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*Attorneys for Plaintiff*

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

-----X  
BENIGNO ESCOBAR, *individually and on  
behalf of others similarly situated,*

*Plaintiff,*

-against-

SHAMROCK SALOON I LLC. (d/b/a  
MCFADDEN’S) and JOHN SULLIVAN

*Defendants.*  
-----X

**COMPLAINT**

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

**ECF Case**

Plaintiff Benigno Escobar (“Plaintiff Escobar” or “Mr. Escobar”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., upon information and belief, and as against each of Defendants Shamrock Saloon I LLC. (d/b/a McFadden’s) (“Defendant Corporation”) and John Sullivan (collectively, “Defendants”), alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Escobar is a former employee of Defendants Shamrock Saloon I LLC (d/b/a McFadden’s) and John Sullivan.
2. McFadden’s is a bar/restaurant owned by John Sullivan located at 800 2nd Avenue, New York, New York 10017.

3. Upon information and belief, Defendant John Sullivan serves or served as owner, manager, principal and/or agent of Defendant Corporation, and through this corporate entity operates the bar/restaurant.

4. Plaintiff Escobar is a former employee of Defendants.

5. Plaintiff Escobar was ostensibly employed as a barback, but he was required to spend several hours each day performing non-tipped duties unrelated to tips, including but not limited to cleaning the entire business including bathroom and windows, carrying down kegs and boxes of beer and liquor and stocking the bottles in the basement, bringing up beer and other bottles of liquor and drinks from the basement and refilling the refrigerators, doing liquor inventory, and taking out the garbage (hereinafter, “non-delivery, non-tip duties”).

6. Plaintiff Escobar regularly worked for Defendants in excess of 40 hours per week without appropriate minimum wage or overtime compensation for any of the hours that he worked.

7. Rather, Defendants failed to maintain accurate recordkeeping of his hours worked and failed to pay Plaintiff Escobar appropriately for any hours worked over 40, either at the straight rate of pay or for any additional overtime premium.

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

9. Defendants employed and accounted for Plaintiff Escobar as a barback in their payroll, but in actuality his duties included a significant amount of time spent performing the non-delivery, non-tipped duties alleged above.

10. At all times, regardless of duties, Defendants paid Plaintiff Escobar and all other barbacks at a rate that was lower than the required tip-credited rate.

11. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Escobar's non-tipped duties exceeded 20% of each workday, or 2 hours per day (whichever was less in each day) (12 N.Y.C.R.R. § 146).

12. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Escobar's actual duties in payroll records to avoid paying Plaintiff Escobar at the minimum wage rate, and to enable them to pay Plaintiff Escobar at the lower tip-credited rate (which they still failed to do) by designating him as a barback instead of a non-tipped employee.

13. Defendants' conduct extended beyond Plaintiff Escobar to all other similarly situated employees.

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

15. Plaintiff Escobar 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"), the New York Labor Law ("NYLL") §§190 and 650 *et seq.*, and "overtime wage order" respectively codified at N.Y.C.R.R. Tit. 12 §§ 142-2.2, 2.4), 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, § 146-1.6 (herein the

“Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees, and costs.

16. Plaintiff Escobar 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**

17. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1531 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Escobar’s state law claims is conferred by 28 U.S.C. § 1367(a).

18. 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 businesses in this district, and Plaintiff Escobar was employed by Defendants in this district.

### **PARTIES**

#### *Plaintiff*

19. Plaintiff Escobar is an adult individual residing in Queens County, New York.

20. Plaintiff Escobar was employed by Defendants from approximately 2003 until on or about 2008 and from approximately 2009 until on or about October 2016.

21. Pursuant to 29 U.S.C. § 216(b), Plaintiff Escobar consents to being a party 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*

22. At all times relevant to this Complaint, Defendants owned, operated, and/or controlled a bar/restaurant located at 800 2nd Avenue, New York, New York 10017 under the name “McFadden’s”.

23. Upon information and belief, Shamrock Saloon I LLC. (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 800 2nd Avenue, New York, New York 10017.

24. Defendant John Sullivan is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Sullivan is sued individually and in his capacity as an owner, officer and/or agent of Defendant Corporation.

25. Defendant Sullivan possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation and/or controlled significant functions of Defendant Corporation.

26. Defendant Sullivan determined the wages and compensation of the employees of Defendants, including Plaintiff Escobar, established the schedules of the employees, maintained employee records and had the authority to hire and fire employees.

**FACTUAL ALLEGATIONS**

*Defendants Constitute Joint Employers*

27. Defendants operate a Bar/restaurant located at 800 2nd Avenue, New York, New York 10017.

28. Individual Defendant John Sullivan possesses operational control over Defendant Corporation, possesses an ownership interest in Defendant Corporation, and controls significant functions of Defendant Corporation.

29. 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.

