

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**RESTAURANT LAW CENTER, and
NATIONAL RESTAURANT
ASSOCIATION,**

Plaintiffs,

v.

**CITY OF NEW YORK, and
LORELEI SALAS, in her official capacity
as Commissioner of the NEW YORK
CITY DEPARTMENT OF CONSUMER
AFFAIRS,**

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the Restaurant Law Center (“RLC”) and the National Restaurant Association (“NRA”) (collectively, “Plaintiffs”), by and through its undersigned attorneys, seeks declaratory and injunctive relief against Defendants the City of New York (“City”) and Lorelei Salas, in her official capacity as Commissioner of the New York City Department of Consumer Affairs (“DCA Commissioner Salas”) (collectively, “Defendants”), and hereby alleges as follows:

PRELIMINARY STATEMENT

1. As part of a years-long effort to unionize fast food employees, the Service Employees International Union (“SEIU”) has successfully lobbied Defendants to conscript employers in the SEIU’s organizing and dues-raising efforts. Specifically, under a new law to take effect on November 26, 2017, Defendants now require fast food employers, *and only fast food employers*, to calculate, deduct, collect, administer, and remit employee deductions to political and ideological groups that employers may choose to oppose, and should not be forced

to support. New York City Administrative Code (“NYCC”) § 20-1301, *et seq.* (the “Deduction Bill”).¹ As the City’s own Councilmembers put it, this new law “seeks to lend a [*sic*], and provide a voice for those who are not currently organized within the labor movement,” creating a “new form of worker organizing.” Statement of I. Daneek Miller, Chairperson of Committee on Civil Service and Labor, in Hearing Transcript 5/22/17, PDF at 4, <http://legistar.council.nyc.gov/View.ashx?M=F&ID=5279161&GUID=3DB7BE35-3089-49C2-A7D1-9AA94823CEC7>; Statement of Council Member Brad S. Lander, in Hearing Transcript 5/22/17, *supra*, PDF at 13-14.

2. By enacting, threatening enforcement of, and enforcing the Deduction Bill, acting under color of local law, Defendants have deprived Plaintiffs and Plaintiffs’ members of their rights under federal law, including the U.S. Constitution.

3. Defendants intend these results. Specifically, the Deduction Bill forces fast food employers to fund organizations affiliated with a movement that is, itself, designed and formed to disrupt the fast food industry in an effort to force fast food employers to voluntarily recognize the SEIU or its affiliates, messages which Plaintiffs’ members may not wish to endorse.

4. While Plaintiffs’ members have no issue with (and indeed share the goal of) many minimum labor standards and protections, the SEIU is improperly attempting to use the Defendants—through their enforcement of the Deduction Bill—to fund and advocate for the SEIU’s private attack on the fast food industry, and it is that agenda with which the Plaintiffs’ members disagree.

5. As an initial matter, the First Amendment entitles employers not to assist with “provid[ing] a voice” for movements with which those employers may disagree. The First Amendment similarly entitles employers not to endorse these movements—or any cause at all—

¹ A copy of the Deduction Bill is attached to this complaint as Exhibit A.

by associating with them, much less to subsidize them by bearing administrative, labor, and legal expenses in the course of that compelled assistance. The Deduction Bill violates each of these guarantees. First, it compels employers' speech by forcing unwilling employers to donate employees' wages to ideological and political organizations with whom those employers may and do disagree. Second, it likewise compels employers' association with and endorsement of those groups and their messages, as employers will fund—and will be perceived as funding—their apparent ideological and political agenda. Finally, the Bill requires employers to subsidize employees' speech, as it necessarily imposes numerous administrative, labor, and legal costs which will not be (and in some cases *cannot* be) reimbursed. And these violations are not an incidental effect of the Bill: they are the point—to advance the explicitly stated and deliberately opposed agenda of groups that the City knows employers may and do not want to advance. The First Amendment prohibits both Defendants' speech-compelling ends as well as its forced-endorsement and speech-subsidizing means.

6. Federal labor law, moreover, preempts the Deduction Bill. The Deduction Bill purports to grant Defendants the authority to decide what is and is not a “labor organization” under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (“NLRA”), and legislates obligations that the NLRA intended to leave unregulated. Additionally, it requires covered employers to pay funds without regard to the restrictions of the Labor Management Relations Act, 29 U.S.C. § 186 *et seq.* (“LMRA”), exposing employers to federal criminal liability and an impossible choice between compliance with federal or local law.

7. Accordingly, the Deduction Bill compels employers' speech, association with others' speech, and subsidies for speech under threat of stiff penalties. If employers comply, they involuntarily communicate, endorse, and subsidize messages and groups with which they

disagree and risk eventual federal criminal sanctions under the LMRA. Indeed, even an employer *complying* with the Deduction Bill must shoulder the risk that the City has deemed a group not a labor organization for *City* purposes that is a labor organization for *federal* purposes. If an employer refuses to comply, it will immediately risk liability for statutory penalties of up to \$1,000 per violation, NYCC § 20-1307(b)(2)(b), as well as civil suits for actual and punitive damages. NYCC § 20-1308(a). The City may not put employers in this position—much less as part of an effort to “pressure [employers] toward a national bargaining table” with unions. Eric Morath, *Q&A: SEIU President on Lessons for Labor in ‘Fight for \$15’*, WALL STREET JOURNAL (May 23, 2017). Plaintiffs therefore respectfully request that this Court declare that the Deduction Bill runs afoul of both the First Amendment and federal labor law and enjoin the Deduction Bill’s implementation or enforcement.

PARTIES

8. Plaintiff Restaurant Law Center (“RLC”) is a public policy organization affiliated with Plaintiff National Restaurant Association (“NRA”), the largest foodservice trade association in the world. The NRA was created in 1919 and launched the RLC, its affiliate, in 2015, and Plaintiffs are headquartered at 2055 L St. NW, Suite 700, Washington, DC 20036. The RLC routinely advocates on matters of labor relations policy and represents the interests of its members in labor relations matters before the courts. NRA members have locations that operate within New York City, and the NRA has members that would be subject to the Deduction Bill. The NRA’s members include “fast food employers” that employ “fast food employees” at a “fast food establishment” within the definitions of the Deduction Bill. NYCC §§ 20-1301.

9. Defendant City of New York is a municipality organized and existing under the laws of New York State. It is authorized by law to create and maintain its Department of Consumer Affairs (“DCA”) and is responsible for the DCA’s rules, actions, and policies.

10. Defendant Lorelei Salas, sued here in her official capacity, is the Commissioner of the New York City Department of Consumer Affairs, within which the Office of Labor Policy and Standards is organized. The Office of Labor Policy and Standards (the “Office”), which Commissioner Salas also oversees, is the entity empowered to enforce the Deduction Bill, to determine what entities qualify for registration under the Deduction Bill, to determine which entities are labor organizations excluded from the Deduction Bill, and to promulgate rules interpreting and implementing the Deduction Bill. NYCC §§ 20-1301, 20-1303, 20-1310. Commissioner Salas served in that capacity at the time the DCA issued proposed rules implementing the Deduction Bill.

JURISDICTION AND VENUE

11. This action, under both the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, and this Court’s power to enjoin state (or local) regulations preempted by federal law, *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1384 (2015), seeks to prevent Defendants from further implementing or enforcing the Deduction Bill due to its irreconcilable conflict with the First Amendment and applicable federal labor laws.

12. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3)-(4), and 1367(a).

13. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.

14. A live, justiciable controversy exists between the parties regarding the implementation and enforcement of the Deduction Bill. Several of the NRA’s members have begun implementing internal procedures in order to comply with the Deduction Bill; meanwhile, those members do not wish to assist with the SEIU’s efforts or other similar ideological or political campaigns to which they are personally or professionally opposed. These members

have sought Plaintiffs' assistance in designing a strategy to attempt to negate the unwanted political or ideological effects of their actions as well as counseling regarding the Deduction Bill's requirements.

15. As a consequence, Plaintiffs have been required to divert resources from their core missions—advocating for the foodservice industry, providing tools and systems to help members improve operating results, and providing access to information regarding best business practices to its members. Plaintiffs would prefer to assist members in expanding and growing their enterprises and to promote pro-growth policies and balanced federal regulations. Nonetheless, Plaintiffs have had to spend time and money to counsel members regarding their rights and federal-law obligations regarding the Deduction Bill, the First Amendment, and federal labor law. This “diver[sion of] resources from” Plaintiffs’ “current activities” is also “an injury that has been repeatedly held to be independently sufficient to confer” standing on Plaintiffs. *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 111 (2d Cir. 2017). Plaintiffs and its members have suffered these concrete harms, and with the Deduction Bill’s effective date later this month, this Court has jurisdiction to adjudicate this dispute under Article III.

16. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2).

FACTUAL ALLEGATIONS

The City Enacts the Deduction Bill to Assist the SEIU in Organizing Employers in the Fast Food Industry

17. It is public knowledge that the SEIU has pursued a nearly-five-year campaign, called the “Fight for \$15,” to organize and raise dues from employees in the fast food sector.

