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*Attorney for the Plaintiff and Proposed FLSA
Collective Action Plaintiffs*

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

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JIPENG DU, *individually and on behalf of all others
similarly situated*,

Plaintiff,

v.

WAN SANG CHOW, *as shareholders and corporate
officers*, and **SUN RISE CHINESE FOOD INC.**,
Defendants.

Case No.: 1:18-cv-01692
Date Filed: 3/18/2018

**COMPLAINT
FLSA COLLECTIVE ACTION**

ECF

JURY TRIAL DEMANDED

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Plaintiff JIPENG DU (hereinafter referred to as “Plaintiff”), individually and on behalf of all others similarly situated, *by and through his undersigned counsel*, DAVID YAN, ESQUIRE, file this Complaint against defendants WAN SANG CHOW, as the shareholder and corporate officer, and SUN RISE CHINESE FOOD INC. (hereinafter sometimes referred to collectively as “Defendants”), and allege as follows:

INTRODUCTION

1. This action is brought by Plaintiff, individually and on behalf of all others similarly situated employees against Defendants for alleged violations of the Federal Labor Standards Act, (“FLSA”) 29 U.S.C. § 201 *et seq.* and of the New York Labor Law (NYLL), arising from the Defendants’ various willful and unlawful employment policies, patterns and/or practices.

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA and NYLL by engaging in a pattern and practice of failing to pay its employees, including Plaintiff, minimum wage and overtime compensation for all hours worked over forty (40) each workweek.

3. Defendants refused to record all of the time that Plaintiff and similarly situated employed by Corporate Defendants work or worked, including work done in excess of forty hours each week.

4. Plaintiff alleges that, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), he is entitled to recover from the Defendants: (1) unpaid minimum wages, (2) unpaid overtime wages, (3) unpaid “out-of-pocket” costs and expenses of purchasing, maintaining, repairing and keeping the Plaintiff’s motor vehicles or any other trade tools in working conditions for the sole benefit of the Defendants, (4) liquidated damages, (5) post-judgment interest, and (6) costs, expenses, and attorneys’ fees.

5. Plaintiff further alleges that, pursuant to the New York Labor Law (“NYLL”) § 650 *et seq.* and 12 New York Codes, Rules and Regulations §§ 146 (“NYCRR”), the Wage Theft Prevention Act, and the orders of the New York Commissioner of Labor (“spread of hours order” and “overtime wage order” respectively codified at 12 N.Y.C.R.R. §§ 142-2.2, 2.4), he is entitled to recover from the Defendants: (1) unpaid minimum wages, (2) unpaid overtime wages, (3) unpaid “spread of hours”, (4) up to five thousand dollars (\$5,000.00) per Plaintiff for the Defendants’ failure to provide a Time of Hire Notice detailing rates of pay and payday, (5) up to five thousand dollars (\$5,000.00) per Plaintiff for Defendants’ failure to provide a paystub that accurately and truthfully lists employee’s hours along with the name, employer’s name, employer’s address and telephone number, employee’s rate or rates of pay, any deductions made

from employee's wages, any allowances claimed as part of the minimum wage, and the employee's gross and the net wages for each pay day, (6) unpaid "out-of-pocket" costs and expenses of purchasing, maintaining, repairing and keeping the Plaintiff's motor vehicles or any other trade tools in working conditions for the sole benefit of the Defendants, (7) liquidated damages and/or civil penalties equal to the percentage of the sum of unpaid minimum wages, unpaid overtime wages, and unpaid "spread of hours" premium, in the amount of twenty five percent under the NYLL §§ 190 *et seq.*, §§ 650 *et seq.*, and one hundred percent after April 9, 2011 under New York Wage Theft Prevention Act, (8) prejudgment and post-judgment interest, and (9) costs, expenses, and attorneys' fees.

6. Plaintiff now brings this action on behalf of himself and other similarly situated individuals for the relief stated above. Plaintiff seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of the Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

7. This Court has original federal question jurisdiction over this controversy pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 1337 and 1343.

8. This Court has supplemental jurisdiction over this controversy under the New York Labor Law pursuant to 28 U.S.C. § 1367(a), as they are so related in this action within such original federal question jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct businesses in this judicial District, and a

substantial parts of the acts and/or omissions giving rise to the claims herein alleged occurred in this judicial District.

10. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

Plaintiffs

11. Plaintiff is former employees of Defendants WAN SANG CHOW, as the shareholder and corporate officer, and SUN RISE CHINESE FOOD INC. located at 683 A Glen Cove Avenue, Glen Head, New York 11545 (the “Defendants”).

12. Throughout the course of his employment, Plaintiff regularly worked at least 69 hours a week for wages that fell below the legal minimum wage and without receiving the overtime premiums required by law.

13. Plaintiff JIPENG DU was employed by WAN SANG CHOW and SUN RISE CHINESE FOOD INC. located at 683 A Glen Cove Avenue, Glen Head, New York 11545 from approximately September 25, 2013 to September 30, 2017 as a deliveryman. During his employment with defendants, he generally worked 11.50 hours a day from 10:50 a.m. to 10:20 p.m. for six (6) days a week with Tuesday off. Although he occasionally had some meals, Plaintiff could only have a meal for less than 10 minutes a time (which was not guaranteed and was skipped frequently). Other than the meal time, Plaintiff did not have any break during his work day and had to do side work continuously at least for 3 hours a day in addition to his delivery work.

DEFENDANTS

14. Upon information and belief, defendant SUN RISE CHINESE FOOD INC. is a domestic corporation, duly organized and existing under the laws of the State of New York on

June 20, 2006 with a principal place of business located at 683 A Glen Cove Avenue, Glen Head, New York 11545.

