer CFO
 Roti Modern Mediterranean
 600 W Fulton, Suite 101
 CHICAGO IL 60661

SERVICE OF PROCESS NOTICE

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

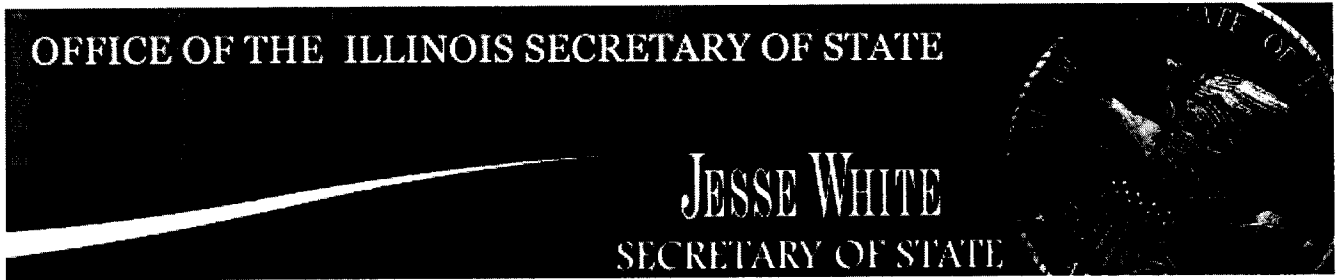
Note: Any questions regarding the substance of the matter described below, including the status or to whom or where to respond, should be directed to the person set forth in line 12 below or to the court or government agency where the matter is being heard.

Item: 2018-4

1.	Client Entity: ROTI RESTAURANTS, LLC	
2.	Title of Action: Raul Garcia vs. Roti Restaurants, LLC	
3.	Document(s) Served: Letter Summons Class and Collective Action Complaint Notice of Commencement of Action Subject to Mandatory Electronic Filing	
4.	Court/Agency: New York County Supreme Court	
5.	State Served: New York	
6.	Case Number: 157518/2018	
7.	Case Type: New York Labor Law	
8.	Method of Service: Certified Mail	
9.	Date Received: Monday 9/24/2018	
10.	Date to Client: Tuesday 9/25/2018	
11.	# Days When Answer Due: See Notes Answer Due Date: See Notes	CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of service in their records matches the Date Received.
12.	SOP Sender: C.K. Lee (Name, Address and Phone Number) New York, NY (212) 465-1188	
13.	Shipped to Client By: Email Only with PDF Link	
14.	Tracking Number: Not Applicable	
15.	Handled By: 331	
16.	Notes: Please review the enclosed documents in order to calculate the response due date. Please note that this document was served upon the Secretary of State on 09/12/2018 and Corporate Creations received it on 09/24/2018 Also Attached: *Notice Regarding Availability of Electronic Filing Supreme Court Cases	

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At Corporate Creations, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by Corporate Creations Network Inc.

Exhibit 3



LLC FILE DETAIL REPORT

File Number	02873591		
Entity Name	ROTI RESTAURANTS, LLC		
Status	ACTIVE	On	08/16/2018
Entity Type	LLC	Type of LLC	Foreign
File Date	09/28/2009	Jurisdiction	DE
Agent Name	CORPORATE CREATIONS NETWORK	Agent Change Date	05/10/2018
Agent Street Address	350 S. NORTHWEST HWY, #300	Principal Office	600 WEST FULTON #101 CHICAGO, IL 60661
Agent City	PARK RIDGE	Managers	View
Agent Zip	60068	Duration	PERPETUAL
Annual Report Filing Date	08/16/2018	For Year	2018
Assumed Name	ACTIVE - ROTI MODERN MEDITERRANEAN ACTIVE - ROTI MEDITERRANEAN GRILL		
Series Name	NOT AUTHORIZED TO ESTABLISH SERIES		

[Return to the Search Screen](#)

[Select Certificate of Good Standing for Purchase](#)
 (One Certificate per Transaction)

OTHER SERVICES

- File Annual Report
- Adopting Assumed Name
- Articles of Amendment Effecting A Name Change
- Change of Registered Agent and/or Registered Office Address

BACK TO CYBERDRIVEILLINOIS.COM HOME PAGE

Certificate of Admission To the Bar of Illinois

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of Illinois, do hereby certify that

Antonio Caldarone

has been duly licensed and admitted to practice as an Attorney and Counselor at Law within this State; has duly taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by law, that said name was entered upon the Roll of Attorneys and Counselors in my office on 11/10/2005 and is in good standing, so far as the records of this office disclose.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the
seal of said Court, this 19th day of
October, 2018.



Clerk,
Supreme Court of the State of Illinois

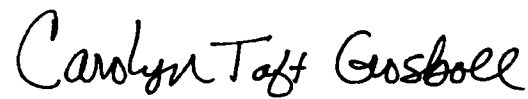
Certificate of Admission To the Bar of Illinois

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of Illinois, do hereby certify that

David Victor Cascio

has been duly licensed and admitted to practice as an Attorney and Counselor at Law within this State; has duly taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by law, that said name was entered upon the Roll of Attorneys and Counselors in my office on 11/16/2012 and is in good standing, so far as the records of this office disclose.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the
seal of said Court, this 19th day of
October, 2018.



Clerk,
Supreme Court of the State of Illinois

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Roti Modern Mediterranean Restaurants Sued Over Allegedly Unpaid Wages, Discrimination](#)
