UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEPHANIE SANZ, BRYAN HARMIN, ANNYA SANTANA, NYKYA LUCE, JESSICA WAFER, KATELYN CANNING, STEPHANIE WALSH, OSCAR ROJAS, TAYLOR MESCHKE, JENNIFER BLEIWEISS, JUAN BALBUENA AND DESTINY FRYE, individually and on behalf of all other similarly situated Plaintiffs,

INDEX NO. 14-cv-4380 (JMF)

AMENDED CLASS ACTION COMPLAINT

v.

JOHNY UTAH 51 LLC, D/B/A JOHNNY UTAH'S, ROBERT WERHANE, JOHN SULLIVAN, THOMAS CASABONA, J.R. LOZADA, DOE Corporations I through X, inclusive, and DOE Limited Liability Companies I through X, inclusive,

Defendants.

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Individual and Representative Plaintiffs Stephanie Sanz, Bryan Harmin, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Oscar Rojas, Taylor Meschke, Jennifer Bleiweiss, Juan Balbuena and Destiny Frye (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and upon information and belief as to other matters, against Defendants Johny Utah 51 LLC, d/b/a Johnny Utah's ("Johnny Utah's"), Robert Werhane ("Werhane"), John Sullivan ("Sullivan"), Thomas Casabona ("Casabona"), and J.R. Lozada ("Lozada"), as follows:

NATURE OF THE CLAIM

1. This case addresses the pervasive sexual harassment and discriminatory practices and policies at Johnny Utah's, a western-themed restaurant and bar located in Rockefeller Center. Beneath the advertised "wild west party" atmosphere promoted by Defendant Johnny Utah's, and

its owners and supervisors, is a hyper-sexualized work environment that increases the Defendants' profits by exploiting, degrading and humiliating its female employees.

2. Female servers and bartenders are required to wear sexually provocative clothing, including cut-off denim shorts, cut-off shirts, cowboy boots, and excessive make-up, and are instructed by their superiors to look sexy and "available" to the male patrons. Managers expect the female servers to flirt and "party" with their male customers. Female employees are expected to encourage male customers to buy them shots of alcohol during their work shifts, to sit on male customers' laps, ride a mechanical bull with other female employees and male customers, dance on top of the bar in front of customers and pour shots of alcohol into customers' mouths.

3. On a consistent and regular basis, Defendants urge the female employees to take off their shirts when they ride the mechanical bull and kiss other female employees when they ride the bull together. During beach theme parties held during the summer, the female servers must wear bikini tops and customers watch as the female servers splash around in plastic baby/toddler pools set up throughout Johnny Utah's.

4. Certain female employees, called the "Daisy Dukes girls," are paid to walk around Rockefeller Center between 9:00 p.m. and 12:00 a.m., wearing cowboy boots, cut-off denim shorts and t-shirts, to solicit male customers to patronize Johnny Utah's. The Daisy Dukes girls hand out promotional flyers to men on the street and if the customer comes to Johnny Utah's with the promotional flyer, the Daisy Duke girl whose initials are on the flyer receives $2.

5. At all times, male employees at Johnny Utah's wear long sleeved shirts and jeans and are not required to drink shots of alcohol during their shifts with customers, ride the mechanical bull, dance on the bar, take their shirts off, kiss their co-workers, sit in their customers'

laps, get wet in the baby/toddler pools or walk through the streets of Manhattan soliciting customers.

6. As part of the wild west party atmosphere at Johnny Utah's, the female servers are subjected to pervasive and regular unwelcome sexual comments, propositions, and physical contact by male customers. Female servers know that if they complain to management about the unwelcome sexual conduct that they will be penalized and told that they are "not fun" and do not know how to "throw a party." Defendants tell female servers to be "team players" and not complain about the sexual conduct because it is "part of their job."

7. Female servers do not complain or report unwelcome physical contact by male customers to management because employees who do complain are systematically cut from working the favorable work shifts and lucrative private parties. Managers frequently remind the female servers that they are expendable and tell them that "twenty (20) other women" are willing to take their job.

8. By intentionally using the ramped up sexualization of its female employees to sell alcohol to the male patrons and requiring that their female employees submit to unwelcome sexual conduct, at all relevant times, the owners and managers of Johnny Utah's have knowingly engaged in the discriminatory policies and practices.

9. At all relevant times, Johnny Utah's operates as a restaurant and bar, and is in the business of selling food and alcohol. Johnny Utah's is not in the business of selling adult male entertainment and the service employees are not dancers, entertainers or performers. There is no bona fide occupational qualification for female service employees to adhere to the systemic discriminatory policies that the Defendants impose upon them in order for the female employees

to maintain their jobs at Johnny Utah's. Assumption of the risk is not a defense to sexual discrimination and pervasive hostile environment conditions in the workplace.

10. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this case is commenced by Plaintiffs Stephanie Sanz, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Taylor Meschke, Jennifer Bleiweiss and Destiny Frye, on behalf of all former and current Johnny Utah's female servers, bartenders, hostesses and Daisy Dukes girls (collectively, the "female servers"), who worked at Johnny Utah's between June 11, 2011, through the resolution of this action, to remedy Defendants' violations of the New York State Human Rights Law under §290 *et. seq.*, and §296 as amended, (the "NYSHRL"), and the New York City Human Rights Law, Article 1, Section 8 of the New York City Administrative Code, § 8-101, *et. seq*., (the "NYCHRL") (the "Female Service Employee Class").

11. In addition to the female servers' discrimination claims, all Johnny Utah's service employees, including the male bartenders, bussers, runners and bar backs, were regularly and systematically denied overtime wages, spread of hours pay, and proper distributions of the tip pool. Plaintiffs Stephanie Sanz, Bryan Harmin, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Oscar Rojas, Taylor Meschke, Jennifer Bleiweiss, Juan Balbuena and Destiny Frye, bring this action on behalf of themselves and other similarly situated current and former employees who elect to opt in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§201 *et. seq*. ("FLSA"), and specifically the collective action provision of 29 U.S.C. §216(b29), who worked at Johnny Utah's between June 11, 2011, through the resolution of this action, to remedy Defendants' wage and hour violations of the FLSA (the "Collective Action Class").

12. Plaintiffs further bring a cause of action pursuant to Rule 23, on behalf of themselves and other similarly situated current and former Johnny Utah's service employees, including the male bartenders, bussers, runners and bar backs, who worked at Johnny Utah's, between June 11, 2008, through resolution of this action, to remedy Defendants' wage and hour violations of the New York Labor Law ("NYLL"), Article 6, §§190 *et seq.*, Article 19, §§ 650 *et seq.*, and 12 New York Codes, Rules and Regulations ("NYCRR"), §§142-2.1 *et seq.* (the "NYLL Class").

JURISDICTION AND VENUE

13. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § l331 and 29 U.S.C. §216(b).

14. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367 because those claims are so closely related to Plaintiffs' claims that they form part of the same case or controversy.

15. Venue is proper in the Southern District pursuant to 28 U.S.C. §1391 as the events and conduct giving rise to the claims occurred in this District.

THE PARTIES

16. Plaintiff Stephanie Sanz ("Sanz") is a former server at Johnny Utah's who resides in New York County, New York. She worked as a server at Johnny Utah's from January 2012 through June 2014. Sanz is a covered employee within the meaning of the FLSA and NYLL.

17. Plaintiff Bryan Harmin ("Harmin") is a former bartender at Johnny Utah's who resides in New York County, New York. He worked as a bartender at Johnny Utah's from May 2012 through June 2013. Harmin is a covered employee within the meaning of the FLSA and NYLL.

18. Plaintiff Annya Santana ("Santana") is a former server at Johnny Utah's who resides in New York County, New York. She worked as a server at Johnny Utah's from October 2013 through June 2014. Santana is a covered employee within the meaning of the FLSA and NYLL.

19. Plaintiff Nykya Luce ("Luce") is a former hostess at Johnny Utah's who resides in New York County, New York. She worked as a hostess at Johnny Utah's from February 2014 through June 2014. Luce is a covered employee within the meaning of the FLSA and NYLL.

20. Plaintiff Jessica Wafer ("Wafer") is a former Daisy Dukes girl at Johnny Utah's who resides in New York County, New York. She worked as a Daisy Dukes girl at Johnny Utah's from August 2012 through November 2013. Wafer is a covered employee within the meaning of the FLSA and NYLL.

21. Plaintiff Stephanie Walsh ("Walsh") is a former Daisy Dukes girl at Johnny Utah's who resides in New York County, New York. She worked as a Daisy Dukes girl at Johnny Utah's from May 2013 through June 2014. Walsh is a covered employee within the meaning of the FLSA and NYLL.

22. Plaintiff Katelyn Canning ("Canning") is a former Daisy Dukes girl and bartender at Johnny Utah's who resides in New York County, New York. She worked as a Daisy Dukes girl and bartender at Johnny Utah's from January 2012 through November 2012. Canning is a covered employee within the meaning of the FLSA and NYLL.

23. Plaintiff Oscar Rojas ("Rojas") is a former busser/runner and bar back at Johnny Utah's who resides in New York County, New York. He worked as a busser/runner and bar back at Johnny Utah's from August 2013 through May 2014. Rojas is a covered employee within the meaning of the FLSA and NYLL.

24. Plaintiff Taylor Meschke ("Meschke") is a former Daisy Dukes girl and bartender at Johnny Utah's who resides in New York County, New York. She worked as a Daisy Dukes girl and bartender at Johnny Utah's from January 2012 through February 2014. Meschke is a covered employee within the meaning of the FLSA and NYLL.

25. Plaintiff Jennifer Bleiweiss ("Bleiweiss") is a former bartender at Johnny Utah's who resides in New York County, New York. She worked as a bartender at Johnny Utah's from approximately August 2010 through November 2012. Bleiweiss is a covered employee within the meaning of the FLSA and NYLL.

26. Plaintiff Juan Balbuena ("Balbuena") is a former busser/runner and bar back at Johnny Utah's who resides in New York County, New York. He worked as a busser/runner and bar back at Johnny Utah's from September 2011 through June 2014. Balbuena is a covered employee within the meaning of the FLSA and NYLL.

27. Plaintiff Destiny Frye ("Frye") is a former hostess at Johnny Utah's who resides in New York County, New York. Frye was 19 years old when she worked as a hostess at Johnny Utah's from June 2011 through December 2011. Frye is a covered employee within the meaning of the FLSA and NYLL.

28. Defendant Johny Utah 51 LLC, d/b/a Johnny Utah's ("Johnny Utah's") is a domestic limited liability company formed and existing under the laws of the State of New York, with its principal place of business located at 214 East 49th Street, New York, New York 10017. The restaurant Johnny Utah's is located at 25 West 51st Street, New York, New York 10019.

29. Upon information and belief, Defendant Robert Werhane ("Werhane") is a resident of New York, New York, and was at all relevant times, an officer, member, shareholder and/or owner of Johnny Utah's. Upon information and belief, Defendant Werhane, individually and

through his company Experience Hospitality, also owns and operates multiple bars and restaurants throughout Manhattan.

30. Upon information and belief, Defendant John Sullivan ("Sullivan") is a resident of New York, New York, and was at all relevant times, an officer, member, shareholder and/or owner of Johnny Utah's. Upon information and belief, Defendant Sullivan also owns and operates multiple bars and restaurants throughout Manhattan, including Calico Jack's, Cantina, Irish Exit, McFadden's Saloon, McFadden's 42, Savannah, Snitch, Sully's Restaurant, Tavern on Third and Turtle Bay.

31. Upon information and belief, Defendant Sullivan also owns and operates East Coast Saloons, a restaurant and entertainment company with over 30 restaurant/bars nationwide.

32. Upon information and belief, Defendant Thomas Casabona ("Casabona") is a resident of New York, New York, and is an agent, manager or supervisor of Johnny Utah's.

33. Upon information and belief, Defendant J.R. Lozada ("Lozada") is a resident of New York, New York, and is an agent, manager or supervisor at Johnny Utah's.

34. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOE Corporations I through X, inclusive, and DOE Limited Liability Companies I through X, inclusive, are unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious names and will seek leave to amend this Complaint to show their true names and capacities when they have been ascertained. Plaintiffs believe that each Defendant named as a DOE Corporation or DOE Limited Liability Companies, is responsible in some manner for the acts and/or omissions alleged herein.

35. Upon information and belief, Defendant Sullivan is the owner, director or president of Defendants named herein as DOE Corporations I through X, inclusive, and DOE Limited

Liability Companies I through X, inclusive. Upon information and belief, Defendants named herein as DOE Corporations I through X, inclusive, and DOE Limited Liability Companies I through X, inclusive, are the parent companies that own Defendant Johnny Utah's. Plaintiffs will request leave to amend the Complaint to insert the true names and capacities of the individuals or entities, when they have been ascertained, who are responsible for the ownership of Defendant Johnny Utah's.