18. The SEIU is one of the largest unions in both the City and the Nation. It represents service workers in the United States, with a significant portion of its expenditures over the past few years focused on organizing and obtaining new members in the fast food industry.

19. As part of its mission, the SEIU advances certain political and ideological goals that it views as beneficial to its membership. It contributes significantly to political campaigns in both time and money, supporting certain political candidates, platforms, and messages, while attempting to defeat others. In 2016 alone, the SEIU's national headquarters publicly reported spending over \$61 million on political activities and lobbying. *See* SEIU International's Form LM-2, Labor Organization Annual Report.

20. Contributions to the SEIU are used in part to fund political and ideological messaging, including through methods such as political organizing, direct political speech, supporting specific electoral candidates, public demonstrations, and public-relations campaigns.

21. The SEIU instituted and heavily funds the "Fight for \$15" campaign. Eric Morath, *Labor Spends Millions To Boost Wages For Workers Who Don't Yet Pay Dues*, WALL STREET JOURNAL (May 23, 2015). The SEIU expects the Fight for \$15 campaign to "eventually lead to unionized workers," which supports their organizational "effort to boost union membership." *Id.* The "stated goal of Fight for \$15 protestors is '\$15 [per hour] and a union.'" *Id.*

22. The SEIU's ideological and political speech, such as the "Fight for \$15" effort, and SEIU-driven union organizing efforts in the fast food industry are inextricably linked, with SEIU President Mary Kay Henry announcing that given a public-relations "breakthrough on \$15, it's just a matter of time that we break through on a union." Morath, *Q&A, supra*.

23. The SEIU fundamentally advances its goals through the collection and expenditure of money for political and ideological advocacy.

24. Per SEIU President Henry, this campaign exists to apply “pressure toward a national bargaining table with [fast food companies.]” *Id.*

25. The SEIU has also lobbied the City to advance its unionization efforts. These efforts included the Deduction Bill, commonly referred to as the “**Fast Food Worker Empowerment Bill**.” *See, e.g.,* Statement of Council Member Julissa Ferreras-Copland, in Hearing Transcript 3/3/17, PDF at 14, <http://legistar.council.nyc.gov/View.ashx?M=F&ID=5089847&GUID=8D40BD48-CEAA-4E79-B0F0-B5167595C052>.

26. The SEIU recognized that the various provisions included in this law would encourage fast-food unionization. To this end, when discussing the Deduction Bill, Hector Figueroa, President of SEIU Local 32BJ, declared that: “[t]he Fast Food Workers Empowerment [B]ill specifically would be the first of its kind and [would] present a new model for workers to pool resources together and build collective power to be able to learn and educate themselves and other coworkers of their rights under the law to be able to support issues that affect them[.]” Testimony of Hector Figueroa before the New York City Council, in Hearing Transcript 3/3/17, *supra*, PDF at 81.

27. Figueroa’s statements recognize the necessary relationship between the SEIU’s fundraising efforts, its organizing goals, and its ability to communicate ideological and political messages. The Bill was designed to streamline the former in order to advance the latter two: it was a “new model for workers to pool resources together,” *i.e.* money, in order to “build collective power,” including through political advocacy.

28. The City agreed, with Deputy Commissioner Liz Vladeck of the City’s Office of Labor Policy and Standards—the Office authorized to administer and regulate under the Deduction Bill—stating that: “[t]he Administration largely agrees with the goals of this bill. Fast food workers have been engaging in powerful collective efforts to drive change in their industry and beyond for several years, and they have achieved critical victories” in advancing “our national conversation about labor issues.” Testimony of Deputy Commissioner Liz Vladeck, Office of Labor Policy and Standards, New York City Department of Consumer Affairs, before the New York City Council, in Hearing Transcript 3/3/17, *supra*, PDF at 28.

29. The Deduction Bill accordingly compels employers to assist the SEIU’s fundraising efforts in order to advance the SEIU’s private financial and political agenda, under penalty of law imposed by the City. The City and DCA act as an enforcement mechanism for the SEIU’s self-interested objectives, including the organization’s political goals.

The Deduction Bill Obligates Employers to Communicate, Assist In Communicating, Endorse, and Subsidize Employees’ Communication of Political and Ideological Messages

30. The Deduction Bill applies only to “fast food establishments” that are part of a chain, and that are one of 30 or more establishments nationally, including either an integrated enterprise, or an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate. NYCC § 20-1301.

31. Under the Deduction Bill, a fast food employee, defined as “any employee employed or permitted to work at or for a fast food establishment that is located within the city, by any employer, where such job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance,” NYCC § 20-1301, may authorize a portion of their wages to be donated

to City-approved “not-for-profit” organizations, and that employee’s employer is legally obligated to deduct, collect, and remit those wages to the designated, City-approved not-for-profit. That process happens in several steps.

32. The Deduction Bill requires a not-for-profit organization to register with the City before it may accept deductions pursuant to the bill. NYCC § 20-1303(a).

33. The not-for-profit must provide its name, a physical address, email and telephone information, and a “contact.” NYCC § 20-1303(a)(1). It must also provide proof that it is organized as a not-for-profit entity under the laws of its state of incorporation and tax filings for the past three years, which the Deduction Bill takes as conclusive of its nature as a legitimate not-for-profit entity. NYCC § 20-1303. The entity must then gather 500 fast food employee authorizations to deduct wages for donations to that not-for-profit—though the employees need not be employed by the same employer—and provide proof of corresponding disclosures to the fast food employee by the not-for-profit regarding its name, mission, finances, governance, and a statement that labor organizations may not seek donations under the Deduction Bill. NYCC §§ 20-1303(a)(3)-(4), 1304. It must also submit its last three years of tax filings. NYCC § 20-1303(a)(5).

34. Once a not-for-profit has provided the above documentation, the Office issues it a registration letter confirming its enrollment under the Deduction Bill. NYCC § 20-1303(b).

35. Not-for-profits are eligible to seek registration under the Deduction Bill, save “labor organizations.” NYCC § 20-1310. For private employers, the Deduction Bill defines “labor organization” two ways: first, by reference to New York Labor Law Section 701, and second, as any organization qualifying under 29 U.S.C. § 152(5)—defined as:

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in

part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

36. The Deduction Bill directs Commissioner Salas, through the Office, to “promulgate rules necessary to ensure that” the Deduction Bill “will be applied in a manner consistent with federal or state labor law.” NYCC § 20-1310(c).

37. DCA issued its proposed rules on October 16, 2017. The proposed rules stated that “[t]he office shall not register and shall revoke any previously issued registrations of not-for-profits that collect authorization cards or other documents related to membership in a labor organization or with respect to a showing of interest or vote for certification, decertification, or deauthorization of a labor organization, upon receiving proof that the not-for-profit is engaging in such activities.” NYCC § 15-09(c).²

38. Thus, the Deduction Bill authorizes the City of New York and/or its agency to determine whether a not-for-profit organization seeking a registration letter is a “labor organization” under the NLRA. NYCC § 20-1303(b).

39. A fast food employee may then designate deductions to a registered not-for-profit by providing his or her employer with a written authorization and a copy of the registration letter. NYCC § 20-1302(a). The authorization must include the employee’s name and physical address, the amount to be donated, the name and contact information of the not-for-profit, a contact through which the employee can revoke authorization, and a statement that the employee understands that donations are both voluntary and revocable through written revocation provided to the not-for-profit. *Id.*

40. A deduction request triggers a variety of employer obligations under the Deduction Bill:

² A copy of the proposed rules is attached as Exhibit B.

a. The employer must calculate and deduct the authorized contribution from the employee's wages and remit them to the designated not-for-profit no later than 15 days following the authorization. NYCC § 20-1302(e).

b. It must remit the funds in the method the organization requests, noting the deduction in a manner required by state law. *Id.*

c. An employer must also provide copies of the employee's authorization to both the not-for-profit and the employee within five business days of receiving it, NYCC § 20-1302(d), and must give its employees notice of both employees' rights and employers' obligations under the Deduction Bill. NYCC § 20-1302(h).

d. The employer must continue calculating, deducting, and remitting donations until the employee revokes the authorization through a letter to the not-for-profit. NYCC § 20-1302(c).

e. Finally, a fast food employer must keep records of authorizations, revocations, deductions, and remittances made per the Deduction Bill; as well as copies of authorization forms; and proof that the employer provided employees with information required by the Deduction Bill. NYCC § 20-1305.

f. An employer is entitled to limited compensation for "the costs associated with deduction and remittance," but nothing else. NYCC § 20-1302(g).

