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

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*LUIS E. BENITEZ, individually and on behalf of
others similarly situated,*

Plaintiff,

-against-

KEITH RESTAURANT, INC. (d/b/a CHINA
CHALET), CHINA CHALET UPTOWN INC. (d/b/a
CHINA CHALET), and KEITH NG (a.k.a. KEITH
NGALET)

Defendants.

-----X

COMPLAINT

**COLLECTIVE ACTION
UNDER 29 U.S.C. § 216(b)**

ECF Case

Plaintiff Luis E. Benitez (“Plaintiff Benitez” or “Mr. Benitez”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Keith Restaurant, Inc. (d/b/a China chalet), China Chalet Uptown Inc. (d/b/a China Chalet) (“Defendant Corporations”), and Keith Ng (a.k.a. Keith Ngalet) (collectively, “Defendants”), upon information and belief, alleges as follows:

NATURE OF ACTION

1. Plaintiff Benitez was an employee of Defendants Keith Restaurant, Inc. (d/b/a China Chalet), China Chalet Uptown Inc. (d/b/a China Chalet) and Keith Ng (a.k.a. Keith Ngalet).

2. China Chalet is a Chinese Restaurant owned by Keith Ng (a.k.a. Keith Ngalet) located at 47 Broadway, New York, New York 10006.

3. Upon information and belief, Defendant Keith Ng (a.k.a. Keith Ngalet), serves or served as owner, manager, principal or agent of Defendant Corporations and through these corporate entities operates or operated the Chinese Restaurant as a joint or unified enterprise.

4. Plaintiff Benitez worked long days as a dishwasher and food preparer at the Chinese Restaurant located at 47 Broadway, New York, New York, 10006.

5. Plaintiff Benitez regularly worked for Defendants in excess of 40 hours per week, without appropriate minimum wage and/or overtime compensation for any of the hours that he worked each week.

6. Rather, Defendants failed to maintain accurate records of hours worked and failed to pay Plaintiff Benitez appropriately for any hours worked.

7. Further, Defendants failed to pay Plaintiff Benitez the required “spread of hours” pay for any day in which he had to work over 10 hours a day.

8. Defendants’ conduct extended beyond Plaintiff Benitez to all other similarly situated employees.

9. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Benitez and other employees to work in excess of forty (40) hours per week without providing the minimum wage and overtime compensation required by federal and state law and regulations.

10. Plaintiff Benitez now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”), and for violations of the N.Y. Lab. Law §§ 190 *et seq.* and 650 *et seq.* (the “NYLL”), and the “spread of hours” and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 142-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees, and costs.

11. Plaintiff Benitez seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1337 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Benitez’s State Law claims is conferred by 28 U.S.C. § 1367(a).

13. Venue is proper in this District under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their business in this district, and Plaintiff Benitez was employed by Defendants in this district.

PARTIES

Plaintiff

14. Plaintiff Luis E. Benitez (“Plaintiff Benitez” or “Mr. Benitez”) is an adult individual residing in Kings County, New York.

15. Plaintiff Benitez was employed by Defendants from approximately January 2, 2016 until on or about October 21, 2016.

16. At all relevant times to this complaint, Plaintiff Benitez was employed by Defendants as a dishwasher and food preparer at China Chalet, located at 47 Broadway, New York, New York 10006.

17. Plaintiff Benitez consents to being party plaintiff pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

Defendants

18. Defendants own, operate and/or control a Chinese restaurant located at 47 Broadway, New York, New York 10006 under the name of China Chalet, at all times relevant to this complaint.

19. Upon information and belief, Defendant Keith Restaurant, Inc. (d/b/a China Chalet) (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principle place of business at 47 Broadway, New York, New York 10006.

20. Upon information and belief, Defendant China Chalet Uptown Inc. (d/b/a China Chalet) (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principle place of business at 47 Broadway, New York, New York 10006.

21. Defendant Keith Ng (a.k.a. Keith Ngalet) is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period.

22. Defendant Keith Ng (a.k.a. Keith Ngalet) is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations.

23. Defendant Keith Ng (a.k.a. Keith Ngalet) possesses or possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controlled significant functions of Defendant Corporations.

24. Defendant Keith Ng (a.k.a. Keith Ngalet) determined the wages and compensation of employees, including Plaintiff Benitez, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

Defendants Constitute Joint Employers

25. Defendants own, operate and/or control a Chinese restaurant located at 47 Broadway, New York, New York 10006.

26. Individual Defendant Keith Ng (a.k.a. Keith Ngalet) possesses operational control over Defendant Corporations, possesses an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations.

27. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

28. Each Defendant possessed substantial control over Plaintiff Benitez's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Benitez, and all similarly situated individuals, referred to herein.

29. Defendants jointly employed Plaintiff Benitez, and all similarly situated individuals, and are Plaintiff Benitez's (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

30. In the alternative, Defendants constitute a single employer of Plaintiff Benitez and/or similarly situated individuals.

