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

10 Ioannis Legantis and Nikolaos)
11 Papageorgiou, *on behalf of themselves and*)
12 *others similarly situated,*)
13 *Plaintiffs,*)

Civil Case No.: _____-cv-_____(____)

FLSA COLLECTIVE AND CLASS

-v-

ACTION COMPLAINT

14 Ethos Gallery 51, LLC, Old Northern)
15 Boulevard Restaurant LLC, Little West)
16 Restaurant LLC, 75 HA Restaurant LLC,)
17 Ioannis Chatiris, and Christos)
18 Panagiotopoulos, *jointly and severally,*)
19 *Defendants.*)

NATURE OF THE ACTION

20
21 1. Plaintiffs Nikolaos Papageorgiou, and Ioannis Legantis (“Plaintiffs” or
22 “Papageorgiou”, and “Legantis”), on behalf of themselves and others similarly situated, bring
23 this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et. seq.* in order to
24 remedy Defendants’ wrongful withholding of Plaintiffs’ minimum wages, overtime
25 compensation and tips. Plaintiffs also bring these claims under New York Labor Law
26 ("NYLL"), Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, as well as the supporting
27 New York State Department of Labor Regulations for violations of minimum wages, overtime
28

1 wages, misappropriation of tips, spread-of-hours pay, and notice requirements.

2 **SUMMARY**

3 2. Plaintiffs were employed by Defendants, Ethos Gallery 51, LLC d/b/a Ethos
4 Gallery, Old Northern Boulevard Restaurant LLC d/b/a Kyma, Little West Restaurant LLC
5 d/b/a Pathos Cafe, 75 HA Restaurant LLC d/b/a The BBG, Ioannis Chatiris, and Christos
6 Panagiotopoulos. These Defendants functioned collectively as joint employers of Plaintiffs
7 and/or as a single integrated employer.
8

9 3. Defendants employed Plaintiffs as waiters, bussers, and runners for their four
10 restaurants.
11

12 4. Plaintiffs worked for Defendants at various intervals between May 2015 to May
13 2016.

14 5. Defendants have repeatedly deprived Plaintiffs of their lawfully earned
15 minimum and overtime wages. Plaintiffs were never paid an hourly rate but received a check
16 each week that consisted entirely from money gathered from customers' tips.
17

18 6. Defendants operated a tip pool for waiters, bussers, and runners in each of their
19 four restaurants. Defendants pooled the tips collected from the patrons, however, not all of
20 them were distributed to employees. A significant portion of the tips were misappropriated by
21 Defendant Ioannis Chatiris.
22

23 7. Defendants engaged in their unlawful conduct pursuant to a corporate policy of
24 minimizing labor costs and denying employees compensation by knowingly violating the
25 FLSA and NYLL.

26 8. As a result of Defendants' actions, Plaintiffs suffered great hardship and
27 damages.
28

1 9. Defendants' conduct extended beyond the Plaintiffs to all other similarly
2 situated employees. Plaintiffs seek certification of this action as a collective action on behalf of
3 themselves individually and those other similarly situated employees and former employees of
4 Defendants pursuant to 29 U.S.C. § 216 (b).

5 10. Plaintiffs seek certification of their NYLL claims as class action claims
6 pursuant to F.R.C.P. Rule 23 on behalf of all servers, bussers, runners, and other tipped
7 employees of Defendants.
8

9 **JURISDICTION AND VENUE**

10 **Federal Question Jurisdiction and Supplemental Jurisdiction**

11 11. This Court has original subject matter jurisdiction over this action under 28
12 U.S.C. § 1331 because the civil action herein arises under the laws of the United States,
13 namely, the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Additionally, this Court also
14 has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367(a).
15

16 **Personal Jurisdiction**

17 12. This Court may properly maintain personal jurisdiction over Defendants under
18 Rule 4 of the Federal Rules of Civil Procedure because Defendants' contacts with this state and
19 this judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply
20 with traditional notions of fair play and substantial justice.
21

22 **Venue**

23 13. Venue is proper in the Southern District of New York under 8 U.S.C. §§1391
24 (b) (1) and (2) because Defendants reside and conduct business in this judicial district and
25 because a substantial part of the acts or omissions giving rise to the claims set forth herein
26 occurred in this judicial district.
27
28

THE PARTIES

Plaintiffs

Ioannis Legantis

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4 14. Plaintiff Ioannis Legantis (“Legantis”) is an adult individual residing in the state
5 of New York, County of Queens.

6 15. Legantis is a covered employee within the meaning of the FLSA, 29 U.S.C. §
7 203 and the NYLL § 190.

8
9 16. Legantis worked at Ethos Gallery 51, LLC and Little West Restaurant LLC
10 simultaneously from June 2015 to May 2016, according to Defendant Chatiris' instructions.

11 17. Legantis was employed as a server, busser and runner, and his primary duties
12 included taking orders and serving food and drinks to customers.

13 18. Legantis regularly handled goods in interstate commerce during his
14 employment, such as the food ingredients, food, and drinks he served at the job site that were
15 purchased out of state.

16
17 19. During his period of employment with Defendants, Legantis worked six to
18 seven days per week from 12 pm to 11 pm. Towards the end of his employment with
19 Defendants, Legantis’ schedule changed to 5-6 days per week, for a shift of seven hours from 4
20 pm to 11 pm.

21
22 20. Neither Ethos Gallery 51, LLC nor Little West Restaurant LLC operated a
23 system whereby Legantis would clock in and out or utilized any other system to track Legantis'
24 hours of work.

25
26 21. Defendants operated a tip pool whereby servers, bussers, runners and all other
27 tipped employees would input their tips received from customers.