41. The Deduction Bill imposes both civil liability and administrative penalties for an employer's violations. Both not-for-profits and employees, as well as duly authorized employee representatives, may complain to the Office regarding alleged violations of the Deduction Bill. The Office, in turn, may issue a variety of penalties as a consequence, including: (1) the authorized deductions and remittances; (2) the greater of the statutory interest rate or 6% on

those withheld amounts; (3) an additional statutory penalty of up to \$500 per violation (or \$1,000 per violation in certain cases); and (4) reinstatement, back pay, and similar relief for retaliation claims. NYCC § 20-1307. An employee may also independently vindicate his complaint through a private right of action “for damages, including punitive damages, and for injunctive relief and other such remedies as may be appropriate.” NYCC § 20-1308.

42. The Deduction Bill further prohibits any acts by an employer that are “reasonably likely to deter [an] employee from exercising or attempting to exercise any right protected under this chapter,” regardless of the employer’s knowledge or intent. The prohibition specifically bars the employer from “informing another employer that a fast food employee has engaged in activities” protected by the Deduction Bill. NYCC § 20-1306.

The SEIU and City Acknowledge that the Deduction Bill Both Advances and Was Designed to Advance Political and Ideological Messages and Goals

43. The SEIU and City identified the Deduction Bill as a key instrument to fund the “Fight for \$15.”

44. And both the SEIU and Defendants recognize that these donations will be used to advance explicitly ideological ends. For example, Kyle Bragg, Secretary of Local 32BJ, noted that the Deduction Bill “will make it easier for workers to form their own not-for-profit that can bring about the changes they need in their communities. This organization will be able to advocate for . . . other issues that these workers face in their neighborhoods and communities.” Testimony of Kyle Bragg, in Hearing Transcript 3/3/17, *supra*, PDF at 77.

45. Both the SEIU and Defendants understood as well that the Deduction Bill would give employees an opportunity to work collectively to advance the SEIU’s own political and ideological interests. Hector Figueroa, President of SEIU Local 32BJ, described the Deduction Bill as providing donating employees with “a way for the workers to . . . band together and use

their . . . resources to create efforts that advance their interests[.]” Testimony of Hector Figueroa, in Hearing Transcript 3/3/17, *supra*, PDF at 101.

46. A group called “Fast Food Justice” is already working toward registering as a qualifying not-for-profit, including posting disclosures required by the Bill. *See Disclosures*, FAST FOOD JUSTICE, <https://www.fastfoodjustice.org/disclosures> (last visited Nov. 21, 2017).

47. The relationship between the SEIU and Fast Food Justice is transparent:

a. Fast Food Justice shares its mailing address with SEIU Local 32BJ on its IRS not-for-profit forms;

b. During the organization’s 2017 tax year, Fast Food Justice received all but a few dollars of its total revenue from the SEIU. The organization reported \$335,003 total revenue, and SEIU Local 32BJ donated \$335,000 of that revenue to the organization, with the remaining \$3 from investment income. *See Form 990*, FAST FOOD JUSTICE, <https://www.fastfoodjustice.org/ffj-final990.pdf> (last visited Nov. 21, 2017); and many of Fast Food Justice’s leadership have received compensation from the SEIU in the last two years. *See* “IRS Tax-Exempt Application,” NEW YORK STATE CHARITIES, https://www.charitiesnys.com/RegistrySearch/show_details.jsp?id={A0556358-0000-C413-BA7C-4B851A560A60}.

c. For example, Fast Food Justice’s Executive Director, Autumn Weintraub, is paid by the SEIU for her work for Fast Food Justice. Fast Food Justice’s Form 990 states: “Autumn Weintraub...received total compensation...from SEIU for services provided to the filing organization as its executive director.” Similarly, Kevin Doyle, a member of Fast Food Justice’s Board of Directors, is a consultant for SEIU. *See* “IRS Tax-Exempt Application,” *supra*.

Fast Food Employers Must Now Counteract Unwanted Political and Ideological Messaging and a Federal/Local-Law Dilemma

48. The NRA's members are opposed to the SEIU's efforts to pressure them into facilitating and funding union-organizing and fundraising efforts from its employees where the Union is neither the recognized, nor elected, representative of such employees.

49. Nonetheless, these fast food employers have been forced to prepare to implement the new law, including creating mechanisms to compute, deduct, track, and remit donations, to maintain records as required by the Deduction Bill, and to prepare to defend against litigation arising under the Deduction Bill.

50. The NRA's members must seek to offset the effects of the expected organizational efforts that result due to the Deduction Bill's requirements. Because the Deduction Bill obligates fast food employers to assist employees with making ideological and political donations to designated not-for-profit groups, employers opposing these goals must expend extra effort in at least three ways. First, these employers must now devote additional resources to fighting the SEIU's campaign against the fast-food industry, which employers and the SEIU alike expect will be significantly enhanced by donations collected under the Deduction Bill. Second, fast food employers must spend time and money demonstrating to employees and the public that they do not support the SEIU's goals or methods, including SEIU's use of brand attacks to force employers to agree to recognize the SEIU as bargaining representative for employees who are intentionally deprived by the SEIU of expressing their intentions in a secret-ballot election supervised by the federal agency charged with ensuring fair and pressure-free elections. Third, fast food employers must now devote significantly greater resources to interpreting federal labor law regarding new organizations constituted to take advantage of the

Deduction Bill. Though the Deduction Bill defines “labor organization” by referencing federal labor law, no such controlling guidance exists as to, for example, Fast Food Justice.

51. The Deduction Bill also forces the NRA’s members to choose between federal or local law. They must either comply with the Deduction Bill, risking violating federal labor law should the NLRB disagree with the City’s conclusion as to an organization’s “labor organization” status, or otherwise refuse, exposing themselves to civil suits and significant administrative penalties.

52. Plaintiffs also spend significant resources hearing complaints from, and addressing the concerns of, its members regarding the Deduction Bill. They have communicated with individual members regarding their concerns as to the Deduction Bill’s obligations, and have redirected time, staff, and legal expertise in part to assist members in navigating the potential federal-law implications of the Deduction Bill. These efforts have consequently slowed Plaintiffs’ ability to pursue other projects, such as educational sessions on other laws and opportunities to express Plaintiffs’ perspectives on other topics. In short, Plaintiffs have limited resources, portions of which have been spent educating members about this law.

COUNT ONE

(42 U.S.C. § 1983 / Violation of the First Amendment of the United States Constitution)

53. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 52 of this complaint, as though fully set forth below.

54. The First Amendment to the United States Constitution, incorporated against the States through the Fourteenth Amendment to the United States Constitution, provides: “Congress shall make no law . . . abridging the freedom of speech.”

55. The Deduction Bill compels fast-food employers’ speech by forcing them to transmit donations to political and ideological groups with whom those employers disagree.

Because the underlying donations are, or are treated like, speech, the City cannot compel employers to essentially repeat the donors' underlying messages in the guise of administrative convenience. One of the First Amendment's most fundamental guarantees is the right *not* to speak—not to have one's voice commandeered in the service of others. The Deduction Bill necessarily—deliberately—violates that guarantee.

56. The Deduction Bill also requires the NRA's fast-food employer members to associate with groups and endorse messages that they wish neither to associate with nor endorse. Just as fast-food employers enjoy a First Amendment right not to speak or repeat unwanted messages, they enjoy a concomitant right not to associate themselves with or to endorse groups or messages with whom employers disagree.

57. The Deduction Bill necessarily implicates fast food employers in messages that they do not wish to transmit. Once the City approves a given not-for-profit, employers must submit to employees' speech demands under the employers' name, publicly transmitting money to causes with which fast food employers wish not to be associated.

58. This unwanted transmission associates fast food employers with a disagreeable message. Employers have a First Amendment right to refuse that association or endorsement, and through the Bill, the City will punish that refusal. It cannot.

59. The Deduction Bill also obligates the NRA's members to shoulder administrative, legal, and other expenses related to employees' donations to not-for-profit organizations such as Fast Food Justice. The Deduction Bill transfers these expenses, properly borne either by employees (the speakers) or ideological and political groups (the recipients) to employers instead, obligating fast food employers to pay costs in order to make it easier for employees to speak, through their donations to not-for-profit organizations.

60. Fast food employers do not wish to pay these costs. And regardless of the not-for-profit involved, fast food employers should not be forced to assist with speech with which they disagree—or, at minimum, speech that they have not initiated and approved.

61. The Deduction Bill does not provide a reimbursement mechanism for many of these administrative and legal costs—and what it provides is constitutionally insufficient in any event. Any amount of unreimbursed cost is an unwanted compulsion to assist fast-food employee speech.

62. While the NRA's members have no issue with (and indeed share the goal of) many minimum labor standards and protections, this law goes further—it seeks not to directly impose labor standards, but instead to conscript fast-food employers *to advocate for, endorse, and assist in advocating for* these policy changes, including for the SEIU's own advancement. The City may impose a broad swath of policies, but the First Amendment prohibits it from forcing fast-food employers' political agreement with those policies.