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

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

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

33. Upon information and belief, individual defendant John Sullivan operates Defendant Corporation as either an alter ego of himself and/or fails to operate Defendant Corporation as a legal entity separate and apart from himself by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;
- (b) defectively forming or maintaining Defendant Corporation 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 Corporation for his own benefit as the sole or majority shareholder;
- (e) operating Defendant Corporation for his own benefit and maintaining control over it as a closed corporation or closely controlled entity;
- (f) intermingling assets and debts of his own with Defendant Corporation;
- (g) diminishing and/or transferring assets of Defendant Corporation to protect his own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

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

35. Defendants had the power to hire and fire Plaintiff Escobar, controlled the terms and conditions of his employment, and determined the rate and method of any compensation in exchange for Plaintiff Escobar's services.

36. In each year from 2010 to 2016, 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).

37. In addition, upon information and belief, Defendants and/or their enterprises were directly engaged in interstate commerce. For example, numerous items that were sold in the bar/restaurant on a daily basis, such as beer, scotch, and vodka, were produced outside of the State of New York.

*Individual Plaintiff*

38. Plaintiff Escobar is a former employee of Defendants ostensibly employed as a barback, but who spent more than 20% of each work day performing the non-delivery, non-tip duties outlined above.

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

*Plaintiff Benigno Escobar*

40. Plaintiff Escobar was employed by Defendants from approximately 2003 until on or about 2008 and from approximately 2009 until on or about October 2016.

41. At all relevant times, Plaintiff Escobar was ostensibly employed by Defendants as a barback. However, Plaintiff Escobar spent more than 20% of each work day performing the non-tip duties outlined above.

42. Plaintiff Escobar regularly handled goods in interstate commerce, such as beer and liquor produced outside of the State of New York.

43. Plaintiff Escobar's work duties required neither discretion nor independent judgment.

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



45. During the months of February through August, from approximately October 2010 until on or about late August 2014, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 62 hours per week, or a schedule of four days per week, for a total of approximately 51 hours per week, with the schedule alternating every other week.

46. During the months of September through January, from approximately October 2010 until on or about late January 2014, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 67 hours per week or a schedule of five days per week for a total of approximately 56 hours per week, with the schedule alternating every other week.

47. From approximately September 2014 until on or about late August 2015, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 62 hours per week, or a schedule of four days per week, for a total of approximately 51 hours per week, with the schedule alternating every other week.

48. From approximately September 2015 until on or about late January 2016, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 67 hours per week or a schedule of five days per week for a total of approximately 56 hours per week, with the schedule alternating every other week.

49. From approximately February 2016 until on or about late August 2016, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 62 hours per week, or a schedule of four days per week, for a total of approximately 50 hours per week, with the schedule alternating every other week.

50. From approximately September 2016 until on or about October 2016, Plaintiff Escobar worked a schedule of six days per week for a total of approximately 67 hours per week

or a schedule of five days per week for a total of approximately 55 hours per week, with the schedule alternating every other week.

51. From approximately October 2010 until on or about early 2015, defendants paid Plaintiff Escobar his wages in cash.

52. From approximately early 2015 until on or about October 2016, defendants paid Plaintiff Escobar his wages in a combination of check and cash.

53. From approximately October 2010 until on or about 2013, defendants paid Plaintiff Escobar a fixed salary of \$250 per week and an additional \$50 per week during football season.

54. From approximately 2013 until on or about late August 2014, defendants paid Plaintiff Escobar a fixed salary of \$300 per week and an additional \$50 per week during football season.

55. From approximately September 2014 until on or about early 2015, defendants paid Plaintiff Escobar a fixed salary of \$300 per week.

56. From approximately early 2015 until on or about October 2016, defendants paid Plaintiff Escobar a fixed salary of \$325 per week, an additional \$50 per week during football season.

57. Defendants did not grant Plaintiff Escobar any break or meal periods of any length.

58. Plaintiff Escobar was never notified by Defendants that his tips would be included as an offset for wages.

59. Defendants did not account for these tips in any daily, weekly or other accounting

of Plaintiff Escobar's wages.

60. Defendants did not provide Plaintiff Escobar with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

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

62. Defendants never provided Plaintiff Escobar with a written notice, in English and in Spanish (Plaintiff Escobar's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

63. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Escobar regarding overtime and wages under the FLSA and NYLL.

64. Defendants required Plaintiff Escobar to purchase "tools of the trade" with his own funds—including around 30 pairs of khaki pants.

*Defendants' General Employment Practices*

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

66. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Escobar (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.

67. At no time did Defendants inform their employees, including Plaintiff Escobar, that they had reduced their hourly wages by a tip allowance.

68. Defendants required all barbacks, including Plaintiff Escobar, to perform general non-delivery, non-tipped restaurant tasks in addition to their primary duties as barbacks. Plaintiff Escobar, and all similarly situated employees, were ostensibly employed as tipped employees by Defendants, although their actual duties included a significant amount of time spent performing non-delivery, non-tipped duties.

69. Plaintiff Escobar and all other barbacks were not even paid at the required lower tip-credit rate by Defendants. However, under state law, Defendants were not entitled to a tip credit because the barback's and Plaintiff Escobar's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less) (12 N.Y.C.R.R. § 146).

