

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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DAVID PIERRE, on behalf of himself and all others	:
similarly situated,	: Index No.: March 25, 2019
	:
	: <u>SUMMONS</u>
	:
- against -	:
	: Plaintiff designates Nassau County as
KAUFMAN ENTERPRISES, LLC,	: the Place of Trial
	:
	: Defendant.
-----	X

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon Plaintiff’s attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated, pursuant to C.P.L.R. § 503(a), is Defendant’s acts and omissions giving rise to the cause of action occurred, in substantial part, in Nassau County.

Dated: Melville, New York
March 25, 2019

Yours, etc.,

By: /s/ Troy L. Kessler
SHULMAN KESSLER LLP
Troy L. Kessler
Garrett Kaske
534 Broadhollow Road, Suite 275
Melville, New York 11747
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*Attorneys for Plaintiff and the
Putative Class*

To: Kaufman Enterprises, LLC, 134 West Hills Road, Huntington Station, NY 11746

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----	X
DAVID PIERRE, on behalf of himself and all others	:
similarly situated,	: Index No.:
	:
	:
Plaintiff,	:
- against -	: CLASS ACTION COMPLAINT
	:
KAUFMAN ENTERPRISES, LLC,	:
	:
	:
Defendant.	:
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Plaintiff David Pierre, on behalf of himself and all others similarly situated, by his attorneys Shulman Kessler LLP, complaining of the Defendant Kaufman Enterprises, LLC (“Defendant” or “Kaufman Enterprises”), alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this lawsuit to recover unpaid overtime, spread-of-hours pay, and other damages on behalf of all of Defendant’s current and former Assistant Store Managers (“ASMs”) based on Kaufman Enterprises’ violation of the New York Labor Law (“NYLL”) and appropriate rules and regulations.

2. Kaufman Enterprises operates the following 16 McDonald’s restaurants across Suffolk and Nassau County:

- a. 900 Broadway, Amityville, NY 11701 (“Amityville McDonald’s”);
- b. 1255 Grand Avenue, North Baldwin, NY 11510 (“Baldwin McDonald’s”);
- c. 1484 5th Avenue, Bay Shore, NY 11706 (“Bay Shore McDonald’s”);
- d. 2 Vanderbilt Motor Parkway, Commack, NY 11725 (“Commack McDonald’s”);
- e. 1999 Jericho Turnpike, East Northport, NY 11731 (“East Northport McDonald’s”);
- f. 655 Fulton Street, Farmingdale, NY 11735 (“Farmingdale McDonald’s”);

- g. 2301 North Ocean Avenue, Farmingville, NY 11738 (“Farmingville McDonald’s”);
- h. 157 West Merrick Road, Freeport NY 11520 (“Freeport McDonald’s”);
- i. 2361 Hempstead Turnpike, East Meadow, NY 11554 (“East Meadow McDonald’s”);
- j. 3839 Hempstead Turnpike Levittown, NY 11756 (“Levittown McDonald’s”);
- k. 5500 Sunrise Highway., Massapequa, NY 11758 (“Massapequa McDonald’s”);
- l. 1710 Route 112 Medford, NY 11763 (“Medford McDonald’s”);
- m. 834 Fort Salonga Road, Northport, NY 11768 (“Northport McDonald’s”);
- n. 499-85 Sunrise Highway, Patchogue, NY 11772 (“Patchogue-Gateway McDonald’s”);
- o. 769 Montauk Highway, East Patchogue, NY 11772 (“Patchogue-Montauk-Hwy McDonald’s”); and
- p. 1050 Front Street, Uniondale, NY 11553 (“Uniondale Restaurant”).

3. Over the course of the six-year period prior to the filing of this Complaint (the “Relevant Period”), Kaufman Enterprises employed ASMs at its McDonald’s restaurants.

4. Throughout the Relevant Period, it was Kaufman Enterprises policy and practice to classify ASMs as exempt from the NYLL overtime and spread-of-hours requirements.

