

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Lian Yang, individually and on behalf of all other
employees similarly situated,

Plaintiff,

- against -

Asia Market Corp., Jie Ming Liang, Wen “Doe” (last name
unknown), Naomi Kwong, “John” (first name unknown)
Kwong.

Defendants.

Case No.

COLLECTIVE ACTION
COMPLAINT

Plaintiff Lian Yang (“Plaintiff”), on her own behalf and on behalf of all others similarly situated, by and through her undersigned attorneys, Hang & Associates, PLLC, hereby files this complaint against the Defendants Asia Market Corp., Jie Ming Liang, Wen “Doe”, Naomi Kwong, and “John” Kwong (collectively “Defendants”), alleges and shows the Court the following:

INTRODUCTION

1. This is an action brought by Plaintiff on her own behalf and on behalf of similarly situated employees, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and the New York Labor Law, arising from Defendants’ various willful and unlawful employment policies, patterns and/or practices.

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA and NYLL by engaging in a pattern and practice of failing to pay their employees, including Plaintiff, compensation for all hours worked, including overtime compensation for all hours worked over forty (40) each workweek.

3. Plaintiff alleges pursuant to the FLSA, that she is entitled to recover from the Defendants: (1) unpaid minimum wages, (2) overtime wages, (3) liquidated damages, (4) prejudgment and post-judgment interest; and (5) attorneys' fees and costs.

4. Plaintiff further alleges pursuant to New York Labor Law § 650 et seq. and 12 New York Codes, Rules and Regulations §§ 146 ("NYCRR") that she is entitled to recover from the Defendants: (1) unpaid minimum wages (2) overtime compensation, (3) unpaid "spread of hours" premium for each day she worked ten (10) or more hours, (4) damages for failure to provide wage notice at the time of hiring and failure to provide pay stub as required by New York Labor Law, and (5) liquidated damages equal to the sum of unpaid overtime, unpaid "spread of hours" premium, and unlawful wage deductions pursuant to the NY Wage Theft Prevention Act; (6) prejudgment and post-judgment interest; and (7) attorney's fees and costs.

JURISDICTION AND VENUE

5. This Court has original federal question jurisdiction over this controversy under 29 U.S.C. §216(b), 28 U.S.C. § 1331, and has supplemental jurisdiction over the New York Labor Law claims pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, and the acts and omissions giving rise to the claims herein alleged took place in this District.

PLAINTIFF

7. Lian Yang is a resident of Brooklyn, New York and was employed as a worker by Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013 from July 10, 2017 until

September 2, 2017. Her responsibilities including but not limited to working as a cashier for Defendants.

DEFENDANTS

8. Upon information and belief, Defendant, Asia Market Corp. owns and operates a supermarket in New York located at 71 ½ Mulberry St., New York, NY 10013.

9. Upon information and belief, Defendant, Asia Market Corp. had gross sales in excess of Five Hundred Thousand Dollars (\$500,000) per year.

10. Upon information and belief, Asia Market Corp. purchased and handled goods moved in interstate commerce.

11. Upon information and belief, Defendant Jie Ming Liang is an owner, officer, director and/or managing agent of Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013, participated in the day-to-day operations of Asia Market Corp. and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Asia Market Corp.

12. Upon information and belief, Defendant Jie Ming Liang owns the stock of Asia Market Corp. and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

13. Upon information and belief, Defendant Wen “Doe” is an owner, officer, director and/or managing agent of Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013 and participated in the day-to-day operations of Asia Market Corp., acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated

thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Asia Market Corp.

14. Upon information and belief, Defendant Wen “Doe” owns the stock of Asia Market Corp. and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

15. Upon information and belief, Defendant Naomi Kwong is an owner, officer, director and/or managing agent of Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013, participated in the day-to-day operations of Asia Market Corp. and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Asia Market Corp.

16. Upon information and belief, Defendant Naomi Kwong owns the stock of Asia Market Corp. and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

17. Upon information and belief, Defendant “John” Kwong is an owner, officer, director and/or managing agent of Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013, participated in the day-to-day operations of Asia Market Corp. and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with Asia Market Corp.

18. Upon information and belief, Defendant “John” Kwong owns the stock of Asia Market Corp. and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

19. At all times relevant herein, Asia Market Corp. is, respectively, and continues to be, an “enterprise engaged in commerce” within the meaning of FLSA.

20. At all relevant times, the work performed by Plaintiff was directly essential to the business operated by Asia Market Corp.

21. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff her lawfully earned overtime compensation and spread-of-hour premiums, and failed to provide her a wage notice at the time of hiring in violation of the NYLL.

22. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

STATEMENT OF FACTS

23. Defendants committed the following alleged acts knowingly, intentionally and willfully.

24. Defendants knew that the nonpayment of minimum wages, overtime pay, spread of hours pay, and failure to provide the required wage notice at the time of hiring would financially injure Plaintiff and similarly situated employees and violate state and federal laws.

25. From July 10, 2017 until September 2, 2017 Plaintiff was hired to work as a cashier at the Asia Market Corp. located at 71 ½ Mulberry St., New York, NY 10013. Plaintiff worked six days a week with Saturdays off. Her daily schedule consisted of Monday thru Friday from 7:50 a.m. until 6:00 p.m., and Sunday from 8:50a.m. until 7:00 p.m. without break for at least ten point 17 (10.17) hours per day, Plaintiff thus worked at least sixty-one point zero-two (61.02) hours.

26. During the entire mentioned period, Plaintiff was paid a flat monthly salary of \$1,500.00 paid in cash.

27. Defendants did not compensate Plaintiff for overtime compensation according to state and federal laws.

28. Plaintiff's workdays always lasted longer than 10 hours.

29. Plaintiff was not compensated for New York's "spread of hours" premium for shifts that lasted longer than ten (10) hours.

30. Defendants knew that the nonpayment of overtime and the "spread of hours" premium would economically injure Plaintiff by their violation of federal and state laws.

31. Defendants did not provide Plaintiff with a wage notice at the time of hiring.

32. Defendants did not provide Plaintiff with written notices about the terms and conditions of her employment upon hire in relation to her rate of pay, regular pay cycle and rate of overtime pay.

33. Defendants committed the foregoing acts against the Plaintiff, the FLSA Collective Plaintiffs.

34. Defendants committed the following alleged acts knowingly, intentionally and willfully.

COLLECTIVE ACTION ALLEGATIONS

35. Defendants knowingly and willfully operated their business with a policy of not paying Plaintiff and other similarly situated employees either the FLSA overtime rate (of time and one-half), or the New York State overtime rate (of time and one-half), in violation of the FLSA and New York Labor Law and the supporting federal and New York State Department of Labor Regulations.

36. Defendants knowingly and willfully operated their business with a policy of not paying the New York State “spread of hours” premium to Plaintiff and other similarly situated employees.

37. Plaintiff brings this action individually and on behalf of all other and former non-exempt employees who have been or were employed by the Defendants for up to the last three (3) years, through entry of judgment in this case (the “Collective Action Period”) and who failed to receive overtime compensation or spread-of-hours pay for all hours worked in excess of forty (40) hours per week (the “Collective Action Members”), and have been subject to the same common decision, policy, and plan to not provide required wage notices at the time of hiring, in contravention to federal and state labor laws.

38. Upon information and belief, the Collective Action Members are so numerous the joinder of all members is impracticable. The identity and precise number of such persons are unknown, and the facts upon which the calculations of that number may be ascertained are presently within the sole control of the Defendants. Upon information and belief, there are more than ten (10) Collective Action members, who have worked for or have continued to work for the Defendants during the Collective Action Period, most of whom would not likely file individual suits because they fear retaliation, lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiff submits that this case should be certified as a collection action under the FLSA, 29 U.S.C. §216(b).

39. Plaintiff will fairly and adequately protect the interests of the Collective Action Members, and has retained counsel that is experienced and competent in the field of employment law. Plaintiff has no interests that are contrary to or in conflict with those members of this collective action.

40. This action should be certified as collective action because the prosecution of separate action by individual members of the collective action would risk creating either inconsistent or varying adjudication with respect to individual members of this class that would as a practical matter be dispositive of the interest of the other members not party to the adjudication, or subsequently impair or impede their ability to protect their interests.

41. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation makes it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as collective action.

42. Questions of law and fact common to members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the questions of fact common to Plaintiff and other Collective Action Members are:

- a. Whether the Defendants employed Collective Action members within the meaning of the FLSA;
- b. Whether the Defendants failed to pay the Collective Action Members overtime wages for all hours worked above forty (40) each workweek in violation of the FLSA and the regulation promulgated thereunder;
- c. Whether the Defendants failed to pay the Collective Action Members spread of hours payment for each day an employee worked over 10 hours;

- d. Whether the Defendants failed to provide the Collective Action Members with a wage notice at the time of hiring as required by the NYLL;
 - e. Whether the Defendants' violations of the FLSA are willful as that terms is used within the context of the FLSA; and,
 - f. Whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive, and statutory damages, interest, costs and disbursements and attorneys' fees.
43. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.
44. Plaintiff and others similarly situated have been substantially damaged by Defendants' unlawful conduct.