31. Upon information and belief, Individual Defendant Keith Ng (a.k.a. Keith Ngalet) operates Defendant Corporations as either alter egos of himself, and/or fails to operate Defendant Corporations as entities legally separate and apart from himself, by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporations as separate and legally distinct entities;
- (b) defectively forming or maintaining Defendant Corporations, by among other things failing to hold annual meetings or maintaining appropriate corporate records;
- (c) transferring assets and debts freely as between all Defendants;
- (d) operating Defendant Corporations for his own benefit as the sole or majority shareholder;
- (e) operating Defendant Corporations for his own benefit and maintaining control over these corporations as a closed corporation or closely controlled entities;
- (f) intermingling assets and debts of his own with Defendant Corporations;
- (g) diminishing and/or transferring assets of Defendant Corporations to protect his own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

32. At all relevant times, Defendants were Plaintiff Benitez's employers within the meaning of the FLSA and NYLL.

33. Defendants had the power to hire and fire Plaintiff Benitez, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for Plaintiff Benitez's services.

34. In each year from 2016 to the present, Defendants, both individually and jointly, had gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

35. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. For example, numerous items that were sold in the Chinese Restaurant on a daily basis were produced outside of the State of New York.

Individual Plaintiff

36. Plaintiff Benitez is a former employee of Defendants, who was employed as a dishwasher and food preparer.

37. Plaintiff Benitez seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

Plaintiff Juan Benitez

38. Plaintiff Benitez was employed by Defendants from approximately January 2, 2016 until on or about October 21, 2016.

39. At all relevant times, Plaintiff Benitez was employed by Defendants to work as a dishwasher and food preparer.

40. Plaintiff Benitez regularly handled goods in interstate commerce, such as food, condiments, and supplies necessary to perform his duties as a dishwasher and food preparer.

41. Plaintiff Benitez's work duties required neither discretion nor independent judgment.

42. Throughout his employment with Defendants, Plaintiff Benitez regularly worked in excess of 40 hours per week.

43. From approximately January 2, 2016 until on or about October 21, 2016, Plaintiff Benitez worked from approximately 10:00 a.m. until on or about 9:30 p.m. on Mondays, from approximately 8:00 a.m. until on or about 9:30 p.m. Tuesdays through Fridays and from approximately 5:00 p.m. until on or about 9:30 p.m. on Sundays (typically 69 hours per week).

44. Throughout his employment with defendants, Plaintiff Benitez was paid his wages in cash.

45. From approximately January 2, 2016 until on or about October 21, 2016, defendants paid Plaintiff Benitez a fixed salary of \$540 per week.

46. Plaintiff Benitez was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device, such as sign in sheets or punch cards, that accurately reflected his actual hours worked.

47. Defendants did not provide Plaintiff Benitez with any document or other statement accounting for his actual hours worked, or setting forth the rate of pay for all of his hours worked.

48. No notification, either in the form of posted notices, or other means, was ever given to Plaintiff Benitez regarding wages as required under the FLSA and NYLL.

49. Defendants did not provide Plaintiff Benitez with each payment of wages a statement of wages, as required by NYLL 195(3).

50. Defendants did not give any notice to Plaintiff Benitez, in English and in Spanish (Plaintiff Benitez's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

Defendants' General Employment Practices

51. Defendants regularly required their employees, including Plaintiff Benitez, to work in excess of forty (40) hours per week without paying them the proper minimum wage, overtime, or Spread of Hours compensation.

52. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Benitez (and all similarly situated employees) to work in excess of forty (40) hours per week without paying him appropriate minimum wage and/or overtime compensation, as required by federal and state laws.

53. Defendants paid Plaintiff Benitez all of his wages in cash.

54. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the Fair Labor Standards Act and New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

55. Defendants also failed to post required wage and hour posters in the restaurant, and did not provide Plaintiff Benitez with statutorily required wage and hour records or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Benitez's relative lack of sophistication in wage and hour laws.

56. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Benitez (and similarly situated individuals) worked, and to avoid paying Plaintiff Benitez properly for (1) his full hours worked, (2) for minimum wage, (3) for spread of hours pay and (4) for overtime due.

57. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL. Defendants failed to provide Plaintiff Benitez and other employees with wage statements at the time of payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked, as required by NYLL §195(3).

58. Defendants failed to provide Plaintiff Benitez and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business,

and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

59. Plaintiff Benitez brings his FLSA minimum wage, overtime, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants, or any of them, on or after the date that is three years before the filing of the complaint in this case (the “FLSA Class Period”), as employees of China Chalet (the “FLSA Class”).

60. At all relevant times, Plaintiff Benitez and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required minimum wage under the FLSA, the required overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA, willfully taking improper wage deductions and other improper credits against Plaintiff Benitez ’ wages for which Defendants did not qualify under the FLSA, and willfully failing to keep records required by the FLSA.