70. New York State regulations provide that an employee cannot be classified as a tipped employee on any day in which he has been assigned to work in an occupation in which tips are not customarily received. (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

71. The barbacks', including Plaintiff Escobar's, duties were not incidental to their occupation as barbacks, but instead constituted entirely unrelated general restaurant work with duties, including the non-tipped duties described above.

72. In violation of federal and state law as codified above, Defendants classified Plaintiff Escobar and other barbacks as tipped employees but did not even pay them at the tip-

credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

73. Defendants' pay practices resulted in Defendants' barbacks, including Plaintiff Escobar, not receiving payment for all their hours worked, resulting in their effective rate of pay falling below the required minimum and overtime wage rate.

74. Plaintiff Escobar was paid his wages in cash or in a combination of check and cash.

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

76. Upon information and belief, these practices were done to disguise the actual number of hours Plaintiff Escobar, and similarly situated employees, worked and to avoid paying them properly for their (1) full hours worked, (2) minimum wage, (3) overtime wages, and (4) spread of hours pay.

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

78. Defendants failed to provide Plaintiff Escobar and other employees with wage statements at the time of each 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).

79. Defendants failed to provide Plaintiff Escobar 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**

80. Plaintiff Escobar brings his FLSA minimum wage, overtime compensation 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 his case (the "FLSA Class Period"), as employees of Defendants (the "FLSA Class").

81. At all relevant times, Plaintiff Escobar, and other members of the FLSA Class who are and/or have been similarly situated, 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, overtime pay of one and one-half times his regular rates for work in excess of forty (40) hours per workweek under the FLSA and willfully failing to keep records required by the FLSA.

82. The claims of Plaintiff Escobar stated herein are similar to those of the other employees.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FLSA MINIMUM WAGE PROVISIONS**

83. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set forth herein.

84. At all times relevant to this action, Defendants were Plaintiff Escobar'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 Escobar (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

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

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

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

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

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

**SECOND CAUSE OF ACTION**  
**VIOLATION OF THE FLSA OVERTIME PROVISIONS**

90. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set forth herein.

91. At all times relevant to this action, Defendants were Plaintiff Escobar'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 Escobar (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for his employment.

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

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

94. Defendants, in violation of 29 U.S.C. § 207 (a)(1) of the FLSA, failed to pay Plaintiff Escobar (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.

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



96. Plaintiff Escobar (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**

97. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set forth herein.

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

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

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

101. Plaintiff Escobar (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 LAW**

102. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set forth herein.

103. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Escobar 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.

104. Defendants' failure to pay Plaintiff Escobar overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

105. Plaintiff Escobar was 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**

106. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set forth herein.

107. Defendants failed to pay Plaintiff Escobar one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Escobar's spread of hours exceeded ten hours in violation of NYLL §§ 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, § 142-1.6.

108. Defendants' failure to pay Plaintiff Escobar an additional hour's pay for each day Plaintiff Escobar's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

109. Plaintiff Escobar was 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**

110. Plaintiff Escobar repeats and realleges all paragraphs above as though fully set

forth herein.

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

112. Defendants are liable to Plaintiff Escobar 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**

113. Plaintiff Escobar repeats and realleges all paragraphs above as though set forth fully herein.

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

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

**EIGHTH CAUSE OF ACTION**  
**(RECOVERY OF EQUIPMENT COSTS)**

116. Plaintiff Escobar repeats and realleges all paragraphs above as though set forth fully herein.

117. Defendants required Plaintiff Escobar to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform his job, such as khaki pants, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

118. Plaintiff Escobar was damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Escobar respectfully request that this Court enter judgment against Defendants by:

(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 plaintiffs 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 Escobar 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 Escobar 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 Escobar'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 Escobar and the FLSA class members;

(f) Awarding Plaintiff Escobar 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 Escobar and the FLSA class members liquidated damages in an amount equal to 100% of his 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 Escobar 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 Escobar 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 Escobar and the members of the FLSA Class;

(k) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Escobar'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 Escobar and the FLSA Class members;

(m) Awarding Plaintiff Escobar and the FLSA class members damages for the amount of unpaid minimum and overtime wages as well as spread of hours pay as applicable;

(n) Awarding Plaintiff Escobar damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(o) Awarding Plaintiff Escobar and the FLSA class members liquidated damages in

an amount equal to one hundred percent (100%) of the minimum wage, spread of hours pay and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

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

(q) Awarding Plaintiff Escobar and the FLSA class members the expenses incurred in this action, including costs and attorneys' fees;

(r) 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

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

#### JURY DEMAND

Plaintiff Escobar 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.

/s/ Michael Faillace

By: Michael A. Faillace [MF-8436]  
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*Attorneys for Plaintiff*

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

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New York, New York 10165

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Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

October 19, 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: Benigno Escobar

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: 

Date / Fecha: 19 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: [McFadden's Sued Over FLSA Wage Violations](#)

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