

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LUIS RECARTE and ROSA HERNANDEZ, on behalf of	:
themselves and all others similarly situated, and MOISES	: Case No. 15 Civ. 4421 (ADS) (SIL)
RECARTE, and JOSE TURCIOS, individually,	:
	: FIRST AMENDED CLASS AND
Plaintiffs,	: COLLECTIVE ACTION
- against -	: COMPLAINT
	:
HAUPPAUGE BAGEL CORP., d/b/a BRENDEL’S	:
BAGELS, HUNTINGTON BAGEL CORP., d/b/a	:
BRENDEL’S BAGELS, WESTBURY BAGEL CORP., d/b/a	:
BRENDEL’S BAGELS, and CRAIG BERESID, an	:
individual,	:
	:
Defendants.	:
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Luis Recarte and Rosa Hernandez, on behalf of themselves and all others similarly situated, and Moises Recarte and Jose Turcios, individually (collectively, “Plaintiffs”), by and through their attorneys Shulman Kessler LLP, complaining of the Hauppauge Bagel Corp., d/b/a Brendel’s Bagels, Huntington Bagel Corp., d/b/a Brendel’s Bagels, Westbury Bagel Corp., d/b/a Brendel’s Bagels (collectively, the “Corporate Defendants”), and Craig Beresid (together with the Corporate Defendants, “Defendants”), allege as follows as for their First Amended Complaint:

**INTRODUCTION**

1. This lawsuit seeks to recover unpaid overtime compensation for Plaintiffs, and their similarly situated coworkers, based upon Defendants’ violation of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. § 201, *et seq.* and appropriate rules and regulations.

2. This lawsuit also seeks to recover unpaid overtime compensation, unpaid spread of hours pay, and statutory damages for failure to provide proper wages notices and statements, based

on Defendants' violation of the New York Labor Law ("NYLL" or "N.Y. Lab. Law") and appropriate rules and regulations.

3. Defendants own and/or operate three bagel stores in Nassau and Suffolk Counties, known as Brendel's Bagels.

4. Throughout the relevant period, Plaintiffs were employed by Defendants as kitchen laborers at Brendel's Bagels.

5. Defendants require the kitchen laborers at Brendel's Bagels to work over 40 hours per week without the benefit of proper overtime compensation.

6. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former kitchen laborers who elect to opt-in to this action pursuant to the FLSA, specifically the collective action provision of 29 U.S.C. § 216(b), to remedy Defendants' violations of the wage-and-hour provisions of the FLSA. Plaintiffs seek permission to give notice of this action pursuant to 29 U.S.C. § 216(b) to all persons who are presently, or have at any time during the three years immediately preceding the filing of this action, worked for Defendants.

7. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former kitchen laborers pursuant to the Federal Rule of Civil Procedure 23 to remedy violations of NYLL Article 6 § 190, *et seq.*, and Article 19 § 650, *et seq.*, and the supporting New York State Department of Labor regulations.

### **JURISDICTION & VENUE**

8. Jurisdiction of the Court over this controversy is based upon 29 U.S.C. § 201, *et seq.*, 28 U.S.C. §§ 1331 and 1337.

9. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

10. Defendants operate in Nassau and Suffolk Counties and maintain principal places of business at 950 Wheeler Road, Hauppauge, New York 11788, 133 Walt Whitman Road, Huntington Station, New York 11746, and 1075 Old Country Road Westbury, New York 11590.

11. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

### **THE PARTIES**

#### ***Plaintiff Luis Recarte***

12. Luis Recarte is a resident of the County of Suffolk, State of New York.

13. At all times relevant to the First Amended Complaint, Luis Recarte was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

14. At all times relevant, Luis Recarte was employed by Defendants as a kitchen laborer.

15. Luis Recarte has expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* ECF No. 1-1).

#### ***Plaintiff Rosa Hernandez***

16. Rosa Hernandez is a resident of the County of Suffolk, State of New York.

17. At all times relevant to the First Amended Complaint, Rosa Hernandez was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

18. At all times relevant, Rosa Hernandez was employed by Defendants as a kitchen laborer.

19. Rosa Hernandez has expressed her consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* ECF No. 1-3).

***Plaintiff Moises Recarte***

20. Moises Recarte is a resident of the County of Suffolk, State of New York.

21. At all times relevant to the First Amended Complaint, Moises Recarte was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