15. Upon information and belief, defendant SUN RISE CHINESE FOOD INC. operates a restaurant located at 683 A Glen Cove Avenue, Glen Head, New York 11545.

16. Upon information and belief, at all relevant times, the defendant SUN RISE CHINESE FOOD INC. was, and continues to be, an “enterprise engaged in commerce” within the meaning of the FLSA in that they (i) have had employees engaged in commerce or in the production of goods for commerce and handling, selling or otherwise on goods or materials that have been moved in or produced for commerce by any person; and (ii) have had an annual gross volume of sales of not less than Five Hundred Thousand Dollars (\$500,000.00).

17. Upon information and belief SUN RISE CHINESE FOOD INC. purchased and handled goods moved in interstate commerce.

18. Upon information and belief, defendant WAN SANG CHOW is the owner, officer, director and/or Chief Executive Officer of SUN RISE CHINESE FOOD INC., owns controlling stock interests of defendant SUN RISE CHINESE FOOD INC., has actively participated and continues to actively participate in the day-to-day operations of Defendants and the Defendants’ restaurant, has acted intentionally and maliciously and is an “employer” pursuant to the FLSA, 29 U.S.C. § 203d and Regulations promulgated hereunder, 29 C.F.R. § 791.2, as well as the NYLL § 2 and the Regulations thereunder, and is jointly and severally liable with Defendants. Defendant WAN SANG CHOW is sued individually in his capacity as an employer.

19. Upon information and belief, at all relevant times, defendant WAN SANG CHOW exercised substantial control over the functions of the corporate defendants and their

restaurant, managed and made all business decisions including but not limited to have the power to hire and fire Plaintiff who worked or still are working for defendants, control the Plaintiff's terms and conditions of employment, supervise the Plaintiff's work, maintain employment records and determine the rate and method of any compensation paid to Plaintiff and the number of hours that Plaintiff would work, is an employer pursuant to the FLSA, 29 U.S.C. § 203d, and regulations promulgated thereunder, 29 C.F.R. § 791.2, the NYLL § 2 and the regulations thereunder, and is jointly and severally liable with SUN RISE CHINESE FOOD INC., and its restaurant.

20. At all relevant times, the work performed by Plaintiff was directly essential to the businesses operated by Defendants WAN SANG CHOW, as the shareholder and corporate officer, and SUN RISE CHINESE FOOD INC.

21. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff their lawfully earned wages for all hours worked, minimum wages, overtime compensation and spread-of-hour premiums; failed to post the required Notice of Pay, to provide an accurate and valid Time of Hire Notice detailing rates of pay and payday, to provide employees with an accurate and valid pay stubs, and to keep accurate time records in direct contravention of the FLSA, New York Labor Law, and the Wage Theft Prevention Act of New York State.

22. Plaintiff has satisfied all conditions precedent to the institution of this action and/or such conditions have been waived.

COLLECTIVE ACTION ALLEGATIONS

23. Plaintiff brings this action individually and as class representative on behalf of himself and all other current and former non-exempt employees who have been or were employed by Defendants since March, 2012 to the entry of judgment in this case (the "Collective

Action Period”), and who were compensated at rates less than the statutory minimum wage or at rates less than time and one-half for all hours worked in excess of forty (40) hours per work week (the “Collective Action Members”).

24. Upon information and belief, the collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts upon which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are more than six (6) Collective Action Members who worked for the Defendants during the Collective Action Period, most of whom would not be likely to file individual suits because defendants have failed to provide the statutory required notices under the FLSA and the NYLL to them, these Collective Action Members lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiff submits that this matter should be certified as a collective action under the FLSA, 29 U.S.C. § 216(b).

25. Plaintiff will fairly and adequately protect the interests of the Collective Action Members and has retained counsel in the fields of employment law and class action litigation. Plaintiff has no interest that is contrary to or in conflict with those members of this collective action.

26. This action should be certified as a collective action because the prosecution of separate action by individual members of the class would create a risk of either inconsistent or varying adjudications with respect to individual members of the class, or adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

27. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

28. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

29. Plaintiff and others similarly situated have been substantially damaged by the Defendants' wrongful conduct.

STATEMENT OF FACTS

30. Defendant WAN SANG CHOW owns and operates SUN RISE CHINESE FOOD INC. restaurant located at 683 A Glen Cove Avenue, Glen Head, New York 11545.

31. The Defendants' restaurant serves food to customers on the premises and provide take-out and delivery service.

32. The Defendants' restaurant is "restaurant" within the meaning of the New York Labor Law.

33. Upon information and belief, at all relevant times, and during the course of the employment of the Plaintiff and the Collective Action Members, Defendants failed to maintain complete and accurate time records.

34. Upon information and belief, at all relevant times, and during the course of the employment of the Plaintiff and the Collective Action Members, Defendants knowingly and willfully manipulated time records.

35. Plaintiff and Collective Action Members were each employed at the Defendants' restaurant at various times over the last 6 years.

36. Upon information and belief, at all times relevant to this action, Defendants were employers of Plaintiffs and Collective Action Members within the meaning of the FLSA and the NYLL, 29 U.S.C. § 203(d); N. Y. Lab. Law §§ 2(6); 190(3); 651(6).

37. Upon information and belief, at all times relevant to this action, Plaintiff and Collective Action Members have each been employed at the Defendants' restaurant and were Defendants' employees within the meaning of the FLSA and the NYLL. 29 U.S.C. § 203(e); N. Y. Lab. Law § 651(5).

38. Plaintiff and Collective Action Members held the position of delivery person while employed by Defendants. The Plaintiff and Collective Action Members' primary task was to deliver food from the restaurant premises to locations off the premises, such as customers' homes and places of business. When not delivering food, Plaintiff and Collective Action Members were given secondary tasks or side works such as moving and unpacking goods delivered to the restaurant, filling supplies to the shelves, filling beverages to the shelves and refrigerators, and peeling shrimps.