36. At all relevant times, Defendants Werhane, Sullivan, Casabona and Lozada were the affiliates, agents, representatives or employees of Defendant Johnny Utah's, and each of them were acting within the course and scope of their agency, employment and/or concert of action and are vicariously liable, jointly and severally, for the actions or inactions, and or omissions of themselves and of other Defendants which proximately caused the damages to the Plaintiffs as alleged herein.

37. Defendants Werhane, Sullivan, Casabona and Lozada exercised control over the terms and conditions of Plaintiffs' employment and those of similarly situated employees, including the (1) control of day to day operations; (2) the power to hire and fire employees; (3) supervision and control of employee work schedules; (4) the rate and method of payment for employees and (5) the maintenance of employment records for Johnny Utah's.

38. At all relevant times, Johnny Utah's, was and continues to be an "enterprise engaged in commerce" within the meaning of the FLSA.

39. At all relevant times, Johnny Utah's annual gross volume of sales made or business done was not less than $500,000.00.

40. At all relevant times, the work performed by Plaintiffs and similarly situated employees was directly essential to the business operated by Defendants.

FACTUAL ALLEGATIONS

Johnny Utah's: "Welcome To The Wild, Wild West"

41. Located in Rockefeller Center at 25 West 51st Street, Johnny Utah's promotes the restaurant as an "urban cowboy experience" that is "home to New York City's original mechanical bull." Johnny Utah's caters to a young male heterosexual crowd and promises that guests will have "the most over the top party in NYC and an experience they'll never forget!" http://www.johnnyutahs.com

42. The 6,000 square foot restaurant has three 15 foot projection screens, accommodates parties from 15-400 guests, and has multiple private party rooms.

43. As described on its website:

> Our outrageous staff, incredible DJs and out of control party atmosphere makes Johnny Utah's the number 1 party destination in NYC. Johnny Utah's has redefined the urban cowboy experience through our unique promotions and rowdy atmosphere. Cowgirls, Cowboys, and Rock Stars of all kinds are encouraged to come in and get wild!

http://www.johnnyutahs.com.

44. As part of the "rowdy" and "over the top" party atmosphere, customers are served their food and alcohol by thin attractive women in their early 20s wearing cut-off shorts, tight jeans, tight cut-off shirts and cowboy boots. When the atmosphere at Johnny Utah's starts to get wild, customers watch as the female servers climb onto the bar and dance. The female employees also climb on top of the bar and pour shots of alcohol directly from the bottle into their customers' mouths. Johnny Utah's is so outrageous that the female servers are encouraged by their managers to drink shots of alcohol with their customers, sit on their customer's laps and ride the mechanical bull with one another and older male customers.

45. Johnny Utah's has numerous promotional events to attract customers. In the summer, for example, the restaurant hosts beach theme parties on Friday nights. The female servers wear bikini tops and several blow up baby/toddler pools are brought into the restaurant. During these theme parties, the female servers are expected by Defendants Casabona and Lozada to get into the baby/toddler pools and splash around with one another for the amusement of the male patrons.

46. During last year's Thanksgiving theme event, these same baby/toddler pools were filled with cranberry sauce for the purposes of the women wrestling in the pools.

47. During many of these Friday beach nights, Defendant Casabona subjected the Daisy Dukes girls to an "unveiling" of their bikini tops. The female employees would have to stand on top of the bar for everyone to see and then remove their shirts one by one to expose the bikini top underneath while Defendant Casabona introduced them over the sound system.

48. On a daily basis, multiple video cameras placed throughout Johnny Utah's recorded the events at the restaurant, including the female employees removing their shirts, kissing one another, dancing on the bar and otherwise "throwing the party."

49. Defendants would upload video clips and pictures from the video recordings to the public Johnny Utah's Facebook page and Twitter account. At all relevant times, female employees were not asked whether Defendants had permission to post their images in order to promote Johnny Utah's.

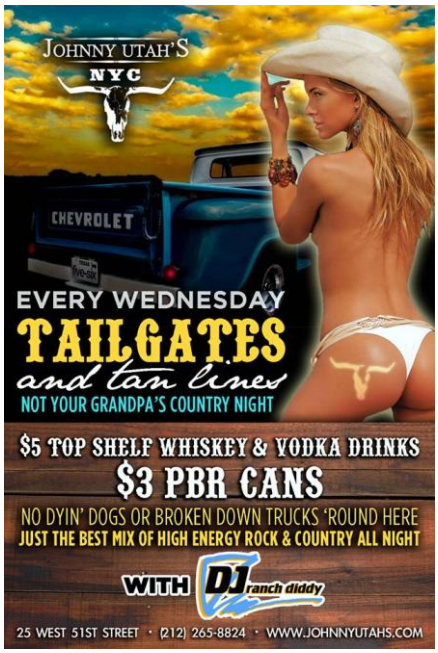
50. Defendants also recklessly permitted customers to record video of events at Johnny Utah's, including videos of employees, and females without their shirts on and kissing other women, and post the video on You Tube and other social media sites.

51. On Fridays, management would send emails to the employees about the beach event, which included the following, "remember bathing suits tonight! Kiddie pools will be out," "bathing suit attire as usual" and "multiple kiddie pools will be out tonight." In one email about the Friday night beach theme, management wrote, "staff attire is key to tie it all together as you all saw how the crowd responded to our dress Friday."

52. If a female server reported to work on a Friday night without a bikini top, she was told she had to go to a nearby store to buy one or go home.

53. In a recent promotion, the restaurant advertised a typical Wednesday night special:

54.



55. On "wild" nights, female servers are expected to ride the bull with one another. During the ride, the Johnny Utah's DJ often plays the song "I Kissed A Girl," by Katy Perry, and then periodically stops the music and announces over the microphone that if the female employees who are riding the bull "make out" with each other, there will be a free round of shots of alcohol for all customers. The customers yell and scream for the female employees to kiss one another.

The female employees are expected to submit to the degradation and all customers receive free alcohol.

56. Defendants routinely request that female servers and female customers take off their shirts before they ride the bull, by saying over the microphone such things as, "this bull can't start until you take your shirt off." With the music stopped, all attention on the female situated atop the bull in the middle of the restaurant and customers screaming, the pressure to comply was immense. Knowing that she will lose shifts during the following weeks if she fails to remove her shirt, the female employee submits to the degradation.

Appearance Criteria Of The Female Servers

57. Only women serve food at Johnny Utah's. In addition to the female servers, the restaurant employs female hostesses, the Daisy Dukes girls, also called the "shots girls" and fifty (50%) percent of the bartending staff is female.

58. At all relevant times, Defendant Casabona, who is approximately 39 years old, was the individual in charge of operating and managing Johnny Utah's on a daily basis. Defendant Casabona at all times reported to Defendant Sullivan. Defendant Lozada and all other employees reported to Defendant Casabona. From approximately 2011 through May 2014, Stuart Lopoten ("Lopoten"), a bartender, also worked as the bar manager and supervised the Daisy Dukes girls. Lopoten reported to Defendants Casabona and Lozada.

59. In 2010 and 2011, Lopoten and Defendant Casabona worked for Defendant Sullivan at Irish Exit, a bar owned by Sullivan, located at 978 Second Avenue, New York, NY.

60. The female servers at Johnny Utah's are required to dress provocatively, look sexy and appear "available."

61. On many occasions, after making the employees purchase the Johnny Utah's t-shirts with their own funds, Defendants handed scissors to the female employees and told them to cut the shirts from the neck down to a point low enough that their breasts were exposed.

62. In order to appear available, female employees are told not to wear engagement rings or wedding bands.

63. Defendants Casabona and Lozada tell the female servers that "as soon as you walk in here, you are single." Such directives to the female servers were openly given at staff meetings in front of all employees, male and female.

64. All female employees are expected to be thin, attractive and have a certain look. For example, if a woman came into the restaurant to apply for a job, Defendants Casabona and Lozada routinely wanted to know whether she had long hair and large breasts. Interviews at Johnny Utah's are not arranged unless the prospective female employee first sent Defendants Casabona and Lozada a full body photograph.

65. Female employees are required to devote considerable attention to their hair and make-up. Defendants Casabona and Lozada tell certain women to wear their hair down, instruct women what to wear, tell them not to dress in "grandma clothing," and to wear more make-up.

66. If a female employee arrives to work and Defendants Casabona or Lozada does not think that she looks attractive enough, she is degraded and belittled in front of other employees. Defendants Casabona or Lozada regularly demean the female servers, calling some of them "ugly," "stupid," "retarded" and "idiots" in front of their co-workers.

67. Female employees are also told not to wear eyeglasses because Defendants Casabona and Lozada believe that this makes them less attractive.

68. Female servers have been reprimanded in the middle of shifts for not looking good enough and told to put on more make-up immediately.

69. Failure of female servers to successfully dress in sexy, attractive outfits and look their best results in reprimands by Defendants Casabona and Lozada, and threats to eliminate shifts or opportunities to work private party events, the most lucrative opportunities for the female servers.

70. On a regular and consistent basis, Defendants Casabona and Lozada tell female servers that the "customers are here to look at you," and therefore they need to "step it up" and "look the part." In response, the female servers understand that they must wear sexually provocative clothing and look sexy for the purpose of pleasing the male customers.

71. Although female servers regularly requested the opportunity to wear clothing that was considered less sexy, including requests to wear sweaters or long sleeve shirts over the cut-off t-shirts in the winter, Defendants denied the requests.

72. The required "Daisy Dukes" uniform of cut-off denim shorts and tight cut-off shirts accentuates the female employees' bodies and is intended to stereotype the women as sex objects.

73. At all relevant times, male employees are not required to dress in a sexually provocative manner or critiqued on their physical appearance by Defendants. Male employees wear long sleeved shirts and jeans.

74. The clothing that the female servers are required to wear, and the emphasis on looking sexy and acting "available" to the patrons placed the female servers at increased risk and probability of being targeted with unwelcome sexual advances by male customers, including touching, grabbing, groping, and requests to have the women sit in their laps.

75. The clothing that the female servers are required to wear, and the emphasis on looking sexy and acting "available" to the patrons placed the female servers at increased risk and probability of being targeted with unwelcome lascivious and sexually provocative remarks by male customers.

76. At all relevant times, Defendants' control and regulation of the female servers' appearance is not related to the ability of the employees to efficiently and properly satisfy their job tasks and responsibilities of serving food and drinks to customers.

77. Defendants' requirement that the female servers wear the Daisy Dukes uniform or tight jeans, tight shirts and cut-off t-shirts is not a bona fide occupational qualification for the job of server, hostess or bartender.

78. Defendants' requirement that the female servers dance on top of the bar, pour shots from the bottle into male customers' mouths, ride the bull, kiss one another while riding on the bull, take their shirts off, sit on customers' laps, submit to unwelcome physical touching, groping and other unwanted sexual contact by male customers is not a bona fide occupational qualification for the job of server, hostess or bartender.

79. A bona fide occupational qualification does not exist for only female employees to work as servers, hostesses or Daisy Dukes girls at Johnny Utah's.

80. The female servers are not "entertainers," dancers or "performers." At all relevant times, Johnny Utah's operates as a restaurant and bar, and does not hold itself out as a strip club or a gentleman's club.

81. Johnny Utah's is in the business of selling food and alcohol to the public, not providing adult entertainment to heterosexual men.

82. At all relevant times, potential female employees who are called in for an interview after sending photos of themselves to Defendants Casabona and Lozada, are not informed during their interviews that female servers are required to wear bikini tops, dance on top of the bar, pour shots from the bottle into male customers' mouths, ride the bull, kiss one another on the bull, take their shirts off, sit on customers' laps, or submit to unwelcome physical touching, groping and other unwanted sexual contact by male customers.

83. At no time are female servers required to sign waivers or notices about the required attire or conduct at Johnny Utah's.

84. At no time are female servers told that drinking shots of alcohol during their work shifts is a requirement of the position.

85. The average age of the female servers is 23 years old. Upon information and belief, more than 95% of the female servers are under the age of 26, and only one female server is over the age of 30. This employee is 31 years old.[1]

86. Upon information and belief, and as set forth *infra*, at all relevant times Johnny Utah's has and does employ female servers who are under the age of 21, including women as young as 18 years old.

87. As part of their employment, the female servers under the age of 21 were encouraged to drink excessive amounts of alcohol during their work shifts. At all times, Defendants Casabona and Lozada knowingly and intentionally coached the underage female servers to drink excessive amounts of alcohol and further supplied these same employees with more alcohol at the end of the evening.

[1] Plaintiffs reserve the right to amend the class complaint to add claims for age discrimination on behalf of female servers should evidence show that hiring was restricted to women under the age of forty (40) years.

Female Servers Must "Throw The Party" Or Risk Termination

88. The female servers are ranked by Defendants Casabona and Lozada by their ability to "throw the party" and thereafter assigned shifts, sections of the restaurant and private party events based on this assessment.

