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7 *Attorneys for the Plaintiff*

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

10 Ismael Antonio Hernandez Garcia, *on behalf*)
11 *of himself and others similarly situated,*)
12)
13 *Plaintiff,*)

Civil Case No.:

14 -v-

FLSA COLLECTIVE ACTION

COMPLAINT

15 Wantagh Bagels Inc., Wantagh Bagels,)
16 Ralph Facchini, and Peter Casella, *jointly*)
17 *and severally,*)
18)
19 *Defendants.*)
20)

21 **NATURE OF THE ACTION**

22 1. Plaintiff Ismael Antonio Hernandez Garcia (“Plaintiff”), on behalf of himself
23 and others similarly situated, brings this action under the Fair Labor Standards Act (“FLSA”),
24 29 U.S.C. §§ 201 *et. seq.* in order to remedy Defendants’ wrongful withholding of Plaintiff’s
25 lawfully earned overtime compensation. Plaintiff also brings these claims under New York
26 Labor Law (“NYLL”), Article 6, §§ 190 *et seq.*, as well as the supporting New York State
27 Department of Labor Regulations for violations of overtime wages, spread-of hours pay, and
28 the failure of the Defendants to provide wage statements and wage notices.

1 **Personal Jurisdiction**

2 8. This Court may properly maintain personal jurisdiction over Defendants under
3 Rule 4 of the Federal Rules of Civil Procedure because Defendants' contacts with this state and
4 this judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply
5 with traditional notions of fair play and substantial justice.
6

7 **Venue**

8 9. Venue is proper in the Eastern District of New York under 28 U.S.C. §§ 1391
9 (b) (1) and (2) because Defendants reside and conduct business in this judicial district and
10 because a substantial part of the acts or omissions giving rise to the claims set forth herein
11 occurred in this judicial district.
12

13 **THE PARTIES**
14 **Plaintiff**

15 **Ismael Antonio Hernandez Garcia**

16 10. Plaintiff Ismael Antonio Hernandez Garcia ("Plaintiff") is an adult individual
17 residing in the state of New York, County of Nassau.

18 11. Plaintiff is a covered employee within the meaning of the FLSA, 29 U.S.C. §
19 203(e) and the NYLL § 190.
20

21 12. Plaintiff worked at Wantagh Bagels located at 3056 Merrick Road, Wantagh,
22 New York, 11793.

23 13. Plaintiff was employed by Defendants, Wantagh Bagels Inc., Wantagh Bagels,
24 Ralph Facchini, and Peter Casella for the majority of his employment period of May 2010 to
25 July 15, 2017, and worked as a baker. His duties included but were not limited to, measuring
26 the dough and other ingredients, mixing and kneading the dough, and baking the bagels.
27

28 14. Plaintiff regularly handled goods in interstate commerce during his employment

1 with the Defendants, such as food, ingredients, tools, and machines imported from outside the
2 State of New York.

3 15. During his employment, Plaintiff was also performing side tasks apart from his
4 duties as a baker and was required to regularly carry in food supplies and purchased
5 merchandise into the shop such as flour, water jugs, etc.
6

7 16. From May 2010 to December 2016, Plaintiff worked six (6) days per week,
8 from Monday through Saturday. His hours from Monday to Friday were 8 a.m. to 5 p.m. and
9 on Saturday from 8 a.m. to 6 or 7 p.m. On average, from May 2010 to December 2016,
10 Plaintiff worked approximately fifty-six (56) hours per week. Plaintiff was allowed a meal
11 break lasting 10 to 15 minutes each day.
12

13 17. In or around January 2017, the business changed owners, and limited the
14 Plaintiff's schedule to less than 40 hours per week.

15 18. Defendants utilized a time clock system to keep track of Plaintiff's hours of
16 work. For this time clock system, each employee was provided a PIN number and the
17 employees would enter their PIN when they would clock in and clock out.
18

19 19. Plaintiff was compensated at the rate of Fifteen Dollars (\$15.00) per hour,
20 regardless of the number of hours he worked.

21 20. During his employment from May 2010 to December 2016, Defendants
22 repeatedly suffered or permitted Plaintiff to work over forty (40) hours per week without
23 paying him the appropriate premium overtime pay of one and one-half times his regular rate of
24 pay.
25

26 21. During his period of employment from May 2010 to December 2016,
27 Defendants failed to pay Plaintiff spread-of-hours pay of one hour's pay at the minimum
28

1 hourly wage rate for each day during which Plaintiff worked a shift which exceeded ten (10)
2 hours.

