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

-----X
FREELYN MARINE ABREU and JUAN
MARINE CANELA, *individually and on behalf of
others similarly situated,*

Plaintiffs,

COMPLAINT

-against-

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

ECF Case

SPUTNIK RESTAURANT CORP. (d/b/a
ESQUIRE DINER), FTELIA ASSOCIATES
INC. (d/b/a ESQUIRE DINER), ALPHA
DINER CORP. (d/b/a ESQUIRE DINER),
PETER ATHANASOPOULOS and
DIMITRIO DOE (A.K.A. JIMMY),

Defendants.

-----X
Plaintiffs Freelyn Marine Abreu (“Plaintiff Freelyn” or “Mr. Freelyn”) and Juan Marine Canela (“Plaintiff Juan” or “Mr. Juan”), individually and on behalf of others similarly situated (collectively, “Plaintiffs”), by and through their attorneys, Michael Faillace & Associates, P.C., upon their knowledge and belief, and as against Sputnik Restaurant Corp. (d/b/a Esquire Diner), Ftelia Associates Inc. (d/b/a Esquire Diner), Alpha Diner Corp. (d/b/a Esquire Diner) (“Defendant Corporations”), Peter Athanasopoulos and Dimitrio Doe (a.k.a. Jimmy) (“Individual Defendants”) (collectively, “Defendants”) allege as follows:

NATURE OF THE ACTION

1. Plaintiffs are employees of Defendants Sputnik Restaurant Corp., Ftelia Associates Inc., Alpha Diner Corp., Peter Athanasopoulos and Dimitrio Doe (a.k.a. Jimmy).

2. Defendants have owned, operated, or controlled a Diner located at 105-45 Cross Bay Blvd, Jamaica, NY 11417 under the name Esquire Diner.

3. Upon information and belief, Individual Defendants Peter Athanasopoulos and Dimitrio Doe (a.k.a. Jimmy) have served as owners, managers, principals, or agents of Defendant Corporations and, through these corporate entities, have operated the diner as a joint or unified enterprise.

4. Plaintiffs have been employed as cook, dishwasher and busboy.

5. From approximately September 2015 until the present date, Plaintiff Freelyn has been primarily employed as a busboy, but he has been required to spend a considerable part of his workday performing non-tipped, non-delivery work, including but not limited to various restaurant duties such as taking out the trash, moving and stocking containers, sweeping and mopping, cleaning the sidewalk when it snowed (hereinafter “non-tipped duties”).

6. At all times relevant to this Complaint, Plaintiffs have worked for Defendants in excess of 40 hours per week, without appropriate minimum wage or overtime compensation for the hours that they have worked.

7. Rather, Defendants have failed to maintain accurate recordkeeping of the hours worked, have failed to pay Plaintiffs appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

8. Further, Defendants have failed to pay Plaintiffs the required “spread of hours” pay for any day in which they have worked over 10 hours per day.

9. From approximately September 2015 until the present date, Defendants have employed and accounted for Plaintiff Freelyn as a busboy (tipped employee) but in actuality his duties have required greater or equal time spent performing the non-tipped functions described above.

10. Regardless, at all times relevant to this complaint, Defendants have paid Plaintiff

Freelyn at a rate that is below the required tip-credit rate.

11. Furthermore, under state law, Defendants have not been entitled to take a tip credit on Plaintiff Freelyn's pay rate because Plaintiff's Freelyn's non-tipped duties exceeded 20% of each workday, or 2 hours per day (whichever was less in each day) (12 N.Y.C.R.R. §146).

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

13. At all times relevant to this Complaint, Defendants have maintained a policy and practice of requiring Plaintiffs and other employees to work without providing the minimum wage, overtime, and spread of hours compensation required by federal and state law and regulations.

14. Defendants' conduct has extended beyond Plaintiffs to all other similarly situated employees.

15. Plaintiffs now bring this action on behalf of themselves, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA"), and for violations of the N.Y. Labor Law §§ 190 *et seq.* and 650 *et seq.* (the "NYLL"), and the "spread of hours" and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6 (herein the "Spread of Hours Wage Order"), including applicable liquidated damages, interest, attorneys' fees and costs.

16. Plaintiffs seek certification of this action as a collective action on behalf of themselves individually and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367(a).

18. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because all, or a substantial portion of, the events or omissions giving rise to the claims occurred in this district, Defendants maintain their corporate headquarters and offices within this district, and Defendants operate a Diner located in this district. Further, Plaintiffs were employed by Defendants in this district.

THE PARTIES

Plaintiffs

19. Plaintiff Freelyn Marine Abreu ("Plaintiff Freelyn" or "Mr. Freelyn") is an adult individual residing in New York County, New York. Plaintiff Freelyn has been employed by Defendants from approximately August 2014 until the present date.

20. Plaintiff Juan Marine Canela ("Plaintiff Juan" or "Mr. Juan") is an adult individual residing in New York County, New York. Plaintiff Juan has been employed by Defendants from approximately 2007 until the present date.

Defendants

21. At all relevant times, Defendants have owned, operated, or controlled a Diner located at 105-45 Cross Bay Blvd, Ozone Park, NY 11417 under the name "Esquire Diner."

22. Upon information and belief Sputnik Restaurant Corp. (Defendant Corporation) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, Defendant Corporation has its principal place of business at 105-45 Crossbay Boulevard, Ozone Park, New York, 11417.