5. That is, while employed by Kaufman Enterprises, ASMs consistently worked over 40 hours a week without receiving premium overtime pay.

6. And, ASMs regularly worked shifts with a “spread” of over 10 hours – i.e., the end of the employee’s shift is over 10 hours from its start – without receiving an additional hour of pay at the minimum wage (“spread-of-hours pay”), as required by the Hospitality Industry Wage Order, 12 N.Y.C.R.R. §§ 146, *et seq.* (“Hospitality Wage Order”). *See* 12 N.Y.C.R.R. § 146-1.6.

7. These practices violated the NYLL because Kaufman Enterprises classified its ASMs as “executives” under the NYLL and Hospitality Wage Order, which are not entitled to overtime and spread-of-hours exempt. Pierre and his fellow ASMs, however, were misclassified as exempt because, *inter alia*, the ASMs primary duties were not managerial.

8. Pierre (the “Class Representative”) brings this action on behalf of himself and all similarly situated former ASMs of Kaufman Enterprises pursuant to Article 9 of the New York Civil Practice Law and Rules to remedy violations of the N.Y. Lab. Law, Article 19, §§ 650 *et seq.*, and the supporting Hospitality Industry Wage Order.

JURISDICTION & VENUE

9. This Court has jurisdiction over this matter pursuant to N.Y. Lab. Law § 198, 663(1) and C.P.L.R. § 301.

10. This Court is the proper venue under C.P.L.R. § 503(a) because, *inter alia*, a substantial part of the events or omissions giving rise to the claim occurred in Nassau County, including at the Massapequa McDonald’s.

THE PARTIES

Plaintiff David Pierre

11. Pierre is a resident of Suffolk County, New York.

12. At all times relevant to this Class Action Complaint, Pierre was an “employee” within the meaning of N.Y. Lab. Law §§ 190(2), 651(5).

13. At all times relevant to this Class Action Complaint, Pierre was an “employee” within the meaning of 12 N.Y.C.R.R. § 146-3.2.

14. At all times relevant to this Class Action Complaint, Pierre was a “fast food employee” within the meaning of 12 N.Y.C.R.R. § 146-3.13(a).

15. Pierre was employed by Kaufman Enterprises as a from approximately April 2004 through October 2017.

Defendant Kaufman Enterprises, LLC

16. Kaufman Enterprises is a domestic limited liability corporation, authorized to do business pursuant to the laws of the State of New York.

17. Kaufman Enterprises does business as Kaufman Enterprises McDonald's.

18. Kaufman Enterprises maintains its principal place of business at 134 West Hills Road, Huntington Station, NY 11746.

19. Upon information and belief, Kaufman Enterprises owns at least 16 McDonald's restaurants in the State of New York, which are listed above in Paragraph 2.

20. Upon information and belief, Kaufman Enterprises operates at least 16 McDonald's restaurants in the State of New York, which are listed above in Paragraph 2.

21. Upon information and belief, Kaufman Enterprises maintains control, oversight, and direction over its operations and employment practices.

22. At all times relevant to this Class Action Complaint, Kaufman Enterprises' McDonald's locations are "restaurants" within the meaning of 12 N.Y.C.R.R. § 146-3.2.

23. At all times relevant to this Class Action Complaint, Kaufman Enterprises' New York locations are "fast food establishments" within the meaning of 12 N.Y.C.R.R. § 146-3.13(b).

24. Kaufman Enterprises' primary purpose is serving food or drink items at its McDonald's restaurants.

25. Kaufman Enterprises' customers order and pay before eating their food and drinks.

26. Kaufman Enterprises' customers purchase their food and beverage from Kaufman Enterprises for on-premise and take-out consumption.

