

claims, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 in that the state law claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is appropriate in the District of Rhode Island pursuant to 28 U.S.C. §1391(b), because a substantial part of the events giving rise to this claim occurred within this judicial district.

III. THE PARTIES

4. The plaintiffs, Pedro Guarcas, Edgar Orellana, Roberto Quinilla, Pedro Us, Domingo Aj, Bairon Lopez, Rafael Hernandez, and Edgar Vargas, were and, with the exception of Rafael Hernandez, are residents of Rhode Island. Rafael Hernandez is currently a resident of Connecticut.

5. At all times relevant to this Complaint the plaintiffs were employees of the defendants as that term is defined by the FLSA, 29 U.S.C. §203(e)(1), and by the RIMWA, §§28-12-2(5) and 28-14-1(2).

6. At all times relevant to this Complaint, the plaintiffs were each an employee engaged in commerce or the production of goods for commerce, and/or they were employees in an enterprise engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §207(a)(1).

7. Defendant Gourmet Heaven, LLC formerly operated Gourmet Heaven, a gourmet grocery and restaurant, located at 173 Weybosset Street, Providence, Rhode Island.

8. At all times relevant to the Complaint, Defendant RI Gourmet Heaven, Inc. operated Gourmet Heaven, a gourmet grocery and restaurant, located at 205 Meeting Street, Providence, Rhode Island.

9. Defendant Chung Cho is the sole member of Defendant Gourmet Heaven, LLC, the president and sole shareholder of Defendant RI Gourmet Heaven, Inc., and a resident of Connecticut.

10. At all times relevant to the Complaint, Defendant Chung Cho made all relevant

decisions regarding the plaintiffs' wages and working conditions at both Gourmet Heaven locations.

11. Defendant GSP Corp. (d/b/a Serendipity Gourmet) was incorporated for the purposes of continuing the operation of the store formerly known as Gourmet Heaven, located at 173 Weybosset Street, Providence, Rhode Island, and currently operates that store under the name Serendipity Gourmet.

12. At all times relevant to the Complaint, the defendants were employers as that term is defined by the FLSA, 29 U.S.C. §203(d), and by the RIMWA, §§28-12-2(6) and 28-14-1(3).

IV. STATEMENT OF FACTS

Pedro Guarcas

13. Pedro Guarcas ("Guarcas") was employed by the defendants to prepare food and stock shelves from on or around March 3, 2013 until on or around June 7, 2014.

14. Guarcas worked from 7:00am until approximately 7:00pm, Monday through Saturday, for a total of around 72 hours each week.

15. From on or around March 3, 2013 until on or around September 28, 2013, the defendants paid Guarcas \$400.00 per week in cash for his work.

16. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Guarcas by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

17. From on or around January 6, 2014 until on or around June 7, 2014, the defendants paid Guarcas by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

Edgar Orellana

18. Edgar Orellana was employed by the defendants to prepare food and stock shelves from on or around October 1, 2012 until on or around September 18, 2013 and again from around May 2014

until on or around December 3, 2014.

19. Orellana worked from 7:00am until approximately 7:00pm, Monday through Saturday, for a total of around 72 hours each week.

20. From on or around October 1, 2012 until on or around September 28, 2013, the defendants paid Orellana \$360.00 per week in cash for his work.

21. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Orellana by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

22. From on or around May 2014 until on or around December 3, 2014, the defendants paid Orellana in cash at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

Roberto Quinilla

23. Roberto Quinilla (“Quinilla”) was employed by the defendants to prepare food and stock shelves from on or around July 7, 2011 until on or around June 14, 2014.

24. From on or around July 7, 2011 until on or around December 21, 2011, Quinilla worked from 6:00am until approximately 6:00pm, Monday through Saturday, for a total of around 72 hours each week, and was paid \$330.00 in cash for that work.

25. From on or around January 5, 2012 until on or around June 14, 2014, Quinilla worked a shorter Saturday shift, from 6:00am to approximately 5:00pm, with the rest of his schedule unchanged, for a total of around 71 hours per week.

26. From on or around January 5, 2012 until on or around September 28, 2013, the defendants paid Quinilla \$360.00 per week in cash for his work.

27. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Quinilla by payroll check at the rate of \$7.75 per hour for forty hours and paid him in

cash at the rate of \$11.63 for hours worked over forty in each week.