89. On a regular and daily basis, Defendants used the specific phrase "throw the party" when instructing the female servers on how to perform their jobs and responsibilities.

90. To "throw the party" means that the female server will successfully "engage and entertain" her customers during their stay at Johnny Utah's. To accomplish this, Defendants Casabona and Lozada expect that the female servers will, at a minimum, engage in the following conduct:

- get on top of the bar and pour shots of alcohol into male customer's mouths;
- dance on the bar;
- ride the mechanical bull alone, with other female servers and with older male customers;
- Drink alcohol with their male customers during their work shifts;
- Encourage male customers to buy them shots of alcohol;
- Flirt with their male customers and at all times appear "available";
- Be open to suggestions from male customers to go out after their shifts;
- Sit on the laps of their male customers;
- Laugh off sexually offensive remarks about their bodies and appearance; and
- Not object to unwelcome physical sexual advances by male customers, including but not limited to unwanted touching, grabbing, groping, hugging, kissing and slapping of their buttocks.

91. As detailed *infra*, the failure of a female server to properly "throw the party" results in threats of reduced shifts or termination.

Harassment By Defendants

92. The female servers reported directly to Defendant Lozada and Lopoten, who were responsible for creating the weekly schedules and assigning employees to specific shifts, sections

of the restaurant during shifts, and delegating which employees were assigned to work private party events.

93. On a regular and daily basis, Defendants Casabona and Lozada, and Lopoten would openly comment on the physical appearance of the female servers, and critique their bodies, clothing, hair and make-up. Defendants would publicly discuss which female servers were the most attractive and the best at "throwing the party" in order to determine who was assigned the most lucrative sections of the restaurant during shifts. If a female server had not been regularly "throwing the party," she was placed in the least desirable section of the restaurant.

94. For the women who were not as successful at throwing the party, Defendants Casabona and Lozada publically questioned them as to why more male customers were not buying the servers shots or why they were not riding the mechanical bull. They said such things as "you need to be "a team player," "have more fun," "loosen up" and "drink more shots."

95. When a female bartender once attempted to refuse to get up on the bar and dance, management told her "get on the bar now or you will lose your shifts." On certain nights, the female servers were told that they must dance on the bar a minimum of two times or lose shifts.

96. Male customers regularly groped and grabbed the female servers while they danced on the bar without any reprimand from Defendants Casabona, Lozada or Lopoten.

97. When Defendant Sullivan, the owner, would visit Johnny Utah's, Defendants Casabona and Lozada discussed which female server was the best at "throwing the party" in order to decide who would serve Defendant Sullivan.

98. The female servers particularly dreaded being assigned to throw the party for Defendant Sullivan and his friends. If a server refused to do what Defendant Sullivan wanted her to do, she was fired within days of his visit to Johnny Utah's. If Defendant Sullivan wanted a

female server to dance for him or allow him to repeatedly grab her body, she had to agree or risk termination.

99. The female server assigned to his table was required to, and in fact, did drink shots with Defendant Sullivan and his friends, sit on his lap and the laps of his friends, ride the bull with his friends, and otherwise permit Defendant Sullivan and his friends to inappropriately grab, touch, fondle and grope the female server's body throughout the evening. As part of throwing the party, the female server was also expected not to object to unwelcome lascivious and sexually provocative remarks regarding her and her coworkers.

100. For example, one evening a female server was told by Defendant Sullivan that she had to ride the bull with a friend of his who was recently divorced. Defendant Sullivan said that she needed to make sure the friend was "cheered up" and "had a good time." Humiliated and disgusted, this employee rode the bull with the friend, approximately thirty (30) years her senior, because she knew that she would be terminated if she refused.

101. During the bull ride Defendant Sullivan's friend inappropriately groped and touched the female employee. During this event, the female server's boyfriend was present in the restaurant and witnessed his girlfriend riding the bull with Defendant Sullivan's friend, further adding to her humiliation.

102. The female servers were also subject to unwanted sexual advances by Defendant Casabona and Defendant Sullivan. Specifically, on a regular and consistent basis, Defendant Casabona would ask female servers to go out to "party" with him at other bars after work. Because Defendant Casabona was the highest level manager, there was inherent pressure on the female servers to agree to go with him.

103. Although Defendant Casabona generally asked those female servers who were more intoxicated than other employees, he generally and regularly asked several girls at a time to go with him. On numerous occasions, after being out at other bars and drinking, Defendant Casabona would ask female servers to go back to his apartment with him, including the female servers who were under the age of 21 years.

104. On a Tuesday night in 2012, Defendant Sullivan came to Johnny Utah's and told the female bartender working that evening that she was "going out drinking" with him. Specifically, Defendant Sullivan did not ask her if she wanted to go. It was understood that this was not negotiable. Petrified, the female bartender attempted to offer reasons why she could not go. In response, Defendant Sullivan told her to close down the restaurant.

105. The manager on duty that night helped convince Defendant Sullivan that she was the only bartender available to work and it needed to remain open.

106. On a constant and regular daily basis, the female servers were the recipients of inappropriate sexual remarks about their bodies by Defendants.

107. On a constant and regular daily basis, the female servers were strongly encouraged by Defendant Casabona and Lozada to drink excessive amounts of alcohol during their work shifts to the point of extreme intoxication.

108. If a female server was favored by Defendants Casabona or Lozada, she received the best weekly shifts, more hours and was assigned private party events. Female servers who were perceived by Defendants as less "fun" and less willing to party than other employees, received more day time shifts and less private party events, resulting in less money for the female server.

109. One female server who was known to be dating the bar manager, consistently received the best Friday and Saturday night shifts to the detriment of the other female servers who were not dating a manager.

110. On a regular and consistent basis, the female servers experienced and were subjected to anger, intimidation and retaliatory conduct by Defendants Casabona and Lozada when they failed to meet the appearance criteria of Defendants or act in the alluring and provocative manner as required to "throw the party."

111. Female servers experienced and witnessed Defendant Casabona engage in multiple angry outbursts, which included Defendant Casabona physically throwing and destroying chairs, tables and other items, such as computer equipment and dinner plates. During these physical outbursts, Defendant Casabona yelled and used excessive profanity. At 6'2" and approximately 250 pounds, the female servers were intimidated by Defendant Casabona.

112. On numerous occasions, the female servers experienced and witnessed Defendant Casabona repeatedly punch, strike and hit doors in the restaurant, including interior office doors. Employees heard the punching and striking of the doors, along with the yelling and profanity by Defendant Casabona.

113. On a regular and consistent basis, Defendants Casabona and Lozada would yell, berate and intimidate the female servers to the point where the employee was reduced to tears in front of her co-workers and customers.

114. Knowing Defendant Casabona's temper and his propensity for physical angry outbursts, the female employees were afraid of him and fearful when they were the subject of his anger.

Intimidation and Retaliation Against Female Servers

115. Defendants publically intimidated and retaliated against female servers. Defendants Casabona and Lozada, and Lopoten, verbally berated and threatened them in front of their co-workers and customers for minor offenses. In certain instances, Defendant Casabona used the sound system to publically humiliate a female server allowing the entire restaurant to hear.

116. For instance, employees were not permitted to use their cellular phones during work hours. One night, Luce was told by Defendants that she needed to work past 2:00 a.m. on a night when the train she usually took home had stopped running. Luce used her cellular phone to find transportation home. Defendant Casabona reprimanded her publically by stopping the music and announcing over the sound system that Luce was a "fucking idiot."

117. Employees were not permitted to take breaks nor were they allowed to eat at any time during a shift. If they wanted a meal at Johnny Utah's, they had to report thirty (30) minutes before their shift began and could not clock in until after eating.

118. They were not permitted to eat or take breaks even if the shift was longer than 10 hours. The Johnny Utah's employee handbook contains the following regarding breaks: "Taking Breaks: At all times you must gain permission from MOD (manager on duty) for breaks which include: to smoke a cigarette in designated area, to make an emergency phone call, to eat, and any personal issues that might arise."

119. During a shift when four (4) Daisy Dukes girls were handing out promotional flyers for more than 5 hours, a few of them decided to purchase a sandwich and share it. The female employees knew that they had to work at least another 5 hours selling shots of alcohol and that they would not be able to eat or have a break.

120. When Defendant Casabona learned about the sandwich, he punished the entire group, and stated "are you fucking serious? You all better get comfortable staying outside."

121. One of the Daisy Dukes girls who worked that evening called the New York Department of Labor ("DOL") the following day to inquire about her right to a break and meal break.

122. The next day, Lopoten sent the following email to the female employees:

> Ladies - if you weren't here last night, new policy concerning flying to avoid apathy that often goes on outside. Wed-Friday each person will come inside once 25 cards with your name on it r turned in (I will let you know). On Saturday I'll let you know the # based on how it is outside. If everyone hustles at 5 and does their job, u should be able to accomplish this quickly and not be out there for 4 hours anymore. If you don't hustle it will be a long night outside enjoying the spring….

123. After receiving this email, the employee told Lopoten that she had called the DOL and learned that she was entitled to a break.

124. Minutes later Defendant Casabona left this employee a voice mail. In the message, Defendant Casabona told her that because she had called the DOL, she should not report to her shift that evening and effective immediately, she was suspended indefinitely.

125. Defendant Casabona told her that he would consider whether she could continue to work at Johnny Utah's following an in person meeting. It took more than 3 weeks of the employee's attempting to meet with Defendant Casabona before she was allowed to return, during which time she earned no income.

126. When she finally was permitted to return, before her shift began, Defendant Casabona forced her to sign a write-up in which she had to promise to never again contact the DOL or other federal or state agency about the working conditions at Johnny Utah's.

127. After this incident, even though Defendants allowed her to return, the employee's shifts were drastically reduced and she was assigned lower income generating shifts. Additionally, Defendant Casabona, Lozada, and Lopoten refused to speak to her. She quit two (2) weeks later.

Wage and Hour Violations

Failure to Pay Overtime Wages to all Service Employees

128. At all relevant times, Defendant Johnny Utah's, and its managers and supervisors, knowingly and intentionally engaged in multiple violations of the FLSA and NYLL. While working for Defendants, Plaintiffs and Class members were regularly required to perform work for Defendants without receiving proper minimum wages, overtime compensation and spread of hours compensation as required by applicable federal and state law.

129. "Service employees" are the female servers, Daisy Dukes girls, hostesses, bartenders, bussers/runners and bar backs at Johnny Utah's.

130. Johnny Utah's is open daily during the following hours:

Monday - Thursday: 11:30 a.m. to 3:00 a.m.;
Friday: 11:30 a.m. to 4:00 a.m.;
Saturday: 11:00 a.m. to 4:00 a.m.; and
Sunday: 10:00 a.m. to 12:00 a.m.

131. The kitchen closes for food service at 12:00 a.m. each day.

132. Service employees generally and regularly worked over ten (10) hours a day and often worked twelve (12) to fourteen (14) hours a day.

133. Service employees regularly worked from 4:30 p.m. to 4:00-6:00 a.m., more than ten (10) hours in one day. Service employees who regularly worked double shifts from 11:00 a.m. to 12:00 a.m. or later, worked more than twelve (12) hours in one day.

134. Even though the restaurant closed at 3:00 or 4:00 a.m., service employees had to remain at work in order to clean up and prepare for the next day. The clean-up often took over one (1) hour.

135. Upon information and belief, all female servers who worked at Johnny Utah's generally and regularly were required to work from twelve (12) to fourteen (14) hours or more a day, and generally worked more than forty (40) hours a week.

136. Upon information and belief, all bartenders who worked at Johnny Utah's generally and regularly were required to work from twelve (12) to fourteen (14) hours or more a day, and generally worked more than forty (40) hours a week.

137. Upon information and belief, all bussers/runners and bar backs who worked at Johnny Utah's generally were required to work from twelve (12) to fourteen (14) hours, or more a day, five or six days a week.

138. Upon information and belief, all Daisy Dukes girls who worked at Johnny Utah's generally were required to work four (4) to six (6) hours a day handing out promotional flyers and five (5) to six (6) hours a day selling shots of alcohol. All Daisy Dukes girls generally worked more than forty (40) hours a week. All Daisy Dukes girls were told that they would receive $2 for every customer who came to Johnny Utah's with a promotional flyer with their initials on it. On an average night, however, less than eight (8) customers in total would hand in promotional flyers. The three (3) to four (4) Daisy Dukes girls working, on average, did not earn minimum wages for the hours spent handing out flyers.

139. Upon information and belief, all hostesses who worked at Johnny Utah's generally were required to work from twelve (12) to fourteen (14) hours, or more a day, and generally worked more than forty (40) hours a week.

140. Although all service employees regularly and consistently worked more than forty (40) hours in one work week, including working between sixty (60) and seventy (70) hours in one work week, at all relevant times, the employees only received payment for hourly wages of forty (40) hours or less.

141. All service employees were required to clock in and out for each shift worked. The time entries as submitted by the service employees contemporaneously with their hours worked show that the service employees regularly and consistently worked more than forty (40) hours in one work week.