39. Plaintiff and similarly situated employees were required to commit substantial part of their work day in non-tipped work.

40. Upon information and belief, the non-tipped work of the Plaintiffs and similarly situated employees exceeds two hours or twenty percent (20%) of their workday.

41. Defendants knew that the nonpayment of minimum wage, overtime pay, and spread of hours pay would financially injure Plaintiff and similarly situated employees and violate the FLSA and the NYLL and the NYS Wage Theft and Prevention Act.

42. Defendants failed to keep complete and accurate time records, to post the required Notice of Pay, to provide a Time of Hire Notice detailing rates of pay and payday, and to provide pay stubs to Plaintiff and similarly situated employees.

43. Plaintiff and similarly situated employees have never received notification from Defendants that Defendants are taking tip credits towards the minimum wage and overtime compensation paid to Plaintiff and similarly situated employees.

44. Defendants failed to post the required United States Department of Labor and New York State Department of Labor posters regarding pay rates, overtime pay, tip credit, and pay day.

45. Upon information and belief, at all relevant times, Defendants failed to keep complete and accurate time records of the hours and wages of the Plaintiff and similarly situated employees in order to avoid liability for their wage violations.

46. Upon information and belief, at all relevant times, Defendants knowingly and willfully failed to provide Plaintiff and similarly situated employees with Time of Hire Notice in English and in their primary language (Chinese) reflecting true rates of pay and paydays as well as pay stubs that lists employee's name, employer's name, employer's address and telephone number, employee's rate or rates of pay, and deductions made from the employee's wages, and allowances claimed as part of the minimum wage, and the employee's gross and net wages for each pay day as required by the NYLL § 195(1).

47. Defendants knew that the nonpayment of overtime compensation for every week and nonpayment of the New York's "spread of hours" premium for every day in which Plaintiff worked over ten (10) hours would financially injure Plaintiff and similarly situated employees and violate state and federal laws.

Minimum Wage

48. Both the FLSA and New York State Labor Law require that employees be paid a minimum wage. 29 U.S.C. § 206; N.Y.Lab. Law § 652.

49. Plaintiff and Collective Action Members regularly worked for Defendants at least 11.50 hours a day for six (6) days a week or sixty-nine (69) hours per week during most or all of their employment.

50. Plaintiff and Collective Action Members received wages of approximately \$1,300.00 per month or \$300.00 per week during their employment with Defendants.

51. At all times relevant to this action, Defendants did not have an accurate time clock that recorded the exact amount of time Plaintiff and Collective Action Members worked.

52. At all times relevant to this action, Defendants were supposedly to compensate many or all Plaintiff and Collective Action Members by paying them weekly. However, Defendants always delayed the payments for at least half a month.

53. At all times relevant to this action, many Plaintiff and Collective Action Members received their wages in part of cash and part of checks.

54. Defendants did not notify Plaintiff and Collective Action Members of the minimum wage provisions of the FLSA.

55. Defendants did not notify Plaintiff and Collective Action Members of the FLSA tip credit provisions. Defendants did not notify Plaintiff and Collective Action Members of Defendants' intention to claim a tip credit against their minimum wage obligations. Therefore, Defendants were not legally entitled to claim a tip credit under the FLSA in order to meet their minimum wage obligations to Plaintiff and Collective Action Members.

56. The weekly wage paid by Defendants to Plaintiff and Collective Action Members was insufficient to satisfy Defendants' obligation to pay the minimum wage required by the FLSA. The wage effectively resulted in an hourly wage that was below the required minimum wages.

57. The weekly wage paid by Defendants to Plaintiff and Collective Action Members was insufficient to satisfy Defendants' obligation to pay the minimum wage required by the New York Labor Law. The wage effectively resulted in an hourly wage that was below the required minimum wages.

Overtime

58. The FLSA and New York Labor Law require that Defendants pay an overtime rate of one-and-a-half times the regular rate of pay for each hour of work over forty hours a week. 29 U.S.C. § 207; 12 N.Y.C.R.R. § 137-1.3.

59. Plaintiff and Collective Action Members regularly worked at least sixty-nine (69) hours each week during most or all of their employment with Defendants.

60. Despite the fact that Plaintiff and Collective Action Members regularly worked in excess of forty hours a week, Defendants failed to pay Plaintiff and Collective Action Members overtime compensation as required by both the FLSA and New York Labor Law.

Spread of Hours

61. The "spread of hours" is the number of hours from the time that an employee started working on a particular day until the time that he or she stopped working for the day. 12 N.Y.C.R.R. § 137-3.11. New York State Labor Regulation § 137-1.7 provides that an employer is required to pay an employee an extra hour of pay at the full minimum wage, without allowances, for each day in which the employee's spread of hours exceeds ten. *Id.* at § 137-1.7.

62. Plaintiff and Collective Action Members routinely worked a “spread of hours” greater than ten hours per day.

63. Despite the fact that Plaintiff and Collective Action Members routinely worked a “spread of hours” greater than ten hours per day, Defendants did not pay Plaintiff and Collective Action Members any additional compensation as required by New York State regulations.

Lack of Reimbursement

64. The FLSA and New York Labor Law prohibit employers from requiring minimum wage employees to purchase the tools of their trade or give any money back to their employers. 29 U.S.C. § 201 *et seq.*; 29 C.F.R. § 531.35; 12 N.Y.C.R.R. § 137-2.5(b).

65. Defendants required Plaintiff and Collective Action Members worked as deliverymen to use and maintain motor vehicle to make deliveries for the benefit of Defendants’ businesses during their course of employment with the Defendants.

