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

-----X
DIMAS IXCOY, *individually and on behalf of others
similarly situated,*

Plaintiff,

-against-

ROYAL PIZZA OF THIRD AVENUE CORP. (d/b/a
ROYAL PIZZA), ROYAL PIZZA 1 OF THIRD
AVENUE CORP. (d/b/a ROYAL PIZZA), ADEM
KANDIC and NATHANIEL KIM,

Defendants.

-----X

COMPLAINT

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

ECF Case

Plaintiff Dimas Ixcoy (“Plaintiff Ixcoy” or “Mr. Ixcoy”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Royal Pizza of Third Avenue Corp. (d/b/a Royal Pizza), Royal Pizza 1 of Third Avenue Corp. (d/b/a Royal Pizza), Adem Kandic and Nathaniel Kim (collectively, “Defendants”), upon information and belief alleges as follows:

NATURE OF ACTION

1. Plaintiff Ixcoy is a former employee of Defendants Royal Pizza of Third Avenue Corp. (d/b/a Royal Pizza), Royal Pizza 1 of Third Avenue Corp. (d/b/a Royal Pizza), (“Defendant Corporations”), Adem Kandic, and Nathaniel Kim.

2. Royal Pizza is a pizzeria owned by Adem Kandic and Nathaniel Kim located at 592 3rd Ave #1, New York, NY 10016.

3. Upon information and belief, Defendants Adem Kandic and Nathaniel Kim serve or served as owners, managers, principals or agents of Defendant Corporations and through these corporate entities operate the pizzeria.

4. Plaintiff Ixcoy is a former employee of Defendants.

5. Plaintiff Ixcoy was ostensibly employed as a delivery worker, but he was required to spend several hours each day performing non-tipped duties unrelated to deliveries, including dishwashing, preparing food, cutting vegetables, sweeping and mopping, taking out the trash, carrying and stocking deliveries into the refrigerator and other parts of the business, cleaning the bathroom, the counter, the tables, and making pizza dough. (hereinafter non-tip/non-delivery duties).

6. At all times relevant to this Complaint, Plaintiff Ixcoy worked for Defendants in excess of 40 hours per week, without receiving the applicable minimum wage or appropriate compensation for the hours over 40 per week that he worked.

7. Defendants failed to maintain accurate recordkeeping of his hours worked, failed to pay Plaintiff Ixcoy the applicable minimum wage, and failed to pay him 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 Ixcoy 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 Ixcoy as a delivery worker in their payroll, but in actuality his duties included greater or equal time spent performing the non-delivery, non-tipped functions such as those alleged above.

10. At all times, regardless of duties, Defendants paid Plaintiff Ixcoy and all other delivery workers at a rate that was lower than the lowered tip-credited rate.

11. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Ixcoy'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 Ixcoy's actual duties in payroll records to avoid paying Plaintiff Ixcoy at the minimum wage rate, and to enable them to pay Plaintiff Ixcoy at the lower tip-credited rate (which they still failed to do) by designating him as a delivery worker instead of a non-tipped employee.

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

14. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Ixcoy 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 Ixcoy 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 Ixcoy 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 Ixcoy'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 Ixcoy was employed by Defendants in this district.

PARTIES

Plaintiff

19. Plaintiff Ixcoy is an adult individual residing in Kings County, New York.

20. Plaintiff Ixcoy was employed by Defendants from approximately July 2016 until on or about January 8, 2017.

21. At all relevant times to this Complaint, Plaintiff Ixcoy was ostensibly employed by Defendants as a delivery worker at the pizzeria.

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

Defendants

23. At all times relevant to this complaint, Defendants owned, operated, and/or controlled a pizzeria located at 592 3rd Ave #1, New York, NY 10016.

24. Upon information and belief, Royal Pizza of Third Avenue Corp. 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 592 3rd Ave #1, New York, NY 10016.

25. Upon information and belief, Royal Pizza 1 of Third Avenue Corp. 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 592 3rd Ave #1, New York, NY 10016.

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

27. Defendant Adem Kandic possesses or possessed operational control over Defendant Corporations, had an ownership interest in Defendant Corporations, and/or controlled significant functions of Defendant Corporations. Defendant Adem Kandic determined the wages and compensation of the employees of Defendants, including Plaintiff Ixcoy, established the

schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

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

29. Defendant Nathaniel Kim possesses or possessed operational control over Defendant Corporations, had an ownership interest in Defendant Corporations, and/or controlled significant functions of Defendant Corporations. Defendant Nathaniel Kim determined the wages and compensation of the employees of Defendants, including Plaintiff Ixcoy, established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

30. Defendants operate a pizzeria located in the Midtown East section of Manhattan.

31. Individual Defendants Adem Kandic and Nathaniel Kim possess operational control over Defendant Corporations, possess an ownership interest in Defendant Corporations, and control significant functions of Defendant Corporations.