27. Kaufman Enterprises' locations, including those locations in which Pierre was employed, are part of the chain.

28. Kaufman Enterprises' McDonald's restaurants have standardized décor, marketing, packaging, products, and services.

29. Kaufman Enterprises employed employees, including Plaintiff and other ASMs.

30. Upon information and belief, generally, at least one ASM works at a given Kaufman Enterprises' McDonalds over the course of any given workweek.

31. Upon information and belief, generally, two ASMs work at a given Kaufman Enterprises' McDonalds over the course of any given workweek.

32. Kaufman Enterprises constitutes a unified operation.

33. Upon information and belief, Kaufman Enterprises' subsidiaries operate more than one of Kaufman Enterprises' 16 locations listed above in Paragraph 2.

34. Kaufman Enterprises' subsidiaries include:

- a. "A" Food Corp.;
- b. "H" Food Corp.;
- c. "F" Food Corp.;
- d. "L" Food Corp.;
- e. "P" Food Corp.;
- f. "S" Food Corp.;
- g. "W" Food Corp.;
- h. Emmy Meadow Food Corp.; and
- i. Joshville Inc. (collectively, the "Subsidiaries").

35. "H" Food Corp. operates the East Northport McDonald's.

36. "L" Food Corp. operates the Levittown McDonald'
37. Emmy Meadow Food Corp. operates the East Meadow McDonald's.
38. Joshville Inc. operates the Farmingville McDonald's.
39. The CEO of the Subsidiaries is Jonah Kaufman.
40. The Subsidiaries list Jonah Kaufman as their CEO with the New York State Department of State, Division of Corporations.
41. The principal executive office for the Subsidiaries is 134 West Hill Road, Huntington Station, NY 11746.
42. The Subsidiaries list their principal executive office as 134 West Hill Road, Huntington Station, NY 11746.
43. Upon information and belief, generally, at any given time, Kaufman Enterprises employs over 25 ASMs across its 16 restaurants.
44. Upon information and belief, generally, at any given time, Kaufman Enterprises and the Subsidiaries employs over 25 ASMs across Kaufman Enterprises' 16 McDonald's.
45. Kaufman Enterprises and the Subsidiaries constitute a common enterprise.
46. Kaufman Enterprises and the Subsidiaries have interrelated operations.
47. Kaufman Enterprises and the Subsidiaries have common management.
48. Kaufman Enterprises has common management.
49. Kaufman Enterprises' McDonald's restaurants have common management.
50. Kaufman Enterprises has a centralized control of labor relations.
51. Kaufman Enterprises and the Subsidiaries have a centralized control of labor relations.

52. Kaufman Enterprises' McDonald's restaurants have a centralized control of labor relations.

53. Kaufman Enterprises and the Subsidiaries use the same or similar employee handbooks and policies, including, but not limited to: (a) McDonald's Kaufman Enterprises Crew Handbook; and (b) McDonald's Kaufman Enterprises Management Handbook.

54. Members of the public may apply for job openings at the McDonald's listed in Paragraph 2 through Kaufman Enterprises website.

55. Kaufman Enterprise has the power to transfer ASMs and other employees from one of Kaufman Enterprises' McDonald's to another.

56. For example, Kaufman Enterprise transferred Pierre from the Massapequa McDonald's to the Patchogue McDonald's in or around 2017.

57. Further, Kaufman Enterprises' Management Handbook, published in January 2010, informs managers that Kaufman Enterprises may transfer them to other stores.

58. Upon information and belief, Kaufman Enterprises employs approximately four Supervisors (also known as "Area Supervisors").

59. Upon information and belief, Kaufman Enterprises' Supervisors support, assist, and oversee the General Managers in charge of Kaufman Enterprises' McDonalds.

60. Upon information and belief, Kaufman Enterprises' Supervisors report to Kaufman Enterprises' Director of Operations, with response to Kaufman Enterprises' McDonalds.

61. Upon information and belief, Kaufman Enterprises' Supervisors visit their assigned restaurants to oversee operations.

