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

-----X
RAFAEL ANDRE SALAS SANCHEZ, *individually and on
behalf of others similarly situated,*

Plaintiff,

-against-

MEXICO 2000 RESTAURANT CORP. (d/b/a
MEXICO 2000), MEXICO 2000 DELI RESTAURANT
CORP. (d/b/a MEXICO 2000), ADRIAN MEJIA and
SERGIO ROMERO,

Defendants.

-----X

COMPLAINT

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

ECF Case

Plaintiff Rafael Andre Salas Sanchez (“Plaintiff Salas” or “Mr. Salas”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Mexico 2000 Restaurant Corp. (d/b/a Mexico 2000), Mexico 2000 Deli Restaurant Corp. (d/b/a Mexico 2000) (“Defendant Corporations”), Adrian Mejia and Sergio Romero (collectively, “Defendants”), alleges, upon information and belief, as follows:

NATURE OF ACTION

1. Plaintiff Salas is a former employee of Defendants Mexico 2000 Restaurant Corp., Mexico 2000 Deli Restaurant Corp., Adrian Mejia and Sergio Romero.

2. Mexico 2000 is a restaurant owned by Defendants Mexico 2000 Restaurant Corp., Mexico 2000 Deli Restaurant Corp., Adrian Mejia and Sergio Romero located at 369 Broadway, Brooklyn, NY 11211.

3. Upon information and belief, Defendants Adrian Mejia and Sergio Romero serve or served as owners, managers, principals or agents of Defendant Corporations and through these corporate entities operate or operated both restaurants as a joint or unified enterprise.

4. Plaintiff Salas is a former employee of Defendants.

5. Plaintiff Salas worked long days as a delivery worker at Mexico 2000 restaurant.

6. At all times relevant to this Complaint, Plaintiff Salas 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. Rather, Defendants failed to maintain accurate recordkeeping of his hours worked, failed to pay Plaintiff Salas 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 Salas the required "spread of hours" pay for any day in which he worked over 10 hours.

9. Plaintiff Salas was ostensibly employed as a delivery worker. However, Plaintiff Salas was required to spend several hours of each day performing non-tipped duties unrelated to being a deliverer, including laying down carpets/rugs down in the dining area in the morning and at night and placing them back as well, refilling water cooler, bringing up food and products from the basement storage for the cook(which is located half a block away) to the restaurant twice a day, stocking the freezer located at the basement storage, carrying items to and from the basement, taking out the garbage and separating bottles and bringing them to the storage area, sweeping and mopping the entire restaurant, bathroom and bar, cleaning the patio and tables twice or three times a week over the summer with disinfectant cleaner, cleaning the sidewalk in front of the store one or twice a week, cleaning the employees' changing room, unloading the items delivered to the store twice a week (alcohol, wine, flour, tortillas), making sporadic deliveries for the deli (which is located next door and

also owned by Defendants), peeling potatoes and helping out in the kitchen, stocking the restaurant's attic with disposable plates, containers, bags, utensils used for delivery, etc., stocking the fridge, stocking the dessert fridge, and filling the mini container with sauces (hereinafter the "non-delivery, non-tip duties").

10. Defendants employed and accounted for Plaintiff Salas as a tipped worker in their payroll, but in actuality his duties required greater or equal time spent in non-delivery, non-tipped functions such as those outlined above.

11. Regardless, Defendants paid Plaintiff Salas less than or at the lowered tip-credit rate.

12. However, under state law Defendants were not entitled to take a tip credit because Plaintiff Salas' non-tipped duties exceeded 20% of each workday, or 2 hours per day (whichever were less in each day) (12 N.Y.C.R.R. §146).

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

14. Defendants' conduct extended beyond Plaintiff Salas to all other similarly situated employees.

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

16. Plaintiff Salas 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"), for violations of the N.Y. Lab. Law §§ 190 *et seq.* and 650 *et seq.*

(the “NYLL”), 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, § 142-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees, and costs.

17. Plaintiff Salas 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

18. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1337 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Salas’ state law claims is conferred by 28 U.S.C. § 1367(a).

19. 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 business in this district, and Plaintiff Salas was employed by Defendants in this district.

PARTIES

Plaintiff Rafael Andre Salas Sanchez

20. Plaintiff Salas is an adult individual residing in Queens County, New York.

21. Plaintiff Salas was employed by Defendants from approximately December 15, 2016 until on or about September 19, 2017.

22. At all relevant times to this complaint, Plaintiff Salas was employed by Defendants as a delivery worker at Mexico 2000, located at 369 Broadway Brooklyn, NY 11211.

23. Plaintiff Salas consents to being party plaintiff 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

24. Defendants own, operate and/or control a Mexican restaurant located at 369 Broadway Brooklyn, NY 11211 under the name of Mexico 2000, at all times relevant to this complaint.

25. Upon information and belief, Defendant Mexico 2000 Restaurant 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 369 Broadway Brooklyn, NY 11211.

26. Upon information and belief, Defendant Mexico 2000 Deli Restaurant 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 369 Broadway Brooklyn, NY 11211.