66. All Plaintiff and Collective Action Members worked as deliverymen as a result of irreparable damage or robbery or accident, had to fully replace their motor vehicles on multiple occasions.

67. Upon information and belief, Plaintiff purchased a new Toyota Primus in the amount of \$25,000.00 in January, 2013 and used the said motor vehicle for the sole benefit of Defendants from September 25, 2013 to May, 2017 until the motor vehicle would have to be scrapped after the extensive uses in the delivery.

68. Upon information and belief, Plaintiff purchased a new Toyota Corolla in the amount of \$20,000.00 in May, 2017 and used the said motor vehicle for the sole benefit of Defendants from May, 2017 until he was laid off by Defendants on September 30, 2017. The motor vehicle would have a life span for about 7 years unless sooner scrapped.

69. Upon information and belief, Plaintiff spent the following costs and expenses to maintain and repair the motor vehicles as well as to purchase accessories: (1) \$65 every 2 months to change oil every year for 4 years; (2) \$20 every 2 months to balance and switch the front and rear tires every year for 4 years; (3) \$500 per year for 4 years to replace old tires with new tires; (4) \$200 per year to replace brake blocks for 4 years; (5) \$50 per year for 4 years to replace air filters; (6) \$1,500 per year for 4 years for car insurance; (7) \$10 per day in the least every year for 4 years for gas; and (8) \$15 per month every year for 4 years for car wash.

70. Upon information and belief, Plaintiff was fined \$400 caused by the delivery during his employment with Defendants.

71. Upon information and belief, Plaintiff rented a motor vehicle for two times that cost \$350 per time due to the need to repair the Plaintiff's motor vehicle.

72. Defendants never supplied Plaintiff and Collective Action Members worked as deliverymen with any motor vehicle, a bicycle or electric bicycle, nor did they reimburse those Plaintiff and Collective Action Members for any purchase, maintenance, repair or replacement costs of the motor vehicles according to state and federal labor laws.

Failure to Post the Notices Required by Law

73. The FLSA requires employers to inform employees of the FLSA's wage provisions, including the manner in which the wage for a tipped employee is determined. 29 U.S.C. § 203(m). The FLSA and the NYLL also requires an employer to maintain in the workplace a display containing notices in Chinese language of employees' right to receive the minimum wage and overtime rate of one-and-a-half times their regular rate. 29 C.F.R. § 516.4; 12 N.Y.C.R.R. § 137-2.3.

74. During the time that Plaintiff and Collective Action Members were employed by Defendants, Defendants did not maintain in the workplace a display containing notices in Chinese language of employees' right to receive the minimum wage and overtime payment at a rate of one-and-a-half times their regular rate.

75. Additionally, Defendants failed to display a copy of §§ 193 and 196-d of New York Labor Law regarding the prohibition on illegal deductions from wages and the illegality of employers demanding or accepting any portion of employees' tips in violation of New York Labor Law. N.Y.Lab. Law § 198-d.

76. Finally, Defendants failed to keep full and accurate, and to certain extent manipulated, records of Plaintiff and Collective Action Members' hours and wages in violation of the FLSA and New York Labor Law. 29 U.S.C. § 211(c); N.Y. Lab. Law § 661.

Knowing and Intentional Acts

77. At all relevant times, Defendants knowingly, intentionally and willfully committed the acts alleged herein.

78. At all relevant times, Defendants knowingly and willfully operated their business with a policy and practice of not paying either the FLSA overtime rate (of time and one half) or the New York State overtime rate (of time and one-half) to Plaintiffs and Collective Action Members for work performed over forty (40) hours in a work week.

79. At all relevant times, Defendants knew that the nonpayment of minimum wage, overtime pay and spread-of-hours pay would financially injure Plaintiff and Collective Action Members.

80. At all relevant times, Defendants knowingly and intentionally took unlawful deductions from Plaintiff and Collective Action Members and knowingly and intentionally required Plaintiff and Collective Action Members to provide and maintain tools of the trade.

STATEMENT OF CLAIMS

COUNT 1

[Claim for Minimum Wages under the FLSA, 29 U.S.C. §§ 201, *et seq.*]

81. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

82. At all relevant times, upon information and belief, Defendants were and continue to be the Plaintiff's employers within the meaning of the FLSA, 29 U.S.C. § 203(d).

83. At all relevant times, upon information and belief, Defendants were and continue to be the Plaintiff's employers engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

84. Plaintiff is covered individual within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

85. Plaintiff is entitled to be paid at the rate of minimum wages for their hours worked at and within 40 hours per week.

86. Throughout the statute of limitations period covered by these claims, Defendants knowingly failed to pay Plaintiff the applicable federal minimum wages for each hour worked, in violation of 29 U.S.C. § 206(a).

87. At all relevant times, upon information and belief, Defendants had a policy and practice of refusing to pay minimum wages at the applicable federal statutory rate of time to Plaintiff.

88. At all relevant times, Defendants are not entitled to take tip credit against the Plaintiff's minimum wage rate due to the Defendants' violations of the NYLL and supporting regulations require employers to notify employees of their intent to apply a tip credit and post a

notice conspicuously explaining the employment laws' requirements. 12 N.Y.C.R.R. §§ 142-2.8; and 146-2.1, 2.2.

89. At all relevant times, Defendants willfully failed and intentionally failed to post the notices required by the NYLL informing Plaintiff of the requirements of the employment law, or provided information about employment laws' requirements in other forms to Plaintiff. 12 N.Y.C.R.R. § 142-2.8.

90. At all relevant times, Defendants willfully failed and intentionally failed to notify Plaintiff of their intent to apply a tip credit. 12 N.Y.C.R.R. §§ 146-2.1, 2.2.

