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*Attorneys for Plaintiff*

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

-----X  
JAVIER NEXTICAPAN LOPEZ, *individually*  
*and on behalf of others similarly situated,*

*Plaintiff,*

-against-

TACOS EL BRONCO RESTAURANT INC.  
(d/b/a TACOS EL BRONCO ), MARIANO  
TAPIA and ARTEMIO TAPIA

*Defendants.*

**COMPLAINT**

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

**ECF Case**

-----X  
Plaintiff Javier Nexticapan Lopez (“Plaintiff Lopez” or “Mr. Lopez”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Tacos el Bronco Restaurant Inc. (d/b/a Tacos el Bronco ) (“Defendant Corporation”) Mariano Tapia, and Artemio Tapia (collectively, “Defendants”), upon information and belief alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Lopez is a former employee of Defendants Tacos el Bronco Restaurant Inc. (d/b/a Tacos el Bronco) Mariano Tapia, and Artemio Tapia.
2. Tacos el Bronco is a Mexican restaurant and a number of food trucks owned by Mariano Tapia and Artemio Tapia. The restaurant is located at 4324 4th Avenue, Brooklyn, NY

11232. The relevant food trucks are/were located at 4324 4th Avenue, Brooklyn, NY 11232 (in front of the restaurant) and at 37<sup>th</sup> Street and 5<sup>th</sup> Avenue in Brooklyn.

3. Upon information and belief, Defendants Mariano Tapia and Artemio Tapia serve or served as owners, managers, principals and/or agents of Defendant Corporation, and through this corporate entity operate the Mexican restaurant and the food trucks.

4. Plaintiff Lopez is a former employee of Defendants.

5. Plaintiff Lopez ostensibly was employed as a delivery worker, but he was required to spend several hours each day performing non-tipped duties unrelated to deliveries, including but not limited to cleaning the kitchen, the garage and the street, taking out the garbage, twisting and tying up cardboard boxes, bringing supplies back to the restaurant from the food trucks for cleaning, dishwashing and working on food trucks (hereinafter “non-delivery, non-tip duties”).

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

7. Rather, Defendants failed to pay Plaintiff Lopez appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

8. Further, Defendants failed to pay Plaintiff Lopez 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 Lopez as a delivery worker in their payroll, but in actuality his duties included a significant amount of time performing the non-delivery, non-tipped duties alleged above.

10. Regardless of duties, Defendants paid Plaintiff Lopez and all other delivery workers at a rate that was lower than the required tip-credit rate.

11. In addition, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Lopez's non-tipped duties exceeded 20% of each workday (12 N.Y.C.R.R. § 146).

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

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

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

### **PARTIES**

#### *Plaintiff*

19. Plaintiff Javier Nexticapan Lopez (“Plaintiff Lopez”) is an adult individual residing in Queens County, New York.

20. Plaintiff Lopez was employed by Defendants from approximately June 2013 until on or about September 20, 2017.

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

*Defendants*

22. At all times relevant to this Complaint, Defendants own(ed), operate(d), and/or control(led) a Mexican restaurant located at 4324 4th Avenue, Brooklyn, NY 11232 and number of food trucks, two of which are/were located at 4324 4th Avenue, Brooklyn, NY 11232 (in front of the restaurant) and at 37<sup>th</sup> Street and 5<sup>th</sup> Avenue in Brooklyn under the name “Tacos el Bronco.”

23. Upon information and belief, Tacos el Bronco Restaurant Inc. (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 4324 4th Avenue, Brooklyn, NY 11232.

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

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

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

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

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

29. Defendant Artemio Tapia determined the wages and compensation of the employees of Defendants, including Plaintiff Lopez, 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 Mexican restaurant located at 4324 4th Avenue, Brooklyn, NY 11232 and a number of food trucks, two of which are/were located at 4324 4th Avenue, Brooklyn, NY 11232 (in front of the restaurant) and at 37<sup>th</sup> Street and 5<sup>th</sup> Avenue in Brooklyn.