22. At all times relevant, Moises Recarte was employed by Defendants as a kitchen laborer.

23. Moises Recarte has expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* ECF No. 1-3).

***Plaintiff Jose Turcios***

24. Jose Turcios is a resident of the County of Nassau, State of New York.

25. At all times relevant to the First Amended Complaint, Jose Turcios was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

26. At all times relevant, Jose Turcios was employed by Defendants as a kitchen laborer.

27. Jose Turcios has expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* ECF No. 1-3).

***Defendant Hauppauge Bagel Corp.***

28. Upon information and belief, Hauppauge Bagel Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

29. Upon information and belief, Hauppauge Bagel Corp.'s principal place of business is located at 950 Wheeler Road, Hauppauge, New York 11788 (the "Hauppauge Store").

30. Upon information and belief, Hauppauge Bagel Corp. does business as Brendel's Bagels.

31. At all times hereinafter mentioned, Hauppauge Bagel Corp. was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

32. At all times hereinafter mentioned, the activities of Hauppauge Bagel Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

33. Upon information and belief, Hauppauge Bagel Corp. maintains control, oversight, and direction over its operations and employment practices.

34. At all times hereinafter mentioned, Hauppauge Bagel Corp. employed employees, including Plaintiffs, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

35. Hauppauge Bagel Corp.'s annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

***Defendant Huntington Bagel Corp.***

36. Upon information and belief, Huntington Bagel Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

37. Upon information and belief, Huntington Bagel Corp.'s principal place of business is located at 133 Walt Whitman Road, Huntington Station, New York 11746 (the "Huntington Store").

38. Upon information and belief, Huntington Bagel Corp. does business as Brendel's Bagels.

39. At all times hereinafter mentioned, Huntington Bagel Corp. was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

40. At all times hereinafter mentioned, the activities of Huntington Bagel Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

41. Upon information and belief, Huntington Bagel Corp. maintains control, oversight, and direction over its operations and employment practices.

42. At all times hereinafter mentioned, Huntington Bagel Corp. employed employees, including Plaintiffs, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

43. Huntington Bagel Corp.'s annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

***Defendant Westbury Bagel Corp.***

44. Upon information and belief, Westbury Bagel Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

45. Upon information and belief, Westbury Bagel Corp.'s principal place of business is located at 1075 Old Country Road Westbury, New York 11590 (the "Westbury Store").

46. Upon information and belief, Westbury Bagel Corp. does business as Brendel's Bagels.

47. At all times hereinafter mentioned, Westbury Bagel Corp. was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

48. At all times hereinafter mentioned, the activities of Westbury Bagel Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

49. Upon information and belief, Westbury Bagel Corp. maintains control, oversight, and direction over its operations and employment practices.

50. At all times hereinafter mentioned, Westbury Bagel Corp. employed employees, including Plaintiffs, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

51. Westbury Bagel Corp.'s annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

*The Corporate Defendants*

52. The Corporate Defendants constitute a unified operation.
53. The Corporate Defendants constitute a common enterprise.
54. The Corporate Defendants have interrelated operations.
55. The Corporate Defendants have common management.
56. The Corporate Defendants have a centralized control of labor relations.
57. The Corporate Defendants have common ownership.
58. The Corporate Defendants share employees.
59. The Corporate Defendants commingled funds with each other.
60. The Corporate Defendants share the same physical addresses in the State of New York.
61. The Corporate Defendants constitute a single employer.
62. The Corporate Defendants constitute an integrated enterprise.
63. The Corporate Defendants advertise as a single integrated enterprise on Defendants' website: <http://www.brendelsofnewyork.com/> (last accessed July 12, 2015).
64. At all relevant times, the Corporate Defendants maintain control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.
65. The Corporate Defendants apply the same employment policies, practices, and procedures to all kitchen laborers, including policies, practices, and procedures with respect to payment of overtime compensation.

***Defendant Craig Beresid***

66. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid owns and/or operates Hauppauge Bagel Corp.

67. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the President of Hauppauge Bagel Corp.

68. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Vice-President of Hauppauge Bagel Corp.

69. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a shareholder of Hauppauge Bagel Corp.

70. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a corporate officer of Hauppauge Bagel Corp.

71. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Chief Executive Officer of Hauppauge Bagel Corp.

72. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is an agent of Hauppauge Bagel Corp.

73. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over personnel decisions for Hauppauge Bagel Corp.

74. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over payroll decisions for Hauppauge Bagel Corp.

75. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid supervises employees of the Hauppauge Bagel Corp.

76. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority to hire and fire employees for Hauppauge Bagel Corp.

77. Craig Beresid has the power to make binding decisions for Hauppauge Bagel Corp.

78. Craig Beresid has the power to transfer the assets or liabilities of Hauppauge Bagel Corp.

79. Craig Beresid has the power to declare bankruptcy on behalf of Hauppauge Bagel Corp.

80. Craig Beresid has the power to enter into contracts on behalf of Hauppauge Bagel Corp.

81. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid owns and/or operates Huntington Bagel Corp.

82. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the President of Huntington Bagel Corp.

83. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Vice-President of Huntington Bagel Corp.

84. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a shareholder of Huntington Bagel Corp.

85. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a corporate officer of Huntington Bagel Corp.

86. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Chief Executive Officer of Huntington Bagel Corp.

87. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is an agent of Huntington Bagel Corp.

88. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over personnel decisions for Huntington Bagel Corp.

89. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over payroll decisions for Huntington Bagel Corp.

90. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid supervises employees of the Huntington Bagel Corp.

91. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority to hire and fire employees for Huntington Bagel Corp.

92. Craig Beresid has the power to make binding decisions for Huntington Bagel Corp.

93. Craig Beresid has the power to transfer the assets or liabilities of Huntington Bagel Corp.

94. Craig Beresid has the power to declare bankruptcy on behalf of Huntington Bagel Corp.

95. Craig Beresid has the power to enter into contracts on behalf of Huntington Bagel Corp.

96. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid owns and/or operates Westbury Bagel Corp.

97. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the President of Westbury Bagel Corp.

98. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Vice-President of Westbury Bagel Corp.

99. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a shareholder of Westbury Bagel Corp.

100. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is a corporate officer of Westbury Bagel Corp.

101. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is the Chief Executive Officer of Westbury Bagel Corp.

102. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid is an agent of Westbury Bagel Corp.

103. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over personnel decisions for Westbury Bagel Corp.

104. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority over payroll decisions for Westbury Bagel Corp.

105. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid supervises employees of the Westbury Bagel Corp.

106. Upon information and belief, and at all times hereinafter mentioned, Craig Beresid has the authority to hire and fire employees for Westbury Bagel Corp.

107. Craig Beresid has the power to make binding decisions for Westbury Bagel Corp.

108. Craig Beresid has the power to transfer the assets or liabilities of Westbury Bagel Corp.

109. Craig Beresid has the power to declare bankruptcy on behalf of Westbury Bagel Corp.

110. Craig Beresid has the power to enter into contracts on behalf of Westbury Bagel Corp.

111. At all times hereinafter mentioned, Craig Beresid was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

**FLSA COLLECTIVE ACTION CLAIMS**

112. Upon information and belief, there are approximately more than 40 current and former kitchen laborers that are similarly situated to Plaintiffs who were denied overtime compensation.

113. Plaintiffs Luis Recarte and Rosa Hernandez sue on their own behalf and as the class representatives (hereinafter, the “Class Representatives”) and bring the First Cause of Action on behalf of themselves and all similarly situated persons who have worked for Defendants as kitchen laborers and elect to opt-in to this action.

114. The Class Representatives represent other kitchen laborers, and are acting on behalf of the interests of those kitchen laborers, as well as their own interests in bringing this action.

115. The Class Representatives seek to proceed as a collective action with regard to the First Cause of Action, pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following class of persons:

All kitchen laborers who are currently or have been employed by Defendants and who worked more than 40 hours per week at any time during the three years prior to the filing of their respective consent forms (hereinafter, the “FLSA Collective”).

116. Defendants were aware or should have been aware that the law required them to pay non-exempt employees, including Plaintiffs and the FLSA Collective, an overtime premium of one and one-half times their regular rate of pay for all work-hours Defendants suffered or permitted them to work in excess of 40 per workweek. Upon information and belief, Defendants applied the same unlawful policies and practices to its kitchen laborers throughout all of the Corporate Defendants doing business as Brendel’s Bagels.