91. Defendants also willfully required Plaintiff to provide motor vehicles for the Plaintiff's work for the benefits of the Defendants' businesses. The cost of providing these tools further reduced the Plaintiff's wages below the applicable federal minimum hourly wage in violation of the FLSA, 29 U.S.C. § 206(a), and applicable regulations, specifically 29 C.F.R. § 531.35.

92. Defendants' violations of the FLSA, as described in this Complaint, have been willful and intentional.

93. Upon information and belief, Defendants failed to make, keep, and preserve records and even manipulate time records with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, et seq., including 29 U.S.C. §§ 211(c) and 215(a).

94. Alternatively, records, if any, concerning the number of hours worked by Plaintiff and the actual compensation paid to Plaintiff is in the possession and custody of Defendants. Plaintiff intends to obtain these records by appropriate discovery proceedings to be taken

promptly in this case and, if necessary, will then seek leave of Court to amend this Complaint to set forth the precise amount due.

95. Due to the Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, the amount of any such underpayments of the minimum wages and as a direct and proximate result of the Defendants' willful disregard of the FLSA, Plaintiff is entitled to the equal amount of the unpaid minimum wages in the form of the liquidated damages pursuant to the FLSA, plus the prejudgment interest thereon, all in an amount to be determined at trial.

96. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), all in an amount to be determined at trial.

COUNT 2

[Claim for Minimum Wages under the New York Labor Law]

97. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

98. At all times relevant to this action, Defendants were employers within the meaning of New York Labor Law §§ 2(6), 190(3), and 651(6).

99. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§ 2(5) and 651(5).

100. Defendants willfully failed to record, credit, or compensate Plaintiff the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law § 652 and applicable regulations.

101. At all relevant times, Defendants are not entitled to take tip credit against the Plaintiff's minimum wage rate due to the Defendants' violations of the NYLL and supporting

regulations require employers to notify employees of their intent to apply a tip credit and post a notice conspicuously explaining the employment laws' requirements. 12 N.Y.C.R.R. §§ 142-2.8; and 146-2.1, 2.2.

102. At all relevant times, Defendants willfully failed and intentionally failed to post the notices required by the NYLL informing Plaintiff of the requirements of the employment law, or provided information about employment laws' requirements in other forms to Plaintiff. 12 N.Y.C.R.R. § 142-2.8.

103. At all relevant times, Defendants willfully failed and intentionally failed to notify Plaintiff of their intent to apply a tip credit. 12 N.Y.C.R.R. §§ 146-2.1, 2.2.

104. Upon information and belief, at all relevant time, Defendants failed to establish, maintain, and preserve for not less than six (6) years payroll records showing the hours worked, gross wages, deductions, and net wages for each employee, in contravention of the New York Labor Law § 194(4), and New York State Labor Regulations 12 N.Y.C.R.R. § 146-2.1.

105. At all relevant times, Defendants have failed to make a good faith effort to comply with the New York Labor Law with respect to compensation of Plaintiff.

106. Defendants also willfully required Plaintiff to provide motor vehicles for his work and pay expenses incurred while carrying out duties assigned by Defendants, in violation of 12 N.Y.C.R.R. § 137-2.5. The costs and expenses paid by the Plaintiff further reduced the hourly wages that they were paid.

107. Defendants failed to properly disclose or apprise Plaintiff of their rights under the New York Labor Law.

108. Defendants failed to furnish Plaintiff with a statement with every payment of wages listing gross wages, deductions, and net wages, in contravention of New York Labor Law § 195(3) and New York State Department of Labor Regulations § 146-2.3.

109. Defendants failed to keep true and accurate records of hours worked by each employee covered by an hourly minimum wage rate, the wages paid to all employees, and other similar information in contravention of New York Labor Law § 661.

110. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, the amount of any such underpayments of the minimum wages and as a direct and proximate result of the Defendants' willful disregard of the New York Labor Law, Plaintiff is entitled to the liquidated damages and civil penalties pursuant to New York Labor Law § 663(1), and the New York State Wage Theft Prevention Act, plus the prejudgment interest thereon, all in an amount to be determined at trial.

111. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to New York Labor Law § 663(1), et al., and § 198, all in an amount to be determined at trial.

COUNT 3

[Claim for Overtime Wages under the FLSA, 29 U.S.C. §§ 201, et seq.]

112. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

113. Throughout the statute of limitations period covered by these claims, Plaintiff regularly worked in excess of forty (40) hours per workweek.

114. At all relevant times, upon information and belief, Defendants had a policy and practice of willfully failing and refusing to pay Plaintiff one and one-half times of their regular

rate of pay or, at a minimum, the minimum wages to which Plaintiff is entitled under 29 U.S.C. § 206(a), for work in excess of forty (40) hours per workweek, in violation of 29 U.S.C. § 207(a)(1).

115. At all relevant times, upon information and belief, Defendants failed to make, keep, and preserve records as required by the FLSA, and even manipulate time records in violation of the FLSA, even though Plaintiff has been and is entitled to overtime.

116. At all relevant time, Defendants willfully, regularly and repeatedly failed to pay Plaintiff at the required overtime rates, one and one-half times of the applicable federal minimum wages for hours worked in excess of forty (40) hours per workweek, in violation of 29 U.S.C. § 207(a)(1).

117. Due to the Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, the amount of any such underpayments of the overtime wages and as a direct and proximate result of the Defendants' willful disregard of the FLSA, Plaintiff is entitled to the equal amount of the unpaid overtime wages in the form of the liquidated damages pursuant to the FLSA, plus the prejudgment interest thereon, all in an amount to be determined at trial.

118. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), all in an amount to be determined at trial.