3 22. Plaintiff was not provided with a notice containing the rate and basis of his pay;
4 the designated pay date; and the employer's name, address and telephone number at the time of
5 hiring or at any point thereafter.

6 23. Plaintiff was never provided with wage statements or other records detailing,
7 *inter alia*, Plaintiff's regular hourly rate of pay; the overtime rate of pay; the number of regular
8 hours worked; and the number of overtime hours worked at any point during the time of his
9 employment with Defendants.

10 24. Upon information and belief, while Defendants employed Plaintiff, they failed
11 to post notices explaining the minimum wage rights of employees under the FLSA and NYLL
12 and failed to inform Plaintiff of such rights.

13 25. Throughout his period of employment, Plaintiff did not have any supervisory
14 authority over any of Defendants' employees, nor did he exercise discretion or independent
15 judgment with respect to matters of significance.

16 26. Plaintiff consented in writing to be a party to the FLSA claims in this action,
17 pursuant to 29 U.S.C. § 216(b).

18 27. Plaintiff has personal knowledge of other employees of Defendants who are
19 similarly situated and who also worked hours for which they were not paid overtime wages and
20 spread-of-hour pay.

21
22
23
24
25 **Defendants**

26 28. At all relevant times, Individual and Corporate Defendants were joint employers
27 of Plaintiff, acted in the interest of each other with respect to Plaintiff's and other employees'
28

1 remuneration, and had common policies and practices as to wages and hours, pursuant to 29
2 C.F.R. § 791.2. Factors indicating joint employment include:

- 3 a. Defendants all suffered or permitted Plaintiff to work.
4 b. Each of the Defendants acted directly or indirectly in the interest of one another
5 in relation to Plaintiff and similarly situated employees.
6 c. Defendants each have an economic interest in the location in which Plaintiff and
7 similarly situated employees worked.
8 d. Defendants all simultaneously benefitted from Plaintiff's work.
9 e. Defendants each had either functional and/or formal control over the terms and
10 conditions of work of Plaintiff and similarly situated employees.
11 f. Plaintiff and similarly situated employees performed work integral to the
12 Corporate Defendant's operation.
13
14

15 29. In the alternative, all Defendants functioned together as a single integrated
16 employer of Plaintiff within the meaning of the FLSA and NYLL.
17

18 30. The Corporate Defendants own and operate the business Wantagh Bagels, a sit-
19 down deli and bakery engaged in the retail sale of food and beverage items. Defendant
20 Wantagh Bagels Inc. and Wantagh Bagels share the exact same business address and operate
21 from the same location.
22

23 **Corporate Defendants**

24 **Wantagh Bagels Inc.**

25 31. Wantagh Bagels Inc. is a domestic corporation organized and existing under the
26 laws of the State of New York with initial DOS filing date of April 26, 2010 and a principle
27 place of business located at 3056 Merrick Road, Wantagh, New York, 11793.
28

1 32. Wantagh Bagels Inc. owns and operates Wantagh Bagels, a sit-down deli and
2 bakery engaged in the retail sale of food and beverage items where customers sit down and
3 order and then pay after consuming items.

4 33. Wantagh Bagels Inc. is open seven (7) days per week for several hours per day.
5 It employs a handful of full-time and part-time personnel including bakers, cashiers and
6 cleaning personnel.
7

8 34. At all relevant times, Wantagh Bagels Inc. was a covered employer within the
9 meaning of the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

10 35. At all relevant times, Wantagh Bagels Inc. maintained control, oversight, and
11 direction over the Plaintiff, including timekeeping, payroll, and other employment practices
12 that applied to him.
13

14 36. At all relevant times, Wantagh Bagels Inc. was "an enterprise engaged in
15 commerce" within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees
16 were handling food made from ingredients imported from out of state and distributed in New
17 York. In addition, Wantagh Bagels conducted business with vendors and other businesses
18 outside the State of New York and engaged in credit card transactions involving banks and
19 other institutions outside the State of New York.
20

21 37. Upon information and belief, at all relevant times, Wantagh Bagels Inc.'s
22 annual gross volume of sales made, or business done, was not less than \$500,000.00, exclusive
23 of separate retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).
24

25 **Wantagh Bagels**

26 38. Wantagh Bagels is the trade name of a domestic corporation organized and
27 existing under the laws of the State of New York. Its principal place of business is located at
28

1 3056 Merrick Road, Wantagh, New York, 11793.

2 39. Wantagh Bagels is a sit-down deli and bakery engaged in the retail sale of food
3 and beverage items where customers sit down and order and then pay after consuming items.