63. In sum, Defendants intend to compel fast food employers into assisting fast food employees' efforts to communicate political and ideological messages with which employers disagree. The Deduction Bill forces fast food employers to fund organizations affiliated with a movement that is, itself, designed and formed to disrupt the fast food industry in an effort to force fast food employers to voluntarily recognize the SEIU or its affiliates. Defendants further intend to associate fast food employers with speakers and messages with which employers would prefer not to associate. The Deduction Bill therefore has the purpose of compelling speech, compelling association with unwanted political and ideological groups, compelling the endorsement of those groups' (and employees') messages, and compelling subsidies for these messages.

64. The Deduction Bill's provisions obligate fast food employers to facilitate employee speech, to associate themselves with both unwanted speakers and messages, and to subsidize that speech, under both penalty and color of law.

65. Fast food employers have no adequate remedy at law.

66. Because the law violates the U.S. Constitution, Defendants and their agencies, officers and employees should be restrained and enjoined from enforcing the Deduction Bill, which should be declared invalid. *See* 42 U.S.C. § 1983.

COUNT TWO
(42 U.S.C. § 1983, 28 U.S.C. § 2201, *Ex Parte Young*
Federal Labor Law Preemption)

67. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 66 of this complaint, as though fully set forth below.

68. The Supremacy Clause of the U.S. Constitution states that the “Laws of the United States . . . shall be the supreme Law of the Land.” U.S. CONST. art. VI. Federal courts have long recognized a cause of action in equity to prohibit the enforcement of state and local law that runs afoul of the Supremacy Clause. *See Friends of the E. Hampton Airport, Inc. v. Town of E. Hampton*, 841 F.3d 133, 144 (2d Cir. 2016), *cert. denied sub nom. Town of E. Hampton v. Friends of the E. Hampton Airport, Inc.*, 137 S. Ct. 2295 (2017); *see also* 42 U.S.C. § 1983; *Ex parte Young*, 209 U.S. 123, 155-63 (1908).

69. The Labor Management Relations Act, 29 U.S.C. § 186 *et seq.* (“LMRA”), provides that it is unlawful for an employer “to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value” to “any representative of any of his employees who are employed in an industry affecting commerce;” or to “any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of

the employees of such employer who are employed in an industry affecting commerce,” among other restrictions. LMRA § 302(a); 29 U.S.C. § 186(a).

70. The LMRA provides an exception that allows covered employers and labor organizations to enter into agreements for payroll deduction of labor organization dues, fees, or assessments and to apply such agreements in a manner consistent with the LMRA. LMRA § 302(c)(4); 29 U.S.C. § 186(c)(4). The LMRA preempts the entire field of such a dues “checkoff.”

71. The prerequisites of LMRA § 302(c)(4) are not met here.

72. The decision whether an entity is a “representative” or “labor organization” under LMRA § 302(a) is a matter of federal law.

73. With respect to groups like Fast Food Justice, enforcing the Deduction Bill places employers in a “Catch-22” of violating either federal or local law.

74. Accordingly, the Deduction Bill is preempted under the LMRA under both field and conflict preemption principles, and is therefore unenforceable.

75. The decision whether an entity is a “labor organization” under NLRA § 2(5) also is a matter of federal law and within the exclusive jurisdiction of the National Labor Relations Board. *See, e.g.*, NLRA § 8(a)(2); 29 U.S.C. § 158(a)(2).

76. Because the Deduction Bill attempts to vest this authority with Defendants acting under color of law, it infringes on activity that the NLRA protects or prohibits or arguably protects or prohibits, as well as on the exclusive jurisdiction of the National Labor Relations Board. As such, the Bill is preempted under *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), and is therefore unenforceable. Indeed, the SEIU and Fast Food Justice, at the very least an arguable labor organization itself, have already taken concrete steps towards their

stated goal of forcing employers under the Deduction Law to make payments to their fast food industry organizing efforts.

77. The Deduction Bill also illustrates precisely the kind of local interference in labor-management relations that the NLRA forbids, rather than leaving such arrangements to negotiations and the free play of economic forces.

78. Therefore, the Deduction Bill is also preempted by the NLRA because the Deduction Bill violates the right to be free from local interference with federal rights under the NLRA, and is therefore unenforceable. *Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 140 (1976).

79. Because the law is unenforceable, Defendants and their agencies, officers and employees should be restrained and enjoined from enforcing the Deduction Bill, which should be declared invalid.

COSTS AND ATTORNEYS' FEES

80. Pursuant to 42 U.S.C. § 1988, Plaintiffs seek an award of its costs, including reasonable attorneys' fees, incurred in the litigation of this case.

REQUEST FOR RELIEF

81. Plaintiffs pray for a permanent injunction, declaratory relief that the Deduction Bill is invalid, unenforceable, unlawful, and that this Court enters a judgment declaring that the Deduction Bill: (1) violates Plaintiffs' and the members' First Amendment free speech rights by compelling fast-food employers to speak; (2) violates Plaintiffs' and the members' First Amendment rights by requiring the endorsement of and association with messages with which those entities disagree; (3) requires fast food employers to subsidize employees' speech; (4) is preempted by the NLRA and/or LMRA by empowering Defendants to determine which entities are "labor organizations;" and (5) is preempted by the NLRA and/or LMRA by compelling fast

food employers to agree to collect and remit fast food employees' donations to third-party organizations.

82. Plaintiffs pray for an injunction prohibiting the City, the Commissioner, and their agents from implementing or enforcing the Deduction Bill against the NRA's members.

83. Plaintiffs pray for such additional or different relief as the Court deems just and proper, including an award of reasonable attorneys' fees and the costs of this action.

Dated: November 21, 2017

Respectfully submitted,

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National Restaurant Association

EXHIBIT A



The New York City Council

City Hall
New York, NY 10007

Legislation Text

File #: Int 1384-2016, **Version:** A

Int. No. 1384-A

By Council Members Ferreras-Copeland, Lander, Williams, Kallos, Rodriguez, Richards, Torres, Rose, Levin, Dromm, Cohen, Reynoso, Espinal, Levine, Vacca, Rosenthal, Johnson, Salamanca, Van Bramer, Koslowitz, Lancman, Menchaca, Chin, Treyger, Crowley, Cabrera, Eugene, Maisel, Miller, Cumbo, Cornegy, Barron, Constantinides, Gibson, Palma, Garodnick, Greenfield, Perkins, Mendez, Wills and the Public Advocate (Ms. James)

A Local Law to amend the administrative code of the city of New York, in relation to providing fast food employees the ability to make voluntary contributions to not-for-profit organizations of their choice through payroll deductions, and the expiration and repeal of such amendment

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 13 to read as follows:

CHAPTER 13

PAY DEDUCTIONS FOR CONTRIBUTIONS TO NOT-FOR-PROFIT ORGANIZATIONS

§ 20-1301 Definitions. For purposes of this chapter, the following terms have the following meanings:

Chain. The term “chain” means a set of establishments that share a common brand or that are characterized by standardized options for decor, marketing, packaging, products and services.

Director. The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

Employee. The term “employee” means any person covered by the definition of “employee” set forth in subdivision 5 of section 651 of the labor law or any person covered by the definition of “employee” set forth in subsection (e) of section 203 of title 29 of the United States code, any person covered by the definition of an

File #: Int 1384-2016, **Version:** A

“employee” set forth in subsection (3) of section 152 of title 29 of the United States code, any person covered by the definition of “public employee” in subdivision 7 of section 201 of the civil service law, or any person covered by the definition of “employees” in subdivision 3 of section 701 of the labor law and who is employed within the city and who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law. Notwithstanding any other provision of this section, the term “employee” does not include any person who is employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

Employer. The term “employer” means any person or entity covered by the definition of “employer” set forth in subdivision 6 of section 651 of the labor law or any person or entity covered by the definition of “employer” set forth in in subsection (d) of section 203 of title 29 of the United States code, any person or entity covered by the definition of “employer” set forth in subsection (2) of section 152 of title 29 of the United States code, any person or entity covered by the definition of a “public employer” in subdivision 6 of section 201 of the civil service law, or any person or entity covered by the definition of “employer” in subdivision 2 of section 701 of the labor law. Notwithstanding any other provision of this section, the term does not include (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city or any local government, municipality or county or agency or other body thereof.

Fast food employee. The term “fast food employee” means any employee employed or permitted to work at or for a fast food establishment that is located within the city, by any employer, where such job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security,

File #: Int 1384-2016, **Version:** A

stocking supplies or equipment, cleaning or routine maintenance.

Fast food employer. The term “fast food employer” means any employer that employs a fast food employee at a fast food establishment.

Fast food establishment. The term “fast food establishment” means any establishment (i) that has as its primary purpose serving food or drink items; (ii) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer’s location; (iii) that offers limited service; (iv) that is part of a chain; and (v) that is one of 30 or more establishments nationally, including (A) an integrated enterprise that owns or operates 30 or more such establishments in the aggregate nationally or (B) an establishment operated pursuant to a franchise where the franchisor and the franchisees of such franchisor own or operate 30 or more such establishments in the aggregate nationally. The term “fast food establishment” includes such establishments located within non-fast food establishments.