32. 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.

33. Each Defendant possessed substantial control over Plaintiff Ixcoy's (and other similarly situated employees') working conditions, and over the policies and practices with

respect to the employment and compensation of Plaintiff Ixcoy, and all similarly situated individuals, referred to herein.

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

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

36. Upon information and belief, individual defendants Adem Kandic and Nathaniel Kim operate Defendant Corporations as either alter egos of themselves, and/or fail to operate Defendant Corporations as legal entities separate and apart from themselves by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporations as separate and legally distinct entities;
- (b) defectively forming or maintaining Defendant Corporations by, among other things, failing to hold annual meetings or maintaining appropriate corporate records;
- (c) transferring assets and debts freely as between all Defendants;
- (d) operating Defendant Corporations for their own benefit as the sole or majority shareholders;
- (e) operating Defendant Corporations for their own benefit and maintaining control over them as closed corporations or closely controlled entities;

- (f) intermingling assets and debts of their own with those of Defendant Corporations;
- (g) diminishing and/or transferring assets of Defendant Corporations to protect their own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

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

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

39. In each year from 2016 to 2017, 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).

40. 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 pizzeria on a daily basis, such as beverages, cheese and tomato sauce, were produced outside of the State of New York.

Individual Plaintiff

41. Plaintiff Ixcoy is a former employee of Defendants, ostensibly employed as a delivery worker, but who spent most of the day performing the non-delivery, non-tip duties outlined above.

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

Plaintiff Dimas Ixcoy

43. Plaintiff Ixcoy was employed by Defendants from approximately July 2016 until on or about January 8, 2017.

44. At all times relevant to this Complaint, Plaintiff Ixcoy ostensibly was employed by Defendants as a delivery worker. However, Plaintiff Ixcoy spent most of the work day performing the non-delivery, non-tip duties outlined above.

45. Plaintiff Ixcoy regularly handled goods in interstate commerce, such as juices, dishwashing liquid and pizza dough, produced outside of the State of New York.

46. Plaintiff Ixcoy's work duties required neither discretion nor independent judgment.

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

48. From approximately July 2016 until on or about January 8, 2017, Plaintiff Ixcoy worked from approximately 11:00 a.m. until on or about 12:00 a.m. Wednesday through Monday (typically 78 hours per week).

49. Furthermore, on approximately six (6) Tuesdays throughout his entire employment Plaintiff Ixcoy worked from approximately 6:00 p.m. until on or about 11:30 p.m. in addition to his regular schedule (typically 83.3 hours for each of those six (6) weeks).

50. Throughout his employment with defendants, Plaintiff Ixcoy was paid his wages in cash.

51. From approximately July 2016 until on or about January 8, 2017, defendants paid Plaintiff Ixcoy a fixed salary of \$450 per week when he worked six (6) days a week Wednesday through Monday and \$500 per week when he worked seven days a week.

52. Plaintiff Ixcoy's wages did not vary regardless of how many additional hours he worked in a week.

53. For example, Defendants required Plaintiff Ixcoy to work and additional 30 minutes to one hour past his scheduled departure time every day, without paying him any additional compensation.

54. Defendants never granted Plaintiff Ixcoy meal breaks or rest periods of any kind.

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

56. Defendants did not account for these tips in any daily, weekly or other accounting of Plaintiff Ixcoy's wages.

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

58. Plaintiff Ixcoy 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, that accurately reflected his actual hours worked.

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

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

61. Defendants required Mr. Ixcoy to purchase "tools of the trade" with his own funds—including a delivery bike, a helmet, and a vest.

Defendants' General Employment Practices

62. Defendants regularly required Plaintiff Ixcoy to work in excess of forty (40) hours per week without paying him the proper minimum wage, overtime and spread of hours compensation.

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

64. At no time did Defendants inform Plaintiff Ixcoy that they had reduced his hourly wage by a tip allowance.

65. Defendants required Plaintiff Ixcoy, and all other delivery workers, to perform general non-delivery, non-tipped tasks in addition to their primary duties as delivery workers.

66. Plaintiff Ixcoy and all other similarly situated employees, were employed ostensibly as tipped employees by Defendants, although their actual duties included greater or equal time spent performing non-tipped duties.

67. Plaintiff Ixcoy and all other delivery workers were paid at a rate that was lower than the required tip-credited rate by Defendants; however, under state law Defendants were not entitled to a tip credit because Plaintiff Ixcoy's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less) (12 N.Y.C.R.R. § 146).

68. 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.