28 22. Defendants failed to pay Legantis at an hourly rate. Legantis' entire paycheck

1 derived from his share of the customers' tips in the tip pool.

2 23. Defendant Chatiris would also take a significant portion of the tips in the tip
3 pool.

4 24. Legantis was not provided with statutorily required meal breaks during his
5 shifts.

6 25. Legantis was not provided with a notice containing the rate and basis of his pay;
7 the designated pay date; and the employer's name, address and telephone number at the time of
8 hiring or at any point thereafter.

9 26. Legantis was never provided with wage statements or other records detailing
10 dates worked, money received, and the employer's details at any point during the time of his
11 employment with Defendants.

12 27. Upon information and belief, while Defendants employed Legantis, they failed
13 to post notices explaining the minimum wage rights of employees under the FLSA and the
14 NYLL and failed to inform Legantis of such rights.

15 28. Throughout the duration of his employment, Legantis did not have any
16 supervisory authority over any of Defendants' employees, nor did he exercise discretion or
17 independent judgment with respect to matters of significance.

18 29. Legantis consented in writing to be a party to the FLSA claims in this action,
19 pursuant to 29 U.S.C. § 216(b).

20 30. Legantis has personal knowledge of other employees in all four of Defendants'
21 restaurants who were not paid at an hourly rate and derived their entire earnings from the tip
22 pool operated by Defendants.
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1 **Nikolaos Papageorgiou**

2 31. Plaintiff Nikolaos Papageorgiou (“Papageorgiou”) is an adult individual
3 residing in the state of New York, County of Queens.

4 32. Papageorgiou is a covered employee within the meaning of the FLSA, 29
5 U.S.C. § 203 and the NYLL § 190.

6 33. Papageorgiou worked at Ethos Gallery 51, LLC, Little West Restaurant LLC
7 and 75 HA Restaurant LLC at different intervals between May 2015 and April 2016 according
8 to Defendant Chatiris' instructions.
9

10 34. Papageorgiou was employed as a server, busser and runner, and his primary
11 duties included taking orders and serving food and drinks to customers.
12

13 35. Papageorgiou regularly handled goods in interstate commerce during his
14 employment, such as food ingredients, food, and drinks he served at the job site that were
15 purchased out of state.

16 36. During his period of employment with Defendants, Papageorgiou worked five
17 days per week from 11am to 11pm.
18

19 37. None of the three restaurants Papageorgiou worked for operated a system
20 whereby Papageorgiou would clock in and out or utilized any other system to track
21 Papageorgiou's hours of work.

22 38. Defendants operated a tip pool whereby servers, bussers, runners and all other
23 tipped employees would input their tips received from customers.
24

25 39. Defendants failed to pay Papageorgiou at an hourly rate. Papageorgiou's entire
26 paycheck derived from his share of the tips in the tip pool.

27 40. Defendant Chatiris would also take a significant portion of the tips in the tip
28

1 pool.

2 41. Papageorgiou was not provided with statutorily required meal breaks during his
3 shifts.

4 42. Papageorgiou was not provided with a notice containing the rate and basis of his
5 pay; the designated pay date. He was also not provided the employer's name, address and
6 telephone number at the time of hiring or at any point thereafter.

7
8 43. Papageorgiou was never provided with wage statements or other records
9 detailing dates worked, money received, and the employer's details at any point during the
10 time of his employment with Defendants.

11 44. Upon information and belief, while Defendants employed Papageorgiou, they
12 failed to post notices explaining the minimum wage rights of employees under the FLSA and
13 the NYLL and failed to inform Papageorgiou of such rights.

14
15 45. Papageorgiou consented in writing to be a party to the FLSA claims in this
16 action, pursuant to 29 U.S.C. § 216(b).

17
18 46. Papageorgiou has personal knowledge of other employees in all four of
19 Defendants' restaurants who were not paid at an hourly rate and derived their entire earnings
20 from the tip pool operated by Defendants.

21 **Defendants**

22 47. At all relevant times, Individual and Corporate Defendants were joint employers
23 of Plaintiffs, acted in the interest of each other with respect to Plaintiffs' and other employees'
24 remuneration, and had common policies and practices as to wages and hours, pursuant to 29
25 C.F.R. § 791.2. Factors indicating joint employment include:
26

27 a. Corporate Defendants all suffered or permitted Plaintiffs to work.
28

1 b. Each of the Defendants acted directly or indirectly in the interest of one
2 another in relation to Plaintiffs and similarly situated employees.

3 c. Defendants each have an economic interest in the locations in which
4 Plaintiffs and similarly situated employees worked.

5 d. Defendants all simultaneously benefitted from Plaintiffs' work.

6 e. Defendants each had either functional and/or formal control over the terms
7 and conditions of work of Plaintiffs and similarly situated employees.

8 f. Plaintiffs and similarly situated employees performed work integral to
9 each Corporate Defendant's operation.

10
11 48. In the alternative, all Defendants functioned together as a single integrated
12 employer of Plaintiffs within the meaning of the FLSA and NYLL.

13 49. Upon information and belief, Corporate Defendants Ethos Gallery 51, LLC, Old
14 Northern Boulevard Restaurant LLC, Little West Restaurant LLC, 75 HA Restaurant LLC are
15 related entities and operate together as a single integrated enterprise. Specifically, all four
16 restaurants are owned, managed, and operated by the same core team of Individual Defendants;
17 Ioannis Chatiris and Christos Panagiotopoulos. Moreover, all the restaurants maintain similar
18 interior décor, use similar menus, serve similar Greek food and employ the same personnel,
19 including the two Plaintiffs in this action, who are instructed to work at different locations in
20 accordance with Defendants' needs.
21

22
23 50. Upon information and belief, non-exempt workers at Ethos Gallery 51, LLC,
24 Old Northern Boulevard Restaurant LLC, Little West Restaurant LLC, and 75 HA Restaurant
25 LLC perform the same job duties, are subject to the same employment policies and practices,
26 and are directed and/or permitted by Defendants to perform work at multiple locations without
27 retraining.
28

1 51. Accordingly, all non-exempt employees working at any one Corporate
2 Defendant at a particular instance were simultaneously considered and accounted for as
3 employees of all Corporate Defendants collectively.