117. The FLSA Collective is readily identifiable and locatable through use of the Defendants’ records. The FLSA Collective should be notified of and allowed to opt-in to this

action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendants.

**FEDERAL RULE OF CIVIL PROCEDURE RULE 23**  
**CLASS ALLEGATIONS**

118. The Class Representatives bring the Second, Third, and Fourth Causes of Action on their own behalf and as a class action, on behalf of those similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b) (hereinafter, the “New York Class”). The sub-classes of the New York Class are defined as:

- a. All kitchen laborers who were employed by Defendants and worked more than 40 hours per week, at any time within the 6 years prior to the filing of the Complaint through the entry of judgment in this matter (hereinafter, the “NYLL Overtime Class”).
- b. All kitchen laborers who were employed by Defendants and worked a spread of more than 10 hours in a day, at any time within the six years prior to the filing of the Complaint through the entry of judgment in this matter (hereinafter, the “Spread of Hours Class”).
- c. All kitchen laborers who Defendants hired at any time from April 9, 2011 through the present, and who were not provided the proper wage notice pursuant to N.Y. Lab. Law § 195(1) (hereinafter, the “Wage Notice Class”).
- d. All kitchen laborers who Defendants employed at any time from April 9, 2011 through the present, and who were not provided the proper wage statement pursuant to N.Y. Lab. Law § 195(3) (hereinafter, the “Wage Statement Class”).

119. The persons in the New York Class are so numerous that joinder of all members is impracticable. Although, the precise number of such persons is unknown, and facts upon which

the calculation of that number are presently within the sole control of the Defendants, there are approximately more than 40 members of the New York Class during the New York Class Period.

120. There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

- a. Whether Defendants unlawfully failed to pay overtime compensation in violation of and within the meaning of N.Y. Lab. Law §190 *et. seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. § 146-1.4;
- b. Whether Defendants unlawfully failed to pay spread of hours pay pursuant to the NYLL;
- c. Whether Defendants failed to furnish the Class Representatives and New York Class with an accurate statement of, inter alia, wages, hours worked, and rates paid as required by N.Y. Lab. Law § 195;
- d. Whether Defendants failed to furnish the Class Representatives and New York Class with an accurate wage notice as required by N.Y. Lab. Law § 195;
- e. Whether Defendants failed to keep accurate time records for all hours worked by the Class Representatives and the New York Class;
- f. Whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law;
- g. The proper measure of damages sustained by the Class Representatives and the New York Class; and
- h. Whether Defendants should be enjoined from such violations in the future.

121. The Class Representatives fairly and adequately protect the interests of the New York Class and have no interests antagonistic to the class. The Plaintiffs are represented by attorneys who are experienced and competent in both class litigation and employment litigation.

122. A class is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual

plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The damages sustained by individual class members are small, compared to the expense and burden of individual prosecution of this litigation. Class action treatment will obviate unduly duplicative litigation and the possibility of inconsistent judgments.

123. Further, the Class Representatives and the New York Class have been equally affected by Defendants' failure to pay overtime wages, pay spread of hours pay, and provide wage notices and statements pursuant to the NYLL. Moreover, members of the New York Class still employed by Defendants may be reluctant to raise individual claims for fear of retaliation.

124. Defendants have acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

125. Plaintiffs' claims are typical of those of the class. The Class Representatives and the other class members were subjected to Defendants' policies, practices, programs, procedures, protocols and plans alleged herein concerning the non-payment of overtime wages and the failure to keep adequate records. The job duties of the Class Representatives are typical of those of the class members.

126. The Class Representatives intend to send notice to all members of the New York Class to the extent required by Rule 23.

#### **CLASSWIDE FACTUAL ALLEGATIONS**

127. Plaintiffs and the members of the FLSA Collective and New York Class (collectively "Class Members") have been victims of Defendants' common policy and plan that has violated their rights under the FLSA and NYLL by denying them overtime compensation. At all times relevant, Defendants' unlawful policy and pattern or practice has been willful.

128. All of the work performed by Class Members was assigned by Defendants and/or Defendants were aware of all the work that Plaintiffs and the Class Members performed.

129. Upon information and belief, Defendants have a policy and pattern or practice to require Plaintiffs and Class Members to work in excess of 40 hours per workweek.