Franchise. The term “franchise” has the same definition as set forth in section 681 of the general business law.

Franchisee. The term “franchisee” means a person or entity to whom a franchise is granted.

Franchisor. The term “franchisor” means a person or entity who grants a franchise to another person or entity.

Integrated enterprise. The term “integrated enterprise” means two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors: (i) degree of interrelation between the operations of multiple entities; (ii) degree to which the entities share common management; (iii) centralized control of labor relations; and (iv) degree of common ownership or financial control.

Not-for-profit. The term “not-for-profit” means an entity that is organized under the not-for-profit corporation law or the law governing incorporation of not-for-profit organizations in the jurisdiction of its incorporation.

File #: Int 1384-2016, **Version:** A

Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

§ 20-1302 Requirement to deduct and remit voluntary contributions to not-for-profits. a. A fast food employer shall, upon authorization from a fast food employee and upon receipt of a registration letter as provided in subdivision b of section 20-1303 pertaining to the relevant not-for-profit, deduct voluntary contributions from such fast food employee’s paycheck and remit them to the not-for-profit designated by such fast food employee. An authorization shall be written, whether on paper or by an electronic or other method prescribed by the director, and shall include:

1. The fast food employee’s signature;

2. The fast food employee’s name and physical address;

3. The amount, frequency and start date of the contribution;

4. The name, physical address, email address, web address, if any, and phone number of the not-for-profit and a contact for an employee who seeks to revoke authorization and

5. A statement notifying the fast food employee that contributions are voluntary and that the authorization to deduct is revocable at any time by submitting a written revocation to the not-for-profit.

b. An authorization may be submitted to a fast food employer by either a not-for-profit or a fast food employee.

c. An authorization is in effect until the fast food employee revokes the authorization in writing, whether on paper or by an electronic or other method prescribed by the director, to the not-for-profit. The not-for-profit shall transmit the revocation to the fast food employer.

d. The fast food employer shall provide a copy of any authorization and any revocation to the not-for-profit to which it pertains and to the fast food employee who submitted it within five business days of receipt.

e. The fast food employer shall begin or end deductions no later than the first pay period after 15 days of receipt of the authorization or of receipt of the revocation. In the case of authorization, the fast food

File #: Int 1384-2016, **Version:** A

employer shall remit the deductions to the not-for-profit, by the method of transmission that such organization requests, no later than 15 days after deduction. Deductions may only be taken from paychecks issued after the date the fast food employer receives the authorization, and the deduction amount from any one paycheck shall not exceed the maximum amount specified by the fast food employee. The fast food employer must comply with state law regarding notation of deductions on fast food employees' statements of wages.

f. A fast food employer is not required to honor an authorization for a contribution to a not-for-profit:

1. Of less than \$6 per paycheck if the fast food employee is paid every two weeks, or less than \$3 per paycheck if the fast food employee is paid every week; or

2. More than once per pay period.

g. Processing fee. Upon request by a fast food employer, the not-for-profit shall reimburse the fast food employer for the costs associated with deduction and remittance, as calculated pursuant to rules of the office.

h. Written notice of rights and obligations. A fast food employer shall provide written notice to its fast food employees of their rights and of the fast food employer's obligations under this section on a form provided by the office. Such notice shall be posted in a conspicuous place in the fast food establishment. Such notice shall include a statement that labor organizations as defined by the national labor relations act, employee organizations as defined by subdivision 5 of section 201 of the civil service law, and labor organizations as defined in subdivision 5 of section 701 of the labor law are not permitted to seek remittances under this chapter pursuant to subdivision b of section 20-1310.

§ 20-1303 Registration by not-for-profits required. a. Before it may accept deductions pursuant to this chapter, a not-for-profit shall register with the office by providing the following in the manner prescribed by the office:

1. The name, physical address, email address, web address, if any, and phone number of the not-for-profit and a contact;

2. Proof of status as a not-for-profit that has not been suspended or dissolved pursuant to the laws of the

File #: Int 1384-2016, **Version:** A

state of its incorporation;

3. Facially valid written authorizations in the form described in subdivision a of section 20-1302 from at least 500 fast food employees, though such authorizations need not be from employees employed by the same fast food employer;

4. Proof that the not-for-profit has provided the information required by section 20-1304 to the fast food employee; and

5. The not-for-profit organization's form 990 of the Internal Revenue Service of the United States Department of the Treasury or other equivalent tax filing for the three most recent tax years for which such form was filed.

b. The office shall issue a registration letter to the registered not-for-profit confirming that it has met the conditions required to trigger the requirements of this chapter. A not-for-profit or fast food employee seeking to have a fast food employer make payroll deductions pursuant to this chapter must provide a copy of the office's registration letter to the relevant fast food employer along with the request for such deductions authorization.

§ 20-1304 Not-for-profit required disclosure. a. Before any deduction pursuant to this chapter is made, the not-for-profit shall provide the relevant fast food employee the following information concerning its operations:

1. Name, contact, physical address, email address, web address, if any, and phone number;

2. Information about the not-for-profit's governance, which shall include any officers and directors and may include members or shareholders as the director shall require;

3. Information about the not-for-profit's mission, programs and areas of focus;

4. When prescribed by the director, a list of the not-for-profit's employees;

5. Information about the not-for-profit's finances, including its sources of funding, budget and expenditures; and

6. A statement that labor organizations as defined by the national labor relations act, employee

File #: Int 1384-2016, **Version:** A

organizations as defined by subdivision 5 of section 201 of the civil service law, and labor organizations as defined in subdivision 5 of section 701 of the labor law are not permitted to seek remittances under this chapter pursuant to subdivision b of section 20-1310.

b. The not-for-profit may satisfy the disclosure requirements of this section by the conspicuous posting of the information on a single webpage on the website of the covered not-for-profit dedicated to fulfilling the disclosure requirements of this section, provided that the website address of such page is included on the authorization described in section 20-1302 or other written document provided to the fast food employee and that such website address is preceded by language indicating that legally required disclosures are contained there.

§ 20-1305 Recordkeeping. a. A fast food employer must keep records of the following for two years:

1. Deduction authorizations and revocations made pursuant to this chapter;

2. Remittances pursuant to this chapter;

3. Deductions pursuant to this chapter;

4. A copy of the authorization required by subdivision d of section 20-1302;

5. Proof of distribution of the notice to fast food employees required by subdivision h of section 20-1302;

b. The failure to keep records required by this section creates an inference that such records would be unfavorable to that fast food employer, and a factfinder may use such inference to establish facts in support of a final determination pursuant to sections 20-1307 and 20-1308.

§ 20-1306 Retaliation prohibited. No person shall take any adverse action against a fast food employee that penalizes such employee for, or is reasonably likely to deter such employee from, exercising or attempting to exercise any right protected under this chapter. Taking an adverse action includes threatening, intimidating, disciplining, discharging, demoting, suspending or harassing a fast food employee, reducing the hours or pay of a fast food employee, informing another employer that a fast food employee has engaged in activities protected

File #: Int 1384-2016, **Version:** A

by this chapter, and discriminating against the fast food employee, including actions related to perceived immigration status or work authorization. A fast food employee need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

§ 20-1307 Enforcement. a. The office shall investigate potential violations and enforce the provisions of this chapter consistent with sections 20-a and 2203 of the charter and with all powers and duties described therein and according to rules and policies of the office.

b. Violations by fast food employers. 1. Except as provided in subdivision c of this section, an aggrieved fast food employee or duly authorized representative thereof or an aggrieved not-for-profit may file a complaint with the office regarding violations of this chapter by a fast food employer. Except for an allegation of retaliation in violation of section 20-1306, the office shall only investigate such a complaint if the relevant not-for-profit demonstrates that it has complied with sections 20-1303 and 20-1304 by providing a copy of the registration letter.

2. Except as otherwise provided in subdivision c of this section, if a fast food employer is found to have violated this chapter, including by retaliation, the office may award any of the following, in addition to any other remedy provided in the charter or other law:

(a) Deductions and remittances as authorized by the fast food employee and the payment of interest to the not-for-profit from the date of the failure to deduct or remit based on the interest rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the banking law, but in any event at a rate of no less than six percent per year; and

(b) Payment of a further sum as a civil penalty in an amount not exceeding \$500 for each violation of this chapter. However, in cases where a final disposition has been entered against a fast food employer twice within any consecutive three-year period determining that such fast food employer has willfully failed to deduct or remit funds in accordance with this chapter, or has retaliated against a fast food employee in violation of section 20-1306, the office may impose a civil penalty in an amount not exceeding \$1,000 for each violation of

File #: Int 1384-2016, **Version:** A

this chapter.

(c) Reinstatement, back pay and other appropriate relief for any fast food employee found to have been subject to retaliation in violation of section 20-1306.