4 **Corporate Defendants**

5 **Ethos Gallery 51, LLC**

6
7 52. Ethos Gallery 51, LLC ("Ethos") is a domestic corporation formed on May 24,
8 2011, organized and existing under the laws of the State of New York.

9 53. Ethos owns and operates Ethos Gallery, a sit down restaurant, serving food and
10 drinks to customers, located at 905 First Avenue, New York, NY 10022.

11 54. At all relevant times, Ethos was a covered employer within the meaning of the
12 FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

13
14 55. Ethos is open seven (7) days per week from 12:00 pm to 11:00 pm. It has more
15 than 30 full-time employees and serves between 250-300 customers per day.

16 56. At all relevant times, Ethos was a covered employer within the meaning of the
17 FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

18
19 57. At all relevant times, Ethos maintained control, oversight, and direction over the
20 Plaintiffs, including timekeeping, payroll, and other employment practices that applied to
21 them.

22 58. At all relevant times, Ethos was "an enterprise engaged in commerce" within
23 the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were handling food
24 and drinks produced out of state and distributed in New York. In addition, Ethos conducted
25 business with vendors and other businesses outside the State of New York and engaged in
26 credit card transactions involving banks and other institutions outside the State of New York.
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1 59. Upon information and belief, at all relevant times, Ethos's annual gross volume
2 of sales made, or business done, was not less than \$500,000.00, exclusive of separate retail
3 excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).

4 **Old Northern Boulevard Restaurant LLC**

5 60. Old Northern Boulevard Restaurant LLC ("Old Northern") is a foreign limited
6 liability company organized and existing under the laws of the state of Delaware. On
7 November 13, 2012, Old Northern designated the New York Secretary of State as an agent of
8 the corporation upon whom process against it may be served in New York.

9 61. Old Northern owns and operates Kyma Restaurant, a sit down restaurant,
10 serving food and drinks to customers, located at 1446 Old Northern Blvd, Roslyn, NY 11576.

11 62. At all relevant times, Kyma was a covered employer within the meaning of the
12 FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

13 63. Kyma is open seven (7) days per week according to their own website:
14 <http://www.kyma-roslyn.com/>. It has more than 15 full-time employees and serves between 50-
15 60 customers per day.

16 64. At all relevant times, Old Northern was a covered employer within the meaning
17 of the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

18 65. At all relevant times, Old Northern maintained control, oversight, and direction
19 over the Plaintiffs, including timekeeping, payroll, and other employment practices that applied
20 to them.

21 66. At all relevant times, Old Northern was "an enterprise engaged in commerce"
22 within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were
23 handling food and drinks produced out of state and distributed in New York. In addition, Old
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1 Northern conducted business with vendors and other businesses outside the State of New York
2 and engaged in credit card transactions involving banks and other institutions outside the State
3 of New York.

4 67. Upon information and belief, at all relevant times, Old Northern's annual gross
5 volume of sales made, or business done, was not less than \$500,000.00, exclusive of separate
6 retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).
7

8 **Little West Restaurant LLC**

9 68. Little West Restaurant LLC ("Little West") is a domestic corporation formed on
10 March 6, 2014, organized and existing under the laws of the State of New York.

11 69. Little West owns and operates Pathos Cafe, a sit down restaurant, serving food
12 and drinks to customers, located at 932 First Avenue, New York, NY 10022.
13

14 70. At all relevant times, Little West was a covered employer within the meaning of
15 the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

16 71. Pathos Cafe is open seven (7) days per week according to their own website:
17 <http://www.createtheory.com/pathoscafe>. It has more than 10 full-time employees and serves
18 between 50-60 customers per day.
19

20 72. At all relevant times, Little West maintained control, oversight, and direction
21 over the Plaintiffs, including timekeeping, payroll and other employment practices that applied
22 to them.

23 73. At all relevant times, Little West was "an enterprise engaged in commerce"
24 within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were
25 handling food and drinks produced out of state and distributed in New York. In addition, Little
26 West conducted business with vendors and other businesses outside the State of New York and
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1 engaged in credit card transactions involving banks and other institutions outside the State of
2 New York.

3 74. Upon information and belief, at all relevant times, Little West Restaurant LLC's
4 annual gross volume of sales made, or business done, was not less than \$500,000.00, exclusive
5 of separate retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).
6

7 **75 HA Restaurant LLC**

8 75. 75 HA Restaurant LLC ("75 HA") is a domestic corporation formed on October
9 23, 2013, organized and existing under the laws of the State of New York.

10 76. 75 HA owns and operates The BBG, a sit down restaurant, serving food and
11 drinks to customers, located at 75 Hillside Avenue, Williston Park, NY 11596.
12

13 77. At all relevant times, The BBG was a covered employer within the meaning of
14 the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

15 78. The BBG is open seven (7) days per week for several hours per day. It has more
16 than 10 full-time employees and serves between 50-60 customers per day.
17

18 79. At all relevant times, 75 HA was a covered employer within the meaning of the
19 FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

20 80. At all relevant times, 75 HA maintained control, oversight, and direction over
21 the Plaintiffs, including timekeeping, payroll and other employment practices that applied to
22 them.
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24 81. At all relevant times, 75 HA was "an enterprise engaged in commerce" within
25 the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were handling food
26 and drinks produced out of state and distributed in New York. In addition, 75 HA conducted
27 business with vendors and other businesses outside the State of New York and engaged in
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1 credit card transactions involving banks and other institutions outside the State of New York.