31. Individual Defendants Mariano Tapia and Artemio Tapia possess or possessed operational control over Defendant Corporation, possess or possessed an ownership interest in Defendant Corporation, and control or controlled significant functions of Defendant Corporation.

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 Lopez's (and other similarly situated employees') working conditions, and over the policies and practices with

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

34. Defendants jointly employed Plaintiff Lopez, and all similarly situated individuals, and were Plaintiff Lopez'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 constituted a single employer of Plaintiff Lopez and/or similarly situated individuals.

36. Upon information and belief, individual Defendants Mariano Tapia and Artemio Tapia operate or operated Defendant Corporation as either an alter ego of themselves and/or fail or failed to operate Defendant Corporation as a legal entity separate and apart from themselves by, among other things:

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

- (g) diminishing and/or transferring assets of Defendant Corporation 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 Lopez's employers within the meaning of the FLSA and NYLL.

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

39. In each year from 2013 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 are directly engaged in interstate commerce. For example, numerous items that are sold in the Mexican restaurant and the food trucks on a daily basis, such as cooking oil and food, are produced outside of the State of New York.

*Individual Plaintiff*

41. Plaintiff Lopez is a former employee of Defendants who ostensibly was employed as a delivery worker, but who spent more than 20% of his work days performing the non-delivery, non-tip duties outlined above.

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

*Plaintiff Javier Nexticapan Lopez*



43. Plaintiff Lopez was employed by Defendants from approximately June 2013 until on or about September 20, 2017.

44. At all relevant times, Plaintiff Lopez ostensibly was employed by Defendants as a delivery worker. However, Plaintiff Lopez spent at least 20% of each work day performing the non-delivery, non-tip duties outlined above.

45. Plaintiff Lopez regularly handled goods in interstate commerce, such as cooking oil and food produced outside of the State of New York.

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

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

48. From approximately June 2013 until on or about September 2013, Plaintiff Lopez worked at the food truck (at 37<sup>th</sup> Street and 5<sup>th</sup> Avenue) from approximately 5:00 p.m. until on or about 7:00 a.m. Tuesdays through Thursdays, and at the restaurant from approximately 2:00 p.m. until on or about 2:00 a.m. on Fridays and Saturdays and from approximately 1:00 p.m. until on or about 1:00 a.m. on Sundays (typically 78 hours per week).

49. From approximately September 2013 until on or about May 2014, Plaintiff Lopez worked at the restaurant from approximately 7:00 p.m. until on or about 5:00 a.m. or 6:00 a.m. on Mondays, from approximately 9:00 a.m. until on or about 9:00 p.m. on Wednesdays, from approximately 5:00 p.m. until on or about 5:00 a.m. on Thursdays, from approximately 2:00 p.m. until on or about 2:00 a.m. on Fridays and Saturdays and from approximately 1:00 p.m. until on or about 1:00 a.m. on Sundays (typically 70 to 71 hours per week).

50. From approximately May 2014 until on or about November 2014, Plaintiff Lopez worked at the food truck (in front of the restaurant) five days per week, for approximately 50 hours per week.

51. From approximately November 2014 until on or about May 2015 and from approximately June 2015 until on or about September 20, 2017, Plaintiff Lopez worked at the restaurant from approximately 7:00 p.m. until on or about 5:00 or 6:00 a.m. on Mondays, from approximately 9:00 a.m. until on or about 9:00 p.m. on Wednesdays, from approximately 5:00 p.m. until on or about 5:00 a.m. on Thursdays, from approximately 2:00 p.m. until on or about 2:00 a.m. on Fridays and Saturdays and from approximately 1:00 p.m. until on or about 1:00 a.m. on Sundays (typically 70 to 71 hours per week).

52. Throughout his entire employment period, Defendants paid Plaintiff Lopez his wages in cash.

53. From approximately June 2013 until on or about May 2014, defendants paid Plaintiff Lopez a fixed salary of \$450 per week.