27. Defendant Adrian Mejia is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Adrian Mejia is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation. Defendant Adrian Mejia possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation. Defendant Adrian Mejia determined the wages and compensation of employees, including Plaintiff Salas, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

28. Defendant Sergio Romero is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Sergio Romero is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation. Defendant Sergio Romero possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation. Defendant Sergio Romero determined the wages and compensation of employees, including Plaintiff Salas, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

Defendants Constitute Joint Employers

29. Defendants own, operate and/or control a Mexican restaurant located at 369 Broadway Brooklyn, NY 11211.

30. Individual Defendants Adrian Mejia and Sergio Romero possess operational control over Defendant Corporations, possess an ownership interest in Defendant Corporations, and control significant functions of Defendant Corporations.

31. 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.

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

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

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

35. Upon information and belief, Individual Defendants Adrian Mejia and Sergio Romero operate Defendant Corporations as either alter egos of themselves, and/or fail to operate Defendant Corporations as entities legally 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 these entities as closed Corporations or closely controlled entities;
- (f) intermingling assets and debts of their own with 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.

36. At all relevant times, Defendants were Plaintiff Salas' employers within the meaning of the FLSA and NYLL.

37. Defendants have the power to hire and fire Plaintiff Salas, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for Plaintiff Salas' services.

38. 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).

39. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. For example, numerous items that were sold in the restaurant on a daily basis were produced outside of the State of New York.

Individual Plaintiff

40. Plaintiff Salas is a former employee of Defendants, who ostensibly was employed as a delivery worker, but who spent more than 20% of each shift performing the non-delivery, non-tip duties outlined above.

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

Plaintiff Rafael Andre Salas Sanchez

42. Plaintiff Salas was employed by Defendants from approximately December 15, 2016 until on or about September 19, 2017.

43. At all relevant times, defendants ostensibly employed Plaintiff Salas as a delivery worker; however, Plaintiff Salas spent more than 20% of each work day performing the non-delivery, non-tip duties outlined above.

44. Plaintiff Salas regularly handled goods in interstate commerce, such as food, condiments and supplies necessary to perform his duties as a delivery worker.

45. Plaintiff Salas' work duties required neither discretion nor independent judgment.

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

47. From approximately December 15, 2016 until on or about August 9, 2017, Plaintiff Salas worked from approximately 11:00 a.m. until on or about 1:00 a.m. or 1:30 a.m. four days a week, from approximately 11:00 a.m. until on or about 2:00 a.m. on Fridays and from approximately 4:00 p.m. until on or about 2:00 a.m. on Saturdays (typically 81 to 83 hours per week).

48. From approximately August 10, 2017 until on or about September 19, 2017, Plaintiff Salas worked from approximately 11:00 a.m. until on or about 8:00 p.m. five days a week (typically 45 hours per week).

49. From approximately December 15, 2016 until on or about July 2017, Defendants paid Plaintiff Salas his wages in cash.

50. From approximately August 2017 until on or about September 19, 2017, Defendants paid Plaintiff Salas his wages by check.

51. From approximately December 15, 2016 until on or about July 2017, Defendants paid Plaintiff Salas a fixed salary of \$400 per week.

52. From approximately August 2017 until on or about September 19, 2017, defendants paid Plaintiff Salas \$7.25 per hour.

53. From approximately December 15, 2016 until on or about August 9, 2017, Plaintiff Salas's pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

54. For example, Defendants regularly required Plaintiff Salas to work an additional 30 minutes to one hour past his scheduled departure time, and did not pay him for the additional time he worked.

55. From approximately August 2017 until on or about September 19, 2017, Defendants granted Mr. Salas a 35-minute break.

56. Before August 2017, Plaintiff Salas 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.

57. Instead, on approximately five occasions on payday, Defendants required Plaintiff Salas to sign a document the content of which he was not allowed to review and was not allowed to keep a copy.

58. Plaintiff Salas was never notified by the Defendants that his tips were being included as an offset for wages.

59. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Salas' wages.

60. Defendants did not provide Plaintiff Salas with any document or other statement accounting for his actual hours worked, or setting forth the rate of pay for all of his hours worked.

61. No notification, either in the form of posted notices, or other means, was ever given to Plaintiff Salas regarding wages as required under the FLSA and NYLL.

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

63. Defendants did not give any notice to Plaintiff Salas, in English and in Spanish (Plaintiff Salas'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 Salas to purchase "tools of the trade" with his own funds—including two electric bicycles, one pair of rain/snow boots, a chain and a pair of gloves.

Defendants' General Employment Practices

65. Defendants regularly required Plaintiff Salas to work in excess of forty (40) hours per week without paying him the appropriate minimum wage, spread of hours pay and/or overtime compensation.

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

67. Plaintiff Salas was a victim of Defendants' common policy and practices violating his rights under the FLSA and New York Labor Law by *inter alia*, not paying him the wages he was owed for the hours he had worked.

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

69. Defendants failed to inform Plaintiff Salas that his tips would be credited towards the payment of the minimum wage.

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

71. Defendants failed to maintain a record of tips earned by Plaintiff Salas for the deliveries he made to customers.

72. Defendants required Plaintiff Salas, and similarly situated individuals, to perform several non-tip related tasks for over half of each work day, in addition to their role as deliverers. These responsibilities included the non-tip non-delivery duties described above.