142. As detailed below, these contemporaneous time records were used on a daily basis by the Defendants to calculate distributions of the mandatory tip pool for the servers, bartenders, bussers/runners, and bar backs.

143. However, on a daily and/or weekly basis, Defendants Casabona and Lozada intentionally altered and deleted time entries in the computer time system. Multiple service employees witnessed Defendants making these deletions and alterations.

144. Additionally, bussers/runners and bar backs were regularly told by Defendants Casabona and Lozada to not enter their time on certain days and to clock out early but continue working.

145. The fact that bussers/runners and bar backs regularly worked "off the clock" was a well-known fact among the employees at Johnny Utah's.

146. All hostesses were regularly told that "no one works more than 40 hours at Johnny Utah's." If they worked more than 40 hours, they understood that they would not receive hourly wages. On numerous occasions, hostesses were told to clock out and to continue working.

147. Based on the intentionally altered and deleted time entries in the computer time system by Defendants Casabona and Lozada, service employees' paychecks reflected weekly hours of forty (40) hours or less.

148. Additionally, the service employees' paychecks for their hourly wages were always zeroed out, such that the employees' hourly paychecks totaled $0.00 for almost every week that Plaintiffs and Class members worked.

Employees Not on Payroll

149. Until on or about May 2012, the majority of service employees at Johnny Utah's were not on payroll.

150. These service employees were paid exclusively in cash. Depending on the day of the week and the shift, Defendants paid these service employees a flat rate per shift or a percentage of the tip pool.

151. At no time did these service employees receive pay checks, pay stubs or W-2s.

152. In May 2012, Defendants sent an email to the service employees informing them that they needed to provide social security numbers and identification cards in order to be placed on payroll.

153. Upon information and belief, many service employees continued to work at Johnny Utah's, but were never required by Defendants to provide social security numbers and identification cards.

154. Upon information and belief, at all relevant times and through the present, numerous service employees continue to work at Johnny Utah's off the payroll.

Tip Pool Violations

155. At all relevant times, Defendants paid the service employees at a tipped minimum wage rate, which is a rate less than the full minimum wage rate for non-tipped employees.

156. Defendants failed to satisfy the strict requirements pursuant to the FLSA or NYLL that would allow Defendants to pay the tip credit rate and not the full minimum wage rate for non-tipped employees.

157. At all relevant times, Johnny Utah's required the servers and bartenders to pool their tips each shift. As part of the mandatory tip pool, bussers/runners and bar backs received a percentage of the total tips.

158. The servers and bartenders had to submit their cash tips in an envelope at the end of each night to Defendants Casabona and Lozada. Also calculated and written on this envelope was the amount that each employee made in credit card tips.

159. If a female server had worked a private party during a shift, the earned tip from this was also included in the employee's total.

160. Based on a calculation of the number of hours that each employee worked, as reflected in the time keeping system, and the gross tip pool amount, each employee received a percentage of the tip pool.

161. At all times, Defendants Casabona and Lozada made the final calculations of tip pool distributions and purportedly entered these calculations on excel sheets created on a daily basis. The excel sheets purportedly show the actual and accurate number of hours that each employee worked.

162. These excel sheets were never provided to the service employees to review nor were copies provided to them at any time. As such, once employees handed in their envelopes,

they had no involvement with the tip money and were not told how the tips were distributed or what amounts were distributed to whom.

163. At all relevant times, the service employees were never told by Defendants how much money was generated in tips on any given day nor were they told what the total collective "tip pool" was at the end of a shift in which tips were pooled.

164. In fact, Defendants never provided the service employees with any records of collective tip pool amounts at any time. Defendants similarly failed to inform all service employees the method, standards, calculations or policies, if any, in effect which governed the specific percentage of the tip pool each employee received.

165. Regularly, if at the end of the night a cash register was short, Defendants would inform the service employees that their tip money was being used to cover the difference.

166. Upon information and belief, Defendants failed to distribute 100% of the tip pool to the service employees who were performing tip-producing work.

167. For example, Defendants made female servers stand outside the restaurant for hours to hand out flyers, a task assigned to the Daisy Dukes girls. Although the female server was not engaged in a tip generating activity, Defendants included her in the tip pool, even if she handed out flyers for an entire shift.

168. Further, upon information and belief, Defendants allowed those with managerial authority and ownership interests to share in the tip pool, including but not limited to the bar manager, Lopoten.

169. Upon information and belief, Defendants regularly removed cash from the tip pool at the end of a shift and used a portion of the cash to pay certain bussers/runners, bar backs and

other employees their purported wages. The removed funds would not be included in the total amount of collected tips subject to distribution amongst the service employees.

170. Money from the tip pool was also used to pay non tip producing employees, including the office employees responsible for booking and preparing the contracts for the private party events.

171. Upon information and belief, the Defendants maintained a cash register behind the bar that was used exclusively for purchases made with cash. There were typically two bartenders assigned to this register. Unlike all other registers in Johnny Utah's, this cash register did not have a point of sale ("POS") system, and therefore these purchases were not tracked or recorded in any manner.

172. Upon information and belief, Defendant Sullivan would personally remove the cash collected from this register and stored in the safe located at Johnny Utah's every two (2) to three (3) weeks.

173. Defendants required the service employees to perform non-tip producing work on a daily basis. Specifically, Johnny Utah's regularly promoted an inclusive "all you can drink" special. For a flat rate of between $25 and $40 customers could purchase a colored wrist band that allowed them free drinks for 2 to 3 hours. These wristband customers received their drinks for no additional charge and did not tip service employees.

174. The wrist band customers composed a significant portion of the overall customers on any given night with over 100 customers regularly purchasing wristbands on a Friday or Saturday.

175. The service employees, especially the bartenders, performed considerable work for the wristband customers without receiving tips and without receiving a non-tip producing minimum wage.

176. On multiple occasions, a promoter would rent out the entire restaurant or a significant portion of the restaurant and the customers enjoyed "all you can drink" parties. The service employees were not tipped for serving hundreds of employees at events, nor did they receive a portion of the payments made to Johnny Utah's.

177. When a service employee complained to Defendants Casabona or Lozada about not receiving tips for the wristband or promotional customers, they were threatened with being sent home early with no pay.

Failure To Withhold Taxes And Misrepresentation Of Reported Tip Earnings

178. At all relevant times, Defendants failed to accurately and lawfully withhold federal, state and city taxes from employees' paychecks. Defendants failed to tell employees that all required withholdings were not being made. This failure to pay required taxes by Defendants caused service employees to incur substantial end of the year federal, state and city tax penalties.

179. On a regular basis, Defendants over-stated and/or misrepresented to payroll and state and federal tax authorities the amount of money that service employees earned in tips for any given pay period. The failure to accurately record and/or intentionally misrepresent the service employees' tip earnings resulted in further economic harm to Plaintiffs and class members.

Unpaid Wages For Promotional Work

180. As part of their employment at Johnny Utah's, the service employees were required to promote Johnny Utah's. Specifically, employees were required to expend considerable effort to increase the visibility and exposure of Utah's through word of mouth and social media.

181. Employees were told that they must link their personal Facebook pages to the Johnny Utah's Facebook page, https://www.facebook.com/johnnyutahsnewyorkcity.

182. They had to permit Defendants Casabona and Lozada, and Lopoten, access to their own Facebook pages. Defendants regularly monitored the employees' personal Facebook pages to confirm that the employees were promoting Johnny Utah's.

183. The time employees were expected to spend engaged in promotional work on a weekly basis was significant. At no time were the service employees compensated for this work. They were not paid hourly wages, commissions or a flat fee.

184. Despite the fact that Defendants did not compensate the employees for this work, they were expressly told verbally and in writing that this work was a condition of their employment and if they failed to do it, shifts would be eliminated from their weekly schedules.

185. In multiple emails Defendants detailed what was expected of the employees. The following excerpts are from emails written by Defendant Casabona and Lopoten during the relevant time period:

> This is part of your job. If you want to work here you will help us with our social media impressions. Ways this can be done: First and Foremost everyone is to "like" Johnny Utah's on facebook....the link to the correct page is https://www.facebook.com/#!/johnnyutahsnewyorkcity. We will be checking to see that all of you have done so. If any of us are not friends we will have you show us that you did so before your next shift in the office.
>
> We have asked politely, suggested and even sternly told you guys that this is something we are requiring from now on and we don't think it's too much to ask. Once you've liked Johnny Utah's page the ways in which you can help us are as follows:
>
> - mention when you are working in your status
> - mention when you know we have promotions going on in your status
> - when Johnny Utah's posts a flyer or status like, share or comment on it
>
> HAVING AN EMPLOYEE WHO DOES THEIR JOB BY POSTING AND THEN ASKING THEM TO TAG YOU IS NOT CONSIDERED COMPLYING TO THIS POLICY. We are sending this email in the hopes

that you will all understand and cooperate. We are also sending it as notice so that if/when you don't and your schedule changes you need not be surprised as to why....

Promotional blitz starting right now that could include the following:

- give us a pop on your face books and twitters for tonight;
- tell your co-workers at other jobs to come in and have a drink or two on you tonight;
- send out a mass text and let them know that we are pumped at Utah's for a great weekend;
- send out a mass email saying the same;
- most importantly come in ready to work hard and drink your face off.

Next weekend is an all-out push to try to re-establish ourselves as the beast we know we should be. Over the top party, over the top marketing and promotions push….please don't forget to push the Saturday, June 8th as hard as you can. We are asking you to try to get 20 of your friends in their [sic] each. I know that sounds like a lot for many of you but it's kind of the mentality we need to have. Sometimes the only way to get 5 or 7 people in there is to try for 20 or 30. Each of you will have a guest list and please don't let there be a zero next to your name.

Many of you did a great job with the staff invite last time and we really do thank you for that. Some of you completely ignored it. Trust me that we noticed both. If you didn't do so well last time, this is a chance to bounce back.

It's all about elevating our profile through increasing our impressions. Please understand that this is an all the time think and needs to be kept up…. What we want to push is the Saturday Night Halloween Party....please use this attached flyer and get it up on Facebook.

As we have mentioned many times, part of everyone's job is to promote on Facebook, twitter, email, etc. Promoting your own shifts and promoting specials for Utah's in general takes only a few seconds and will help all of you make more money. So that no one is surprised, from this point forward no matter what your regular shifts have been, shifts will be scheduled based not only on performance on the floor at Utah's, but also based upon who is helping with promoting on Facebook/twitter, flyering, etc. . . . aka, who is doing their job (you can start by promoting dollar mugs for tomorrow night, the flyer for which can be found on the Utah's Facebook page).

186. In addition to not receiving compensation and threatened with retaliation, employees were not provided the opportunity to decline the Facebook exposure.

187. Many employees were concerned that prospective employers, professors and even family members would see the Johnny Utah's links and postings of photos depicting the female employees in provocative clothing, as well as customers and employees engaging in excessive drinking and lewd conduct.

188. Defendants refused to allow employees to opt out of the social media exposure and promotional work, but continued to fail to pay employees for time spent on the promotional work.

Representative Plaintiffs

Stephanie Sanz

189. Stephanie Sanz worked at Johnny Utah's from January 2012 through June 11, 2014 as a server. She was 23 years old when hired and a student at Columbia University.

190. Sanz and the other female servers were required to report for evening shifts by 4:30 p.m. and lunch shifts by 11:30 a.m. Regularly and generally, Sanz and the servers were expected to work until 1:30 a.m., and often as late as 3:00 a.m. The servers were not permitted to take any breaks during their shifts. Sanz worked double shifts from approximately 11:30 a.m. to 12:00 a.m.

191. Sanz began experiencing anxiety shortly after starting work at Johnny Utah's. Defendants Casabona and Lozada reprimanded Sanz and told her that she was not "throwing the party."

192. Defendants told Sanz that if she wanted the weekend shifts and the good sections of the restaurant she needed to "flirt more," "drink more with her tables," and learn how to "throw the party." Implicit in the Defendants' comments was the message that her hours would be reduced if she could not improve her ability to "throw the party."

193. Because she needed the money and was fearful that she could not find another job with equal pay, Sanz tried to ignore her anxiety and perform the acts required to be a server at

Johnny Utah's. This meant that she did not complain to Defendants Casabona or Lozada when male customers grabbed, groped, and touched her body, including her breasts and buttocks, without her consent. Sanz reasonably believed that if she had complained to Defendants that they would be angry and accuse her of not "throwing the party." Unfortunately, Sanz's anxiety increased and she eventually began having panic attacks.

194. At all relevant times during her employment, Sanz was repeatedly told by Defendants Casabona or Lozada during staff meetings, and individually, that she was expected to look as attractive as possible for work, flirt with patrons, appear to be "available," get on top of the bar and pour shots of alcohol into male customer's mouths, dance on the bar, drink alcohol with her male customers during her shifts, encourage male customers to buy her shots of alcohol, be open to suggestions from male customers to go out after work, sit on her customers' laps, laugh off sexually offensive remarks and not complain about unwelcome physical contact from male customers.