54. From approximately May 2014 until on or about November 2014, defendants paid Plaintiff Lopez \$7.50 per hour.

55. From approximately November 2014 until on or about May 2015 and from approximately June 2015 until on or about September 20, 2017, defendants paid Plaintiff Lopez a fixed salary of \$450 per week.

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

57. In fact, from approximately September 2013 until on or about May 2014 and from approximately November 2014 until on or about September 20, 2017, Defendants regularly required Plaintiff Lopez to work up to one hour past his scheduled departure time on Mondays, without paying him any additional compensation.

58. Defendants never granted Plaintiff Lopez a meal break or rest period of any length.

59. Plaintiff Lopez was never notified by Defendants that his tips were being included as an offset for wages.

60. Defendants never accounted for these tips in any daily, weekly or other accounting of Plaintiff Lopez's wages.

61. With the exception of approximately one week in 2017, Plaintiff Lopez was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device, such as sign in sheets or punch cards, that accurately reflected his actual hours worked.

62. Defendants never provided Plaintiff Lopez with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

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

64. Defendants required Plaintiff Lopez to purchase "tools of the trade" with his own funds—including an electric bicycle, bicycle maintenance, a helmet and a vest.

*Defendants' General Employment Practices*

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

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

67. Defendants never informed their employees, including Plaintiff Lopez, that they reduced their hourly wages by a tip allowance.

68. Defendants habitually required their employees, including Plaintiff Lopez, to work additional hours beyond their regular shifts, but did not provide them with any additional compensation.

69. Defendants' pay practices resulted in Defendants' delivery workers, including Plaintiff Lopez, never receiving payment for all their hours worked, which resulted in their effective rate of pay falling below the required minimum and overtime wage rate.

70. Defendants required all delivery workers, including Plaintiff Lopez, to perform general non-delivery, non-tipped restaurant tasks in addition to their primary duties as delivery workers.

71. Plaintiff Lopez, and all similarly situated employees, ostensibly were employed as tipped employees by Defendants, although their actual duties included a significant amount of time spent performing non-delivery, non-tipped duties.

72. At all relevant times, Plaintiff Lopez and all other delivery workers were not even paid at the required lower tip-credit rate by Defendants.

73. However, under state law, Defendants were not entitled to a tip credit because the delivery worker's and Plaintiff Lopez's non-tipped duties exceeded 20% of each workday (12 N.Y.C.R.R. § 146).

74. New York State regulations provide that an employee cannot be classified as a tipped employee on any day in which he is 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.

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

76. In violation of federal and state law as codified above, Defendants classified Plaintiff Lopez and other delivery workers as tipped employees, but never paid them at the tip-credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

77. Defendants paid Plaintiff Lopez's wages in cash.

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

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

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

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

82. Defendants failed to provide Plaintiff Lopez and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by

the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

**FLSA COLLECTIVE ACTION CLAIMS**

83. Plaintiff Lopez brings his FLSA minimum and overtime wages, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants, or any of them, on or after the date that is three years before the filing of the complaint in his case (the “FLSA Class Period”), as employees of Defendants (the “FLSA Class”).

84. At all relevant times, Plaintiff Lopez, and other members of the FLSA Class who are and/or were similarly situated, had substantially similar job requirements and pay provisions, and were 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 at one and one-half times their 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.

85. The claims of Plaintiff Lopez stated herein are similar to those of the other employees.

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

86. Plaintiff Lopez repeats and realleges all paragraphs above as though fully set forth herein.

87. At all times relevant to this action, Defendants were Plaintiff Lopez'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 Lopez (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.

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

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

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

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

92. Plaintiff Lopez (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**

93. Plaintiff Lopez repeats and realleges all paragraphs above as though fully set forth herein.

94. At all times relevant to this action, Defendants were Plaintiff Lopez'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 Lopez



(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.

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

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

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

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

99. Plaintiff Lopez (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**

100. Plaintiff Lopez repeats and realleges all paragraphs above as though fully set forth herein.

101. At all times relevant to this action, Defendants were Plaintiff Lopez's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Lopez (and the FLSA Class members), controlled terms and conditions of

employment, and determined the rates and methods of any compensation in exchange for employment.