61. The claims of Plaintiff Benitez stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION
(VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA)

62. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

63. At all times relevant to this action, Defendants were Plaintiff Benitez's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Benitez (and the FLSA class members), control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for employment.

64. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

65. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

66. Defendants failed to pay Plaintiff Benitez (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

67. Defendants' failure to pay Plaintiff Benitez (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

68. Plaintiff Benitez (and the FLSA Class members) were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA)

69. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

70. Defendants, in violation of the FLSA, failed to pay Plaintiff Benitez (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of 29 U.S.C. § 207 (a)(1).

71. Defendants' failure to pay Plaintiff Benitez (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

72. Plaintiff Benitez (and the FLSA Class members) were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(VIOLATION OF THE NEW YORK MINIMUM WAGE RATE)

73. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

74. At all times relevant to this action, Defendants were Plaintiff Benitez's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Benitez (and the FLSA Class members), control terms and conditions of employment, and determine the rates and methods of any compensation in exchange for employment.

75. Defendants, in violation of the NYLL, paid Plaintiff Benitez (and the FLSA Class members) less than the minimum wage in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor.

76. Defendants' failure to pay Plaintiff Benitez (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

77. Plaintiff Benitez (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(VIOLATION OF THE OVERTIME PROVISIONS OF
THE NEW YORK STATE LABOR LAWS)

78. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

79. Defendants, in violation of the NYLL and associated rules and regulations, failed to pay Plaintiff Benitez (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor.

80. Defendants failed to pay Plaintiff Benitez (and the FLSA Class members) in a timely fashion, as required by Article 6 of the New York Labor Law.

81. Defendants' failure to pay Plaintiff Benitez (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

82. Plaintiff Benitez (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER
OF THE NEW YORK COMMISSIONER OF LABOR)

83. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

84. Defendants failed to pay Plaintiff Benitez (and the FLSA Class members) one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Benitez's spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.*, and 650 *et seq.*, and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 137-1.6 and 137-3.11.

85. Defendants' failure to pay Plaintiff Benitez (and the FLSA Class members) an additional hour's pay for each day Plaintiff Benitez's (and the FLSA Class members) spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

86. Plaintiff Benitez (and the FLSA Class members) were damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
**(VIOLATION OF THE NOTICE AND RECORDKEEPING REQUIREMENTS OF THE
NEW YORK LABOR LAW)**

87. Plaintiff Benitez repeats and re-alleges all paragraphs above as though fully set forth herein.

88. Defendants failed to provide Plaintiff Benitez with a written notice, in English and in Spanish (Plaintiff Benitez's primary language), of their rate of pay, regular pay day, and such other information as required by NYLL §195(1).

89. Defendants are liable to Plaintiff Benitez in the amount of \$5,000, together with costs and attorneys' fees.

SEVENTH CAUSE OF ACTION
**(VIOLATION OF THE WAGE STATEMENT PROVISIONS OF THE NEW
YORK LABOR LAW)**

90. Plaintiff Benitez repeats and re-alleges all paragraphs above as though set forth fully herein.

91. Defendants did not provide Plaintiff Benitez with wage statements upon each payment of wages, as required by NYLL 195(3).

92. Defendants are liable to Plaintiff Benitez in the amount of \$5,000, together with costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants:

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

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Benitez and the FLSA class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Benitez and the FLSA class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Benitez's and the FLSA

class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Benitez and the FLSA class members;

(f) Awarding Plaintiff Benitez and the FLSA class members damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiff Benitez and the FLSA class members liquidated damages in an amount equal to 100% of their damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Benitez and the members of the FLSA Class;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Benitez and the members of the FLSA Class;

(j) Declaring that Defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiff Benitez and the members of the FLSA Class;

(k) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Benitez's and the FLSA Class members' compensation, hours, wages; and any deductions or credits taken against wages;

(l) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Benitez and the FLSA Class members;

(m) Awarding Plaintiff Benitez and the FLSA class members damages for the amount

of unpaid minimum and overtime wages, spread of hours pay and damages for any improper deductions or credits taken against wages, under the NYLL as applicable;

(n) Awarding Plaintiff Benitez and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, overtime compensation and spread of hours pay shown to be owed pursuant to NYLL § 663 as applicable;

(o) Awarding Plaintiff Benitez and the FLSA class members pre-judgment and post-judgment interest as applicable;

(p) Awarding Plaintiff Benitez and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(q) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(r) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Benitez demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
October 28, 2016

MICHAEL FAILLACE & ASSOCIATES, P.C.

By: /s/ Michael Faillace
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October 25, 2016

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre:

Luis E. Benitez

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

25 de octubre de 2016

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NY's China Chalet Sued Over FLSA Overtime Pay Violations](#)