28. From on or around January 6, 2014 until on or around March 22, 2014, the defendants paid Quinilla by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

29. From on or around March 24, 2014 until on or around June 14, 2014, the defendants paid Quinilla by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the purported overtime rate of \$12.00 for hours worked over forty in each week, but actually gave him around \$100 less in each week.

Pedro Us

30. Pedro Us (“Us”) was employed by the defendants to prepare food and stock shelves from on or around April 29, 2013 until on or around July 16, 2014.

31. Us worked from 7:00pm until approximately 7:00am, seven days per week, for a total of around 84 hours each week.

32. From on or around April 29, 2013 until on or around September 29, 2013, the defendants paid Us \$360.00 per week in cash for his work.

33. From on or around September 30, 2013 until on or around December 22, 2013, the defendants paid Us \$470.00 per week for his work, \$310.00 by payroll check and \$160 in cash.

34. From on or around January 2, 2014 until on or around July 16, 2014, the defendants paid Us \$480.00 per week for his work, \$320.00 by payroll check and \$160 in cash.

Domingo Aj

35. Domingo Aj (“Aj”) was employed by the defendants to prepare food and stock shelves from on or around April 25, 2013 until on or around December 3, 2014.

36. From on or around April 25, 2013 until on or around July 30, 2013, Aj worked from 6:00am until approximately 5:00pm seven days per week, for a total of around 77 hours each week.

37. From on or around August 5, 2013 until on or around December 3, 2014, Aj worked from 6:00am until approximately 5:00pm, Monday through Saturday, for a total of around 66 hours each week.

38. From on or around April 25, 2013 until on or around September 28, 2013, the defendants paid Aj \$360.00 per week in cash for his work.

39. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Aj by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

40. From on or around January 6, 2014 until on or around December 3, 2014, the defendants paid Aj by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

Bairon Lopez

41. Bairon Lopez (“Lopez”) was employed by the defendants to prepare food and stock shelves from on or around March 3, 2013 until on or around December 21, 2013.

42. Lopez worked from 7:00am until approximately 7:00pm, Monday through Saturday, for a total of around 72 hours each week.

43. From on or around March 3, 2013 until on or around May 11, 2013, the defendants paid Lopez \$368.00 per week in cash for his work.

44. From on or around May 13, 2013 until on or around September 28, 2013, the defendants paid Lopez \$400.00 per week in cash for his work.

45. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Lopez by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

Rafael Hernandez

46. Rafael Hernandez (“Hernandez”) was employed by the defendants to prepare food and stock shelves from on or around August 6, 2012 until on or around February 23, 2013.

47. From on or around August 6, 2012 until on or around December 21, 2012, Hernandez worked from 6:00am until approximately 4:00pm, Monday through Saturday, for a total of around 60 hours each week, except for the month of December 2012 when he also had Saturdays off and worked a total of 50 hours each week.

48. From on or around August 6, 2012 until on or around December 21, 2012, the defendants paid Hernandez \$350.00 per week in cash for his work.

49. From on or around January 1, 2013 until on or around February 23, 2013, the defendants paid Hernandez \$360.00 per week in cash for his work.

Edgar Vargas

50. Edgar Vargas (“Vargas”) was employed by the defendants to prepare food and stock shelves from on or around June 6, 2011 until on or around December 3, 2014.

51. Vargas worked six days per week, from Monday through Saturday, with a variable schedule of 10 to 12 hours each day, for a total of 68 to 72 hours per week.

52. From on or around June 6, 2011 until on or around September 28, 2013, the defendants paid Vargas \$360.00 per week in cash for his work.

53. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Vargas by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

54. From on or around January 6, 2014 until on or around December 3, 2014, the defendants paid Vargas by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

All plaintiffs

55. During the plaintiffs' employment, the defendants did not post and keep posted a notice explaining the Fair Labor Standards Act, as prescribed by the U.S. Department of Labor, Wage and Hour Division, in a conspicuous place in their establishment such as would permit the plaintiffs or other employees to observe readily a copy, as required by 29 C.F.R. §516.4.

56. During the plaintiffs' employment, the defendants did not post and keep posted the minimum wage and overtime poster issued by the Rhode Island Department of Labor and Training at the places of employment where it could be read easily by its employees, as required by R.I. Gen. L. §28-12-11.