3. In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, and the good faith of the fast food employer. No procedure or remedy set forth in this section is exclusive of or a prerequisite for asserting a claim for relief to enforce any rights under this chapter in a court of competent jurisdiction.

c. Failure to honor a revocation. A fast food employer or a not-for-profit that the office finds has failed to honor the revocation of a fast food employee of voluntary deductions and instead has retained contributions after revocation shall refund the fast food employee the amount of the contribution wrongfully retained. If the refund to the fast food employee is not made within 60 days of receipt of the revocation by the party that retained the contribution, the office may require the payment of interest on the amount of the refund owed based on the rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the banking law, but in any event at a rate of no less than six percent per year.

d. False or misleading disclosures to fast food employees. It is a violation of this chapter for a not-for-profit intentionally to make materially false or misleading disclosures to fast food employees under subdivision a of section 20-1304, and as set forth in rules prescribed by the director. Where a violation is established, such not-for-profit shall cure the false or misleading statements to fast food employees within 30 days. Upon establishing a second such violation within two years of a previous violation, the director shall revoke any previously issued letter of registration as set forth in subdivision b of section 20-1303.

e. The office shall make rules establishing a process for such interested parties as the office may identify by rule to petition the director to re-examine or revoke a not-for-profit's registration pursuant to this chapter.

f. Any party with rights under this chapter may bring an action pursuant to article 78 of the civil practice law and rules to enforce, vacate or modify an order, determination or other disposition of the office, the office

File #: Int 1384-2016, **Version:** A

of administrative trials and hearings or other relevant tribunal.

§ 20-1308 Civil action. a. Except as otherwise provided by law, any person claiming to be aggrieved by a fast food employer's violation of this chapter has a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, if the relevant not-for-profit demonstrates that it has complied with sections 20-1303 and 20-1304 by providing a copy of the registration letter from the office unless such person has filed a complaint with the office with respect to such claim. If the court finds in favor of the plaintiff, it shall award such person, in addition to other relief, reasonable attorney's fees and costs.

b. Notwithstanding any inconsistent provision of subdivision a of this section, if the office dismisses a complaint or the complaint is withdrawn, an aggrieved person maintains all rights to commence a civil action pursuant to this section.

1. An employee need not file a complaint with the office before bringing a civil action; however, no person shall file a civil action after filing a complaint with the office unless such complaint has been withdrawn or dismissed without prejudice to further action.

2. No person shall file a complaint with the office after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

c. A civil action under this section shall be commenced in accordance with subdivision 2 of section 214 of the civil practice law and rules.

d. This chapter does not limit a fast food employee's right to bring any other action authorized by law.

§ 20-1309 Limitations period. The office shall not investigate violations of this chapter committed more than two years before the filing of a complaint or the commencement of such investigation, whichever is earlier. Each failure to comply with this chapter constitutes a separate violation; a pattern of such violations is a continuing violation for purposes of assessing the limitations period.

§ 20-1310 Application; exclusion of labor organizations. a. This chapter does not discourage, prohibit,

File #: Int 1384-2016, **Version:** A

preempt or displace any law, regulation, rule, requirement, written policy or standard that is at least as protective of a fast food employee as the requirements of this chapter.

b. This chapter does not authorize deductions prohibited by section 193 of the labor law or remittances to labor organizations. For purposes of this subdivision, the term “labor organization shall mean:

1. A “labor organization” as defined in subdivision 5 of section 701 of the labor law;

2. An “employee organization” as defined in subdivision 5 of section 201 of the civil service law; or

3. A “labor organization” within the meaning of subsection (5) of section 152 of title 29 of the United States code, which defines a labor organization as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work,” as such definition is interpreted by the national labor relations board.

c. The office shall promulgate rules necessary to ensure that this law will be applied in a manner consistent with federal or state labor law and will not affect the relationship among workers or employees and employers, and the entities described in subdivision b, except as specifically provided in this chapter.

§ 2. This local law takes effect 180 days after it becomes law and expires and is deemed repealed 2 years after such effective date.

MWC
5/18/2017 2:46 PM
LS 9052 and LS 8636

EXHIBIT B

NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS

Notice of Proposed Hearing and Opportunity to Comment

What are we proposing?

The Department of Consumer Affairs Office of Labor Policy and Standards is proposing rules to implement Chapter 13 of Title 20 of the NYC Administrative Code, and provide guidance to covered employers and protected workers.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, November 17. The hearing will be in the 5th floor hearing room at 42 Broadway, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rulecomments@dca.nyc.gov.
- **Mail.** You can mail written comments to Casey Adams, Deputy Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Fl. New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, 347-788-4689.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-436-0095. You can also sign up in the hearing room before the hearing begins on Friday, November 17. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes. Written comments must be submitted on or before 5 PM on Friday, November 17.

What if I need assistance to participate in the Hearing? You must tell the Department's External Affairs Division if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5 PM on Wednesday, November 15.

This location has the following accessibility option(s) available: Wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the Website at <http://rules.cityofnewyork.us/>. A

few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available between the hours of 9 a.m. and 5 p.m. to the public at the office of Casey Adams, Deputy Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.

What authorizes the Department of Consumer Affairs Office of Labor Policy and Standards to make this rule? Sections 20-a, 1043, and 2203(f) of the New York City Charter and Chapter 13 of Title 20 of the New York City Administrative Code authorize the Department of Consumer Affairs Office of Labor Policy & Standards to make these proposed rules. These proposed rules were not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year.

Where can I find the Department of Consumer Affairs' rules? The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

In May 2017, New York City Mayor Bill de Blasio signed into law a bill to give fast food employees the ability to make voluntary contributions to not-for-profit organizations through payroll deductions under certain circumstances.

These rules add a new Chapter 15 to Title 6 of the Rules of the City of New York to implement this new law and provide guidance on when and how fast food employers must make such payroll deductions. Specifically, these rules:

- Define terms used in the new Pay Deductions law.
- Clarify that the authorization shall state that a not-for-profit's contact person is responsible for processing authorizations and revocations.
- Clarify that an electronic signature has the same effect as a handwritten signature.
- Establish when an authorization is presumed to have been received by an employer.
- Clarify that a fast food employer shall not begin deductions prior to the start date indicated on an authorization.
- Establish that a not-for-profit must notify fast food employees of when the not-for-profit intends to transmit authorizations to the fast food employer if more than 180 days has elapsed since the not-for-profit received an employee's authorization and the not-for-profit has not yet transmitted it.
- Establish which of their employees not-for-profits must include on their required disclosures.
- Clarify that IRS form 990, or an equivalent tax form if no 990 was filed, is sufficient for disclosing a not-for-profit's finances.
- Establish the format for posting disclosures on a single webpage.
- Clarify what a false or misleading disclosure is.
- Establish what constitutes an acceptable form of proof of not-for-profit status.
- Establish what constitutes acceptable proof that a not-for-profit made required disclosures to fast food employees.
- Establish how costs associated with deductions and remittances will be calculated.
- Clarify how an authorization may be revoked.
- Establish procedures for reexamining or revoking a not-for-profit's registration.
- Clarify what rights are protected against retaliation.
- Establish procedures for enforcement.
- Establish procedures relating to civil actions.
- Clarify the records fast food employers must retain.

Sections 20-a, 1043, and 2203(f) of the New York City Charter and Chapter 13 of Title 20 of the New York City Administrative Code authorize the Department of Consumer Affairs Office of Labor Policy & Standards to make these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rules

Section 1. A new Chapter 15 of Title 6 of the Rules of the City of New York is added to read as follows:

§ 15-01 Definitions

- (a) As used in Title 20, Chapter 13 of the New York City Administrative Code and this chapter, the following terms have the following meanings:

“Contact person” means the not-for-profit employee or agent responsible for processing authorizations and requests to revoke authorizations.

“Electronic signature” means a computer data compilation of any symbol or series of symbols executed, adopted, or authorized by a natural person attached to or logically associated with an electronic record and executed or adopted by a natural person with the intent to sign the record. An electronic signature is considered to be “attached to or logically associated with an electronic record” if the electronic signature is linked to the record during transmission and storage.

“Pay Deductions Law” means Title 20, Chapter 13 of the New York City Administrative Code.

“Signature” means an original, handwritten signature or an electronic signature.

“Valid authorization” means a written authorization from a fast food employee to deduct wages from the fast food employee’s paycheck for remittance to a not-for-profit that complies with section 20-1302 of the New York City Administrative Code and section 15-03 of these Rules.

- (b) As used in this chapter, the following terms have the same meaning as set forth in Section 20-1301 of the Pay Deductions Law: “fast food employee,” “fast food employer,” “fast food establishment,” “not-for-profit,” and “office.”