130. Defendants failed to pay Plaintiffs and Class Members one and one-half times their regular hourly rate for all hours worked over 40 in a workweek in violation of the FLSA and NYLL.

131. Defendants were or should have been aware that the FLSA and NYLL required Defendants to pay Plaintiffs and Class Members overtime pay for hours worked in excess of 40 per week.

132. Defendants' failure to pay Plaintiffs and the Class Members overtime wages for their work in excess of 40 hours per week was willful, intentional, and in bad faith.

133. Plaintiffs and the Class Members have been victims of Defendants' common policy and plan that has violated their rights under the NYLL by denying them spread of hours pay. At all times relevant, Defendants' unlawful policy and pattern or practice has been willful.

134. Upon information and belief, Defendants have a policy and pattern or practice to require Plaintiffs and Class Members to work in excess of 10 hours in a workday.

135. In violation of the NYLL, Defendants failed to pay Plaintiffs and Class Members at least one hour at the minimum wage rate for each day worked where the spread was in excess of 10 hours.

136. Defendants were or should have been aware that the NYLL required Defendants to pay Plaintiffs and Class Members at least one hour at the minimum wage rate for each day worked where the spread was in excess of 10 hours.

137. Defendants' failure to pay Plaintiffs and the Class Members proper spread of hours pay for working more than 10 hours per day was willful, intentional, and in bad faith.

138. Since April 9, 2011, in violation of the NYLL, Defendants failed to provide Plaintiffs and Class Members a wage notice at the time of hiring pursuant to N.Y. Lab. Law § 195(1).

139. Since April 9, 2011, in violation of the NYLL, Defendants failed to provide Plaintiffs and Class Members with a proper wage statement each workweek since April 9, 2011 pursuant to N.Y. Lab. Law § 195(3).

140. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and NYLL. Defendants' policy and pattern or practice includes but is not limited to:

- a. Willfully failing to record all of the time that its employees, including Plaintiffs and Class Members, have worked for the benefit of Defendants;
- b. Willfully failing to keep payroll records as required by the FLSA and NYLL;
- c. Willfully failing to pay their employees, including Plaintiffs and Class Members, overtime wages for hours that they worked in excess of 40 per workweek; and
- d. Willfully failing to pay their employees, including Plaintiffs and Class Members, spread of hours pay for each day worked where the spread was over 10 hours.

141. Defendants' unlawful conduct has been widespread, repeated, and consistent.

**PLAINTIFFS' FACTUAL ALLEGATIONS**

***Plaintiff Luis Recarte***

142. Luis Recarte was an employee of Defendants, working under their direct supervision.

143. Luis Recarte was employed by Defendants from in or about March 2008 until in or about May 2015 as a kitchen laborer.

144. Defendants employed Luis Recarte at the Hauppauge Store from in or about March 2008 until in or about October 2009.

145. Defendants employed Luis Recarte at the Huntington Store from in or about October 2009 until in or May 2015.

146. At all times hereinafter mentioned, Luis Recarte was required to be paid overtime pay at the statutory rate of one and one-half his regular rate of pay after he had worked 40 hours in a workweek.

147. During most workweeks throughout Luis Recarte's employment with Defendants, he worked more than 40 hours per week.

148. For instance, during most workweeks throughout 2012 Luis Recarte worked more than 60 hours per week and during most workweeks throughout 2011, 2013, and 2014 he worked more than 55 hours per week.

149. Defendants failed to compensate Luis Recarte for time worked in excess of 40 hours per week at a rate of at least one and one-half times his regular rate, throughout the entire term of his employment with Defendants.

150. Throughout his employment with Defendants, Luis Recarte regularly worked a spread of more than 10 hours in a workday.

151. Defendants failed to compensate Luis Recarte in the amount of at least one hour at the minimum wage rate for each day he worked in excess of 10 hours in a workday.

152. Defendants failed to furnish Luis Recarte with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

153. Defendants failed to furnish Luis Recarte with a wage notice in 2012 through 2014 as was required by the NYLL.

154. Upon information and belief, Defendants did not keep accurate records of hours worked by and the wages paid to Luis Recarte.

***Plaintiff Rosa Hernandez***

155. Rosa Hernandez was an employee of Defendants, working under their direct supervision.

156. Rosa Hernandez was employed by Defendants from in or about June 2012 until in or about May 2015 as a kitchen laborer.