195. On the nights that Sanz did not drink as much as Defendants expected her to, she was told by Defendant Lozada that she was not a "team player," was "boring," had "low energy," and was "not showing the customers a good time."

196. The humiliation and degradation that she experienced as a server resulted in increased anxiety, depression and panic attacks. Sanz began seeking medical treatment and requested that she no longer be scheduled on the weekend night shifts and asked to be placed on day time shifts and mid-week night shifts only. Sanz continued to work this reduced schedule and occasionally filled in for other co-workers when needed.

197. In April 2014, Defendants Casabona and Lozada told the female servers that they needed to assist the Daisy Dukes girls and hand out promotional flyers to potential customers on the street.

198. Sanz was degraded and humiliated when forced to stand outside and hand out promotional flyers.

199. Sanz complained to Defendants Casabona and Lozada about handing out the flyers. She told them that she was being harassed by men, felt objectified and it was causing her anxiety to perform this task. Defendants Casabona and Lozada responded by telling Sanz that she was "being ridiculous," and her complaints were "crap." Defendants refused to acknowledge that she felt objectified and specifically asked her whether "she wanted to work at Johnny Utah's or not." Sanz was told that if she wanted to work at Johnny Utah's, she must hand out the flyers.

200. Sanz's complaints about female servers sharing in the tip pool for hours worked handing out flyers were similarly dismissed by Defendants. Sanz was repeatedly made aware that if she did not like the conditions at Johnny Utah's, there were twenty (20) women waiting for the job.

201. During the course of Sanz's period of employment at Johnny Utah's, she regularly and consistently received unwelcome sexual comments and propositions from male customers. She was also regularly and consistently physically touched, grabbed, and groped by male customers. She reasonably believed that complaining about such unwelcome sexual harassment would cause the Defendants to reduce her weekly shifts and private party events.

202. Sanz worked during the 2013 Thanksgiving female "cranberry-wrestling" theme event. Sanz was humiliated, degraded and ashamed that her employer was hosting such an event.

203. Sanz was asked to go out to "party" with Defendant Casabona at other bars during nights that she worked at Johnny Utah's. Sanz agreed to go with him because she feared that her work hours would be reduced if she did not.

204. Sanz, along with one of her co-workers, was asked by Defendant Casabona to go back to his apartment after their shift ended. They both declined.

205. At all times during her employment at Johnny Utah's, Sanz was required to like the Johnny Utah's Facebook page and allow Defendants access to her personal Facebook page. Sanz was required to, and did, post on her personal Facebook page about Johnny Utah's.

206. Sanz spent considerable time outside of her shifts promoting Johnny Utah's and asking friends and acquaintances to come to the restaurant.

207. At no time did Sanz receive wages or compensation for this work.

Annya Santana

208. Annya Santana worked at Johnny Utah's from September 2013 through June 2014, as a server. She was 25 years old when hired.

209. Santana is Dominican, has curly black hair and wears glasses. During her employment, she was the only female employee with dark skin. She is also married.

210. Defendants still expected her to appear available and act single while working at Johnny Utah's.

211. Defendant Lozada regularly and consistently would remark to her that she is not attractive when wearing her eyeglasses and that she needed to wear contact lenses. Defendant Lozada even sent her a coupon for the purchase of contact lenses. At some point during her employment, her glasses were "lost" at Johnny Utah's and have not been located. Rather than replacing her eyeglasses, Santana worked without glasses until her employment ended.

212. Defendant Lozada regularly and consistently berated Santana about her overall appearance, unattractiveness and lack of sexiness. For example, on a regular basis she was criticized for not straightening her curly hair, not wearing enough make-up and putting her hair into a ponytail. In front of other employees, Defendant Lozada would tell Santana that she "looked like shit," and needed to "be sexier." He also regularly told her that Defendant Casabona did not like Santana's "look."

213. Although she was married, Santana was instructed by Defendant Lozada that she was "single" the minute she walked into Johnny Utah's for a shift.

214. Santana was reprimanded for not "throwing the party" on multiple occasions. She was reprimanded for not drinking shots of alcohol with her customers and therefore appearing "too serious" and "not fun."

215. On more than one occasion, Santana witnessed Defendant Casabona's angry outbursts and excessive intoxication. She saw him throw and break chairs in anger several times. She also saw him throw and break a computer printer while intoxicated. Santana was intimidated by Defendant Casabona and afraid that she would be the subject of an angry outburst.

216. At all relevant times, Santana endured the unwelcome sexual harassment and policies and practices of Defendants in order to keep her job. On numerous occasions, Santana left work anxious, depressed and in tears.

217. Like Sanz, Santana was required to spend considerable time outside of Johnny Utah's promoting the restaurant on social media. As detailed *supra*, she was never paid wages or compensated for this work.

Daisy Dukes Girls and Female Bartenders

Jessica Wafer, Stephanie Walsh, Katelyn Canning, Jennifer Bleiweiss and Taylor Meschke

218. Jessica Wafer worked at Johnny Utah's from August 2012 through November 2013, as a Daisy Dukes girl and shot girl. She was 23 years old when hired.

219. Stephanie Walsh worked at Johnny Utah's from May 2013 through May 2014, as a Daisy Dukes girl and shot girl. She was 22 years old when hired.

220. Katelyn Canning worked at Johnny Utah's from January 2012 through November 2012, as a Daisy Dukes girl, shot girl and bartender. She was 24 years old when hired.

221. Taylor Meschke worked at Johnny Utah's from January 2012 through February 2014. She began work as a Daisy Dukes girl and eventually became a full time bartender. She was 28 years old when hired.

222. Jennifer Bleiweiss ("Bleiweiss") worked at Johnny Utah's from approximately August 2010 through November 2012, as a bartender. In 2007, Bleiweiss worked as a bartender at McFadden's, a bar owned by Defendant Sullivan. She was 23 years old when hired. In 2009, she left McFadden's to work at Irish Exit, another bar owned by Defendant Sullivan. After working for a period of time at both Irish Exit and Johnny Utah's, Bleiweiss eventually became a full time bartender at Johnny Utah's in 2010.

223. The Daisy Dukes girls were required to take hundreds of promotional flyers to distribute on the streets of Manhattan. Typically, three or four female employees would go out together for hours at a time to hand out the flyers. The Daisy Dukes girls had to write their initials on the flyers and for each customer who came to Johnny Utah's and handed in a flyer with her initials, she received $2, in addition to her base pay of $5.00 an hour. At all times, the Daisy Dukes girls did not receive tips when performing these duties.

224. The Daisy Dukes girls passed out the flyers all year long, regardless of the weather, and had to stay out until after midnight on numerous occasions because they were told not to return until the restaurant was full. At all times they were required to wear cowboy boots, cut-off denim shorts and cut-off shirts.

225. From approximately 11:00 p.m. to 4:00 a.m., the Daisy Dukes girls worked in the restaurant selling shots of alcohol. They earned $1 for every shot of alcohol they sold. Unlike the other female servers, they did not pool their tips.

226. On busy weekend nights, at least one Daisy Dukes girl would walk around the bar and solicit email addresses and other contact information from customers for purposes of sending promotional emails and links to the Johnny Utah's Facebook page. They received 25 cents for each email address they obtained. Defendants regularly told them to not clock in when they performed this task.

227. The Daisy Dukes girls were told by Defendants Casabona and Lozada to use their discretion when deciding which customers to ask for email addresses. Despite this directive, the female employees understood that there was a specific target group of customers that Defendants Casabona and Lozada considered good customers.

228. The good customers were generally white males between the 21 and 30 years of age. The bad or wrong customers, as explained by Defendants Casabona, Lozada and Lopoten, were black males and females of any age group, as well as Hispanic males and females. If a black or Hispanic customer came to Johnny Utah's with a promotional flyer that he or she received via email, the employee who obtained that customer's email address was reprimanded by Defendants Casabona or Lozada and reminded of the fact that there were right and wrong customers at Johnny Utah's.

229. In order to avoid being yelled at by Defendants Casabona or Lozada, the Daisy Dukes girls followed their supervisors' directives and did not solicit email addresses or contact information from black or Hispanic customers.

230. Black customers were repeatedly referred to by Lopoten and Defendants Casabona and Lozada as "three stars." If a black customer signed up to receive a promotional happy hour email, the Daisy Dukes girls were told by Defendants to write "***" for three stars, next to the person's information for the purpose of not sending the email.

231. This same practice was used with respect to handing out the promotional flyers between 9:00 p.m. and 12:00 a.m. in and around Rockefeller Center. The Daisy Dukes girls knew that flyers should not be given to black and Hispanic males.

232. On multiple occasions, Defendants refused to pay the employee who gave a flyer to the wrong person, the $2 owed to the employee. Specifically, if a black customer came to Johnny Utah's with a promotional flyer, the Daisy Dukes girl whose initials were on the flyer was reprimanded by Defendants and not paid the $2 as promised.

233. At all relevant times during Plaintiffs' employment, the Daisy Dukes girls were instructed that part of their job was to look "sexy" and "hot." Defendants reprimanded the Daisy Dukes girls if they arrived to work and did not look sexy enough to please Defendants Casabona or Lozada.

234. The Daisy Duke uniform consisted of cowboy boots, cut off shorts, and a tight tank top worn with a flannel shirt tied at the waist. The Daisy Dukes girls also wore Johnny Utah's t-shirts. The shirts, which they were required to purchase and maintain with their own funds, had to be cut by the employees to expose their waist and also cut from the collar down to a point low enough to expose their breasts.

235. As detailed *supra*, the Daisy Dukes girls were directed and instructed by Defendants Casabona and Lozada about what it meant to "throw the party" at Johnny Utah's. Wafer, Walsh, Canning, Bleiweiss and Meschke understood that if they complained about male customers kissing, grabbing, touching, groping, or slapping them on their buttocks, that they would be reprimanded by Defendants Casabona and Lozada and told that they need to "take this for the team" because it is "part of the job."

236. Meschke, Canning and Bleiweiss, along with the other female bartenders, were regularly forced to dance on the bar and to pour shots of alcohol into male customers' mouths. Defendants never asked them to get on the bar, rather, they were ordered. For instance, Defendant Casabona would bark over the sound system for the entire restaurant to hear, "Taylor, get on the bar *now*," or "all female bartenders on the bar dancing *now*."

237. Defendants regularly made three (3) and four (4) female bartenders ride the mechanical bull at the same time. Aside from the inherent danger of four (4) people on the bull simultaneously, the employees were humiliated. However, the employees understood that they risked termination if they refused.

238. Meschke had to throw the party for Defendant Sullivan and his friends multiple times during her employment. When she and other female employees threw the party for Defendant Sullivan and his friends, she and her co-workers were subjected to unwelcome sexual comments, propositions and physical contact, including having to sit on their laps. Meschke was made to ride the bull with friends of Defendant Sullivan. During these bull rides, the male friends of Defendant Sullivan, who were on average 25 to 30 years older than the female employees, would engage in unwelcome touching and groping. Defendant Sullivan tried to get Meschke go out drinking with him at other bars, but she refused.

239. Bleiweiss also had to throw the party for Defendant Sullivan and his friends on multiple occasions. When Defendant Sullivan came to Johnny Utah's and Bleiweiss was working, she was always selected by Defendants Casabona and Lozada to serve Defendant Sullivan.

240. Bleiweiss understood what was expected of her and knew that a failure to do what was necessary to entertain Defendant Sullivan and his friends would result in direct economic consequences. Given her prior work history at McFadden's and Irish Exit since 2007, Bleiweiss had witnessed numerous female employees experience retaliation for their failure to throw the party for Defendant Sullivan. Specifically, these female employees had shifts removed, private parties taken away and some were terminated.

241. In addition to throwing the party for Defendant Sullivan and his friends at Johnny Utah's, Bleiweiss often had to go with Defendant Sullivan to other bars and restaurants to continue drinking and partying.

242. When throwing the party for Defendant Sullivan and his friends, Bleiweiss regularly had to dance for the group's entertainment, drink excessive amounts of alcohol and submit to unwelcome physical contact. She was also made to ride the bull with a countless number of Defendant Sullivan's friends.

243. If Defendant Sullivan wanted to grab any part of her body, Bleiweiss could not object. If she had objected to the physical contact, or to any other aspect of providing him a good time, she risked termination.

244. Meschke, Bleiweiss and Canning, along with co-workers, were subjected to Defendant Casabona's practice of forcing the female employees to "unveil" their bikini tops one by one while standing on top of the bar. This ordeal was humiliating and degrading. Male

customers would grab, touch and grope the female employees up on the bar without any reprimand from Defendants Casabona, Lozada or Lopoten.

