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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**CHIMON’E KILLINGS, individually
and on behalf of all others similarly
situated,**

Plaintiff,

-against-

PANERA, LLC,

Defendant.

No: 1:22-cv-108

**CLASS & COLLECTIVE ACTION
COMPLAINT**

Chimon’e Killings (“Plaintiff”), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to herself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover unpaid overtime compensation and other damages for Plaintiff and similarly situated non-exempt hourly positions such as baristas, counter workers, associates, cashiers, cleaners, bakers, sandwich/salad makers, and other cooks (collectively, “Hourly Workers”) who work or have worked for Panera LLC at their “Panera Bread” cafes in New York (collectively, “Panera” or “Defendant”).

2. Headquartered in St. Louis, Missouri, Panera owns and operates several hundred cafes around the United States. According to its website, Panera operates at least 115 Panera Cafes

in New York State alone.¹

3. Defendant maintains and policy and practice whereby Plaintiff and other Hourly Workers are subject to time shaving at the hands of their store managers. This time shaving causes Plaintiff and other Hourly Workers to not be paid the appropriate overtime wages when they in fact work over 40 hours in a workweek in violation of the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”).

4. In weeks where Plaintiff and Hourly Workers do not pass the 40-hour per week mark, the NYLL mandates that Plaintiff and Hourly Workers be paid at their agreed upon wage rates.

5. Additionally, at all relevant times Defendant compensated Plaintiff and all other Hourly Workers in New York on a bi-weekly basis.

6. Despite being manual workers, Defendant failed to properly pay Plaintiff and other Hourly Workers in New York their wages within seven calendar days after the end of the week in which these wages were earned.

7. As such, Defendant failed to provide timely wages to Plaintiff and all other similarly situated Hourly Workers in New York.

8. As a result of untimely wage payments, Defendant has harmed Plaintiff and similarly situated Hourly Workers in New York.

9. Plaintiff brings this action on behalf of herself and all other similarly situated Hourly Workers who elect to opt in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. § 216(b).

10. Plaintiff also brings this action on behalf of herself and all other similarly situated

¹ See 115 Panera Bread Locations in New York, Panera Website, (available at <https://locations.panerabread.com/ny.html>) (last accessed February 3, 2022).

Hourly Workers in New York pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy violations of the New York Labor Law, Article 6, §§ 190 *et seq.* (“NYLL”), and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations

11. Plaintiff, individually, also brings this action to remedy her illegal termination by Defendant. In this regard, Plaintiff made a complaint to Panera’s corporate line in approximately November 2021 about the time shaving she faced during her employment. In December 2021, her employment was terminated by her store manager who specifically referenced her good faith complaint of the wage theft she experienced. As such, Plaintiff brings a retaliation claim under both the FLSA and NYLL.

THE PARTIES

Plaintiff

Chimon’e Killings

12. Chimon’e Killings (“Killings”) is an adult individual who is a resident of the State of New York.

13. Killings was employed by Panera as an Hourly Worker from on or about August 2021 through approximately December 2021.

14. Killings is a covered employee within the meaning of the FLSA and the NYLL.

15. A written consent form for Killings is being filed with this Class Action Complaint.

Defendant

Panera, LLC

16. Panera, LLC is a foreign business corporation organized and existing under the laws of Delaware.

17. Panera, LLC’s principal executive office is located at 3630 S. Geyer Road, St.

Louis, Missouri 63127.

18. Panera, LLC was and is a covered employer within the meaning of the FLSA and NYLL, and at all times relevant, employed Plaintiff and similarly situated employees.

19. Panera, LLC is the corporate payor listed on Plaintiff's wage statements.

20. Panera, LLC has maintained control, oversight, and direction over Plaintiff and similar employees, including timekeeping, payroll, and other employment practices that applied to them.

21. Panera, LLC applies the same employment policies, practices, and procedures to all Hourly Workers in its operation, including policies, practices, and procedures with respect to payment of wages.