157. Defendants employed Rosa Hernandez at the Westbury Store from in or about June 2012 until in or about June 2013.

158. Defendants employed Rosa Hernandez at the Hauppauge Store from in or about June 2013 until in or May 2015.

159. At all times hereinafter mentioned, Rosa Hernandez was required to be paid overtime pay at the statutory rate of one and one-half her regular rate of pay after she had worked 40 hours in a workweek.

160. During most workweeks throughout Rosa Hernandez's employment with Defendants, she worked more than 40 hours per week.

161. For instance, during most workweeks from approximately June 2012 through June 2013 Rosa Hernandez worked more than 45 hours per week and from July 2013 through May 2015 she worked more than 55 hours per week.

162. Defendants failed to compensate Rosa Hernandez for time worked in excess of 40 hours per week at a rate of at least one and one-half times her regular rate, throughout the entire term of her employment with Defendants.

163. Throughout her employment with Defendants, Rosa Hernandez regularly worked a spread of more than 10 hours in a workday.

164. Defendants failed to compensate Rosa Hernandez in the amount of at least one hour at the minimum wage rate for each day she worked in excess of 10 hours in a workday.

165. Defendants failed to furnish Rosa Hernandez with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

166. Defendants failed to furnish Rosa Hernandez with a wage notice at the time of hiring as required by the NYLL.

167. Upon information and belief, Defendants did not keep accurate records of hours worked by and the wages paid to Rosa Hernandez.

***Plaintiff Moises Recarte***

168. Moises Recarte is an employee of Defendants, working under their direct supervision.

169. Moises Recarte has been employed by Defendants from in or about April 2009 until in or about December 2014 and from in or about February 2015 through the present as a kitchen laborer.

170. For the duration of his employment with Defendants, Moises Recarte has been employed at the Hauppauge Store, with the exception of approximately three days in the summer of 2013 when Defendants required him to work at the Huntington Store.

171. At all times hereinafter mentioned, Moises Recarte was required to be paid overtime pay at the statutory rate of one and one-half his regular rate of pay after he had worked 40 hours in a workweek.

172. During most workweeks throughout Moises Recarte's employment with Defendants, he worked more than 40 hours per week.

173. For instance, during most workweeks from approximately October 2009 through December 2014 Moises Recarte worked more than 60 hours per week.

174. Defendants failed to compensate Moises Recarte for time worked in excess of 40 hours per week at a rate of at least one and one-half times his regular rate, throughout the entire term of his employment with Defendants.

175. Throughout his employment with Defendants, Moises Recarte regularly worked a spread of more than 10 hours in a workday.

176. Defendants failed to compensate Moises Recarte in the amount of at least one hour at the minimum wage rate for each day he worked in excess of 10 hours in a workday.

177. Defendants failed to furnish Moises Recarte with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

178. Defendants failed to furnish Moises Recarte with a wage notice at the time of hiring as required by the NYLL.

179. Upon information and belief, Defendants did not keep accurate records of hours worked by and the wages paid to Moises Recarte.

***Plaintiff Jose Turcios***

180. Jose Turcios is an employee of Defendants, working under their direct supervision.

181. Jose Turcios was employed by Defendants from in or about 2008 until in or about April or May 2010 and from in or about August 2011 through in or about December 2014 as a kitchen laborer.

182. Defendants employed Jose Turcios at the Westbury Store from in or about 2008 until in or about December 2009.

183. Defendants employed Jose Turcios at the Huntington Store from in or about December 2009 until in or about April or May 2009.

184. Defendants employed Jose Turcios at the Hauppague Store from in or about August 2011 until in or about December 2014.

185. At all times hereinafter mentioned, Jose Turcios was required to be paid overtime pay at the statutory rate of one and one-half his regular rate of pay after he had worked 40 hours in a workweek.

186. During most workweeks throughout Jose Turcios's employment with Defendants, he worked more than 40 hours per week.

187. For instance, during most workweeks from approximately August 2011 through November 2012 Jose Turcios worked more than 75 hours per week, during most workweeks throughout 2013 he worked more than 70 hours per week, and during most workweeks from approximately June 2014 through December 2014 he worked more than 80 hours a week.

188. Defendants failed to compensate Jose Turcios for time worked in excess of 40 hours per week at a rate of at least one and one-half times his regular rate, throughout the entire term of his employment with Defendants.