COUNT 4

[Claim for Overtime Wages under the New York Labor Law]

119. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

120. Throughout the statute of limitations period covered by these claims, Plaintiff regularly worked in excess of forty (40) hours per workweek.

121. It is unlawful under New York Labor Law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

122. Defendants willfully failed to pay Plaintiff overtime wages for hours worked in excess of forty hours per week at a wage rate of one and one-half times of their regular rate of pay or, at a minimum, the minimum wage to which Plaintiff was entitled to receive under New York Labor Law § 652, in violation of 12 N.Y.C.R.R. § 137-1.3.

123. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, the amount of any such underpayments of the overtime wages and as a direct and proximate result of the Defendants' willful disregard of the New York Labor Law, Plaintiff is entitled to the liquidated damages and civil penalties pursuant to New York Labor Law § 663(1), and the New York State Wage Theft Prevention Act, plus the prejudgment interest thereon, all in an amount to be determined at trial.

124. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to New York Labor Law § 663(1), et al., and § 198, all in an amount to be determined at trial.

COUNT 5

[Illegal Pay Deductions and Deductions from Gratuities, New York Labor Law §§ 196-d and 198-b]

125. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

126. Defendants retained portions of the Plaintiff's tips and distributed them to non-tipped employees.

127. Defendants retained portions of the Plaintiff's tips to cover their operations' costs.

128. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, all these portions of the illegal pay deductions and deductions from gratuities, the liquidated damages and civil penalties pursuant to New York Labor Law § 663(1), and the New York State Wage Theft Prevention Act, plus the prejudgment interest thereon, all in an amount to be determined at trial.

129. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to New York Labor Law § 663(1), et al., and § 198, all in an amount to be determined at trial.

COUNT 6

[Claim for New York Spread of Hours Provisions, New York Labor Law §§ 650 *et seq.*, and N.Y. Comp. Code R. & Regs. tit. 12, § 137-1.7]

130. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

131. Plaintiff regularly worked more than 10 hours in a workday.

132. Defendants willfully failed and intentionally failed to compensate Plaintiff one hour's pay at the basic New York minimum hourly wage rate, as required by New York Labor Law.

133. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, their unpaid "Spread of Hours" wages and as a direct and proximate result of the Defendants' willful disregard of the New York Labor Law, Plaintiff is entitled to the liquidated damages and civil penalties pursuant to New York Labor Law § 663(1), and the New York State Wage Theft Prevention Act, plus the prejudgment interest thereon, all in an amount to be determined at trial.

134. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to New York Labor Law § 663(1), et al., and § 198, all in an amount to be determined at trial.

COUNT 7

**[Pay Notices and Wage Statements under NYLL §§ 195(1) & (3)
and §§ 198 (1-b) & (1-d)]**

135. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

136. Plaintiff has never received either (a) written notice when he was hired, or thereafter, specifying his rate of pay, his regular pay day and his overtime rate of pay or (b) a wage statement when he was paid.

137. Defendants failed to provide Plaintiff in writing in English and in the language identified by Plaintiff as the primary language of such plaintiff at the time of hiring, and on or before February first of each subsequent year of the Plaintiff's employment with the Defendants, a notice containing the following information: 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 in accordance with the NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

138. Since April 9, 2011, Defendants failed to furnish Plaintiff with a statement with every payment of wages, listing rates of pay and basis thereof, gross wages, deductions,

allowances, net wages if any claimed as part of minimum wage, the regular hourly rate of pay if for employees entitled to overtime pay, the regular hourly rate of pay, the overtime rate of pay, the number of regular hours worked, and the number of overtime hours worked in violation of Section 195(3) of the NYLL and the Wage Theft Prevention Act, amended and codified in L.2010, ch. 564 § 3.

139. As a result of the Defendants' two forms of violation of New York Labor Law §§ 195(1) & (3) and §§ 198 (1-b) & (1-d), Plaintiff is entitled to recover from Defendants, jointly and severally, the liquidated damages begin to accrue as of April 9, 2011 as defined in Section 198, which would amount to \$150.00 (\$50.00 for the failure to provide a weekly pay and \$100.00 for the failure to provide the notice of pay at the time of hire or thereafter) for each week in which each form of violation occurred or continued, up to a combined total of \$5,000.00 per employee, plus the prejudgment interest thereon, all in an amount to be determined at trial.

140. Effective February 27, 2015, the above stated weekly damage awards of \$50.00 per week and \$100.00 per week have been amended to daily awards of \$50.00 per day and \$250.00 per day, with respective ceilings of \$5,000.00 each, for a total maximum of \$10,000.00. See L.2014 ch. 537, § 2.

141. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs pursuant to New York Labor Law § 663(1), et al., and § 198, all in an amount to be determined at trial.

COUNT 8

[Breach of Implied Contract for Reimbursement of all Costs and Expenses of Motor Vehicles, including but not limited to Depreciation, Insurance, Maintenance and Repairs]

142. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

143. At all relevant times, Defendants never provided Plaintiff motor vehicles or any other trade tools that were in working condition for Plaintiff to use to deliver food to the Defendants' restaurant customers on behalf of the Defendants and for the Defendants' benefit.

144. At all relevant times, Defendants required Plaintiff to use motor vehicles or any other trade tools to make delivery of foods to the Defendants' restaurant customers on behalf of the Defendants and for the Defendants' benefit.

145. Plaintiff had to purchase, maintain, repair and keep his motor vehicles or any other trade tools in working conditions in order to make fast delivery of foods to the Defendants' restaurant customers on behalf of the Defendants and for the Defendants' benefit.

146. Plaintiff can document actual "out-of-pocket" costs and expenses in connection with the purchasing, maintaining, repairing and keeping his motor vehicles or any other trade tools in working conditions for the Defendants' benefit.