22. Upon information and belief, at all relevant times, Panera, LLC has had an annual gross volume of sales in excess of \$500,000.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

24. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

25. This Court also has original jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1332(d), because the amount in controversy against the Defendant in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and Plaintiff and the members of the proposed class are citizens of states different from that of Defendant.

26. There are over 100 members in the proposed class.

27. Defendant is subject to personal jurisdiction in New York.

28. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendant conducts business in this District.

COLLECTIVE ACTION ALLEGATIONS

29. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of herself and all similarly situated persons who work or have worked as Hourly Workers for Panera in New York who elect to opt-in to this action (the “FLSA Collective”).

30. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and the FLSA Collective for their overtime hours worked.

31. Consistent with Defendants’ policies and patterns or practices, Plaintiff and the FLSA Collective were not paid the proper premium overtime compensation of 1.5 times their regular rates of pay for all hours worked beyond 40 per workweek.

32. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

33. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to, willfully shaving their employees time in order to avoid paying for all of the hours worked by Plaintiff and the FLSA Collective.

34. An employer “willfully violates the FLSA when it either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the [FLSA].” *See Young v.*

Cooper Cameron Corp., 586 F. 3d 201, 207 (2d Cir. 2009).

35. According to *Whiteside v Hover-Davis*, “a claim is facially plausible ‘when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’ *See* 995 F.3d 315, 323 (2d Cir. 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “For a plaintiff to nudge their claim ‘across the line from conceivable to plausible,’ [they] must ‘raise a reasonable expectation that discovery will reveal evidence’ of the wrongdoing alleged, ‘even if it strikes a savvy judge that actual proof of those facts is improbable.” *See Id.* (quoting *Citizens United v. Schneiderman*, 882 F.3d 374, 380 (2d Cir. 2018); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (1995)).

36. Defendants’ willful violation of the FLSA is evidenced by their knowledge that their policies violated the FLSA, and their intentional and/or reckless choice to continue to operate in violation of the FLSA’s requirements. Here, as evidenced below, discovery will certainly reveal evidence that Defendants blatantly ignored the FLSA’s explicit requirement that employees must be paid for *all* hours suffered or permitted to be worked and that time-shaving is an illegal practice.

37. Defendants have been faced with multiple wage and hour actions for their failure to pay overtime without correcting their payment policies to be in compliance with the FLSA. *See e.g., Meyers v. Panera, LLC*, No. 17-cv-02575 (D.D.C. Nov. 29, 2017) (failure to pay overtime compensation); *Frischia v. Panera, LLC*, 2:16-cv-03754 (D. N.J. June 25, 2016) (failure to pay overtime compensation); *Daneil v. Panera, LLC*, No. 5:15-cv-486 (M.D. Ga. Dec. 31, 2015) (alleging off the clock and failure to pay overtime compensation).

38. As such, Defendants’ failure to pay proper overtime constitutes a willful violation of the FLSA. *See Rojas v. Splendor Landscape Designs, Ltd.*, 268 F. Supp. 3d 405, 410-411 (E.D.N.Y. 2017) (finding that employer’s FLSA violation was willful where the Department of

Labor had previously informed the employer that their pay policies violated the FLSA).

NEW YORK CLASS ACTION ALLEGATIONS

39. Plaintiff brings the Second, Third, Fourth, Fifth and Sixth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as Hourly Workers for Panera in New York between June 24, 2015 and the date of final judgment in this matter (the “New York Class”).²

40. The members of the New York Class are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

41. There are more than one hundred members of the New York Class.

42. Plaintiff’s claims are typical of those claims that could be alleged by any member of the New York Class, and the relief sought is typical of the relief which would be sought by each member of the New York Class in separate actions.

43. Plaintiff and the New York Class have all been injured in that they have been uncompensated, under-compensated, or untimely compensated due to Defendants’ common policies, practices, and patterns of conduct. Defendants’ corporate-wide policies and practices affected everyone in the New York Class similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each member of the New York Class.