STATEMENT OF CLAIM

COUNT I

(Fair Labor Standards Act-Unpaid Minimum Wages)

45. Plaintiff repeats the preceding allegations and incorporates the same herein as if set forth in detail.
46. At all relevant times, upon information and belief, Defendants have been, and continue to be, "employers" engaged in interstate "commerce" and/or in the production of goods" for "commerce," within the meaning of the FLSA, 29 U.S.C. §§206(a) and §§207(a). Further, Plaintiff is covered within the meaning of FLSA, U.S.C. §§206(a) and 207(a).
47. At all relevant times, Plaintiff was employed as an "employee" of the Defendants within the meaning of FLSA.

48. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.

49. The FLSA provides that any employer engaged in commerce shall pay employees the applicable minimum wage. 29 U.S.C. § 206(a).

50. At all relevant times, Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiff for some or all of the hours he worked.

51. The FLSA provides that any employer who violates the provisions of 29 U.S.C. § 206 shall be liable to the employees affected in the amount of their unpaid minimum compensation, and in an additional equal amount as liquidated damages.

52. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by failing to compensate Plaintiff at the statutory minimum wage when they knew or should have known such was due and that failing to do so would financially injure Plaintiff.

COUNT II
(New York Labor Law-Unpaid Minimum Wages)

53. Plaintiff repeats the preceding allegations and incorporates the same herein as if set forth in detail.

54. At all relevant times, plaintiff was employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

55. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay the minimum wage shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

56. Defendants knowingly and willfully violated Plaintiff's rights by failing to pay her

minimum wages in the lawful amount for hours worked.

COUNT III
[Violation of Fair Labor Standards Act – Overtime]

57. Plaintiff on behalf of herself and all other similarly situated Collective Action Members repeats and re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

58. At all relevant times, the Defendants had a policy and practice of refusing to pay overtime compensation to their employees for their hours worked in excess of forty hours per workweek.

59. As a result of the Defendants' willful failure to compensate their employees, including Plaintiff and the Collective Action members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, the Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a) (1) and 215(a), including the federal minimum wage.

60. As a result of the Defendants' failure to record, report, credit and/or compensate their employees, including Plaintiff and the Collective Action members, the Defendants have failed to make, keep and preserve records with respect to each of their employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

61. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

62. Due to Defendants' FLSA violations, Plaintiff, on behalf of herself and the Collective Action members, is entitled to recover from Defendants their unpaid wages, their

unpaid minimum wages, their unpaid overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT IV
[Violation of New York Labor Law – Overtime]

63. Plaintiff on behalf of herself and all other similarly situated Collective Action Members repeats and re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

64. Defendants willfully violated Plaintiff's rights by failing to pay them overtime compensation at rates not less than 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 the New York Labor Law and its regulations.

65. The Defendants' New York Labor Law violations have caused Plaintiff irreparable harm for which there is no adequate remedy at law.

66. Due to the Defendants' New York Labor Law violations, Plaintiff and the members of the Class are entitled to recover from Defendants their unpaid wages, and unpaid overtime compensation, damages for unreasonably delayed payment of wages, reasonable attorneys' fees and costs and disbursements of the action, pursuant to New York Labor Law § 663(1) et al.

COUNT V
[Violation of New York Labor Law—Spread of Hour Pay]

67. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

68. The NYLL requires employers to pay an extra hour's pay for every day that an

employee works an interval in excess of ten hours pursuant to NYLL §§190, et seq., and §§650, et seq., and New York State Department of Labor regulations §146-1.6.

69. Defendants' failure to pay Plaintiff spread-of-hours pay was not in good faith.

COUNT VI
[Violation of New York Labor Law—Failure to Provide Wage
Notice at the Time of Hiring]

70. Plaintiff on behalf of herself and all other similarly situated Collective Action Members re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

71. The Defendants failed to furnish to the Plaintiff at the time of hiring a notice 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 in accordance with section one hundred ninety-one of this article; 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, and anything otherwise required by law; in violation of the NYLL, § 195(1).

72. Due to the Defendants' violation of the NYLL, § 195(1), the Plaintiff is entitled to recover from the Defendants liquidated damages of \$50.00 per workday that the violation occurred, up to a maximum of \$5000.00, reasonable attorney's fees, and costs and disbursements of the action, pursuant to the NYLL, § 198(1-b).

73. The Defendants' NYLL violations have caused the Plaintiff irreparable harm for which there is no adequate remedy at law.

COUNT VII

[Violation of New York Labor Law—New York Pay Stub Requirement]

74. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

75. The NYLL and supporting regulations require employers to provide detailed paystub information to employees every payday. NYLL §195-1(d).

76. Defendants have failed to make a good faith effort to comply with the New York Labor Law with respect to compensation of each Plaintiff, and did not provide the paystub on or after Plaintiff's payday.