73. Plaintiff Salas, and similarly situated individuals, were employed ostensibly as deliverers (tipped employees) by Defendants, although their actual duties included much greater time spent in non-delivery, non-tipped functions.

74. Regardless, Plaintiff Salas and similarly situated individuals, were paid below or at the lowered tip-credited rate by Defendants, when in fact, under state law Defendants were not entitled to a tip credit because their non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever were less) (12 N.Y.C.R.R. § 146).

75. 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 regulations an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation. (29 C.F.R. §531.56(e).)

76. Plaintiff Salas’, and similarly situated individuals’, duties were not incidental to their occupation as deliverers, but instead constituted entirely unrelated occupations with duties such as those outlined above. While performing these duties, Plaintiff Salas, and similarly situated individuals,

did not receive tips; therefore, they constituted non-tipped occupations, and Defendants could not lawfully take a tip credit for any of the hours that such employees worked in these roles.

77. In violation of applicable federal and state law, Defendants classified Plaintiff Salas, and similarly situated individuals, as tipped employees and paid them at or below the tip-credited rate when they should have classified them as non-tipped employees and should paid them at the minimum wage rate.

78. 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.

79. Defendants also failed to post required wage and hour posters in the restaurant, and did not provide Plaintiff Salas 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 Salas' relative lack of sophistication in wage and hour laws.

80. Before August 2017, Defendants paid Plaintiff Salas all of his wages in cash.

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

82. Plaintiff Salas and similarly situated individuals were victims of Defendants' common policy and practices violating their rights under the FLSA and NYLL by *inter alia* not paying them the minimum wage and overtime owed for the hours worked.

83. As part of their regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiffs and similarly situated individuals by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL.

84. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL. Defendants failed to provide Plaintiff Salas' 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).

85. Defendants failed to provide Plaintiff Salas 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).

86. Defendants failed to provide Plaintiff Salas 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

87. Plaintiff Salas brings his FLSA minimum wage, overtime, 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 this case (the “FLSA Class Period”), as employees of Mexico 2000 (the “FLSA Class”).

88. At all relevant times, Plaintiff Salas 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 under the FLSA, the required overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA, willfully taking improper wage deductions and other improper credits against Plaintiff Salas’ wages for which Defendants did not qualify under the FLSA, and willfully failing to keep records required by the FLSA.

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

FIRST CAUSE OF ACTION

VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA

90. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

91. At all times relevant to this action, Defendants were Plaintiff Salas’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 Salas (and the FLSA class members), control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for employment.

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

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

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

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

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

SECOND CAUSE OF ACTION

VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA

97. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

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

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

100. Plaintiff Salas (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

101. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

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

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

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

105. Plaintiff Salas (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 LAWS**

106. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

107. Defendants, in violation of the NYLL and associated rules and regulations, failed to pay Plaintiff Salas (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, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor.

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

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

110. Plaintiff Salas (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

111. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

112. Defendants failed to pay Plaintiff Salas one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Salas' spread of hours exceeded ten hours in violation of New York Lab. Law §§ 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).

113. Defendants' failure to pay Plaintiff Salas (and the FLSA Class members) an additional hour's pay for each day Plaintiff Salas' (and the FLSA Class members) spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

114. Plaintiff Salas (and the FLSA Class members) were 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

115. Plaintiff Salas repeats and re-alleges all paragraphs above as though fully set forth herein.

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

118. Defendants are liable to Plaintiff Salas 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

119. Plaintiff Salas repeats and re-alleges all paragraphs above as though set forth fully herein.

120. Defendants did not provide Plaintiff Salas with wage statements upon each payment of wages, as required by NYLL 195(3).

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

EIGHT CAUSE OF ACTION

RECOVERY OF EQUIPMENT COSTS

161. Plaintiff Salas repeats and re-alleges all paragraphs above as though set forth fully herein.

162. Defendants required Plaintiff Salas 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.

167. Plaintiff Salas was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Salas respectfully requests that this Court enter judgment against Defendants:

(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 Plaintiff 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 Salas 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 Salas 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 Salas' 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 Salas and the FLSA class members;

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

(k) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Salas' and the FLSA Class members' compensation, hours, wages; and any deductions or credits taken against wages;

(l) Declaring that Defendants violated the notice, recordkeeping, and wage statement requirements of the NYLL with respect to Plaintiff Salas , and the FLSA Class members', compensation, hours, wages; and any deductions or credits taken against wages;

(m) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Oder were willful as to Plaintiff Salas;

(n) Awarding Plaintiff Salas 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;

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

(p) Awarding Plaintiff Salas and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the total amount of 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 was willful as to Plaintiff Salas and the FLSA class members;

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

(s) Awarding Plaintiff Salas 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 Salas demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
September 22, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace
Michael Faillace [MF-8436]
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September 13, 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:

Rafael Andre Salas Sanchez

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

13 de septiembre de 2017

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Brooklyn, NY Restaurant Mexico 2000 Sued Over Allegedly Unpaid Wages](#)