2 82. Upon information and belief, at all relevant times, The 75 HA's annual gross
3 volume of sales made, or business done, was not less than \$500,000.00, exclusive of separate
4 retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).

5
6 **Individual Defendants**

7 **Ioannis Chatiris**

8 83. Upon information and belief, at all relevant times, Ioannis Chatiris ("Chatiris")
9 was, at the time of Plaintiffs' employment owner, principal, authorized operator, manager,
10 shareholder and/or agent of all Corporate Defendants.

11 84. At all relevant times throughout Plaintiffs' employment, Chatiris had the
12 discretionary power to create and enforce personnel decision on behalf of all corporate
13 Defendants, including but not limited to: hiring and terminating employees at each location;
14 setting and authorizing issuance of wages; maintaining employee records; setting Plaintiffs'
15 schedule; instructing and supervising Plaintiffs; and/or otherwise controlling the terms and
16 conditions for the Plaintiffs while they were employed by Defendants.
17

18 85. Chatiris would also instruct Plaintiffs and other tipped employees on which
19 restaurant to work on a particular day, according to Defendants' business needs.
20

21 86. At all relevant times throughout Plaintiffs' employment, Chatiris was involved
22 in the day-to-day operations of all Corporate Defendants and oversaw their collective finances.
23

24 87. At all relevant times throughout Plaintiffs' employment, Chatiris was a
25 "covered employer" within the meaning of the FLSA and the NYLL, and employed or jointly
26 employed Plaintiffs, and is personally liable for the unpaid wages sought herein, pursuant to 29
27 U.S.C. § 203(d).
28

1 **Christos Panagiotopoulos**

2 88. Upon information and belief, at all relevant times, Christos Panagiotopoulos
3 (“Panagiotopoulos”) was, at the time of Plaintiffs’ employment owner, principal, authorized
4 operator, manager, shareholder and/or agent of all Corporate Defendants.

5 89. At all relevant times throughout Plaintiffs’ employment, Panagiotopoulos had
6 the discretionary power to create and enforce personnel decision on behalf of all Corporate
7 Defendants, including but not limited to: hiring and terminating employees at each location;
8 setting and authorizing issuance of wages; maintaining employee records; setting Plaintiffs’
9 schedule; instructing and supervising Plaintiffs; and/or otherwise controlling the terms and
10 conditions for the Plaintiffs while they were employed by Defendants.
11

12 90. At all relevant times throughout Plaintiffs’ employment, Panagiotopoulos was
13 involved in the day-to-day operations of all Corporate Defendants and oversaw their collective
14 finances.
15

16 91. At all relevant times throughout Plaintiffs’ employment, Panagiotopoulos was a
17 “covered employer” within the meaning of the FLSA and the NYLL, and employed or jointly
18 employed Plaintiffs, and is personally liable for the unpaid wages sought herein, pursuant to 29
19 U.S.C. § 203(d).
20

21 **COLLECTIVE ACTION ALLEGATIONS**

22 92. Pursuant to 29U.S.C. §§ 203, 206, 207, and 216(b), Plaintiffs bring their First,
23 Second and Third causes of action as a collective action under the FLSA on behalf of
24 themselves and the following collective:
25

26 All persons employed by Defendants at any one of their four restaurant
27 establishments at any time since October 19, 2013, and through the entry of
28

1 judgment in this case (the “Collective Action Period”) who worked as waiters,
2 bussers, runners or were otherwise tipped employees (the “Collective Action
3 Members”).

4 93. A collective action is appropriate in these circumstances because Plaintiffs and
5 the Collective Action Members are similarly situated, in that they were all subject to
6 Defendants' illegal policies of paying employees entirely through the tips received by
7 customers in the tip pool. As such, Defendants failed to pay all Collective Action Members at
8 minimum wage and failed to pay them overtime premiums for work performed in excess of
9 forty (40) hours each week. In addition, Defendant Chatiris had a common practice of
10 misappropriating the tips of tipped employees.
11

12 94. Plaintiffs and the Collective Action Members have substantially similar job
13 duties and are paid pursuant to a similar, if not the same, payment structure.
14

15 95. The claims of the Plaintiffs stated herein are similar to those of the other
16 employees.
17

18 **CLASS ACTION ALLEGATIONS**

19 96. Pursuant to the NYLL, Plaintiffs bring their Fourth through Tenth causes of
20 action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the
21 following class:

22 All persons employed by Defendants at any one of their four restaurant
23 establishments at any time since October 19, 2010, and through the entry
24 of judgment in this case (the “Class Period”) who worked as waiters,
25 bussers, runners or were otherwise tipped employees (the “Class Members”).
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1 97. The Class Members are so numerous that joinder of all members is
2 impracticable. The number and identity of the Class Members are determinable from the
3 records of the Defendants. Notice can be provided by means permissible under the Rule 23 of
4 the Federal Rules of Civil Procedure.

5 98. Upon information and belief, there are well in excess of forty (40) Class
6 Members.