245. Defendant Casabona took pictures of the female employees during the unveilings as well as during other events, including the kiddie pools, cranberry wrestling and bull riding. Defendants posted these pictures on the public Johnny Utah's Facebook page, as well as on Twitter and even on the billboard outside of Johnny Utah's. Wafer, Walsh, Canning, Bleiweiss and Meschke were never asked permission before these pictures were posted.

246. At all relevant times, Wafer, Walsh, Canning, Bleiweiss, and Meschke endured the unwelcome sexual harassment and policies and practices of Defendants in order to keep their jobs.

247. Wafer, Walsh, Canning, Bleiweiss and Meschke were required to spend considerable time outside of Johnny Utah's promoting the restaurant on social media. As detailed *supra*, they were never paid wages or compensated for this work.

248. Throughout their employment, despite regularly working over 40 hours a week, Wafer, Walsh, Canning, Bleiweiss and Meschke never received wages for any hour worked over 40 hours.

Hostesses

Nykya Luce and Destiny Frye

249. Nykya Luce worked as a hostess at Johnny Utah's from February 2014 through June 2014. She was 24 years old when hired.

250. On a regular basis Luce worked from 5:00 p.m. to 2:00 a.m., and sometimes to 4:00 a.m. During this time, Luce and all other hostesses did not receive breaks.

251. At least one night a week, Luce was required to sign out at 7:00 p.m. and thereafter work the rest of the night off the clock.

252. During this time, she assisted customers who had received promotional emails from the Daisy Dukes girls for an open bar. Customers who received this promotion could purchase a wristband for $35 that allowed them to drink as much alcohol as they wanted to for two (2) hours. Luce collected the $35 and placed wristbands on customers.

253. During her employment at Johnny Utah's, Luce and the other hostesses were expected to and did wear sexually provocative clothing. In addition to wearing cut-off denim shorts and cut-off shorts, Luce was reminded by Defendant Lozada to wear low-cut revealing shirts and very short skirts or dresses. On the rare occasions in which Luce wore clothing that Defendant Lozada considered not sexy enough, she was reprimanded and told to go home and change.

254. Luce and the other hostesses were forced to drink excessive amounts of alcohol during their work shifts and reprimanded by Defendants Casabona and Lozada if they did not. Generally, during her shift, Luce would be told by Defendants Casabona and Lozada that she needed to go to the bar and drink a shot with one of them. If Defendant Casabona directed her to drink shots with him, Luce was forced to drink shots of whiskey, his preferred drink.

255. Luce and the other hostesses were required to climb onto the bar and dance in front of the customers, ride the mechanical bull with customers and one another. On one occasion, Defendant Casabona told her to ride the bull with a male customer who was only 18 years old. Luce refused and was retaliated against by Defendant Casabona for her refusal.

256. Defendants repeatedly asked the hostesses, over the microphone for all customers to hear, to take off their shirts when riding the mechanical bull.

257. On numerous occasions, Luce and other hostesses, including several under the age of 21, were asked to go out and "party" with Defendant Casabona after work. Afraid and intimidated by Defendant Casabona, Luce agreed.

258. On multiple occasions, Luce witnessed Defendants Casabona and Lozada publically degrade and humiliate other female employees for being ugly, stupid, not sexy and not throwing the party to their satisfaction. Their reprimands and angry outbursts regularly reduced the female employees to tears in front of their co-workers.

Destiny Frye

259. Destiny Frye ("Frye") worked as a hostess at Johnny Utah's from June 2011 through December 2011. Frye was 19 years old during her employment at Johnny Utah's.

260. Destiny Frye ("Frye") worked as a hostess at Johnny Utah's from June 2011 through December 2011. Frye was 19 years old during her employment at Johnny Utah's.

261. She was hired by Defendant Lozada, who required her to send a picture of herself before he scheduled an interview. Frye disclosed her age during the interview.

262. On a regular basis, Frye worked from 5:00 p.m. to 2:00 a.m., and sometimes to 4:00 a.m. During this time, Frye and the other hostesses did not receive breaks.

263. Frye also worked many double shifts from 11:30 a.m. to 12:00 a.m.

264. Frye was regularly told by Defendants to clock out during her shift, but continue to work for another five or six hours off the clock.

265. The Defendants told Frye that "no one gets paid overtime at Johnny Utah's."

266. During her employment, Frye worked with a hostess who was 19 years old and another hostess who was 18 years old.

267. Frye and her underage co-workers were told by Defendants Casabona and Lozada that they had to drink alcohol during their shifts in order to throw the party.

268. During their shifts, they were also told that they had to drink shots with Defendants Casabona and Lozada, as well as their friends.

269. Frye and her underage co-workers were told to dance on the bar, pour shots into customers' mouths and ride the bull together and with customers.

270. On multiple occasions Frye had to ride the bull with another female and made to kiss her while the Johnny Utah's DJ played the song "I Kissed a Girl," by Katy Perry.

271. Frye was also asked over the sound system to remove her shirt while riding the bull.

272. One night when Defendant Casabona was intoxicated, he made Frye and another underage hostess throw and break dinner plates on the floor of the bar while drinking shots with him.

273. Frye and her underage co-workers were regularly subjected to unwelcome sexual comments, touchings and gropings by male customers.

274. Defendant Casabona also inappropriately touched Frye and otherwise said multiple unwelcome sexually provocative remarks to her.

275. Frye and her underage co-workers regularly served customers shots of alcohol and drank alcohol with customers in order to "throw the party."

276. Part of their responsibilities as hostesses involved taking photographs of customers riding the bull and thereafter trying to sell the pictures to the customers. Such photographs included multiple pictures of women kissing other women and riding the bull without their shirts.

277. At all times, Frye reasonably believed and was told by Defendants Casabona and Lozada that if she did not perform the acts necessary to throw the party she would be fired.

Male Bartenders, Bussers/Runners and Bar backs

Bryan Harmin, Oscar Rojas and Juan Balbuena

278. Plaintiff Bryan Harmin ("Harmin") worked at the Restaurant from May 2012 through June 2013. Harmin clocked in and out of every shift that he worked.

279. On a regular basis, Harmin worked in excess of 40 hours a week, often working 60-70 hours in one week. On a typical Saturday night shift, Harmin worked from 5:00 p.m. to 4:00 a.m., and occasionally until 5:00 a.m. or 6:00 a.m. When Harmin worked a double-shift, he worked from 11:00 a.m. to 4:00 a.m.

280. However, every paycheck received by Harmin during his employment showed that Harmin worked only 40 hours each week. Harmin never received compensation for any hour worked over 40 hours, nor did he receive overtime hours or spread of hours pay.

281. Almost every paycheck that Harmin received during his employment was for "$0.00."

282. At all relevant times, Defendants failed to accurately and lawfully withhold federal, state and city taxes from employees' paychecks. For example, for the 2012 tax year, Defendants only withheld $90 in taxes from Harmin's wages resulting in a substantial tax payment from Harmin for the failure to pay. Defendants failed to tell employees, including Harmin, that all required withholdings were not being made.

283. On a regular basis, Defendants over-stated the amount of money that employees earned in tips for any given pay period. For example, during a week in which Harmin earned $400 in tips, his paycheck reflected that he earned $800 in tips, even though accurate records and calculations of the tip pool were made by employees at the end of each shift and provided to Defendants.

284. At no time during his employment, was Harmin or any other service employee provided copies of the excel sheets purportedly created by Defendants to determine the tip pool allocations on a daily basis.

285. On multiple occasions, money from the tip pool was taken by Defendants Casabona, Lozada and Lopoten to cover alleged cash register shortages.

286. At all times during his employment at Johnny Utah's, Harmin was required to like the Johnny Utah's Facebook page and allow Defendants access to his personal Facebook page. Harmin was required to, and did, post on his personal Facebook page about Johnny Utah's.

287. Harmin spent considerable time outside of his shifts promoting Johnny Utah's and asking friends and acquaintances to come to the restaurant.

288. At no time did Harmin receive wages or compensation for this work.

Oscar Rojas

289. Oscar Rojas ("Rojas") worked as a busser/runner and bar back at Johnny Utah's from August 2013 through May 2014.

290. Rojas, and all other bussers/runners and bar backs, were told by Defendants that they would be paid $5.00 an hour, plus tips. Rojas clocked in and out of every shift that he worked. On a regular basis, Rojas worked in excess of 40 hours a week, often working 60-70 hours in one week. On a typical Saturday night shift, Rojas worked from 5:00 p.m. to 5:00 a.m. When Rojas worked a double-shift, he worked from 11:00 a.m. to 5:00 a.m.

291. However, every paycheck received by Rojas during his employment showed that Rojas worked only 40 hours each week. Rojas never received compensation for any hour worked over 40 hours, nor did he receive overtime hours or spread of hours pay.

292. On multiple occasions, Rojas and the other bussers/runners and bar backs, were told by Defendants to punch out despite the fact that it was hours before their shift was scheduled to end. Rojas and his co-workers were forced to work numerous hours on a weekly basis off the clock.

293. Rojas did not complain about the off the clock hours because he reasonably feared that he would be fired if he objected to the practice.

294. At all relevant times, Rojas was never told by Defendants how much money was generated in tips on any given day nor was he told what the total collective "tip pool" was at the end of a shift in which tips were pooled.

295. Defendants never provided Rojas with any records of collective tip pool amounts at any time. Defendants failed to inform Rojas of the method, standards, calculations or policies, if any, in effect which governed the specific percentage of the tip pool each employee received.

296. During his employment at Johnny Utah's, Rojas had no knowledge as to the percentage that he was supposed to receive from the collective tip pool, or what percentage he actually did receive.

Juan Balbuena

297. Juan Balbuena ("Balbuena") worked as a busser/runner and bar back at Johnny Utah's from approximately September 2011 to June 2014.

298. Balbuena, and all other bussers/runners and bar backs, were told by Defendants that they would be paid $5.00 an hour, plus tips. Balbuena clocked in and out of every shift that he worked. On a regular basis, Balbuena worked in excess of 40 hours a week, often working 60-70 hours in one week. On a typical Saturday night shift, Balbuena worked from 5:00 p.m. to 5:00 a.m. He and the other bussers/runners and bar backs were not permitted to take breaks.

299. When Balbuena worked a double-shift, he worked from 11:00 a.m. to 5:00 a.m. If he worked a double shift he was permitted to eat a meal around 4:00 p.m. During his employment, Balbuena never had a meal break longer than 20 minutes when he worked a double shift.

300. Every paycheck received by Balbuena during his employment showed that Balbuena worked only 40 hours or less each week. Balbuena never received compensation for any hour worked over 40 hours, nor did he receive overtime hours or spread of hours pay.

301. In 2011, 2012 and 2013, Balbuena's pay checks were for $0.00. Beginning in 2014, Balbuena received pay checks ranging between $20.00 and $60.00.

302. On multiple occasions, Balbuena and the other bussers/runners and bar backs, were told by Defendants to punch out despite the fact that it was hours before their shift was scheduled to end. Balbuena and his co-workers were forced to work numerous hours on a weekly basis off the clock.

303. Despite the fact that Defendants Casabona or Lozada regularly told Balbuena to punch out and keep working, many times Balbuena never punched out.

304. Balbuena never punched out because he often saw Defendants Casabona or Lozada altering the employees' time records after the restaurant closed and knew that his hours would simply be altered regardless of what the time clock records showed.

305. Further, Balbuena knew it was not necessary for him to clock out because during his entire period of employment, he was never paid for any hours worked over 40, even when he regularly worked 60-70 hours.

306. At all relevant times, Balbuena was never informed, verbally or in writing, by Defendants how much money was generated in tips on any given day nor was he told what the total collective "tip pool" was at the end of a shift in which tips were pooled.

307. In fact, Balbuena has no knowledge as to what percentage bussers/runners and bar backs received as compared to servers or bartenders.

308. At all relevant times, Balbuena, Rojas and the other bussers/runners and bar backs were not told by Defendants Casabona, Lozada or Lopoten to drink alcohol during their shifts.

309. At all relevant times, Balbuena, Rojas and the other bussers/runners and bar backs were not told by Defendants Casabona, Lozada or Lopoten to dance on top of the bar, ride the mechanical bull or otherwise assist in "throwing the party."

310. At all relevant times, Balbuena, Rojas and the other bussers/runners and bar backs were required to wear black pants and a black shirt or a Johnny Utah's t-shirt. Balbuena had to pay $20.00 for his Johnny Utah's t-shirts and was required to launder and maintain them at his own cost.

CLASS ACTION ALLEGATIONS

311. Plaintiffs Stephanie Sanz, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Taylor Meschke, Jennifer Bleiweiss and Destiny Frye, bring the First and Second Causes of Action under Rule 23 of the Federal Rules Of Civil Procedure, on behalf of themselves and all other similarly situated individuals, as defined: All former and current Johnny Utah's female servers, bartenders, hostesses and Daisy Dukes girls (collectively, the "female servers") who worked between June 11, 2011 through the resolution of this action, for Defendant Johnny Utah's and any of its predecessors (the "Female Service Employee Class").

312. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors; government entities or agencies, its affiliates, employees, officers, agents, and directors in their governmental capacities; any judicial

officer presiding over this matter and the members of their immediate families and judicial staff; and class counsel.

313. Plaintiffs are members of the Class they seek to represent. This action is properly maintainable as a class action. The proposed Class is so numerous that joinder of all members is impracticable.

314. There are questions of law or fact common to the Class which predominate over any questions affecting only individual members. Common questions of fact or law include, but are not limited to the following:

a. Whether Defendants have and continue to enforce policies and procedures that discriminate against female service employees;

b. Whether Defendants have and continue to enforce policies and procedures that violate the NYCHRL and NYSHRL;

c. Whether Defendants have and continue to enforce policies and procedures that force female service employees to endure adverse employment actions affecting and altering the terms, conditions and privileges of their employment;

d. Whether Defendants have and continue to enforce unlawful policies and procedures against their female service employees, including the requirement that all female service employees drink alcohol with the Defendants and their customers during their work shifts;

e. Whether Defendants have and continue to enforce an unlawful policy and procedure that requires their female service employees who are under 21 years old to drink alcohol with the Defendants and their customers during their work shifts;

f. Whether pursuant to the NYSHRL, Defendants Sullivan, Casabona and Lozada are "aiders" and "abettors" of the discrimination; and

g. Whether the female service employees are entitled to equitable and injunctive relief, and to recover compensatory damages and punitive damages.

315. The representative Plaintiffs' claims are typical of those of the proposed Class and are based upon the same legal theories. The representative Plaintiffs' claims all arise out of the same practices and course of conduct of Defendants.

316. The representative Plaintiffs' damages arise out of a pattern of nearly identical and repetitive policies and practices conducted by Defendants.

317. The representative Plaintiffs can adequately represent the Class. The representative Plaintiffs and their attorneys are experienced in class actions, employment discrimination and are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this complaint.

318. Class certification is appropriate pursuant to Rule 23(b)(2) because Class members are entitled to injunctive relief to end Defendants' common, uniform, unfair, and discriminatory policies and practices.

319. Class certification is also appropriate pursuant to Rule 23 because common questions of fact and law predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class members have been damaged and are entitled to recovery as a result of Defendants' common and discriminatory policies and practices.

COLLECTIVE ACTION ALLEGATIONS

320. Plaintiffs Stephanie Sanz, Bryan Harmin, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Oscar Rojas, Taylor Meschke, Juan Balbuena, Jennifer Bleiweiss and Destiny Frye, bring the Third and Fourth Causes of Action under pursuant to the FLSA on behalf of themselves and: All former and current female servers, Daisy Dukes girls, hostesses, bartenders, bussers/runners and bar backs (collectively, "service employees") who

worked at Johnny Utah's between June 11, 2011, through the resolution of this action, to remedy Defendants' wage and hour violations of the FLSA (the "Collective Action Class").

321. Plaintiffs and the Class consist of similarly situated employees who performed work for Defendants as service employees in jobs incidental to Defendant Johnny Utah's operations. The number and identity of the Class members are determinable from the records of Defendants. For purposes of notice, their names and addresses are readily available from Defendants.

322. At all relevant times, Plaintiffs and Class members are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subjected to Defendants' decisions, policies, plans, programs, practices, procedures, protocols, routines, and rules, all culminating in willful wage and hour violations.

323. 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. In addition, the names of all potential members of the putative class are not known. The facts on which the calculation of that number, however, are presently within the sole control of Defendants, and upon information and belief, there are more than forty (40) members of the Class.

324. Plaintiffs' 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 Defendants, as alleged herein, of failing to pay minimum wage, overtime compensation, "spread of hours" premiums, and misappropriated tips. Defendants' policies and practices affected all Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiffs and other Class members sustained

similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

325. Plaintiffs are able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. 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 Defendants and resulting in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties.

326. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including but not limited to:

a. Whether Defendants employed Plaintiffs and Class members within the meaning of the FLSA;

b. What are and were the policies, procedures, and protocols of Defendants regarding the types of work for which Defendants did not pay the Class members properly;

c. Whether Defendants paid Plaintiffs and Class members their lawfully earned overtime wages in accordance with the FLSA;

d. Whether Defendants paid Plaintiffs and Class members their lawfully earned minimum wages in accordance with the FLSA;

e. Whether Defendants were entitled to compensate Plaintiffs and Class members at the tip credit rate which is less than the minimum wage rate for non-tipped employees;

f. Whether Defendants properly distributed gratuities earned by Plaintiffs and Class members in accordance with the FLSA;

g. Whether Defendants failed to compensate Plaintiffs and Class members for hours worked to promote Johnny Utah’s;

h. Whether Defendants' policy of failing to pay Plaintiffs and Class members was instituted willfully or with reckless disregard of the law; and

i. The nature and extent of class-wide injury and the measure of damages for those injuries.

NYLL CLASS

327. Plaintiffs Stephanie Sanz, Bryan Harmin, Annya Santana, Nykya Luce, Jessica Wafer, Katelyn Canning, Stephanie Walsh, Oscar Rojas, Taylor Meschke, Juan Balbuena, Jennifer Bleiweiss and Destiny Frye bring the Fifth through the Tenth Causes of Action under Rule 23, on behalf of themselves and all other similarly situated individuals, as defined: All former and current female servers, Daisy Dukes girls, hostesses, bartenders, bussers/runners and bar backs (collectively, "service employees") who worked at Johnny Utah's between June 11, 2008, through resolution of this action, to remedy Defendants' wage and hour violations of the NYLL (the "NYLL Class").

328. Plaintiffs and the Class consist of similarly situated employees who performed work for Defendants as service employees in jobs incidental to Defendant Johnny Utah's operations. The number and identity of the Class members are determinable from the records of Defendants. For purposes of notice, their names and addresses are readily available from Defendants.

329. At all relevant times, Plaintiffs and Class members are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subjected to Defendants' decisions, policies, procedures, and rules, all culminating in willful wage and hour violations.

330. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the court. In addition, the names of all potential members of the putative class are not known. The facts on which the

calculation of that number, however, are presently within the sole control of Defendants, and upon information and belief, there are more than forty (40) members of the Class.

331. Plaintiffs' 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 Defendants, as alleged herein, of failing to pay minimum wage, overtime compensation, "spread of hours" premiums, and misappropriated tips. Defendants' policies and practices affected all Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiffs and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

332. Plaintiffs are able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. 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 Defendants and resulting in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties.

333. There are questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including but not limited to:

a. Whether Defendants violated the NYLL;

b. Whether Defendants failed to pay Plaintiffs and Class members minimum wages for all of the hours they worked;

c. Whether Defendants compensated Plaintiffs and Class members for hours worked in excess of 40 hours per workweek;

d. Whether Defendants were entitled to compensate Plaintiffs and Class members at the tip credit rate which is less than the minimum wage rate for non-tipped employees;

e. Whether Defendants failed to provide Plaintiffs and Class members spread-of-hours pay;

f. Whether Defendants misappropriated tips from Plaintiffs and Class members by pooling, counting, distributing, accepting, and/or retaining tips and/or service charges paid by customers that were intended for Plaintiffs and Class members which customers reasonably believed to be gratuities for Plaintiffs and Class members;

g. Whether Defendants properly distributed gratuities earned by Plaintiffs and Class members in accordance with the NYLL;

h. Whether Defendants failed to compensate Plaintiffs and Class members for hours worked to promote Johnny Utah's;

i. Whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiffs and Class members, and other records required by the NYLL;

j. Whether Defendants failed to provide annual wage notices and accurate wage statements to Plaintiffs and Class members;

k. Whether Defendants violated the NYLL by requiring Plaintiffs and Class members to pay for their own uniforms, as well as pay the cost of the maintenance of the uniforms;

l. Whether Defendants' policy of failing to pay Plaintiffs and Class members was instituted willfully or with reckless disregard of the law; and

m. The nature and extent of class-wide injury and the measure of damages for those injuries.

COUNT I
DISCRIMINATION AND HOSTILE WORK ENVIRONMENT
IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW
(On behalf of the Female Service Employee Class)

334. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

335. Defendant Johnny Utah's is an "employer" as defined in the NYCHRL.

336. Plaintiffs and Class members are "employees" as defined in the NYCHRL.

337. Pursuant to § 8-107(1)(a), Defendants Sullivan, Casabona and Lozada are employees or agents of Defendant Johnny Utah's, and are individually liable for the discriminatory conduct.

338. NYCHRL § 8-107 makes it an unlawful discriminatory practice:

> For an employer, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person to discriminate against such person in compensation or in terms, conditions or privileges of employment.

339. Defendants violated the rights of the Plaintiffs and Class members under the NYCHRL by discriminating against them on the basis of their gender.

340. Plaintiffs and Class members were (i) subjected to verbal and physical conduct of a sexual nature, (ii) the conduct was unwelcome, and (iii) the conduct was sufficiently severe or pervasive to alter the conditions of the Plaintiffs' and Class members' employment and create an abusive work environment that a reasonable person in their position would perceive as an abusive environment in violation of the NYCHRL.

341. As set forth above, Defendants were aware of the discriminatory conduct but failed to exercise reasonable diligence to prevent such discrimination and harassment against Plaintiffs and Class members.

342. Through Defendant Johnny Utah's owners and supervisors, including Defendants Sullivan, Casabona and Lozada, Defendants participated in the discrimination and also ratified the unwelcome sexual misconduct by male customers.

343. Defendants retaliated against those Plaintiffs and Class members who objected to or refused to allow male customers to engage in sexually discriminatory conduct.

344. Plaintiffs and Class members were subjected to constant and pervasive sexual harassment including unwelcome verbal and physical sexual advances. Defendants forced Plaintiffs and Class members to tolerate a hostile work environment in which they personally endured repeated sexual harassment and physical contact.

345. Defendants acts and conduct, individually and jointly, were intentional and malicious and in complete disregard for the rights of Plaintiffs and Class members.

346. As a direct and proximate cause of Defendants' conduct, Plaintiffs and Class members have suffered and continue to suffer damages.

347. The aforementioned acts of Defendants constitute unlawful discrimination and pursuant to § 8-502, Defendants are liable for damages, including punitive damages and attorney's fees.

COUNT II
DISCRIMINATION AND HOSTILE WORK ENVIRONMENT
IN VIOLATION OF THE NYSHRL
(On behalf of the Female Service Employee Class)

348. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

349. Defendant Johnny Utah's is an "employer" as defined in the NYSHRL.

350. Plaintiffs and Class members are "employees" as defined in the NYSHRL.

351. Defendants Sullivan, Casabona and Lozada are "aiders" and "abettors" as defined in the NYSHRL.

352. Section 296 of the NYSHRL makes it an unlawful discriminatory practice:

> For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

353. Defendants violated the rights of the Plaintiffs and Class members under § 296 of the NYSHRL by discriminating against them on the basis of their gender.

354. Plaintiffs and Class members were (i) subjected to verbal and physical conduct of a sexual nature, (ii) the conduct was unwelcome, and (iii) the conduct was sufficiently severe or pervasive to alter the conditions of the Plaintiffs' and Class members' employment and create an abusive work environment that a reasonable person in their position would perceive as an abusive environment in violation of the NYSHRL.

355. As set forth above, Defendants were aware of the discriminatory conduct but failed to exercise reasonable diligence to prevent such discrimination and harassment against Plaintiffs and Class members.

356. Through Defendant Johnny Utah's owners and supervisors, including Defendants Sullivan, Casabona and Lozada, Defendants participated in the discrimination and also ratified the unwelcome sexual misconduct by male customers.

357. Defendants retaliated against those Plaintiffs and Class members who objected to or refused to allow male customers to engage in sexually discriminatory conduct.

358. Plaintiffs and Class members were subjected to constant and pervasive sexual harassment including unwelcome verbal and physical sexual advances. Defendants forced Plaintiffs and Class members to tolerate a hostile work environment in which they personally endured repeated sexual harassment and physical contact.

359. Defendants acts and conduct, individually and jointly, were intentional and malicious and in complete disregard for the rights of Plaintiffs and Class members.

360. As a direct and proximate cause of Defendants' conduct, Plaintiffs and Class members have suffered and continue to suffer damages.

361. The aforementioned acts of Defendants constitute unlawful discrimination and pursuant to § 297(9) Defendants are liable for damages and such other remedies as may be deemed just and appropriate.

COUNT III
THE FAIR LABOR STANDARDS ACT
OVERTIME WAGE COMPENSATION
(On behalf of the Collective Action Class)

362. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

363. Defendants were and continue to be employers engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

364. At all relevant times, Defendants had gross annual revenues in excess of $500,000.

365. Plaintiffs and Class members are employees within the meaning of the FLSA, 29 U.S.C. § 203(e).

366. In violation of 29 U.S.C. §207, the Defendants had a policy and practice of failing to pay Plaintiffs and Class members their earned overtime wages, at the rate of one and one half times the regular rate of pay, for all time in which they worked in excess of forty (40) hours in any given week.