§ 15-02 Valid Authorization

- (a) A valid authorization must contain the following: (i) the relevant fast food employee’s signature and date that the authorization was signed by the fast food employee; (ii) the fast food employee’s name and physical address; (iii) the amount, frequency, and start date of the contribution; (iv) the name, physical address, email address, web address, if any, and phone number of the not-for-profit; (v) the contact person’s title, telephone number, and email address; and (vi) a statement notifying the fast food employee that contributions are voluntary and that the authorization to deduct wages is revocable at any time by submitting a written revocation to the not-for-profit or contact person.
- (b) A valid authorization must include a statement that the fast food employee can revoke an authorization at any time, immediately followed by the contact person’s title and email address.
- (c) Valid authorizations shall be effective with respect to any fast food employer that succeeds another fast food employer in ownership or control of a fast food

establishment, whether through merger, pledge, transfer, assignment, operation of law, or otherwise.

- (d) A valid authorization may be transmitted to a not-for-profit or a fast food employer by personal delivery, mail, facsimile, email, or other means of electronic transmission.

§ 15-03 Electronic Authorization to Deduct and Remit Wages

- (a) The use of an electronic signature shall have the same validity and effect as the use of a handwritten signature. Each electronic signature shall be unique to one individual.
- (b) Each individual shall have a single electronic signature.
- (c) Before an organization establishes, assigns, certifies or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization must verify the identity of the individual by sending the individual an email or a text message to a mobile phone with an electronic link after the individual submits the electronic authorization. Once the individual clicks on the link in the email or text message, the authorization is verified and the electronic signature is valid.
- (d) Not-for-profits using electronic signatures must, prior to or at the time of such use and upon the office's request, certify to the office: (i) that the electronic signatures in their system are intended to be the legally binding equivalent of traditional handwritten signatures, and (ii) the process by which the not-for-profit verifies the signatures.
- (e) Submission of an electronic signature must include verification that the individual is a natural person.

§ 15-04 Authorization to Deduct and Remit Wages

- (a) A fast food employer must begin to deduct wages from the fast food employee's pay check no later than the first pay period after 15 days following receipt of the valid authorization, and remit the deductions to the not-for-profit no later than 15 days after the deduction is made, provided that the not-for-profit has registered with the office and either the fast food employee or not-for-profit has provided a registration letter from the office to the fast food employer.
- (b) A valid authorization or registration letter is presumed to have been received by the fast food employer upon the earlier of (i) the date the document is personally delivered to a managerial or supervisory employee or agent of the fast food employer, or (ii) 10 days following service on a managerial or supervisory employee or agent of the fast food employer by mail, email, or facsimile.
- (c) A fast food employer must not begin deductions earlier than the start date of contribution a fast food employee indicates on an authorization.
- (d) A not-for-profit that has not transmitted the valid authorization and registration to the fast food employer within 180 days of receiving a fast food employee's valid authorization must, at least 10 days prior to transmitting the authorization and its registration to the fast food employer, send the fast food employee a letter by mail to the address indicated on the authorization or by email, if the not-for-profit has solicited the fast food employee's email address, that includes (i) the date the not-for-profit plans to transmit the authorization and registration letter to the fast food employer, which must be no earlier than 10 days after the date that the letter to the fast food employee is mailed, (ii) the anticipated date by which deductions will begin, and (iii) the contact person's title, telephone number, and email address.

§ 15-05 Required Disclosures by Not-for-Profits to Fast Food Employees

- (a) The not-for-profit must provide a fast food employee with disclosures required by section 20-1304(a) of the Pay Deductions Law no later than the time at which the fast food employee authorizes remittance of deductions to the not-for-profit.
- (b) Required disclosures pursuant to section 20-1304(a) of the Pay Deductions Law must include a list of individuals who performed work within the 5 years preceding the date that the fast food employee signed the authorization for the not-for-profit and who also either (i) are or were trustees of the not-for-profit, or (ii) receive(d) more than \$100,000 in compensation from the not-for-profit or a related organization in any single fiscal year. Such list must include the names and titles of such individuals.
- (c) A not-for-profit may satisfy the requirements of section 20-1304(a)(5) of the Pay Deductions Law by submitting the organization's form 990 of the Internal Revenue Service of the United States Department of the Treasury or, if the organization did not file a form 990, another equivalent tax filing that reflects the organization's funding, budget, and expenditures, for the three most recent tax years for which such form was filed.
- (d) If a not-for-profit chooses to post its required disclosures on a single webpage pursuant to section 20-1304(b) of the Pay Deductions Law:
 - i. The text on the webpage must be a sans serif font and in a minimum size of 12 point font; and
 - ii. The URL for the webpage containing the required disclosures must be no more than 50 characters in length.
- (e) A not-for-profit must not intentionally make materially false or misleading disclosures to fast food employees.
 - i. A disclosure is "materially false" when it is both untrue and would have made a reasonable person more likely to contribute funds to the not-for-profit.
 - ii. A disclosure is "misleading" when it is formatted, organized, arranged, or worded in such a way as to neutralize, conceal, or omit information that, if known by the fast food employee, would make a reasonable person less likely to contribute funds to the not-for-profit.
 - iii. Disclosure of materially false or misleading information is "intentional" when the not-for-profit was aware that the information was materially false or misleading at the time of disclosure.
 - iv. A not-for-profit must cure a materially false or misleading disclosure for each fast food employee who received the false or misleading disclosure within 30 days of being found in violation of this section or section 20-1307(d) of the Pay Deductions Law by the office of administrative trials and hearings.

§ 15-06 Not-for-Profit Registration

- (a) A not-for-profit must register with the office by providing the information required under section 20-1303(a) of the Pay Deductions Law to the office electronically, such as by email, providing the office with access to cloud-based storage, or by personally delivering or mailing one or more CD-Rs or DVD-Rs to the office.
- (b) Authorizations submitted pursuant to section 20-1303(a)(3) of the Pay Deductions Law must be signed no earlier than 270 days before the date the not-for-profit submits its registration to the office pursuant to subdivision (a).
- (c) Any of the following will constitute acceptable proof of status as an active not-for-profit for purposes of section 20-1303(a)(2) of the Pay Deductions Law:

- i. A copy of an Internal Revenue Service affirmation or determination letter confirming the not-for-profit's tax-exempt status issued to the not-for-profit within the 120 days preceding the letter's submission to the office;
 - ii. A letter from a state taxing body or a state attorney general certifying that the organization is a not-for-profit organization operating within the State and no part of its net earnings may lawfully benefit any private shareholder or individual, which is issued to the not-for-profit within the 120 days preceding the letter's submission to the office for purposes of registration;
 - iii. A certified copy of the not-for-profit's certificate of incorporation or similar document if such document explicitly identifies the organization as an active not-for-profit, and such document was issued within the 120 days preceding its submission to the office for purposes of registration; or
 - iv. Proof that the not-for-profit was listed in the Internal Revenue Service's online database of organizations eligible to receive tax-deductible charitable contributions within the 120 days preceding submission to the office for purposes of registration.
- (d) Either of the following will constitute acceptable proof that a not-for-profit has provided the required disclosures to a fast food employee pursuant to section 20-1304(a) of the Pay Deductions Law:
- i. Valid authorizations containing the URL of the webpage containing the required disclosures and screenshot(s) depicting each version of the webpage associated with the URL that is written on the authorization during the range of signature dates of the valid authorizations, or
 - ii. A written acknowledgement of receipt of the required disclosures signed and dated by each fast food employee who signed the authorizations not covered by item (i) of this clause, submitted pursuant to section 20-1303(a)(3) of the Pay Deductions Law along with a copy of the writing containing the required disclosures or screenshot(s) depicting each version of the webpage provided to the fast food employees containing the required disclosures over the period covering the dates on the written acknowledgement of receipt.
- (e) The office shall issue a registration letter to the not-for-profit confirming that it has met the conditions required for registration as soon as practicable and in no case more than 14 days after the office has determined that the requirements for registration have been met. A not-for-profit shall be considered registered upon its receipt of the registration letter from the office.

§ 15-07 Method of and Costs Associated with Remitting Deductions

- (a) A not-for-profit must notify a fast food employer in writing of the method by which deductions authorized by fast food employees shall be remitted to the not-for-profit. Such method and its associated costs must be reasonable and consistent with standard deductions remittance practices for fast food employers, and, where possible, should be compatible with the fast food employer's existing processes for remitting deductions. Subject to subdivision (b), the maximum amount per transaction per fast food employee that a fast food employer may charge a not-for-profit is \$0.30.
- (b) A fast food employer may seek an exemption from the maximum amount set forth in subdivision (a) by demonstrating to the office that the employer's actual costs exceed that maximum amount.
- (c) A fast food employer's request to be reimbursed by the not-for-profit pursuant to section 20-1302(g) of the Pay Deductions Law must be made in writing and include the cost calculations prescribed in subdivision (d) of this section.