62. Upon information and belief, Kaufman Enterprises' Supervisors monitor and direct proper spending, mainly in the areas of food and labor cost, at the restaurants under their supervision.

63. Upon information and belief, Kaufman Enterprises' Supervisors may direct the work of General Managers, including with regards to how to train the ASMs.

64. Upon information and belief, Kaufman Enterprises' Supervisors may direct the work of ASMs.

65. Kaufman Enterprises and the Subsidiaries have common ownership.

66. Kaufman Enterprises' McDonald's restaurants have common ownership.

67. Kaufman Enterprises is a McDonald's Franchise owned and operated by Jonah Kaufman and Josh Kaufman.

68. Jonah Kaufman is a president of Kaufman Enterprises.

69. Josh Kaufman is a president Kaufman Enterprises

70. Kaufman Enterprises commingles funds from its various locations.

71. Kaufman Enterprises constitutes an integrated enterprise.

72. Kaufman Enterprises advertises as a single integrated enterprise on Defendant's website: <https://www.macpride.net/> (last accessed Mar. 24, 2019).

73. Throughout the Relevant Period, Kaufman Enterprises maintained control, oversight, and direction over ASMs, including timekeeping, payroll and other employment practices that applied to them.

74. Throughout the Relevant Period, Kaufman Enterprises applied the same employment policies, practices, and procedures to all ASMs, including policies, practices, and procedures with respect to the failure to pay overtime pay.

75. Throughout the Relevant Period, Kaufman Enterprises applied the same employment policies, practices, and procedures to all ASMs, including policies, practices, and procedures with respect to the failure to pay spread-of-hours pay.

76. Throughout the Relevant Period, Kaufman Enterprises applied the policies in its handbooks to ASMs.

77. Throughout the Relevant Period, Kaufman Enterprise maintained uniform job descriptions for its ASMs, regardless of the location at which they were employed.

78. For instance, Kaufman Enterprises applied the job descriptions found on pages 10 to 13 in Kaufman Enterprises' Management Handbook, published in January 2010, to its ASMs and General Managers.

79. And, Kaufman Enterprises advertises a uniform job descriptions for ASMS and General Mangers on its website. *See* <https://www.macpride.net/opportunities/management/> (last accessed Mar. 24, 2019).

80. Kaufman Enterprises requires ASMs to complete standardized training programs.

81. Throughout the Relevant Period, Kaufman Enterprises was and still is an "employer" within the meaning of N.Y. Lab. Law § 190(3).

CLASS ACTION ALLEGATIONS

82. The Class Representative brings the First Cause of Action on his own behalf and as a class action, pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of the following class of persons:

All current and former employees of Kaufman Enterprises who worked as ASMs at any time during the six years prior to the filing of this Complaint through entry of the judgment in the case (the "Class").

83. The persons in the Class are so numerous that joinder of all members is impracticable. Although, the precise number of such persons is unknown, and facts on which the calculation of that number can be based are presently within the sole control of Defendant.

84. Upon information and belief, the size of the Class exceeds 40 individuals.

85. That is, upon information and belief, at least 40 individuals worked as ASMs at one or more of Defendant's McDonald's restaurants at some time during the Relevant Period.

86. Common questions of law and fact exist as to the Class that predominate over any questions only affecting them individually and include, but are not limited to:

- a. Whether the Class Representative and Class are non-exempt from entitlement to overtime and spread-of-hours compensation under the pay requirements of the NYLL;
- b. Whether Defendant failed to pay proper overtime compensation in violation of the NYLL and the Hospitality Wage Order;
- c. Whether Defendant failed to pay proper spread-of-hours compensation for shifts lasting over 10 hours in violation of the NYLL and the Hospitality Wage Order;
- d. Whether Defendant failed to keep accurate time records for all hours worked by the Class Representative and the Class;
- e. Whether Defendant failed to accurately report the Class Representative's and the Class's hours worked on their wage statements each week;
- f. The nature and extent of Class-wide injury and the appropriate measure of damages sustained by the Class Representative and the Class; and
- g. Whether Defendant acted willfully or with reckless disregarding in its failure to pay the Class Representative and the Class; and
- h. Whether Defendant should be enjoined from such violations in the future.