44. Plaintiff is able to fairly and adequately protect the interests of the New York Class

² This class period is due to Governor Cuomo’s Executive Order that tolled the applicable NYLL statute of limitations during the COVID-19 pandemic for 228 days. *See Brash v. Richards*, 195 A.D. 3d 582, 2021 WL 2213786, 2021 N.Y. Slip Op. 03436 (App. Div. 2d Dep’t June 2, 2021) (holding executive order tolled rather than suspended statutes of limitations under New York law).

and has no interests antagonistic to the New York Class.

45. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

46. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similar persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

47. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting Plaintiff and/or each member of the New York Class individually and include, but are not limited to, the following:

- (a) whether Defendants failed to compensate Plaintiff and the New York Class for all hours worked at their regular rate(s) of pay;
- (b) whether Defendants correctly compensated Plaintiff and the New York Class for hours worked in excess of 40 per workweek;
- (c) whether Defendants correctly compensated Plaintiff and the New York Class on a timely basis;
- (d) whether Defendants failed to furnish Plaintiff and the New York Class with a proper time of hire wage notice, as required by the NYLL; and
- (e) whether Defendants failed to furnish Plaintiff and the New York Class with accurate statements with every payment of wages, as required by the NYLL.

PLAINTIFF'S FACTUAL ALLEGATIONS

48. Consistent with their policies and patterns or practices as described herein, Defendant harmed Plaintiff, individually, as follows:

Chimon'e Killings

49. Killings was employed at Defendant's Panera restaurant located at 1593 Niagara Falls Boulevard, Amhurst, New York 14226 from approximately August 2021 through December 2021.

50. During her employment, unless she missed time for vacation, sickness, or personal leave, Plaintiff generally worked the following schedule:

- a. Tuesday to Saturday, from between approximately 6:00am to 8:00am and between 3:00pm to 5:00pm.

51. Despite working the above schedule, Plaintiff received wage statements that reflect less hours than she actually worked.

52. During her employment, one of Plaintiff's supervisors showed Plaintiff management's ability to manipulate time records and shave time.

53. Furthermore, during her employment, over twenty-five percent of Killings' duties were physical tasks, including but not limited to: (1) making drinks for customers; (2) restocking supplies; (3) sweeping and vacuuming the dining room areas; (4) cleaning the bathrooms; (5) cleaning the restaurant windows; (6) wiping down tables; and (7) bussing dirty dishes from the dining areas to the dishwashing area, among other tasks.

54. Despite regularly spending more than twenty-five percent of her shift performing these physical tasks, Killings was compensated by Defendant on a bi-weekly basis.

55. As a result of Defendant's untimely wage payments, Killings was underpaid.

56. Defendants failed to provide Killings with a proper time of hire wage notice as required by the NYLL.

57. Throughout her employment, Defendants failed to provide Killings with accurate wage statements with each payment of wages as required by the NYLL that demonstrated her true hours worked.

58. Plaintiff made several complaints to management about the time shaving practices she believed occurred at Panera. In this regard, Plaintiff complained to her store manager Michael (l/n/u) of the time shaving issues.

59. In November 2021, Plaintiff made another verbal complaint via telephone to Panera's corporate office about the time shaving she believed to be occurring.

60. Plaintiff's complaints were made in good faith.

61. In December 2021, Plaintiff was terminated due to her complaints about the illegal pay practices she suffered.

62. Any non-retaliatory rationale for Plaintiff's termination is pretext.

63. Due to Defendants' unlawful termination, Plaintiff has suffered damages.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiff and the FLSA Collective)

64. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

65. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendant and protect Plaintiff and the FLSA Collective.

66. Plaintiff and the FLSA Collective worked in excess of 40 hours during workweeks

in the relevant period.

67. Defendants failed to pay Plaintiff and the FLSA Collective the premium overtime wages to which they were entitled under the FLSA – at a rate of 1.5 times their regular rates of pay for all hours worked in excess of 40 per workweek.