7 99. There are questions of law and fact common to the claims of Plaintiffs and the
8 claims of the Class. Such common questions will determine Defendants' liability to all (or
9 nearly all) Class Members. These common questions include whether the Defendants had a
10 corporate policy of: failing to pay wages for all hours worked; failing to pay at least the
11 statutory minimum wage for all hours worked; failing to pay overtime premiums when
12 employees worked in excess of forty (40) hours per week; failing to pay spread-of-hours
13 premiums on the occasions in which an employee worked a shift of more than ten hours,
14 misappropriating employees' tips; failing to provide accurate wage statements; failing to
15 provide proper wage notices, and failing to provide employees with statutorily required meal
16 breaks. The answer to these questions would drive resolution of the litigation. If a judge agrees
17 with the plaintiffs on these issues, Defendants would be liable to all Class Members for their
18 NYLL wage and hour violations.
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22 100. Plaintiffs' claims are typical of the Class Members' claims. Plaintiffs, like all
23 Class Members, are tipped employees of Defendants who work collectively for all Defendants
24 pursuant to their corporate policies. Plaintiffs, like all Class Members, were not paid at an
25 hourly rate for their work but instead derived their whole income from the restaurants' tips
26 received by customers. As such, Plaintiffs and the Class Members were paid below minimum
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1 wage, were not paid overtime premium for hours worked over forty (40) in a given workweek,
2 were not paid spread of hours premiums when their shifts extended more than ten hours per
3 day, were not given all the tips they were entitled to, did not receive proper wage statements
4 and wage notices, and were not given statutorily required meal breaks. The job duties of the
5 named Plaintiffs were and are typical of those of class members. If Defendants are liable to
6 Plaintiffs for the claims enumerated in this Complaint, they are also liable to all Class
7
8 Members.

9 101. Plaintiffs and their Counsel will fairly and adequately represent the Class. There
10 are no conflicts between the Plaintiffs and the Class Members, and Plaintiffs bring this lawsuit
11 out of a desire to help all Class Members, not merely out of a desire to recover their own
12 damages.
13

14 102. The questions of law and fact common to the Class predominate over any
15 questions solely affecting the individual members of the Class. These common questions
16 include, but are not limited to:

17 a) whether Defendants employed Plaintiffs and the Class Members within the
18 meaning of the NYLL;

19 b) whether the four Corporate Defendants in this Action operate together as a
20 single integrated enterprise;

21 c) whether Defendants failed to keep true and accurate time records for all hours
22 worked by the Plaintiffs and the Class Members;

23 d) whether Defendants failed and/or refused to pay Plaintiffs and the Class
24 Members wages for all hours worked;
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1 e) whether Defendants failed and/or refused to pay Plaintiffs and the Class
2 Members minimum wages for all hours worked;

3 f) whether Defendants failed and/or refused to pay Plaintiffs and the Class
4 Members overtime premiums for hours worked in excess of forty (40) hours per workweek;

5 g) whether Defendants failed and/or refused to pay Plaintiffs and the Class
6 Members spread of hours premiums for shifts that exceeded ten hours per day;

7 h) whether Defendants misappropriated any of the Plaintiffs' and the Class
8 Members' tips;

9 i) whether Defendants failed to provide Plaintiffs and Class Members with a
10 proper and accurate statement of wages with every wage payment as required by the NYLL;
11

12 j) whether Defendants failed to provide proper wage notice to Plaintiffs and Class
13 Members at the beginning of their employment;

14 k) whether Defendants failed to provide statutorily required meal breaks to
15 Plaintiffs and the Class Members;

16 l) whether Defendants' failure to pay Plaintiffs and the Class Members lacked a
17 good faith basis; and

18 m) whether Defendants are liable for all damages claimed hereunder, including but
19 not limited to compensatory damages, liquidated damages, interest, costs and disbursements
20 and attorneys' fees.

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24 103. A class action is superior to other available methods for the fair and efficient
25 adjudication of this litigation.
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1 104. Defendants are sophisticated parties with substantial resources. The individual
2 plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against
3 the Corporate Defendant.

4 105. The individual members of the Class have no interest or capacity to bring
5 separate actions; Plaintiffs are unaware of any other litigation concerning this controversy; it is
6 desirable to concentrate the litigation in one case; and there are no likely difficulties that will
7 arise in managing the class action.
8

9
10 **FIRST CAUSE OF ACTION**

11 **Fair Labor Standards Act – Minimum Wages**

12 106. Plaintiffs, on behalf of themselves and the Collective Action Members, reallege
13 and incorporate by reference the allegations made in all preceding paragraphs as if fully set
14 forth herein.
15

16 107. At all relevant times, Plaintiffs and the Collective Action Members were
17 employees and employed by Defendants within the meaning of the FLSA, 29 U.S.C. § 203(d),
18 (e)(1), and (g).
19

20 108. At all times relevant, Defendants have been employers of Plaintiffs and the
21 Collective Action Members, and were engaged in commerce and/or the production of goods for
22 commerce within the meaning of 29 U.S.C. §§203 (s)(1) and 206 (a).
23

24 109. Defendants were required to pay directly to Plaintiffs, and the Collective Action
25 Members, the applicable Federal minimum wage rate for all hours worked pursuant to 29
26 U.S.C. § 206.
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1 110. Defendants failed to pay Plaintiffs, and the Collective Action Members, their
2 earned minimum wages for all hours worked to which they were entitled to under the FLSA.

3 111. Defendants did not even pay Plaintiffs and the Collective Action Members at a
4 lower tip-credited rate allowed for food service employees.

5 112. Instead, Plaintiffs and the Collective Action Members received their entire
6 earnings from the tip pool operated by Defendants' restaurants.