69. Plaintiff Ixcoy's duties were not incidental to his occupation as delivery worker, but instead constituted entirely unrelated general pizzeria work with duties including the non-tipped duties described above.

70. In violation of federal and state law as codified above, Defendants classified Plaintiff Ixcoy and other delivery workers as tipped employees and paid them at a rate that was lower than the tip-credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

71. Defendants' pay practices resulted in Plaintiff Ixcoy not receiving payment for all his hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum and overtime wage rate.

72. Plaintiff Ixcoy was paid his wages entirely in cash.

73. 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.

74. By employing these practices, Defendants avoided paying Plaintiff Ixcoy the minimum wage for his regular hours and overtime compensation of time and a half for all of his hours worked in excess of forty (40) hours per week.

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

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

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

78. Defendants failed to provide Plaintiff Ixcoy 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 of Spanish, 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

79. Plaintiff Ixcoy 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 Adem Kandic and Nathaniel Kim (the "FLSA Class").

80. At all relevant times, Plaintiff Ixcoy and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required minimum wage, 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.

81. The claims of Plaintiff Ixcoy stated herein are similar to those of the other employees.

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

82. Plaintiff Ixcoy repeats and realleges all paragraphs above as though fully set forth herein.

83. At all times relevant to this action, Defendants were Plaintiff Ixcoy'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 Ixcoy (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.

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

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

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

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

88. Plaintiff Ixcoy (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)

89. Plaintiff Ixcoy repeats and realleges all paragraphs above as though fully set forth herein.

90. At all times relevant to this action, Defendants were Plaintiff Ixcoy'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 Ixcoy (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.

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

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

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

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

95. Plaintiff Ixcoy (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)

96. Plaintiff Ixcoy repeats and realleges all paragraphs above as though fully set forth herein.

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

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

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

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

FOURTH CAUSE OF ACTION
(VIOLATION OF THE NEW YORK STATE LABOR LAW'S OVERTIME PROVISIONS)

101. Plaintiff Ixcoy repeats and realleges all paragraphs above as though fully set forth herein.

102. 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 Ixcoy (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.

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

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

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

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

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

107. Defendants failed to pay Plaintiff Ixcoy one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Ixcoy'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 Ixcoy an additional hour's pay for each day Plaintiff Ixcoy's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

109. Plaintiff Ixcoy 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 Ixcoy repeats and realleges all paragraphs above as though fully set forth herein.

111. Defendants failed to provide Plaintiff Ixcoy with a written notice, in English and in Spanish (Plaintiff Ixcoy'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 Ixcoy in the amount of \$5,000, together with costs and attorney's fees.

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

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

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

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

EIGHTH CAUSE OF ACTION
RECOVERY OF EQUIPMENT COSTS

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

117. Defendants required Plaintiff Ixcoy 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 bicycles, 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 Ixcoy was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ixcoy respectfully requests 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 FLSA class members 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 Ixcoy 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 Ixcoy 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 Ixcoy'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 Ixcoy and the FLSA class members;

(f) Awarding Plaintiff Ixcoy 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 Ixcoy 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 Ixcoy 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 Ixcoy 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 Ixcoy and the members of the FLSA Class;

(k) Declaring that Defendants violated the notice, recordkeeping, and wage statement requirements of the NYLL with respect to Plaintiff Ixcoy'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 Ixcoy and the FLSA Class members;

(m) Awarding Plaintiff Ixcoy and the FLSA class members damages for the amount of unpaid minimum and overtime wages, damages for any improper deductions or credits taken against wages as well as awarding spread of hours pay under the NYLL as applicable;

(n) Awarding Plaintiff Ixcoy damages for Defendants' violation of the NYLL notice

and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(o) Awarding Plaintiff Ixcoy and the FLSA class members damages for Defendants' failure to pay Plaintiff in a timely fashion, as required by NYLL § 191;

(p) Awarding Plaintiff Ixcoy 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;

(q) Declaring that Defendants' violations of the NYLL were willful as to Plaintiff Ixcoy and the FLSA class members;

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

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

(t) 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

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

JURY DEMAND

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

Dated: New York, New York
January 20, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace

By: Michael A. Faillace
60 East 42nd Street, Suite 2540
New York, New York 10165
(212) 317-1200
Attorneys for Plaintiff

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

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New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

January 16, 2017

BY HAND

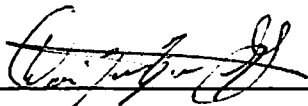
TO: Clerk of Court,

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: Dimas Ixcoy

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

Signature / Firma:  _____

Date / Fecha: 16 de enero de 2017

4 de Noviembre del 2016

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NYC's Royal Pizza Hit with Unpaid Wage Lawsuit](#)