189. Throughout his employment with Defendants, Jose Turcios regularly worked a spread of more than 10 hours in a workday.

190. Defendants failed to compensate Jose Turcios in the amount of at least one hour at the minimum wage rate for each day he worked in excess of 10 hours in a workday.

191. Defendants failed to furnish Jose Turcios with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

192. Defendants failed to furnish Jose Turcios with a wage notice at the time of hiring as required by the NYLL.

193. Upon information and belief, Defendants did not keep accurate records of hours worked by and the wages paid to Jose Turcios.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE**  
**FOR FAILURE TO PAY OVERTIME**  
**AN FLSA VIOLATION**

194. Plaintiffs, on behalf of themselves and the FLSA Collective, reallege and incorporate by reference all allegations in all preceding paragraphs.

195. Plaintiffs and the members of the FLSA Collective are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

196. Defendants employed Plaintiffs and the members of the FLSA Collective for workweeks longer than 40 hours and willfully failed to compensate the Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least one and one-half times their regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

197. Defendants failed to keep accurate records of time worked by Plaintiff and the members of the FLSA Collective.

198. Defendants' violations of the FLSA, as described in this Class and Collective Action First Amended Complaint, have been willful and intentional.

199. Defendants did not make a good faith effort to comply with the FLSA with respect to its compensation to Plaintiff and the FLSA Collective.

200. Because Defendants' violations of the FLSA were willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

201. Plaintiffs have expressed their consent to make these claims against Defendants by filing a written consent forms, pursuant to 29 U.S.C. § 216(b).

202. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the members of the FLSA Collective have incurred damages thereby and the Defendants are indebted to them in the amount of the unpaid overtime compensation, together with interest, liquidated damages, attorneys' fees, and costs in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**ON BEHALF OF PLAINTIFFS AND THE NYLL OVERTIME CLASS**  
**FOR FAILURE TO PAY OVERTIME**  
**A NYLL VIOLATION**

203. Plaintiffs, on behalf of themselves and the NYLL Overtime Class, reallege and incorporate by reference all allegations in all preceding paragraphs.

204. Defendants employed Plaintiffs and the members of the NYLL Overtime Class for workweeks longer than 40 hours and willfully failed to compensate Plaintiff and the members of the New York Class for the time worked in excess of 40 hours per week, at a rate of at least one and one-half times their regular hourly rate, in violation of the requirements of NYLL.

205. By the course of conduct set forth above, Defendants have violated N.Y. Lab. Law § 650 *et seq.*; 12 N.Y.C.R.R. § 146-1.4 *et seq.*

206. Defendants failed to keep, make, preserve, maintain and furnish accurate records of time worked by Plaintiff and the members of the NYLL Overtime Class.

207. Defendants have a policy and practice of refusing to pay overtime compensation to Plaintiff and the members of the NYLL Overtime Class.

208. Defendants' failure to pay overtime compensation to Plaintiff and the members of the NYLL Overtime Class was willful within the meaning of N.Y. Lab. Law § 663.

209. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the members of the NYLL Overtime Class have incurred damages thereby and the Defendants are indebted to them in the amount of the unpaid overtime compensation and such other legal and equitable relief due to Defendants' unlawful and willful conduct, as the Court deems just and proper.

210. Plaintiffs, on behalf of themselves and the members of the NYLL Overtime Class, seek recovery of liquidated damages, attorneys' fees, interest, and costs to be paid by the Defendants as provided by the NYLL.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**ON BEHALF OF PLAINTIFFS AND THE SPREAD OF HOURS CLASS**  
**FOR FAILRE TO PAY A SPREAD OF HOURS WAGE**  
**A NYLL VIOLATION**

211. Plaintiffs, on behalf of themselves and the Spread of Hours Class, reallege and incorporate by reference all allegations in all preceding paragraphs.

212. Defendants failed to pay Plaintiffs and the Spread of Hours Class one additional hour pay at the minimum wage rate for each day the spread of hours exceeded ten hours, in violation of N.Y. Lab. Law §§ 190, *et seq.* & 650, *et seq.*, as codified by 12 N.Y.C.R.R. § 146-1.6.

213. Defendants failed to pay Plaintiffs and the Spread of Hours Class such wages in a timely fashion, as required by Article 6 of the NYLL.