77. Due to Defendants' violations of New York Labor Law, Plaintiff is entitled to recover from Defendants, jointly and severally, \$250 for each workday of the violation, up to \$5,000 for each Plaintiff together with costs and attorneys' fees pursuant to New York Labor Law N.Y. Lab. Law §198(1-d).

Prayer For Relief

WHEREFORE, Plaintiff, on behalf of herself, and the FLSA collective Plaintiffs, respectfully requests that this court enter a judgment providing the following relief:

- a) Authorizing plaintiff at the earliest possible time to give notice of this collective action, or that the court issue such notice, to all persons who are presently, or have been employed by defendants as non-exempt tipped or non-tipped employees. Such notice shall inform them that the civil notice has been filed, of the nature of the action, of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;
- b) Certification of this case as a collective action pursuant to FLSA;
- c) Issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of

the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b), and appointing Plaintiff and his counsel to represent the Collective Action Members;

d) A declaratory judgment that the practices complained of herein are unlawful under FLSA and New York Labor Law;

e) An injunction against Asia Market Corp., their officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of unlawful practices and policies set forth herein;

f) An award of unpaid wages and overtime wages due Plaintiff and the Collective Action members under the FLSA and New York Labor Law, plus compensatory and liquidated damages in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after April 2010 under NY Wage Theft Prevention Act, and interest;

g) An award of unpaid “spread of hours” premium due under the New York Labor Law;

h) An award of unpaid agreed-upon wages due under New York Labor Law and all applicable theories of contract and equity;

i) An award of the Plaintiff’s actual unreimbursed expenses due to the Plaintiff;

j) An award of damages for Defendants’ failure to provide wage notice at the time of hiring as required under the New York Labor Law.

k) An award of liquidated and/or punitive damages as a result of Defendants’ knowing and willful failure to pay wages and overtime compensation pursuant to 29 U.S.C. §216;

l) An award of liquidated and/ or punitive damages as a result of Defendants’ willful

failure to pay wages, overtime compensation, and “spread of hours” premium pursuant to New York Labor Law;

- m) An award of costs and expenses of this action together with reasonable attorneys’ and expert fees pursuant to 29 U.S.C. §216(b) and NYLL §§198 and 663;
- n) The cost and disbursements of this action;
- o) An award of prejudgment and post-judgment fees;
- p) Providing that if any amounts remain unpaid upon the expiration of ninety days following the 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
- q) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: Flushing, New York
September 11, 2017.

HANG & ASSOCIATES, PLLC

/s/ Jian Hang


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Attorneys for Plaintiff

EXHIBIT I

**CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed by Asia Market Corporation, Jie Ming Liang and/or related entities. I consent to be a plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Contingent Fee Retainer signed by the named plaintiff in this case.

ZIAN YANG
Full Legal Name (Print)


Signature

9/5/2017
Date

EXHIBIT II

**NOTICE OF INTENTION TO ENFORCE SHAREHOLDER LIABILITY
FOR SERVICES RENDERED**

TO: Jie Ming Liang, Wen “Doe” (last name unknown), Naomi Kwong, “John” (first name unknown) Kwong.

PLEASE TAKE NOTICE, that pursuant to the provisions of Section 630 of the Business Corporation Law of New York, you are hereby notified that Lian Yang and others similarly situated intend to charge you and hold you personally liable, jointly and severally, as one of the ten largest shareholders of Asia Market Corp. for all debts, wages, and/or salaries due and owing to them as laborers, servants and/or employees of the said corporations for services performed by them for the said corporations within the six (6) years preceding the date of this notice and have expressly authorized the undersigned, as their attorney, to make this demand on their behalf.

Dated: September 11, 2017

EXHIBIT III

**DEMAND BY EMPLOYEES TO INSPECT SHARE RECORDS AND
MINUTES PURSUANT TO SECTION 624 OF THE NEW YORK STATE
BUSINESS CORPORATION LAW**

TO:

Asia Market Corp.
71 ½ Mulberry St.
New York, NY 10013

PLEASE TAKE NOTICE, that Lian Yang, and others similarly situated as employees of the above corporations who intend to demand, pursuant to the provisions of Section 630 of the Business Corporation Law of New York, payment of debts, wages and/or salaries due and owing to them as laborers, servants and/or employees of the above corporations for services performed by them for the above corporations within the six (6) years preceding the date of this notice from the ten largest shareholders of the above corporations, and who have expressly authorized the undersigned, as their attorney, to make this demand on their behalf.

HEREBY DEMAND the right to examine, in person or by agent or attorney, during usual business hours, the minutes of the proceedings of the shareholders and records of shareholders of the above corporations and to make extracts there from on or after five (5) days from receipt of this notice.

Dated: September 11, 2017

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Asia Market Corp. Pegged with Wage and Hour Lawsuit](#)