4 40. Wantagh Bagels is open seven (7) days per week for several hours per day. It
5 employs a handful of full-time and part-time personnel including bakers, cashiers and cleaning
6 personnel.
7

8 41. At all relevant times, Wantagh Bagels was a covered employer within the
9 meaning of the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

10 42. At all relevant times, Wantagh Bagels maintained control, oversight, and
11 direction over the Plaintiff, including timekeeping, payroll, and other employment practices
12 that applied to him.
13

14 43. At all relevant times, Wantagh Bagels was "an enterprise engaged in
15 commerce" within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees
16 were handling food made from ingredients imported from out of state and distributed in New
17 York. In addition, Wantagh Bagels conducted business with vendors and other businesses
18 outside the State of New York and engaged in credit card transactions involving banks and
19 other institutions outside the State of New York.
20

21 44. Upon information and belief, at all relevant times, Wantagh Bagels' annual
22 gross volume of sales made, or business done, was not less than \$500,000.00, exclusive of
23 separate retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).
24

25 **Individual Defendants**

26 **Ralph Facchini**

27 45. Upon information and belief, at all relevant times, Ralph Facchini ("Facchini")
28

1 was, at the time of Plaintiff's employment owner, principal, authorized operator, manager
2 shareholder, and/or agent of the Corporate Defendants.

3 46. At all relevant times throughout Plaintiff's employment, Facchini had the
4 discretionary power to create and enforce personnel decisions on behalf of the Corporate
5 Defendants, including but not limited to: hiring and terminating employees; setting and
6 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;
7 instructing and supervising Plaintiff; and otherwise controlling the terms and conditions for the
8 Plaintiff while he was employed by Defendants.
9

10 47. At all relevant times throughout the Plaintiff's employment, Facchini was
11 actively involved in the day-to-day operations of Corporate Defendants and was in charge of
12 their finances.
13

14 48. At all relevant times throughout the Plaintiff's employment, Facchini was a
15 covered employer within the meaning of the FLSA and NYLL, and employed or jointly
16 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to, 29
17 U.S.C. § 203(d).
18

19 **Peter Casella**

20 49. Upon information and belief, at all relevant times, Peter Casella ("Casella")
21 was, at the time of Plaintiff's employment owner, principal, authorized operator, manager
22 shareholder, and/or agent of the Corporate Defendants
23

24 50. At all relevant times throughout Plaintiff's employment, Casella had the
25 discretionary power to create and enforce personnel decisions on behalf of the Corporate
26 Defendants, including but not limited to: hiring and terminating employees; setting and
27 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;
28

1 instructing and supervising Plaintiff; and otherwise controlling the terms and conditions for the
2 Plaintiff while he was employed by Defendants.

3 51. At all relevant times throughout the Plaintiff's employment, Casella was
4 actively involved in the day-to-day operations of Corporate Defendants and was in charge of
5 their finances.

6
7 52. At all relevant times throughout the Plaintiff's employment, Casella was a
8 covered employer within the meaning of the FLSA and NYLL, and employed or jointly
9 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to, 29
10 U.S.C. § 203(d).

11 **COLLECTIVE ACTION ALLEGATIONS**

12
13 53. Pursuant to 29 U.S.C. §§ 203, 207, and 216(b), Plaintiff brings his First cause
14 of action as a collective action under the FLSA on behalf of himself and the following
15 collective:

16 All persons employed by Defendants at any time from August 21,
17 2014 to December 31, 2016 (the "Collective Action Period") who
18 worked as bakers, cashiers, and other non-exempt employees of
19 the Defendants (the "Collective Action Members").

20
21 54. A collective action is appropriate in these circumstances because Plaintiff and
22 the Collective Action Members are similarly situated, in that they were all subject to
23 Defendants' illegal policies of failing to pay overtime wage for all hours worked.
24

25 55. Plaintiff and the Collective Action Members have substantially similar job
26 duties and are paid pursuant to a similar, if not the same, payment structure.
27
28

1 63. Defendants' unlawful conduct, as described in this Complaint, has been willful
2 and intentional. Defendants were aware, or should have been aware, that the practices described
3 in this Complaint were unlawful.

4 64. Defendants have not made a good faith effort to comply with the FLSA with
5 respect to the compensation of the Plaintiff and the Collective Action Members.