- (d) Costs associated with deductions and remittances shall be calculated based on the actual costs to a fast food employer of making deductions from a fast food employee's paycheck and remitting those deductions to the not-for-profit the fast food employee designated.
- (e) Upon a not-for-profit's request, a fast food employer remitting deductions to that not-for-profit organization pursuant to this chapter must simultaneously with the remittance provide the following information:
 - 1. Name of the fast food employer;
 - 2. For each fast food employee for whom the fast food employer is remitting:
 - (i) name
 - (ii) fast food establishment address
 - (iii) home address
 - (iv) phone number
 - (v) email address, if any
 - (vi) amount of deduction and
 - (vii) date and payroll period of deduction
 - 3. Name of any fast food employee who separated from employment with the fast food employer in the preceding payroll period who had authorized deductions pursuant to this chapter.
- (f) Pursuant to section 20-1302(g) of the Pay Deductions Law, a not-for-profit must reimburse a fast food employer as frequently as the fast food employer requests, provided that a not-for-profit need not honor a fast food employer's request(s) to be reimbursed more frequently than every two weeks.

§ 15-08 Revocations

- (a) A fast food employee's revocation by mail, facsimile, email, web submission, or text message to the not-for-profit or contact person will constitute a revocation in writing.
- (b) If a fast food employee submits a revocation to a fast food employer instead of to the not-for-profit, the fast food employer must provide a copy of the revocation to the not-for-profit within five business days of receipt.
- (c) For purposes of Section 20-1302(e) of the Pay Deductions Law, a revocation is presumed received by the fast food employer upon the earlier of (i) the date of delivery from the not-for-profit to the fast food employer, or, (ii) in the event that a fast food employee delivers the revocation to the fast food employer, the date the revocation is received by the not-for-profit.
- (d) A not-for-profit must not submit an authorization that has been revoked in support of an application for a registration letter.

§ 15-09 Petition to Re-Examine or Revoke a Not-for-Profit's Registration

- (a) The term "interested party" as used in section 20-1307(e) of the Pay Deductions Law shall include: any current or former fast food employee, any authorized representative of a current or former fast food employee, any fast food employer required to make deductions pursuant to the Pay Deductions Law, any not-for-profit, any labor organization or employee organization as those terms are defined in Section 20-1310(b) of the Pay Deductions Law, and the New York State Attorney General.
- (b) Petitions to re-examine or revoke a not-for-profit's registration must be in writing, in the form of a letter addressed to the director, and sent to the office by mail, email, or facsimile.

- (c) The office shall not register and shall revoke any previously issued registrations of not-for-profits that collect authorization cards or other documents related to membership in a labor organization or with respect to a showing of interest or vote for certification, decertification, or deauthorization of a labor organization, upon receiving proof that the not-for-profit is engaging in such activities.

§ 15-10 Retaliation

For purposes of section 20-1306 of the Pay Deductions Law, the phrases “any right protected under this chapter” and “activities protected by this chapter” include, but are not limited to, the right to: sign an authorization, submit an authorization, revoke an authorization, file a complaint with the office, file and maintain a civil action based on the Pay Deductions Law, and communicate with any person regarding the above activities.

§ 15-11 Enforcement and Penalties

- (a) A fast food employee or a not-for-profit may file a complaint with the office alleging violations of the Pay Deductions Law by a fast food employer.
- (b) A not-for-profit that files a complaint with the office must submit with its complaint a copy of the not-for-profit’s registration letter. The office shall dismiss a complaint filed by a not-for-profit if the not-for-profit’s complaint does not include a copy of its registration letter.
- (c) Notwithstanding subdivision b, the office shall investigate any complaint that alleges retaliation in violation of the Pay Deductions Law, regardless of whether the relevant not-for-profit has registered with the office.
- (d) If, as a result of an investigation, the office determines that a fast food employee’s wages were deducted without a valid authorization or after such time as deductions should have ended pursuant to a revocation, the fast food employer or not-for-profit that retains the deductions shall be liable for the reimbursement and interest prescribed pursuant to section 20-1307(c) of the Pay Deductions Law.
- (e) A fast food employer found to be in violation of the Pay Deductions Law shall be liable for the civil penalties due pursuant to section 20-1307(b)(2)(b) of the Pay Deductions Law. Such civil penalties shall be imposed on a per fast food employee basis.

§ 15-12 Civil Actions

- (a) A fast food employee or not-for-profit who filed a complaint with the office pursuant to the Pay Deductions Law and who intends to withdraw the complaint to pursue a civil action must withdraw the complaint in writing to the office prior to commencing a civil action that includes claims based on the Pay Deductions Law.
- (b) A fast food employee or not-for-profit who filed a civil action that includes any claims based on the Pay Deductions Law may file a complaint with the office upon a showing that the Pay Deductions Law claims in the civil action have been withdrawn or dismissed without prejudice to further action.
- (c) The withdrawal of a complaint or the commencement of a civil action by a fast food employee or not-for-profit does not preclude the office from investigating the fast food employer, or commencing, prosecuting, or settling a case against the fast food employer.

§ 15-13 Pattern of Violations

The phrase “pattern of such violations” in section 20-1309 of the Pay Deductions Law shall include a failure to deduct or remit deductions for a particular fast food employee or group of fast food employees, or a failure to honor the revocation(s) of a particular fast food employee or group of fast food employees more than twice in a six month period.

§ 15-14 Recordkeeping

- (a) Fast food employers must retain for two years copies of fast food employees' wage statements issued pursuant to state law requirements regarding notation of deductions.
- (b) A written acknowledgement of receipt of the notice required pursuant to section 20-1302(h) of the Pay Deductions Law signed and dated by each fast food employee along with a copy of the distributed notice shall constitute adequate proof of distribution for purposes of section 20-1305(a)(5) of the Pay Deductions Law.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Implementation of Pay Deductions Law

REFERENCE NUMBER: 2017 RG 076

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 16, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Implementation of Pay Deductions Law

REFERENCE NUMBER: DCA-61

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period/mechanism is provided under the proposed rules because the implementing laws do not provide for a cure period. However, the rules provide for resolution prior to a hearing via settlement.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 16, 2017
Date

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

PLAINTIFFS
RESTAURANT LAW CENTER, and NATIONAL RESTAURANT
ASSOCIATION

DEFENDANTS
CITY OF NEW YORK, and LORELEI SALAS, in her official capacity as
Commissioner of the NEW YORK CITY DEPARTMENT OF CONSUMER
AFFAIRS

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
SAM S. SHAULSON, DAVID I. MILLER
MORGAN, LEWIS & BOCKIUS LLP
101 PARK AVENUE, NEW YORK, NY 10178, T: (212) 309-6000

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

42 U.S.C. § 1983, Violation of the First Amendment of the U.S. Constitution;

42 U.S.C. § 1983, 28 U.S.C. § 2201, *Ex Parte Young*, Federal Labor Law Preemption

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE?

No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 151 MEDICARE ACT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- ☐ 160 STOCKHOLDERS SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MED MALPRACTICE

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☒ 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- ☐ 446 AMERICANS WITH DISABILITIES - OTHER
- ☐ 448 EDUCATION

REAL PROPERTY

- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY

- ☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- ☐ 365 PERSONAL INJURY PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

PRISONER PETITIONS

- ☐ 463 ALIEN DETAINEE
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS

- ☐ 550 CIVIL RIGHTS
- ☐ 555 PRISON CONDITION
- ☐ 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

FORFEITURE/PENALTY

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
- ☐ 21 USC 881
- ☐ 690 OTHER

PROPERTY RIGHTS

- ☐ 820 COPYRIGHTS
- ☐ 830 PATENT
- ☐ 835 PATENT-ABBREVIATED NEW DRUG APPLICATION
- ☐ 840 TRADEMARK

LABOR

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL RET INC SECURITY ACT (ERISA)

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- ☐ 422 APPEAL
- ☐ 28 USC 158
- ☐ 423 WITHDRAWAL
- ☐ 28 USC 157

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-THIRD PARTY
- ☐ 26 USC 7609

OTHER STATUTES

- ☐ 375 FALSE CLAIMS
- ☐ 376 QUI TAM
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 410 ANTITRUST
- ☐ 430 BANKS & BANKING
- ☐ 450 COMMERCE
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 896 ARBITRATION
- ☐ 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN *x* IN ONE BOX ONLY)**ORIGIN**

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation (Transferred)
 ☐ 7 Appeal to District Judge from Magistrate Judge
- ☐ a. all parties represented
 ☐ b. At least one party is pro se.
 ☐ 8 Multidistrict Litigation (Direct File)

(PLACE AN *x* IN ONE BOX ONLY)**BASIS OF JURISDICTION****IF DIVERSITY, INDICATE CITIZENSHIP BELOW.**

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION
 ☐ 4 DIVERSITY
- (U.S. NOT A PARTY)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] 1	DEF [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2	[] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Restaurant Law Center and National Restaurant Association, 2055 L Street NW, Suite 700, Washington, DC 20036

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

City of New York and Lorelei Salas, c/o Corporation Counsel, 100 Church Street, New York, NY 10007 (New York County)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN

/s/ Sam S. Shaulson

DATE 11/21/17 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo. October Yr. 1994)

RECEIPT #

Attorney Bar Code # SS-0460

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)