7 113. As a result of Defendants' violations of the FLSA, Plaintiffs and the Collective
8 Action Members have suffered damages by being denied minimum wages in accordance with
9 the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts,
10 liquidated damages, reasonable attorneys' fees, costs, and other compensation pursuant to 29
11 U.S.C. § 216 (b).
12

13 114. Defendants' unlawful conduct, as described in this Complaint, has been willful
14 and intentional. Defendants were aware, or should have been aware, that the practices described
15 in this Complaint were unlawful.
16

17 115. Defendants have not made a good faith effort to comply with the FLSA with
18 respect to the compensation of the Plaintiffs and the Collective Action Members.
19

20 116. Defendants failed to post or keep posted conspicuous notices of Plaintiffs' rights
21 as required by the U.S. Department of Labor pursuant to 29 C.F.R. § 516.4, further evincing
22 Defendants' lack of good faith.

23 117. Because Defendants' violations of the FLSA have been willful, a three-year
24 statute of limitations applies pursuant to 29 U.S.C. § 255(a).
25
26
27
28

SECOND CAUSE OF ACTION

Fair Labor Standards Act – Unpaid Overtime Wages

1
2
3 118. Plaintiffs and the Collective Action Members reallege and incorporate by
4 reference the allegations made in all preceding paragraphs as if fully set forth herein.

5
6 119. The overtime wage provisions set forth in the FLSA, 29 U.S.C. § 207 (a)(1) and
7 the supporting federal regulations, apply to Defendants and protect Plaintiffs and the Collective
8 Action Members.

9
10 120. Defendants have failed to pay Plaintiffs and the Collective Action Members
11 overtime wages at a rate of one and one-half times the regular rate at which they were employed
12 for but under no instance less than one and one-half times the statutory minimum wage for all of
13 the hours that they worked in excess of forty (40) hours per workweek.

14
15 121. As a result of Defendants' violations of the FLSA, Plaintiffs and the Collective
16 Action Members have been deprived of overtime compensation and other wages in amounts to
17 be determined at trial, and are entitled to recovery of such amounts, liquidated damages,
18 attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216 (b).

19
THIRD CAUSE OF ACTION

20
Fair Labor Standards Act - Misappropriation of tips

21
22 122. Plaintiffs and the Collective Action Members reallege and incorporate by
23 reference all allegations in all preceding paragraphs.

24
25 123. The wage payment provisions of the FLSA, 29 U.S.C. § 203(m) and the
26 supporting federal regulations 29 C.F.R. §§ 531.50 *et seq.* apply to Defendants, and protect
27 Plaintiffs and the Collective Action Members.

28
124. Defendant Chatiris collected a substantial portion of the tips from the tip pool

1 established and operated by each of the four restaurants before the tips were distributed to the
2 tipped employees.

3 125. As a result of Defendants' continuous and willful violations of the FLSA, 29
4 U.S.C. § 203(m) and the supporting federal regulations 29 C.F.R. §§ 531.50 *et seq.*, Plaintiffs
5 and the Collective Action Members are entitled to damages for the value of the
6 misappropriated gratuities, liquidated damages as provided for by the 29 U.S.C. § 216(b),
7 reasonable attorneys' fees, and costs.
8

9 **FOURTH CAUSE OF ACTION**

10 **New York Labor Law – Minimum Wage**

11 126. Plaintiffs, on behalf of themselves and the Class Members, reallege and
12 incorporate by reference all allegations in all preceding paragraphs.
13

14 127. Defendants have engaged in a widespread pattern, policy, and practice of
15 violating the NYLL, as detailed in this Complaint.

16 128. At all relevant times referenced herein, Plaintiffs and the Class Members have
17 been employees of Defendants, and Defendants have been employers of Plaintiffs and the Class
18 Members within the meaning of the NYLL §§ 190, 651 (5), 652, and the supporting New York
19 State Department of Labor Regulations.
20

21 129. The minimum wage provisions of Article 19 of the NYLL and the supporting
22 New York State Department of Labor Regulations apply to Defendants, and protect Plaintiffs
23 and the Class Members.
24

25 130. From 2010 to December 30, 2013, the minimum hourly wage in the State of New
26 York was \$7.25, from December 31, 2013 to December 30, 2014, the minimum hourly wage in
27 the State of New York was \$8.00, from December 31, 2014, to December 30, 2015, the
28

1 minimum hourly wage was \$8.75, and from December 31, 2015 onwards, the minimum hourly
2 wage in the State of New York is \$9.00 pursuant to NYLL § 652 and the New York State
3 Department of Labor Regulations, 12 N.Y.C.R.R. Part 146-1.2.

4 131. Defendants were required to pay Plaintiffs and the Class Members no less than
5 the applicable statutory minimum wage for all hours worked under the NYLL § 652 and the
6 supporting New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 146-1.2.

7
8 132. Defendants did not even pay Plaintiffs and the Collective Action Members at a
9 lower tip-credited rate allowed for food service employees.

10 133. Instead, Plaintiffs and the Collective Action Members received their entire
11 earnings from the tip pool operated by Defendants' restaurants.

12
13 134. Through their knowing and intentional failure to pay minimum hourly wages to
14 Plaintiffs, Defendants have violated the NYLL Article 19, §§ 650 *et seq.*, and 12 N.Y.C.R.R.
15 Part 146-1.2.

16 135. Defendants also failed to post conspicuous notices of the Plaintiffs' and Class
17 Members' rights under the law, as required by the NYLL § 661 and the New York State
18 Department of Labor Regulations, 12 N.Y.C.R.R. Part 146-2.4, further evincing Defendants'
19 lack of good faith.

20
21 136. Defendants' failure to pay Plaintiffs and the Class Members the minimum wage
22 was willful within the meaning of NYLL § 663.

23
24 137. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members
25 are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as
26 provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-
27 judgment interest, pursuant to NYLL § 198 (1-a).
28

FIFTH CAUSE OF ACTION

New York Labor Law – Unpaid Overtime wages

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2
3 138. Plaintiffs and the Class Members reallege and incorporate by reference all
4 allegations in all preceding paragraphs.