57. During the plaintiffs' employment, the defendants did not furnish to the plaintiffs a statement of earnings on every regular payday, including a record of hours worked and itemized deductions from gross earnings, as required by R.I. Gen. L. §28-14-2.1.

58. The plaintiffs do not speak or read English.

59. During the plaintiffs' employment by the defendants, they did not discover the nature or extent of the defendants' violations of their right to be paid according to the law because, *inter alia*, the defendants failed to conspicuously post and provide to the plaintiffs information mandated by federal and state law; the defendants failed to furnish to each plaintiff earnings statements mandated by state law; the plaintiffs did not speak or read English; and the plaintiffs typically worked between 60 and 84 hours per week.

60. The defendants did not maintain a complete and accurate record of the hours worked, wages earned, and wages paid to the plaintiffs.

61. At all times relevant to the Complaint, the federal minimum wage was \$7.25 per hour.

62. From January 1, 2007 until December 31, 2012, the minimum hourly wage in Rhode Island was \$7.40.

63. From January 1, 2013 until December 31, 2013, the minimum hourly wage in Rhode Island was \$7.75.

64. From January 1, 2014 until December 31, 2014, the minimum hourly wage in Rhode Island was \$8.00.

Continuation of Gourmet Heaven by Defendant GSP Corp. (d/b/a Serendipity Gourmet)

65. During the relevant time period, Defendant Chung Cho, the sole member of Defendant Gourmet Heaven, LLC and Defendant RI Gourmet Heaven, Inc., also owned and operated several similarly named retail food businesses in Connecticut.

66. On or about February 2014, Defendant Chung Cho was arrested in Connecticut on charges relating to his treatment of workers at the “Gourmet Heaven” stores located in New Haven, Connecticut. He was charged with a total of 42 felony and misdemeanor counts of wage theft, larceny, and defrauding immigrant workers after a 2013 Connecticut Department of Labor investigation found that Cho owed over \$218,000 in unpaid wages to two dozen employees.

67. On or about March 2015, Chung Cho sold the Connecticut Gourmet Heaven stores to Good Nature Café Inc., which had been incorporated the previous October.

68. On or about June 23, 2015 the United States District Court for the District of Connecticut ordered Cho to secure the sum of \$175,664.12 to pay six Connecticut workers suing him for wage theft (Civil Action No. 3:14-CV-01333 (VLB)).

69. On or about February 2015, Plaintiffs filed the instant action, seeking their unpaid minimum and overtime wages, liquidated damages pursuant to the FLSA, liquidated damages pursuant to the RIMWA, and their reasonable attorney's fees and costs. After several requests for extension of the deadline for filing responsive pleadings, Defendants filed their Answer on May 11, 2015.

70. On April 9, 2015, Defendant GSP Corp. filed articles of incorporation, listing 173 Weybosset Street Providence, Rhode Island as its address and Dae Hyun Yoo as its registered agent.

71. 173 Weybosset Street is the same address at which Defendants operate one of their two aforementioned retail businesses in Providence, RI.

72. Furthermore, 173 Weybosset Street is the address listed on the articles of incorporation for Defendant Gourmet Heaven, LLC.

73. Dae Hyun Yoo (a.k.a. David Yoo) is the Chief Executive Officer of B.C.S. International Corporation (“B.C.S.”), a wholesale food supply company.

74. While operating Gourmet Heaven, LLC, Defendant Chung Cho regularly ordered inventory from B.C.S. and two of its subsidiaries, Hyun Dai International Food Corp. and New York Cheese Corp.

75. On May 20, 2015, after several months of delaying the filing of its Answer in this action, Defendant Gourmet Heaven, LLC agreed to sell to Defendant GSP Corp. for the sum of \$500,000 the “[r]etail food store located at 173 Weybosset Street,” including “all of the chattels and merchandise contained in the premises where the business is conducted, together with all other equipment customarily used therein in connection with the operation of the business, and the lease to the business premises.” The sale also included the right to use the Seller’s trade name, and the right to the telephone number then used by the business.

76. On June 25, 2015 Defendant GSP Corp. filed for use of the fictitious name “Serendipity Gourmet” with State of Rhode Island Office of the Secretary of State.