214. Defendants have a policy and practice of refusing to pay spread of hours pay to Plaintiff and the members of the Spread of Hours Class.

215. Defendants' failure to pay Plaintiffs and the Spread of Hours Class an additional hour pay for each day the spread of hours exceeded 10 was willful within the meaning of N.Y. Lab. Law § 663.

216. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the members of the Spread of Hours Class have incurred damages thereby and the Defendants are indebted to them in the amount of the unpaid spread of hours compensation and such other legal and equitable relief due to Defendants' unlawful and willful conduct, as the Court deems just and proper.

217. Plaintiffs, on behalf of themselves and the members of the Spread of Hours Class, seek recovery of liquidated damages, attorneys' fees, interest, and costs to be paid by the Defendants as provided by the NYLL

**AS AND FOR THE THIRD CAUSE OF ACTION**  
**ON BEHALF OF PLAINTIFFS AND**  
**THE WAGE NOTICE AND WAGE STATEMENT CLASSES**  
**FOR VIOLATION OF NOTICE AND RECORD-KEEPING REQUIREMENTS**  
**A NYLL VIOLATION**

218. Plaintiffs, on behalf of themselves and the Wage Notice and Wage Statement Classes, reallege and incorporate by reference all allegations in all preceding paragraphs

219. Defendants failed to supply Plaintiffs and the members of the Wage Notice Class notice as required by N.Y. Lab. Law § 195, in English or in the language identified by Plaintiffs and the members of the Wage Notice Class as their primary language, containing Plaintiffs' and

the members of the Wage Notice Class' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with N.Y. Lab. Law § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

220. Defendants failed to supply Plaintiffs and the members of the Wage Statement Class with an accurate statement of wages as required by N.Y. Lab. Law § 195, 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; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

221. Due to Defendant's violations of N.Y. Lab. Law § 195, for each workweek that Defendant failed to provide a proper wage notice at the time of hiring from April 9, 2011 through February 26, 2015, Plaintiff and members of the Wage Notice Class are each entitled to damages of \$50, or a total of \$2,500 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

222. Due to Defendant's violations of N.Y. Lab. Law § 195, for each day that Defendant failed to provide a proper wage notice at the time of hiring from February 26, 2015 through the present, Plaintiff and members of the Wage Notice Class are entitled to damages of \$100, or a total

of \$5,000 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

223. Due to Defendant's violations of N.Y. Lab. Law § 195, for each workweek that Defendant failed to provide a proper wage statement from April 9, 2011 through February 26, 2015, Plaintiffs and members of the Wage Statement Class are each entitled to damages of \$100, or a total of \$2,500 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

224. Due to Defendant's violations of N.Y. Lab. Law § 195, for each workweek that Defendant failed to provide a proper wage statement from February 26, 2015 through the present, Plaintiffs and members of the Wage Statement Class are each entitled to damages of \$250, or a total of \$5,000 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, seek the following relief:

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

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

C. Designation of Plaintiffs Luis Recarte and Rosa Hernandez as representatives of the Rule 23 Class, and counsel of record as Class Counsel;

D. Unpaid overtime pay pursuant to the FLSA and the supporting United States Department of Labor regulations;

E. Unpaid overtime pay pursuant to the NYLL;

F. Unpaid spread of hours pay pursuant to the NYLL and the supporting Minimum Wage Orders;

G. Liquidated damages relating to lost wages, as provided for by FLSA § 216(b) and the NYLL;

H. Pre-judgment interest and post-judgment interest as provided by law;

I. Statutory damages, as provided for by N.Y. Lab. Law § 198, for Defendant's violations of the notice and recordkeeping requirements pursuant to N.Y. Lab. Law § 195;

J. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190, *et seq.*;

K. An injunction requiring Defendant to cease the unlawful activity described herein pursuant to N.Y. Lab. Law § 190, *et seq.*;

L. Reasonable incentive awards for the Class Representatives to compensate them for the time they spent attempting to recover wages for the Class and for the risks they took in doing so;

M. Attorneys' fees and costs of the action;

N. Such other injunctive and equitable relief as this Court shall deem just and proper.

Dated: Melville, New York  
September 2, 2015

Your, etc.,

SHULMAN KESSLER LLP

By: /s/ Garrett Kaske

Troy L. Kessler

Marijana Matura

Garrett Kaske

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