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

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

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

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF THE OVERTIME PROVISIONS OF THE**  
**NEW YORK STATE LABOR LAW**

105. Plaintiff Lopez repeats and realleges all paragraphs above as though fully set forth herein.

106. 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 Lopez 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.

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

108. Plaintiff Lopez (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**

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

110. Defendants failed to pay Plaintiff Lopez one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Lopez'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, § 146-1.6.

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

112. Plaintiff Lopez 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**

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

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

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

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF THE WAGE STATEMENT PROVISIONS**

**OF THE NEW YORK LABOR LAW**

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

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

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

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

119. Plaintiff Lopez repeats and realleges all paragraphs above as though set forth fully herein.

120. Defendants required Plaintiff Lopez 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.

121. Plaintiff Lopez was damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

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

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the

pendency of this action, and permitting them promptly to file consents to be plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Lopez 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 Lopez and the FLSA class members;

(d) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Lopez and the FLSA class members;

(e) Awarding Plaintiff Lopez 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;

(f) Awarding Plaintiff Lopez 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);

(g) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Lopez and the members of the FLSA Class;

(h) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Lopez and the members of the FLSA Class;

(i) Declaring that Defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiff Lopez and the members of the FLSA Class;

(j) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Lopez and the FLSA Class members;

(k) Awarding Plaintiff Lopez 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;

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

(m) Awarding Plaintiff Lopez 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;

(n) Declaring that Defendants' violations of NYLL § 191 were willful as to Plaintiff Lopez and the FLSA class members;

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

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

(q) 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



# 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

September 22, 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.)**

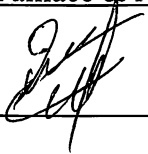
Name / Nombre:

Javier Nexticapan Lopez

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

22 de septiembre de 2017



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

JAVIER NEXTICAPAN LOPEZ, individually and on behalf of others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael A. Faillace, Michael Faillace & Associates, P.C. 60 East 42nd Suite 4510 New York, NY 10165

DEFENDANTS

TACOS EL BRONCO RESTAURANT INC. (d/b/a TACOS EL BRONCO ), MARIANO TAPIA and ARTEMIO TAPIA

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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Plaintiff seeks unpaid overtime wages pursuant to The Fair Labor Standards Act of 1938, 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 \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/27/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Faillace

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, Michael Faillace, 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? NO
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

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? N/A

(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: /s/ Michael Faillace

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JAVIER NEXTICAPAN LOPEZ, individually
and on behalf of others similarly situated,

Plaintiff(s)

v.

TACOS EL BRONCO RESTAURANT INC.
(d/b/a TACOS EL BRONCO), MARIANO
TAPIA and ARTEMIO TAPIA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Tacos el Bronco Restaurant Inc. (d/b/a Tacos el Bronco )
4324 4th Avenue
Brooklyn, NY 11232

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:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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. \_\_\_\_\_

**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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JAVIER NEXTICAPAN LOPEZ, individually
and on behalf of others similarly situated,

Plaintiff(s)

v.

TACOS EL BRONCO RESTAURANT INC.
(d/b/a TACOS EL BRONCO), MARIANO
TAPIA and ARTEMIO TAPIA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Mariano Tapia
4324 4th Avenue
Brooklyn, NY 11232

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:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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. \_\_\_\_\_

**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**

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JAVIER NEXTICAPAN LOPEZ, individually
and on behalf of others similarly situated,

Plaintiff(s)

v.

TACOS EL BRONCO RESTAURANT INC.
(d/b/a TACOS EL BRONCO), MARIANO
TAPIA and ARTEMIO TAPIA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Artemio Tapia
4324 4th Avenue
Brooklyn, NY 11232

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:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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. \_\_\_\_\_

**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: [Tacos El Bronco Facing Wage and Hour Lawsuit](#)

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