87. The Class Representative fairly and adequately protects the interests of and has no interests antagonistic to the Class. The Class Representative is represented by attorneys who are experienced and competent in both class-action and employment litigation.

88. 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 an individual plaintiff lacks the financial resources to vigorously prosecute a lawsuit in court against the 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.

89. Further, the Class Representative and the Class have been equally affected by Defendant's failure to pay proper wages.

90. Members of the Class still employed by Defendant may be reluctant to raise individual claims for fear of retaliation.

91. Defendant acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

92. The Class Representative's claims are typical of those of the Class. The Class Representative and the other Class members were subjected to Defendant's policies, practices, programs, procedures, protocols and plans alleged herein concerning the failure to pay proper wages. Plaintiff's job duties are typical of those of the class members.

93. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Class are not

de minimis, such damages are small compared to the expense and burden of individual prosecution of this litigation. For these reasons and because current employees are often afraid to sue their employer, the interest of Class Members to prosecute their own individual actions is limited.

94. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices. Such piecemeal litigation would also be inefficient and impracticable.

95. Upon information and belief, no Class Members have filed an action regarding these claims.

96. Nassau County is a desirable forum for this action, as Defendant is headquartered in the adjacent county, Suffolk County, and own and operate businesses in Nassau County.

97. Upon information and belief, witnesses and members of the Class are Nassau County residents.

98. There are no anticipated difficulties in managing this case should it be certified as a class action because the class would consist almost entirely of New York residents, the Defendant is a New York resident, and Class Counsel has offices in New York, is experienced in litigating in Nassau County and is experienced in litigating class actions.

99. This action is properly maintainable as a class action under C.P.L.R. Article 9.

COMMON FACTUAL ALLEGATIONS

100. Plaintiff and the members of the Class (collectively "Class Members") have been victims of Kaufman Enterprises' common policy and plan that has violated their rights under the NYLL by requiring ASMs to work over 40-hours a week without overtime pay and shifts with a spread of over 10 hours a day without the benefit of spread-of-hours pay.

101. At all times relevant, Kaufman Enterprises' unlawful policy and pattern or practice has been willful.

102. The work performed by Class Members was assigned by Kaufman Enterprises.

103. Kaufman Enterprises was aware of all the work and work hours that Plaintiff and the Class Members performed.

ASMs Are Misclassified as Exempt from the Overtime and Spread-of-Hours Requirements

104. Plaintiff and the Class Members' primary duties were not managerial.

105. Plaintiff and the Class Members' primary duties were non-exempt duties, including performing the same duties of the hourly-paid non-exempt employees, including preparing and cooking food in the kitchen, taking orders at the drive-through window and front counter, unloading delivery trucks, stocking supplies, cleaning, removing garbage, performing inventory counts, and counting the registers. Plaintiff and Class Members spent most of their time performing these non-exempt duties.

106. Plaintiff and the Class Members were closely supervised by their General Managers and Supervisors. General Managers were responsible for the overall performance of the stores, and for hiring, firing, coaching, and developing employees.

107. Plaintiff and the Class Members did not exercise a meaningful degree of independent discretion with respect to the exercise of their duties and were required to follow the policies, practices, and procedures set by Defendant. Plaintiff and the Class Members did not have any independent discretionary authority to deviate from these policies, practices, and procedures.

108. Plaintiff and the Class Members did not have independent authority (a) to create or implement management policies, practices, and procedures for Defendant; (b) to commit Kaufman Enterprises in matters having significant financial impact; (c) to set employees' wages; (d) to

determine how many labor hours could be allocated to their store; or (e) to hire, fire, or promote employees.