367. Defendants knew of or showed a willful disregard for the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs and Class members at the statutory rate of time and one-half for their hours worked in excess of forty (40) hours per week when Defendants knew or should have known such was due.

368. Due to the intentional, willful and unlawful acts of Defendants, Plaintiffs and Class members suffered damages in an amount not presently ascertainable of unpaid overtime wages, plus an equal amount as liquidated damages.

369. Plaintiffs have consented in writing to be a party to this action, pursuant to 29 U.S.C. §216(b).

370. Plaintiffs and Class members are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

COUNT IV
THE FAIR LABOR STANDARDS ACT
MINIMUM WAGE COMPENSATION
(On behalf of the Collective Action Class)

371. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

372. In violation of 29 U.S.C. § 206, the Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiffs and Class members for their hours worked.

373. Defendants regularly failed to pay wages to Plaintiffs and Class members for any hours worked over forty (40) hours.

374. Defendants regularly ordered Plaintiffs and Class members to clock out hours before their shifts ended and forced them to continue working off the clock.

375. Defendants regularly forced Plaintiffs and Class members to attend and participate in Johnny Utah promotional events for which Plaintiffs and Class members were not compensated.

376. Defendants often required Plaintiffs and Class members to participate in group bar crawls and other events for which Plaintiffs and Class members were not compensated.

377. Defendants regularly required Plaintiffs and Class members to spend time outside of Johnny Utah's, including on their own personal Facebook pages, working to promote Johnny Utah's. Defendants failed to compensate Plaintiffs and Class members any wages for this additional work.

378. At all relevant times, Defendants knew of or showed a willful disregard for the provisions of the FLSA.

379. Due to the intentional, willful and unlawful acts of Defendants, Plaintiffs and Class members suffered damages in an amount not presently ascertainable of unpaid minimum wages, plus an equal amount as liquidated damages.

380. Plaintiffs and Class members are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

COUNT V
VIOLATION OF THE NEW YORK LABOR LAW
OVERTIME WAGE COMPENSATION AND SPREAD OF HOURS
(On behalf of the NYLL Class)

381. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

382. At all relevant times, Plaintiffs and Class members have been employees of Defendants, and Defendants have been employers of Plaintiffs and the Class members within the meaning of the NYLL §§ 190, 650 *et seq*., and the supporting NYCRR.

383. At all relevant times, the overtime wage and spread of hours provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiffs and the Class members of the Rule 23 Class, including but not limited to the regulations in 12 NYCRR Part 137, in force until January 1, 2011 and Part 146, which superseded Part 137, effective January 1, 2011 (hereinafter "Part 146").

384. Upon information and belief, Plaintiffs and Class members regularly worked more than forty (40) hours a week for Defendants.

385. Section 146-1.4, states that "[a]n employer shall pay an employee for overtime at a wage rate of 1/12 times the employee's regular rate for hours worked in excess of 40 hours in one workweek."

386. Defendants willfully violated Plaintiffs' and Class members' rights by failing to pay overtime compensation they are entitled to receive under the NYLL and the supporting NYCRR.

387. Upon information and belief, Plaintiffs and Class members regularly worked more than ten (10) hours in a workday.

388. Section 146-1.6(a), states that "[o]n each day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum hourly rate."

389. Defendants have willfully failed to pay Plaintiffs and Class members additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which they worked more than 10 hours, as required by New York law.

390. Through Defendants' knowing or intentional failure to pay Plaintiffs and Class members overtime wages for hours worked in excess of 40 hours per week and their failure to pay Plaintiff and the Class members spread-of-hours pay, Defendants have willfully violated the NYLL.

391. Due to Defendants' violations of the NYLL, Plaintiffs and the Class members are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, as provided for by the NYLL, reasonable attorneys' fees, costs, and pre judgment and post judgment interest.

COUNT VI
VIOLATION OF THE NEW YORK LABOR LAW
MINIMUM WAGE COMPENSATION
(On behalf of the NYLL Class)

392. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

393. The minimum wage provisions of Article 19 of the NYLL and the supporting NYCRR apply to Defendants, and protect Plaintiffs and Class members.

394. Defendants regularly failed to pay wages to Plaintiffs and Class members for any hours worked over forty (40) hours.

395. Defendants regularly ordered Plaintiffs and Class members to clock out hours before their shifts ended and forced them to continue working off the clock.

396. Defendants regularly forced Plaintiffs and Class members to attend and participate in Johnny Utah promotional events for which Plaintiffs and Class members were not compensated.

397. Defendants often required Plaintiffs and Class members to participate in group bar crawls and other events for which Plaintiffs and Class members were not compensated.

398. Defendants regularly required Plaintiffs and Class members to spend time outside of Johnny Utah's, including on their own personal Facebook pages, working to promote Johnny Utah's. Defendants failed to compensate Plaintiffs and Class members any wages for this additional work.

399. Pursuant to the NYLL, Defendants were required to pay Plaintiffs and Class members a minimum wage at a rate of (a) $7.15 per hour for all hours worked from January 1, 2007 through July 23, 2009; (b) $7.25 per hour for all hours worked from July 24, 2009 through December 31, 2013, and (c) $8.00 per hour for all hours worked from December 31, 2013, through the present.

400. Defendants failed to pay Plaintiffs and the Class members the minimum hourly wages to which they are entitled under the NYLL and NYCRR.

401. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiffs and the Class members, Defendants have willfully violated the NYLL and the supporting NYCRR.

402. Due to Defendants' violations of the NYLL, Plaintiffs and the Class members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, as provided for by the NYLL, reasonable attorneys' fees, costs, and pre judgment and post judgment interest.

COUNT VII
VIOLATION OF NYLL SECTION 196-d
(On behalf of the NYLL Class)

403. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

404. Gratuities provided by Defendants' customers to Plaintiffs and Class members constitute "wages" as that term is defined under Article 6 of the NYLL.

405. Pursuant to Article 6, NYLL §196-d, "[n]o employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

406. Defendants required Plaintiffs and Class members to contribute all gratuities from shifts to the collective "tip pool."

407. At all relevant times, Defendants continuously failed to disclose to Plaintiffs and Class members: (1) the total daily and weekly amounts placed into the tip pool; (2) each employee's percentage of said tip pool; and (3) the total amounts of tip pool distributions. Further, Defendants intentionally and knowingly failed to disclose to Plaintiff and Class members a list of participating members of the "tip pool" and any procedures or policies in place governing the distribution.

408. Defendants unlawfully retained part of the gratuities earned by Plaintiffs and Class members in violation of NYLL, Article 6, § 196-d and the supporting NYCRR.

409. Defendants required Plaintiffs and Class members to share a portion of the gratuities they received with employees other than waiters, servers, bussers, or similar employees, in violation of NYLL, Article 6 § 196-d and the supporting NYCRR.

410. Upon information and belief, Defendants intentionally or recklessly permitted individuals with managerial authority and ownership interests to share in the employee tip pool and retained charges purported to be a gratuity for an employee.

411. Upon information and belief, Defendants recklessly and arbitrarily distributed contributions to the tip pool to Plaintiffs and Class members.

412. Pursuant to NYLL, Plaintiffs and Class members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, pre judgment and post judgment interest, reasonable attorneys' fees, and costs and disbursements of the action.

COUNT VIII
VIOLATION OF THE NEW YORK LABOR LAW
UNLAWFUL DEDUCTIONS FROM WAGES
(On behalf of the NYLL Class)

413. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

414. Defendants made unlawful deductions from the wages of Plaintiffs and Class members. These deductions included, but were not limited to:

a. Refusing to pay employees $2.00 for each promotional flyer brought to the restaurant if the customer was black or Hispanic;
b. Refusing to pay money owed to employees for email addresses collected from customers if the Defendants believed that the email addresses belonged to a black or Hispanic customer;
c. Using Plaintiffs and Class members' tip money to cover cash register shortages;
d. Withholding tip money for alleged infractions such as eating during a shift, arriving late or talking on a cellular phone.

415. The deductions made from the wages of Plaintiffs and Class members were not authorized or required by law.

416. The deductions made from the wages of Plaintiffs and Class members were not expressly authorized in writing by Plaintiffs and Class members, and were not for the benefit of Plaintiffs and Class members.

417. Through their knowing or intentional efforts to permit unauthorized deductions from the wages of Plaintiffs and Class members, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq*., and the supporting New York State Department of Labor Regulations.

418. Due to Defendants' willful violations of the NYLL, Plaintiffs and Class members are entitled to recover from Defendants the amounts of any unlawful deductions, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and prejudgment and post-judgment interest.

COUNT IX
VIOLATION OF THE NEW YORK LABOR LAW
UNIFORM VIOLATIONS
(On behalf of the NYLL Class)

419. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

420. During the relevant time period, Defendants required Plaintiffs and Class members to wear a uniform. Male bartenders, bussers/runners and bar backs were required to wear black long sleeved t-shirts or Johnny Utah t-shirts and jeans. Female servers, bartenders and the Daisy Dukes girls were required to wear cowboy boots, cut off shorts, jeans, and a Johnny Utah's t-shirt, tank top or at various times, an unbuttoned plaid flannel shirt over the tank top.

421. Defendants failed to launder and/or maintain the required uniforms for Plaintiffs and Class members, and failed to pay them the required weekly amount in addition to the required minimum wage.

422. By failing to pay Plaintiffs and Class members for the maintenance of required uniforms, Defendants have willfully violated the NYLL, and the supporting NYCRR.

423. Due to Defendants' willful violations of the NYLL, Plaintiffs and Class members are entitled to recover from Defendants the costs of maintaining their uniforms, liquidated damages

as provided for by the NYLL, reasonable attorneys' fees, costs, and prejudgment and post-judgment interest.

COUNT IX
VIOLATION OF THE NEW YORK LABOR LAW
FAILURE TO PROVIDE ANNUAL WAGE NOTICES
(On behalf of the NYLL Class)

424. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

425. Defendants have willfully failed to supply Plaintiffs and Class members with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified as their primary language, containing Plaintiffs and Class members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

426. Through their knowing or intentional failure to provide Plaintiffs and Class members with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq*., and the supporting NYCRR.

427. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiffs and Class members are entitled to statutory penalties of fifty ($50.00) dollars for each workweek that Defendants failed to provide them with wage notices, or a total of twenty-five hundred dollars ($2500.00), reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

COUNT X
VIOLATION OF THE NEW YORK LABOR LAW
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(On behalf of the NYLL Class)

428. Plaintiffs hereby repeat and reallege all allegations as if fully set forth herein.

429. Defendants have willfully failed to supply Plaintiffs and the Rule 23 Class Members with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

430. Through their knowing or intentional failure to provide Plaintiffs and Class members with the accurate wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting NYCRR.

431. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs and Class members are entitled to statutory penalties of one hundred dollars ($100.00) for each workweek that Defendants failed to provide them with accurate wage statements, or a total of twenty-five hundred dollars ($2500.00), reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class, respectfully pray for relief against Defendants as follows:

a. An order permitting Plaintiffs to give notice of this collective action, or that this Court give such notice, at the earliest permissible time, to all persons who presently work at Defendant Johnny Utah's, and to all persons who have worked at said restaurant during the six (6) years immediately preceding the filing of this complaint as a server, hostess, bartender, Daisy Dukes girl, busser/runner or

bar back. The notice shall inform them of the fact that this lawsuit has been filed, the nature of the claims and the right to join the lawsuit;

b. An injunction against Defendants from engaging in each of the unlawful practices, policies and patterns set forth herein;

c. An award of unpaid overtime compensation, minimum wages and liquidated damages pursuant to 29 U.S.C. §216, due under the FLSA;

d. An award of unpaid overtime compensation, minimum wages, unpaid "spread of hours" premium due, uniform related expenses, unlawful deductions, and other unpaid wages, and liquidated damages under the New York Labor Law, plus interest;

e. An award of unpaid wages due to misappropriation of tip pool monies due under the New York Labor Law;

f. Statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the Rule 23 Class Members with a wage notice, or a total of twenty-five hundred dollars, as provided for by NYLL, Article 6 § 198;

g. Statutory penalties of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs and the Rule 23 Class Members with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by NYLL, Article 6 § 198;

h. Attorneys' fees and costs;

i. Designation of this action as a class action pursuant to Rule 23;

j. Designation of Plaintiffs as class representatives;

k. Reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for Class Members and for the risks they took in doing so; and

l. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable as of right by jury.

Dated: July 1, 2014
New York, New York

Respectfully submitted,

IMBESI CHRISTENSEN

Jeanne Christensen (jc3991)
450 Seventh Avenue, Suite 1408
New York, New York 10123
(212) 736-5588 (Phone)
(212) 658-9177 (Fax)
Attorneys for Plaintiffs