77. On September 14, 2015 the Closing Statement between Defendant Gourmet Heaven, LLC and Defendant GSP Corp. was signed.

78. \$225,389.11 of the \$500,000 purchase price was paid directly to B.C.S. International Corporation, Hyun Dai International Food Corp., and New York Cheese Corp., purportedly to satisfy existing debts.

79. In the Closing Statement, “Chung Cho/Gourmet Heaven, LLC” is listed as receiving a

disbursement of only \$1,620.78 from the \$500,000 purchase price after other debts are settled.

80. In an Indemnity Agreement attached to the Closing Statement, Cho falsely represented that there are “no actions at law, suits in equity or other legal proceedings pending in which the Seller is a party...” Substantially the same claim is repeated in an attached Affidavit of No Creditors.

81. On September 16, 2015 Defendant GSP Corp. “took over operation” of the store located at 173 Weybosset Street, and renamed it Serendipity Gourmet.

82. Upon information and belief, the store continues operation at the same address, with many of the same employees, and sells the same products. The signage on the store uses the same font and colors, and the word “Gourmet” still appears in the name. Signs on the exterior of the store proclaimed that it was “under new management.”

83. On September 30, 2015 Defendant Chung Cho filed for personal bankruptcy in Connecticut.

84. In December of 2015 Defendant Chung Cho testified at a hearing in Connecticut that he has no assets, contradicting a previous sworn statement that he possessed between \$1 million and \$10 million in assets.

85. In the same hearing Defendant Chung Cho testified that he had moved to New Jersey and was employed in New York City.

86. On March 14, 2016 the Rhode Island Office of the Secretary of State filed in relation to Defendant Gourmet Heaven, LLC a “Revocation Notice For Failure to File An Annual Report.” Pursuant to Section 7-16-41 of the Rhode Island General Laws, Defendant Gourmet Heaven, LLC’s Certificate of Organization will be revoked within sixty (60) days if no report Annual Report is filed.

V. COUNT ONE: FLSA AND RIMWA MINIMUM WAGE VIOLATIONS

87. The plaintiffs restate, re-allege and incorporate by reference paragraphs 1 through 86, above.

88. As described above, the defendants failed to compensate the plaintiffs by paying them at least the applicable Rhode Island minimum wage for each hour worked.

89. As described above, the defendants failed to compensate the plaintiffs by paying them at least the applicable federal minimum wage for each hour worked.

90. The defendants' failure to pay at least the applicable minimum wage as required by federal law was willful, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the FLSA and did not do so.

91. The defendants' failure to pay at least the applicable minimum wage as required by Rhode Island law was willful and/or in bad faith, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the RIMWA and did not do so.

92. As a result of the defendants' unlawful conduct as described above, the plaintiffs suffered a loss of wages.

VI. COUNT TWO: FLSA AND RIMWA OVERTIME VIOLATIONS

93. The plaintiffs restate, re-allege and incorporate by reference paragraphs 1 through 86, above.

94. As described above, the defendants failed to compensate the plaintiffs by paying them at least one and a half times their regular hourly wage for hours over forty worked in each week.

95. The defendants' failure to pay overtime wages as required by federal law was willful, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the FLSA and did not do so.

96. The defendants' failure to pay overtime wages as required by Rhode Island law was willful and/or in bad faith, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the RIMWA and did not do so.

97. As a result of the defendants' unlawful conduct as described above, the plaintiffs suffered a loss of wages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully request that this Court:

1. Equitably toll the statute of limitations;
2. Order the defendants to pay to the plaintiffs all minimum and overtime wages owed, consistent with the FLSA and RIMWA;
3. Award the plaintiffs liquidated damages for all federal minimum and overtime wages owed pursuant to 29 U.S.C. §216(b);
4. Award the plaintiffs liquidated damages for all Rhode Island minimum and overtime wages owed pursuant to R.I. Gen. L. §28-14-19.2(a);
5. Award the plaintiffs their reasonable attorney's fees and costs; and
6. Award the plaintiffs such other legal and equitable relief as the Court deems appropriate.

REQUEST FOR TRIAL BY JURY

The plaintiffs respectfully request a trial by jury as to all claims to which they are entitled.

RESPECTFULLY SUBMITTED
THE PLAINTIFFS, by

/s/ Robert McCreanor

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