6 65. Defendants failed to post or keep posted conspicuous notices of Plaintiff's rights
7 as required by the U.S. Department of Labor pursuant to 29 C.F.R. § 516.4, further evincing
8 Defendants' lack of good faith.
9

10 66. Because Defendants' violations of the FLSA have been willful, a three-year
11 statute of limitations applies pursuant to 29 U.S.C. § 255(a).
12

13 **SECOND CAUSE OF ACTION**

14 **New York Labor Law – Unpaid Overtime Wages**
15 **(August 21, 2011 - December 31, 2016)**

16 67. Plaintiff realleges and incorporates by reference all allegations in all preceding
17 paragraphs.
18

19 68. Defendants have engaged in a widespread pattern, policy, and practice of
20 violating the NYLL, as detailed in this Complaint.

21 69. At all relevant times referenced herein, Plaintiff had been an employee of
22 Defendants, and Defendants have been employers of Plaintiff within the meaning of the NYLL
23 §§ 190, 651 (5), 652, and the supporting New York State Department of Labor Regulations.
24

25 70. The overtime wage provisions as set forth in NYLL §§ 190 *et seq.* and the
26 supporting New York State Department of Labor Regulations apply to Defendants and protect
27 Plaintiff
28

1 71. Defendants have failed to pay Plaintiff proper overtime which he was entitled to
2 at a wage rate of one and one-half times his regular rate but under no instance less than one and
3 one-half times the statutory minimum wage as defined by the New York State Department of
4 Labor regulations, 12 N.Y.C.R.R. Part 146-1.4.

5 72. Through their knowing or intentional failure to pay Plaintiff proper overtime
6 wages for hours worked in excess of forty (40) hours per workweek, Defendants have violated
7 the NYLL §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.
8

9 73. Defendants' failure to pay Plaintiff overtime compensation was willful within the
10 meaning of NYLL § 663.

11 74. Defendants also failed to post conspicuous notices of the Plaintiff's rights under
12 the law, as required by the NYLL § 661 and the New York State Department of Labor
13 Regulations, 12 N.Y.C.R.R. Part 146-2.4, further evincing Defendants' lack of good faith.
14

15 75. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
16 Defendants his unpaid overtime wages, liquidated damages as provided for by the NYLL,
17 reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest,
18 pursuant to NYLL § 198 (1-a).
19

20 **THIRD CAUSE OF ACTION**

21 **New York Labor Law – Spread-of-hours pay**
22 **(August 21, 2011 - December 31, 2016)**

23
24 76. Plaintiff realleges and incorporates by reference all allegations in all preceding
25 paragraphs.
26
27
28

1 number of the employer, and anything otherwise required by law, in violation of NYLL §
2 195(1).

3 83. Due to Defendants' violations of the NYLL § 195(1), Plaintiff is entitled to
4 recover from Defendants statutory damages of Fifty dollars (\$50) per workweek that the
5 violation occurred, up to a maximum of Two Thousand Five Hundred Dollars (\$2,500), until
6 February 26, 2015, and statutory damages of Fifty Dollars (\$50) per workday that the violation
7 occurred, up to a maximum of Five Thousand Dollars (\$5,000), thereafter, pursuant to NYLL §
8 198 (1-b).
9

10 **FIFTH CAUSE OF ACTION**

11 **New York Labor Law – Failure to Provide Wage Statements**

12 84. Plaintiff realleges and incorporates by reference all allegations in all preceding
13 paragraphs.
14

15 85. Defendants have failed to provide Plaintiff with wage statements listing, *inter*
16 *alia*, all his hours of work; rate of pay; basis of pay; the period covered; and overtime pay, in
17 violation of NYLL § 195(3).
18

19 86. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
20 Defendants One Hundred Dollars (\$100) for each work week that the violations occurred, up to
21 a maximum of Two Thousand Five Hundred Dollars (\$2,500), until February 26, 2015, and
22 statutory damages of Two Hundred and Fifty Dollars (\$250) per workday that the violation
23 occurred, up to a maximum of Five Thousand Dollars (\$5,000), thereafter, pursuant to NYLL §
24 198 (1-d).
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

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 collective action members, apprising them of the pendency of this action, and permitting them promptly to file consents to be Plaintiff in the FLSA claims in this action;

B. An order tolling the statute of limitations;

C. Issuance of a declaratory judgment that the practices complained of in this complaint are unlawful under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New York Labor Law, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations;

D. Unpaid overtime pay under the FLSA and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and the supporting United States Department of Labor regulations;

E. Unpaid overtime wages and spread-of-hour pay under NYLL, and an additional and equal amount as liquidated damages pursuant to NYLL §198(1-a) and § 663(1);