68. As a result of Defendant’s willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied proper overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys’ fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION

**New York Labor Law – Failure to Pay Agreed Upon Wages
(Brought on behalf of Plaintiff and the New York Class)**

69. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

70. The wage provisions of Article 6 of the NYLL and its supporting regulations apply to Defendant and protect Plaintiff and the New York Class.

71. Pursuant to NYLL, Article 6 § 191, Defendant is required to pay Plaintiff and the New York Class the wages they have earned in accordance with the agreed terms of their employment.

72. Defendant failed to pay Plaintiff and the New York Class the earned wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations, pursuant to the agreed-upon terms of their employment.

73. Upon information and belief, Defendant shaved part of Plaintiff and the New York Class Members’ work time in order to save on labor costs.

74. Due to Defendants’ violations of the NYLL, Plaintiff and the New York Class are

entitled to recover from Defendants their agreed-upon earned wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
New York Labor Law – Overtime Wages
(Brought on behalf of Plaintiff and the New York Class)

75. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

76. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendant and protect Plaintiff and the New York Class.

77. Defendant failed to pay Plaintiff and the New York Class the premium overtime wages to which they were entitled under the NYLL and the supporting New York State Department of Labor Regulations – at a rate of 1.5 times their regular rate of pay – for all hours worked beyond 40 per workweek.

78. Due to Defendant's violations of the NYLL, Plaintiff and the New York Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
New York Labor Law – Failure to Pay Timely Wages
(Brought on behalf of Plaintiff and the New York Class)

79. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

80. The timely payment of wages provisions NYLL § 191 and its supporting regulations apply to Defendant and protect Plaintiff and the New York Class.

81. Defendant failed to pay Plaintiff and the New York Class on a timely basis as required by NYLL § 191(1)(a).

82. Due to Defendant's violations of the NYLL, Plaintiff and the New York Class are entitled to recover from Defendant the amount of their untimely paid wages as liquidated damages, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest as provided for by NYLL § 198.

FIFTH CAUSE OF ACTION

**New York Labor Law – Failure to Provide Proper Time of Hire Notice
(Brought on behalf of Plaintiff and the New York Class)**

83. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

84. Defendant have failed to supply Plaintiff and the New York Class with a proper time of hire wage notice, as required by NYLL, Article 6, § 195(1), in English or in the language identified as their primary language, at the time of hiring, containing, among other items: 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; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; overtime rate; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

85. Due to Defendant's violations of NYLL, Article 6, § 195(1), Plaintiff and the New York Class are entitled to statutory penalties of fifty dollars for each workday that Defendants failed to provide them with wage notices, or a total of five thousand dollars each, as well as

reasonable attorneys' fees and costs as provided for by NYLL, Article 6, § 198(1-b).

SIXTH CAUSE OF ACTION

**New York Labor Law – Failure to Provide Accurate Wage Statements
(Brought on behalf of Plaintiff and the New York Class)**

86. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

87. Defendant failed to supply Plaintiff and the New York Class with an accurate statement of wages with every payment of wages as required by NYLL, Article 6, § 195(3), listing: 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; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked per week, including overtime hours worked if applicable; deductions; and net wages.

88. Due to Defendant's violations of NYLL § 195(3), Plaintiff and the New York Class are entitled to statutory penalties of two hundred fifty dollars for each workday that Defendants failed to provide them with accurate wage statements, or a total of five thousand dollars each, as well as reasonable attorneys' fees and costs as provided for by NYLL, Article 6, § 198.

SEVENTH CAUSE OF ACTION

**FLSA – Retaliation
(Brought on behalf of Plaintiff individually)**

89. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

90. Plaintiff made good faith complaints about time shaving practices occurring at Defendant's restaurant.

91. Defendant ultimately terminated Plaintiff's employment due to her complaints.

92. Defendant's termination constitutes retaliation in violation of 29 U.S.C. § 215(a)(3).

93. Plaintiff has suffered damages due to Defendant's retaliation, including but not limited to, intimidation, harm to her reputation, legal costs, and delay.