5 139. The overtime wage provisions as set forth in NYLL §§ 190 *et seq.* and the
6 supporting New York State Department of Labor Regulations apply to Defendants and protect
7 Plaintiffs and the Class Members.
8

9 140. Defendants have failed to pay Plaintiffs and the Class Members proper overtime
10 which they were entitled to at a wage rate of one and one-half times the employees' regular rate
11 but under no instance less than one and one-half times the statutory minimum wage as defined
12 by the New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 146-1.4.
13

14 141. Through their knowing or intentional failure to pay Plaintiffs and the Class
15 Members proper overtime wages for hours worked in excess of forty (40) hours per workweek,
16 Defendants have violated the NYLL §§ 190 *et seq.*, and the supporting New York State
17 Department of Labor Regulations.
18

19 142. Defendants' failure to pay Plaintiffs and the Class Members overtime
20 compensation was willful within the meaning of NYLL § 663.

21 143. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are
22 entitled to recover from Defendants their unpaid overtime wages, liquidated damages as
23 provided for by the NYLL, reasonable attorneys' fees and costs of the action, pre-judgment and
24 post-judgment interest, pursuant to NYLL § 198 (1-a).
25
26
27
28

SIXTH CAUSE OF ACTION

New York Labor Law- Misappropriation of tips

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2
3 144. Plaintiffs and the Class Members reallege and incorporate by reference all
4 allegations in all preceding paragraphs.

5 145. The wage payment provisions of Article 6 of the NYLL and the supporting New
6 York State Department of Labor Regulations 12 N.Y.C.R.R. Part 146 *et seq.* apply to
7 Defendants, and protect Plaintiffs and the Class Members.
8

9 146. Defendants were prohibited from demanding, accepting or retaining, directly or
10 indirectly, any part of the gratuities received by Plaintiffs and the Class Members pursuant to
11 NYLL Article 6, § 196-d and 12 N.Y.C.R.R. §§ 146-2.15 and 146-2.18.
12

13 147. Defendant Charitis collected a substantial portion of the tips daily from the tip
14 pool established and operated by the four restaurants before the tips were distributed to the
15 tipped employees.

16 148. As a result of Defendants' misappropriation of tips, Plaintiffs' and the Class
17 Members' total of tips received plus their wages frequently fell below minimum wage in
18 violation of 12 N.Y.C.R.R. § 146-1.3(b).
19

20 149. Upon information and belief, Defendants failed to establish, maintain and
21 preserve for at least six years accurate tip records showing the amount, shares and daily log of
22 tips collected by each employee at each position in violation of 12 N.Y.C.R.R. § 146-2.17.
23

24 150. As a result of Defendants' continuous and willful violations of the NYLL § 196-
25 d and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part
26 146 *et seq.*, Plaintiffs and the Class Members are entitled to damages for the value of the
27
28

1 misappropriated gratuities, liquidated damages as provided for by NYLL § 198(1-a),
2 reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

3 **SEVENTH CAUSE OF ACTION**

4 **New York Labor Law– Spread-of-Hours Pay**

5 151. Plaintiffs and the Class Members reallege and incorporate by reference all
6 allegations in all preceding paragraphs.
7

8 152. The spread-of-hours provisions as set forth in NYLL§§ 190 et seq. and the
9 supporting New York State Department of Labor Regulations apply to Defendants and protect
10 Plaintiffs and the Class Members.

11 153. Defendants have failed to pay Plaintiffs and the Class Members spread-of-hours
12 compensation of one hour's pay at the basic minimum hourly wage rate for each day during
13 which Plaintiffs and the Class Members worked a shift exceeding ten (10) hours, as defined by
14 the New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 146-1.6.
15

16 154. Through their knowing or intentional failure to pay Plaintiffs and the Class
17 Members spread-of-hours compensation, Defendants have willfully violated the NYLL§§ 190
18 et seq., and the supporting New York State Department of Labor Regulations.
19

20 155. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members
21 are entitled to recover from Defendants their unpaid spread-of-hours pay, liquidated damages
22 as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-
23 judgment interest, pursuant to NYLL § 198 (1-a).
24
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EIGHTH CAUSE OF ACTION

New York Labor Law– Failure to Provide Notice at the Time of Hiring

156. Plaintiffs and the Class Members reallege and incorporate by reference all allegations in all preceding paragraphs.

157. Defendants have failed to provide Plaintiffs and the Class Members, at the time of hiring or at any point thereafter, a notice containing the rate of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular pay day designated by the employer; the physical address of the employer's main office or principal place of business; the telephone number of the employer, and anything otherwise required by law, in violation of NYLL § 195(1).

158. Due to Defendants' violations of the NYLL § 195(1), Plaintiffs and the Class Members are entitled to recover from Defendants statutory damages of fifty dollars (\$50) per workweek that the violation occurred, up to a maximum of Two Thousand Five Hundred Dollars (\$2,500), until February 26, 2015, and statutory damages of Fifty dollars (\$50) per workday that the violation occurred, up to a maximum of Five Thousand Dollars (\$5,000), thereafter, pursuant to NYLL § 198 (1-b).

NINTH CAUSE OF ACTION

New York Labor Law– Failure to Provide Wage Statements

159. Plaintiffs and the Class Members reallege and incorporate by reference all allegations in all preceding paragraphs.

160. Defendants have failed to provide Plaintiffs and the Class Members with accurate wage statements listing their rate of pay; basis of pay; the period covered; and overtime pay, in violation of NYLL § 195(3).