F. Civil penalties of One Thousand One Hundred Dollars (\$1,100) for each of Defendants' willful and repeated violations of the FLSA pursuant to 29 U.S.C. § 216(b);

G. An award of statutory damages for Defendants' failure to provide Plaintiff with a wage notice at the time of hiring or any time thereafter pursuant to NYLL § 198 (1-b);

H. An award of statutory damages for Defendants' failure to provide Plaintiff with wage statements pursuant to NYLL § 198 (1-d);

1 I. A permanent injunction requiring Defendants to pay all statutorily required
2 wages pursuant to the FLSA and NYLL;

3 J. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b), are not awarded,
4 an award of prejudgment interest pursuant to 28 U.S.C. § 1961;

5 K. An award of pre-judgment interest of nine per centum per annum (9%)
6 pursuant to the New York Civil Practice Law and Rules §§ 5001-5004;

7 L. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the
8 New York Civil Practice Law and Rules § 5003;

9 M. An award of attorney's fees, costs, and further expenses up to fifty dollars,
10 pursuant to 29 U.S.C. § 216(b), and NYLL §§ 198 and 663(1);

11 N. Such other relief as this Court shall deem just and proper.

12 Dated: August 21, 2017

13
14
15 Respectfully submitted,
16 **PARDALIS & NOHAVICKA, LLP**

17
18 By: /s/Ariadne Panagopoulou
19 Ariadne Panagopoulou (AP-2202)
20 *Attorneys for the Plaintiff*
21 35-10 Broadway, Suite 201
22 Astoria, New York 11106
23 Tel: 718.777.0400 | Fax: 718.777.0599
24 Email: ari@pnlawyers.com
25
26
27
28

NOTICE OF CONSENT TO JOIN, PURSUANT TO 29 U.S.C. 216(b)

FAIR LABOR STANDARDS ACT CONSENT FORM

I consent to be a party plaintiff in a lawsuit against **Ismael Antonio Hernandez Garcia** and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. Section 216(b). I hereby designate Pardalis & Nohavicka LLP to represent me in such a lawsuit.

Dated: 7/18/2017

Astoria, New York

ISMAEL HERNANDES

Signature

Ismael Antonio Hernandez Garcia

Print Name

Address

516.547.5590

Telephone

JS 44 (Rev. 06/17)

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.)*

I. (a) PLAINTIFFS

Ismael Antonio Hernandez Garcia, on behalf of himself and others similarly situated

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Pardalis & Nohavicka, LLP
35-10 Broadway, Suite 201, Astoria, NY 11106
Tel: (718) 777-0400; Fax: (718) 777-0599

DEFENDANTS

Wantagh Bagels Inc., Wantagh Bagels, Ralph Facchini, and Peter Casella, jointly and severally

County of Residence of First Listed Defendant Nassau
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- 1 U.S. Government Plaintiff
- 3 Federal Question *(U.S. Government Not a Party)*
- 2 U.S. Government Defendant
- 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	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

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	PERSONAL INJURY <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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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	LABOR <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	PROPERTY RIGHTS <input type="checkbox"/> 424 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <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
			LABOR <input 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	FEDERAL TAX SUITS <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

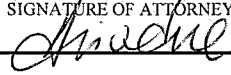
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
29 U.S.C. §§201 et. seq.
 Brief description of cause:
Unpaid overtime wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 200,000.00 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 08/21/2017 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, Ariadne Panagopoulou, Esq., counsel for Plaintiff, 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:

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? 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
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

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? _____

(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: *Ariadne*

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Ismael Antonio Hernandez Garcia, on behalf of himself and others similarly situated,

Plaintiff(s)

v.

Wantagh Bagels Inc., Wantagh Bagels, Ralph Facchini, and Peter Casella, jointly and severally,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

- To: (Defendant's name and address) 1. Wantagh Bagels Inc. - 3056 Merrick Road, Wantagh, New York 11793 2. Wantagh Bagels - 3056 Merrick Road, Wantagh, New York 11793 3. Ralph Facchini - 3056 Merrick Road, Wantagh, New York 11793 and 2365 Riverside Avenue, Seaford, NY 11783 4. Peter Casella - 3056 Merrick Road, Wantagh, New York 11793 and 2056 Merrick Road, Wantagh, New York 11793

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:

Pardalis & Nohavicka, LLP 35-10 Broadway, Suite 201, Astoria, NY 11106 Tel: (718) 777-0400 Fax: (718) 777-0599

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Long Island's Wantagh Bagels Hit with Unpaid Overtime Lawsuit](#)