ASMs Regularly Work a Spread of Over 10 Hours in a Day

109. ASMs regularly work over 40 hours in a workweek.

110. Kaufman Enterprises, however, does not pay ASMs overtime pay.

111. That is, Kaufman Enterprises does not pay ASMs one and one-half times their regular rate for all hours worked over 40 each workweek.

ASMs Regularly Work a Spread of Over 10 Hours in a Day

112. ASMs regularly work a spread of over 10 hours in a workday.

113. Kaufman Enterprises, however, does not pay ASMs an additional hour at the minimum wage for each shift that spans over a 10-hour period.

Defendant's NYLL Violations were Willful and Widespread

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

- a. Willfully requiring ASMs to work over 40 hours a week;
- b. Willfully requiring ASMs to work shifts with a spread-of-hour longer than 10 hours;
- c. Willfully failing to pay ASMs overtime wages; and
- d. Willfully failing to pay ASMs, including Plaintiff and Class Members, spread-of-hours wages.

115. Kaufman Enterprises was or should have been aware that the NYLL and Hospitality Industry Wage Order required them to pay ASMs overtime pay.

116. Kaufman Enterprises was or should have been aware that the NYLL and Hospitality Industry Wage Order required them to pay ASMs an additional hour at the minimum wage for each shift that spanned over a 10-hour period.

117. Kaufman Enterprises' failure to pay Plaintiff and Class Members proper overtime pay wages was willful, intentional, and in bad faith.

118. Kaufman Enterprises' failure to pay Plaintiff and Class Members proper spread-of-hours wages was willful, intentional, and in bad faith.

119. Kaufman Enterprises' unlawful conduct was widespread, repeated, and consistent.

120. Regardless of the location at which Plaintiff and Class Members worked for Kaufman Enterprises, Kaufman Enterprises' policies and practices remained substantially the same.

INDIVIDUAL FACTUAL ALLEGATIONS

121. Kaufman Enterprises employed Pierre from in or about April 2007 through October 2017

122. During the Relevant Period, Pierre was employed as an ASM.

123. Pierre was employed at the Massapequa McDonald's from in or about 2012 through 2017.

124. In or about August 2017, Kaufman Enterprises transferred Pierre from the Massapequa McDonald's to the Patchogue-Gateway McDonald's.

125. Pierre's emailed wage statements listed his employer as "W&K Mgt. (McDonald's), 134 West Hills Road, Hunt. Station, NY 11746."

126. Kaufman Enterprises listed “W & K Management Corp. d/b/a: Kaufman Enterprises McDonald’s” as his employer on his wage notice issued pursuant to Section 195.1 of the NYLL.

127. Denis Stickelman, who upon information and belief is the Director of Operations for Kaufman Enterprises, is listed as the preparer of Pierre’s 2017 wage notice.

128. During most workweeks between during the Relevant Period, Pierre worked more than 45 hours per week.

129. Kaufman Enterprises failed to compensate Pierre 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 his employment with Kaufman Enterprises.

130. Kaufman Enterprises failed to furnish Pierre with an accurate statement of wages listing hours worked.

131. Upon information and belief, Kaufman Enterprises did not keep accurate records of hours worked by Pierre.

132. Despite working shifts with a spread of hours exceeding 10 hours, Kaufman Enterprises failed to pay Pierre an additional hour of pay at the minimum wage when he worked such a shift.

FIRST CAUSE OF ACTION

NYLL – Unpaid Overtime

(Brought on behalf of the Class Representative and the Class)

133. Plaintiff realleges and incorporates all allegations in all preceding paragraphs.

134. Plaintiff and the Class are covered by the NYLL.

135. Defendant failed to keep, make, preserve, maintain and furnish accurate records of time worked by Plaintiff and Class Members.