1 161. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members
2 are entitled to recover from Defendants One Hundred Dollars (\$100) for each work week that
3 the violations occurred, up to a maximum of Two Thousand Five Hundred Dollars (\$2,500),
4 until February 26, 2015, and statutory damages of Two Hundred and Fifty dollars (\$250) per
5 workday that the violation occurred, up to a maximum of Five Thousand Dollars (\$5,000),
6 thereafter, pursuant to NYLL § 198 (1-d).
7

8 **TENTH CAUSE OF ACTION**

9 **New York Labor Law – Meal Break Violations**

10 162. Plaintiffs and the Class Members reallege and incorporate by reference all
11 allegations in all preceding paragraphs.
12

13 163. The meal provisions as set forth in NYLL § 162 apply to Defendants and protect
14 Plaintiffs and the Class Members.

15 164. Defendants have consistently and repeatedly failed to allow Plaintiffs and the
16 Class Members a meal break lasting at least thirty minutes per day for any days Plaintiffs
17 worked a shift of more than six hours extending between the hours of 11:00 a.m. and 2:00 p.m.
18 as required by NYLL § 162(2).
19

20 165. Defendants have consistently and repeatedly failed to allow Plaintiffs and the
21 Class Members an additional meal break lasting at least twenty minutes per day for any days
22 Plaintiffs worked a shift extending between the hours 11:00 a.m. and 7:00 p.m. as required by
23 NYLL § 162(3).
24

25 166. Defendants have consistently and repeatedly failed to allow Plaintiffs and the
26 Class Members a meal break lasting at least forty-five minutes per day for any days Plaintiffs
27
28

1 worked a shift of more than six hours extending between 1:00 p.m. and 6:00 a.m. as required by
2 NYLL § 162(4).

3 167. Due to Defendants' violations of the NYLL, Plaintiffs have suffered damages by
4 being deprived of their statutorily required meal breaks and are entitled to compensation in an
5 amount to be determined at trial.

6
7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs seek the following relief:

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

14 B. Certification of this action as a class action pursuant to F.R.C.P. Rule 23(a),
15 (b)(2) and (b)(3) on behalf of the Class Members and appointing Plaintiffs and their counsel to
16 represent the class;

17 C. An order tolling the statute of limitations;

18 D. Issuance of a declaratory judgment that the practices complained of in this
19 complaint are unlawful under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New
20 York Labor Law, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting
21 New York State Department of Labor Regulations;

22 E. Unpaid minimum wages, tips, and overtime pay under the FLSA and an
23 additional and equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and the
24 supporting United States Department of Labor regulations;

1 F. Unpaid minimum wages, tips, overtime wages and spread-of-hours pay under
2 the NYLL, and an additional and equal amount as liquidated damages pursuant to NYLL
3 §198(1-a) and § 663(1);

4 G. Civil penalties of One Thousand One Hundred Dollars (\$1,100) for each of
5 Defendants' willful and repeated violation of the FLSA pursuant to 29 U.S.C.A. § 216(b);
6

7 H. An award of statutory damages for Defendants' failure to provide Plaintiffs and
8 the Class Members with a wage notice at the time of hiring pursuant to NYLL § 198 (1-b);

9 I. An award of statutory damages for Defendants' failure to provide Plaintiffs and
10 the Class Members with accurate wage statements pursuant to NYLL § 198 (1-d);
11

12 J. An award of damages for Defendants' failure to provide Plaintiffs with
13 statutorily required meal breaks pursuant to NYLL § 162 to be determined at trial;

14 K. A permanent injunction requiring Defendants to pay all statutorily required
15 wages pursuant to the FLSA and NYLL;

16 L. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b), are not awarded,
17 an award of prejudgment interest pursuant to 28 U.S.C. § 1961;
18

19 M. An award of pre-judgment interest of nine per centum per annum (9%) pursuant
20 to the New York Civil Practice Law and Rules §§ 5001-5004;

21 N. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the
22 New York Civil Practice Law and Rules § 5003;

23 O. An award of attorney's fees, costs, and further expenses up to fifty dollars,
24 pursuant to 29 U.S.C. § 216(b), and NYLL §§ 198 and 663(1);
25

26 P. Such other relief as this Court shall deem just and proper.
27
28

Dated: Astoria, New York
October 19, 2016

Respectfully submitted,
PARDALIS & NOHAVICKA, LLP

By: /s/Ariadne Panagopoulou
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NOTICE OF CONSENT TO JOIN, PURSUANT TO 29 U.S.C. §216(b)

FAIR LABOR STANDARDS ACT CONSENT FORM

I consent to be a party plaintiff in a lawsuit against **Ethos Gallery 51,LLC**, and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. section §216(b). I hereby designate **Pardalis & Nohavicka LLP** to represent me in such a lawsuit.

Dated: 9/22/2016



Signature

Ioannis Legantis

Print

2186 47th St.
Astoria, NY, 11103

Address

(917)-671-6608

Telephone

NOTICE OF CONSENT TO JOIN, PURSUANT TO 29 U.S.C. §216(b)

FAIR LABOR STANDARDS ACT CONSENT FORM

I consent to be a party plaintiff in a lawsuit against **Ethos Gallery 51,LLC**, and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. section §216(b). I hereby designate **Pardalis & Nohavicka LLP** to represent me in such a lawsuit.

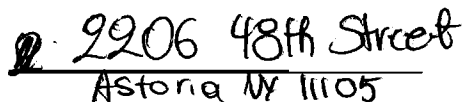
Dated: 9/22/2016



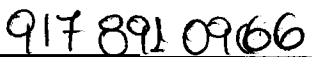
Signature



Print



Address



Telephone



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Four New York Restaurants Hit with FLSA Class Action](#)