94. Due to Defendant's violation of the FLSA, Plaintiff is entitled to recover from Defendant back pay, front pay, compensatory damages, punitive damages, liquidated damages, and attorneys' fees and costs.

EIGHTH CAUSE OF ACTION
New York Labor Law – Retaliation
(Brought on behalf of Plaintiff individually)

95. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

96. Plaintiff made good faith complaints about time shaving practices occurring at Defendant's restaurant.

97. Defendant ultimately terminated Plaintiff's employment due to her complaints.

98. Defendant's termination constitutes retaliation in violation of NYLL § 215.

99. Plaintiff has suffered damages due to Defendant's retaliation, including but not limited to, intimidation, harm to her reputation, legal costs, and delay.

100. Due to Defendant's violation of the NYLL, Plaintiff is entitled to recover from Defendant back pay, front pay, compensatory damages, punitive damages, liquidated damages, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similar persons, respectfully request that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all Hourly Workers in New York who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked for Panera. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime wages, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff as representative of the NY Rule 23 Class and counsel of record as Class Counsel;

E. Unpaid agreed upon wages, overtime wages, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

F. Liquidated damages in the amount of the untimely wage payments pursuant to the NYLL;

G. Statutory penalties of fifty dollars for each workday that Defendants failed to provide Plaintiff and the NY Rule 23 Class with proper time of hire wage notices, or a total of five thousand

dollars each, as provided for by NYLL, Article 6 § 198;

H. Statutory penalties of two hundred fifty dollars for each workday that Defendants failed to provide Plaintiff and the NY Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article § 198;

I. Back pay, front pay, compensatory damages, punitive damages, and liquidated damages relating to Plaintiff's unlawful termination;

J. Prejudgment and post-judgment interest;

K. Reasonable attorneys' fees and costs of the action; and

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

Dated: New York, New York
February 7, 2022

Respectfully submitted,

/s/ Brian S. Schaffer
Brian S. Schaffer

FITAPELLI & SCHAFFER, LLP

Brian S. Schaffer

Armando A. Ortiz, *Admission Request Forthcoming*

28 Liberty Street, 30th Floor

New York, NY 10005

Telephone: (212) 300-0375

*Attorneys for Plaintiff and
the Putative Class & Collective*

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against PANERA and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP (“the Firm”) to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney’s fees from any settlement or judgment in the amount of the greater of: (1) the “lodestar” amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

Chimon'e Killings

Chimon'e Killings (Feb 3, 2022 00:59 EST)

Signature

Chimon'e Killings

Full Legal Name (Print)

CIVIL COVER SHEET

JS 44 (Rev. 08/18)

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

Chimon'e Killings, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Fitapelli & Schaffer, LLP
28 Liberty Street, 30th Floor, New York, NY 10005. 212-300-0375

DEFENDANTS

Panera, LLC

County of Residence of First Listed Defendant _____
(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 checked="" 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 checked="" 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	<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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. s. 207, 215; Class Action Fairness Act, 28 USC s. 1332(d)
 Brief description of cause:
Failure to pay overtime wages

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
02/07/2022

SIGNATURE OF ATTORNEY OF RECORD
Brian Schaffer

FOR OFFICE USE ONLY

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

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

UNITED STATES DISTRICT COURT

for the

Western District of New York

Chimon'e Killings, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

Panera, LLC

Defendant(s)

Civil Action No. 1:22-cv-108

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Panera, LLC
c/o Corporation Service Company
80 State Street
Albany, New York 12207

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:

Brian S. Schaffer
FITAPELLI & SCHAFFER, LLP
28 Liberty Street, 30th Floor
New York, New York 10005
212-300-0375

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.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:22-cv-108

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Accuses Panera of Time Shaving, Failing to Properly Pay New York Workers](#)