136. Defendant failed to pay Plaintiff and Class Members overtime wages to which they are entitled under the NYLL and the Hospitality Wage Order.

137. Defendant failed to pay Plaintiff and Class Members overtime at a wage rate of one and one-half times their regular rate of pay.

138. Defendant has a policy and practice of refusing to pay overtime compensation for all hours worked to Plaintiff and the Class.

139. Defendant's failure to pay overtime compensation to Plaintiff and the Class was willful and intentional.

140. Defendant lacked a good faith basis, within the meaning of N.Y. Lab. Law § 663, to believe its failure to pay Plaintiff overtime wages complied with the NYLL.

141. As a result, Defendant owes Plaintiff and the Class their unpaid overtime wages, together with liquidated damages, interest, attorneys' fees and costs.

SECOND CAUSE OF ACTION

NYLL – Spread of Hours Pay

(Brought on behalf of the Class Representative and the Class)

142. Plaintiff realleges and incorporates all allegations in all preceding paragraphs.

143. Plaintiff and Class Members worked shifts in which the spread of hours exceeded 10 hours, as defined by 12 N.Y.C.R.R. § 146-1.6.

144. Throughout the six years prior to the filing of this Class Action Complaint there have been times in which Plaintiff and Class Members were entitled to an additional hour of pay at the "basic minimum hourly rate," as defined by 12 N.Y.C.R.R. §§ 146-1.2(1)-(2).

145. Defendant's failed to pay Plaintiff and Class Members one additional hour pay at the basic minimum wage rate before allowances for each day Plaintiff's spread of hours exceeded 10 hours, in violation of N.Y. Lab. Law §§ 650, *et seq.*, as codified by 12 N.Y.C.R.R. § 146-1.6.

146. Defendant lacked a good faith basis, within the meaning of N.Y. Lab. Law § 663, to believe its failure to pay Plaintiff an additional hour of pay for each day where the spread of hours exceeded 10 complied with the NYLL.

147. As a result, Defendant owes Plaintiff and the Class their unpaid spread-of-hours pay, together with liquidated damages, interest, attorneys' fees and costs.

THIRD CAUSE OF ACTION
NYLL – Failure to Provide Accurate Wage Statements
(Brought on behalf of the Class Representative and the Class)

148. Plaintiff realleges and incorporates all allegations in all preceding paragraphs.

149. Defendant failed to supply Plaintiff and members of the 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.

150. 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, Plaintiff and members of the Class are each entitled to damages of \$100 per work week, 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.

151. 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, Plaintiff and members of the Class are each entitled to damages of \$250 per work day, 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, Plaintiff seeks the following relief:

- A. That, at the earliest possible time, the Court certify this case as a class action pursuant to Article 9 of the C.P.L.R., and authorize the issuance of notice to the Class;
- B. Designation of Plaintiff David Pierre as the Class Representative, and counsel of record as Class Counsel;
- C. Unpaid overtime pay permitted by law pursuant to the NYLL and the Hospitality Wage Order;
- D. Unpaid spread-of-hours wages pursuant to the NYLL and the Hospitality Wage Order;
- E. Liquidated damages, pursuant to the NYLL;
- F. Statutory damages, as provided for by N.Y. Lab. Law §§ 195 and 198, for Defendant's violations of the notice and recordkeeping requirements pursuant to N.Y. Lab. Law § 195;
- G. Pre-judgment interest and post-judgment interest as provided by law;
- H. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;
- I. Attorneys' fees and costs of the action;
- J. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law §§ 190, 650, *et seq.*;
- K. Such other injunctive and equitable relief as this Court shall deem just and proper;

L. Reasonable incentive awards for Plaintiff to compensate him for the time he spent attempting to recover wages for the Class and for the risks he took in doing so; and

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

Dated: Melville, New York
March 25, 2019

Respectfully submitted,

By: /s/ Troy L. Kessler
Troy L. Kessler

SHULMAN KESSLER LLP

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