147. As a result of the afore-alleged conduct of the parties, an implied contract arose between Plaintiff and Defendants, the term of which are that Plaintiff would incur the costs and expenses to purchase, maintain, repair and keep his motor vehicles or any other trade tools in working conditions in the course of completing their required duties for Defendants in order to be employed by Defendants as a delivery person for the sole benefit of the Defendants.

148. Defendants had never compensated Plaintiff for the "out-of-pocket" costs and expenses to purchase, maintain, repair and keep his motor vehicles or any other trade tools in working conditions.

149. As the result of the Defendants' conduct, Defendants had breached the implied contract so that Plaintiff is entitled to the reimbursement for such "out-of-pocket" costs and expenses.

150. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs, all in an amount to be determined at trial.

COUNT 9

[Fraudulent Concealment from Plaintiffs both the Nature of Their Rights and Defendants' Violations of Them]

151. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

152. Defendants fabricated and manipulated the employees' records, if any, and maintained these false records for the purpose of fraudulent concealment of the Plaintiff's rights under the FLSA and NYLL.

153. As a result of the Defendants' material and substantial efforts to make and maintain the false records, Defendants took extensive efforts to conceal from Plaintiff both the nature of their rights afforded by the FLSA and the NYLL and the Defendants' violation of them.

154. Defendants have a legal duty separate from the duty to perform under the employment contract, if any, to inform the Plaintiff his rights under the FLSA and NYLL.

155. Defendants knowingly and willfully failed to post the FLSA and the NYLL required minimum wage notices.

156. Although Plaintiff acted due diligently under the circumstances, Plaintiff was unaware of his rights to minimum wage and overtime pay absent the posting of notices.

157. As the result of the Defendants' conduct, Plaintiff is entitled to tolling of statute of limitations.

158. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs, all in an amount to be determined at trial.

COUNT 10

[Corporate Defendant is the Individual Defendants' "Alter Ego"]

159. Plaintiff realleges and incorporates by reference all allegations and statements in all preceding paragraphs as if they were fully set forth herein.

160. Defendant WAN SANG CHOW (the "Individual Defendant") used the corporate form itself as a vehicle to defraud Plaintiff. Individual Defendant knew and should have known the FLSA and NYLL in connection with the employment of the Plaintiff. In particular, Defendants were sued by some of their employees before for violating their rights under the FLSA and NYLL. Individual Defendant, however, still used the corporate form to violate the Plaintiff's rights under the FLSA and NYLL willfully and intentionally.

161. The Individual Defendant and defendant SUN RISE CHINESE FOOD INC. (the "Corporate Defendant") commingled the Defendants' funds for using the Corporate Defendant's funds for the Individual Defendant's personal use and leisure. The Individual Defendant used the Corporate Defendant's funds to pay his travel and luxury life's costs and expenses, which has nothing to do with the Corporate Defendant's businesses and operations.

162. The Individual Defendant shuttled funds in and out of personal and corporate bank accounts, used corporate funds and property for personal purposes and obligations.

163. The Corporate Defendant is under-capitalized. For instance, the Corporate Defendant frequently requested the suppliers to provide the food and supplies by longer terms.

164. The Corporate Defendant was so dominated by the Individual Defendant and primarily transacted the Individual Defendant's business rather than its own and was the Individual Defendant's alter ego. For instance, although Plaintiff was paid by the Corporate Defendant, the money of the payment was from the Individual Defendant's own funds when the

Corporate Defendant had to wait for the Individual Defendant to put money into the Corporate Defendant's bank accounts.

165. There is a lack of corporate formalities in the Corporate Defendant. The Corporate Defendant failed to issue stock, conduct election of directors, and keep corporate records, and maintain separate books and records.

166. The Corporate Defendant failed to file its own, independent, and meaningful tax returns. The Corporate Defendant deducted from its income the Individual Defendant's travel, lodging, dining, and living expenses as the Corporate Defendant's business expenses.

167. The Corporate Defendant is the Individual Defendant's "Alter Ego" and should be disregarded.

168. Plaintiff is entitled to an award of their reasonable attorneys' fees and costs, all in an amount to be determined at trial.

**NOTICE OF INTENTION TO ENFORCE SHAREHOLDER LIABILITY
FOR SERVICE RENDERED**

TO: WAN SANG CHOW:

PLEASE TAKE NOTICE that, pursuant to the provisions of Section 630 of the Business Corporation Law of New York, you are hereby notified that Plaintiff JIPENG DU, *individually and on behalf of all others similarly situated*, intend to charge you and hold you personally liable, jointly and severally, as one of the ten largest shareholders of SUN RISE CHINESE FOOD INC. for all debts, wages, and/or salaries due and owing to them as laborers, servants and/or employees of the said corporations for services performed by them or the said corporation within the six (6) years preceding the date of this notice and have expressly authorized the undersigned, as their attorneys, to make this demand on their behalf.

**DEMAND TO INSPECT SHARE RECORDS AND MINUTES PURSUANT TO
SECTION 624 OF THE NEW YORK STATE BUSINESS CORPORATION LAW**

TO: SUN RISE CHINESE FOOD INC.:

PLEASE TAKE NOTICE that, pursuant to the provisions of Section 624 of the Business Corporation Law of New York, you are hereby notified that Plaintiff JIPENG DU, *individually and on behalf of all others similarly situated*, hereby demand to examine, in person or by agent or attorney, during usual business hours, the minutes of the proceedings of the shareholders and records of shareholders of the above corporations and to make extracts there from on or after five (5) days from receipt of this notice, in connection with Plaintiff JIPENG DU's intention to enforce shareholder liability pursuant to the provisions of Section 630 of the Business Corporation Law of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- (a) Authorizing Plaintiff at the earliest possible time to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have been employed by Defendants as non-exempt tipped or non-tipped employees. Such notice shall inform them that the civil notice has been filed, of the nature of the action, of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;
- (b) Certifying this case as a collective action pursuant to the FLSA;
- (c) Issuing a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them assert timely the FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. 216(b), and appointing Plaintiff and his counsel to represent the Collective Action Members;
- (d) Granting a declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NYLL;
- (e) Under the Count 1, awarding the amount of any such underpayments of the minimum wages and the equal amount of such underpayments of the minimum wages in the form of the liquidated damages pursuant to the FLSA;
- (f) Under the Count 2, awarding the amount of any such underpayments of the minimum wages and the liquidated damages and civil penalties pursuant to the NYLL § 663(1), and the New York Wage Theft Prevention Act, plus the prejudgment interest thereon;

- (g) Under the Count 3, awarding the amount of any such underpayments of the overtime wages and the equal amount of such underpayments of the overtime wages in the form of the liquidated damages pursuant to the FLSA;
- (h) Under the Count 4, awarding the amount of any such underpayments of the overtime wages and the liquidated damages and civil penalties pursuant to the NYLL § 663(1), and the New York Wage Theft Prevention Act, plus the prejudgment interest thereon;
- (i) Under the Count 5, awarding the amount of any such portions of the illegal pay deductions and deductions from gratuities and the liquidated damages and civil penalties pursuant to NYLL § 663(1), and the New York Wage Theft Prevention Act, plus the prejudgment interest thereon;
- (j) Under the Count 6, awarding the amount of any such underpayments of the “Spread of Hours” wages and the liquidated damages and civil penalties pursuant to NYLL § 663(1), and the New York Wage Theft Prevention Act, plus the prejudgment interest thereon;
- (k) Under the Count 7, awarding the amount of the liquidated damages begin to accrue as of April 9, 2011 that would amount to \$150.00 (\$50.00 for the failure to provide a weekly pay stub and \$100.00 for the failure to provide the notice of pay at the time of hire or thereafter) for each week in which each form of violation occurred or continued, up to a combined total of \$5,000.00 per plaintiff, or effective February 27, 2015, that would amount to \$300.00 per day (daily awards of \$50.00 per day for the failure to provide a pay stub and \$250.00 per day for the failure to provide the notice of pay at the time of hire or thereafter), with

respective ceilings of \$5,000.00 each, for a total maximum of \$10,000.00, plus the prejudgment interest thereon;

- (l) Under the Count 8, awarding the amount of the “out-of-pocket” costs and expenses in connection with the Plaintiff’s purchasing, maintaining, repairing and keeping his motor vehicles or any other trade tools in working conditions for the sole benefit of the Defendants;
- (m) Under the Count 9, tolling the Statute of Limitations;
- (n) Under the Count 10, piercing the corporate veil of the Corporate Defendant, SUN RISE CHINESE FOOD INC., finding the Corporate Defendant is the Individual Defendant WAN SANG CHOW’s “alter ego” and should be disregarded, and holding the Individual Defendant personally liable to the Plaintiff and the Collective Action Members for the Defendants’ violation of the Plaintiff’s rights under the FLSA and NYLL;
- (o) Awarding prejudgment and post-judgment interest;
- (p) Awarding costs, disbursements, and expenses of this action together with reasonable attorneys’ fees and expert fees pursuant to 29 U.S.C. § 216(b) and NYLL §§ 198, 663;
- (q) Automatically increasing the total amount of judgment by fifteen percent, as required by the NYLL § 198(4) in the event that if any amounts remain unpaid upon the expiration of ninety days following the issuance of judgment, or ninety days after expiration of the time to appeal and non appeal is then pending, whichever is later; and

- (r) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands trial by Jury on all issues.

Dated: Flushing, New York
March 8, 2018

Respectfully submitted,

LAW OFFICES OF DAVID YAN

By: /s/ David Yan/
David Yan (DY2343)
Law Offices of David Yan
136-20 38th Avenue, Suite 11E
Flushing, New York 11354
Tel: (718) 888-7788

Attorney for Plaintiff

JS 44 (Rev. 01/29/2018)

CIVIL COVER SHEET

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 the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>JIPENG DU, individually and on behalf of all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Queens</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) David Yan, Esq., Law Offices of David Yan 136-20 38th Avenue, Suite 11E, Flushing, NY 11354 Tel.: (718) 888-7788</p>	<p>DEFENDANTS</p> <p>WAN SANG CHOW, as shareholders and corporate officers, and SUN RISE CHINESE FOOD INC.,</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION		
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
29 U.S.C. Sections 201, et seq (Fair Labor Standards Act), New York Labor Law

Brief description of cause:
Unpaid minimum wages, overtimes, spread-of-hours, breach of implied contract, invalid notice and statement

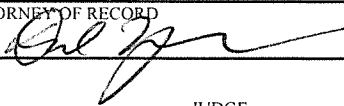
VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE 03/18/2018 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No
(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

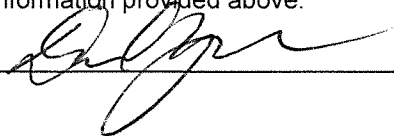
I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: _____


AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JIPENG DU, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

WAN SANG CHOW, as shareholders and corporate
officers, and SUN RISE CHINESE FOOD INC.,

Defendant(s)

Civil Action No. 1:18-cv-01692

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WAN SANG CHOW
SUN RISE CHINESE FOOD INC.

683 A Glen Cove Avenue
Glen Head, New York 11545

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Law Offices of David Yan
136-20 38th Avenue, Suite 11E
Flushing, NY 11354

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-01692

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against Sun Rise Chinese Food Inc. Attempts to Shed Light on Allegedly Illegal Pay Practices](#)