23. Upon information and belief Ftelia Associates Inc. (Defendant Corporation) is a domestic corporation organized and existing under the laws of the State of New York. Upon

information and belief, Defendant Corporations has its principal place of business at 105-45 Crossbay Boulevard, Ozone Park, New York, 11417.

24. Upon information and belief Alpha Diner Corp. (Defendant Corporation) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, Defendant Corporations has its principal place of business at 105-45 Crossbay Boulevard, Ozone Park, New York, 11417.

25. Defendant Peter Athanasopoulos is an individual engaging (or who has been engaged) in business in this judicial district during the relevant time period. Defendant Peter Athanasopoulos is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporations. Defendant Peter Athanasopoulos has possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or has controlled significant functions of Defendant Corporations. Defendant Peter Athanasopoulos has determined the wages and compensation of the employees of Defendants, including Plaintiffs, has established the schedules of the employees, has maintained employee records, and has had the authority to hire and fire employees.

26. Defendant Dimitrio Doe (a.k.a. Jimmy) is an individual engaging (or who has been engaged) in business in this judicial district during the relevant time period. Defendant Dimitrio Doe (a.k.a. Jimmy) is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporations. Defendant Dimitrio Doe (a.k.a. Jimmy) has possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or has controlled significant functions of Defendant Corporations. Defendant Dimitrio Doe (a.k.a. Jimmy) has determined the wages and compensation of the employees of Defendants, including Plaintiffs, has established the schedules of the employees, has maintained employee records, and has had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

27. Defendants operate a Diner located in Ozone Park, Queens.

28. Individual Defendants, Peter Athanasopoulos and Dimitrio Doe (a.k.a. Jimmy), have possessed operational control over Defendant Corporations, have possessed ownership interests in Defendant Corporations, and have controlled significant functions of Defendant Corporations.

29. Defendants are associated and joint employers, have acted in the interest of each other with respect to employees, have payed employees by the same method, and have shared control over employees.

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

31. Defendants jointly have employed Plaintiffs (and all similarly situated employees) and are Plaintiffs' (and all similarly situated employees') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

32. In the alternative, Defendants constitute a single employer of Plaintiffs and/or similarly situated individuals.

33. Upon information and belief, individual defendants Peter Athanasopoulos and Dimitrio Doe (a.k.a. Jimmy) have operated Defendant Corporations as either alter egos of themselves and/or have failed to operate Defendant Corporations as entities legally separate and apart from themselves, by among other things:

- a) failing to adhere to the corporate formalities necessary to operate Defendant Corporations as corporations,

- b) defectively forming or maintaining the corporate entities of Defendant Corporations, by, amongst other things, failing to hold annual meetings or maintaining appropriate corporate records,
- c) transferring assets and debts freely as between all Defendants,
- d) operating Defendant Corporations for their own benefit as the sole or majority shareholders,
- e) operating Defendant Corporations for their own benefit and maintaining control over these corporations as closed corporations,
- f) intermingling assets and debts of their own with Defendant Corporations,
- g) diminishing and/or transferring assets of Defendant Corporations to avoid full liability as necessary to protect their own interests; and,
- h) other actions evincing a failure to adhere to the corporate form.

34. At all relevant times, Defendants have been Plaintiffs' employers within the meaning of the FLSA and New York Labor Law. Defendants have had the power to hire and fire Plaintiffs, have controlled the terms and conditions of employment, and have determined the rate and method of any compensation in exchange for Plaintiffs' services.

35. In each year from 2011 to 2017, Defendants, both separately and jointly, have had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

36. In addition, upon information and belief, Defendants and/or their enterprises have been directly engaged in interstate commerce. As an example, numerous items that are used in the restaurant on a daily basis are goods produced outside of the State of New York.

Plaintiffs

37. Plaintiffs are present employees of Defendants who have been employed as a cook,

dishwasher and busboy.

38. Plaintiffs seek to represent a class of similarly situated individuals under 29 U.S.C. 216(b).

Plaintiff Freelyn Marine Abreu

39. Plaintiff Freelyn has been employed by Defendants from approximately August 2014 until the present date.

40. From approximately August 2014 until on or about August 2015, Defendants employed Plaintiff Freelyn as a dishwasher and from approximately September 2015 until the present date as a busboy (tipped employee).

41. From approximately September 2015, Defendants have ostensibly employed Plaintiff Freelyn as a busboy. However, Plaintiff Freelyn has also been required to perform the non-tip duties described above and has spent almost his entire workday performing such duties.

42. Plaintiff Freelyn has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

43. Plaintiff Freelyn's work duties have required neither discretion nor independent judgment.

44. From approximately August 2014 until on or about August 2015, Plaintiff Freelyn worked as a dishwasher from approximately 9:00 a.m. until on or about 6:00 p.m. Saturdays and from approximately 9:00 a.m. until on or about 7:00 p.m. Sundays (typically 19 hours per week).

45. From approximately September 2015 until the present date, Plaintiff Freelyn has worked from approximately 5:00 p.m. until on or about 11:00 p.m. Sundays, Mondays, Tuesdays and Thursdays; from approximately 9:00 p.m. until on or about 6:00 a.m. Fridays and Saturdays; and from approximately 6:00 a.m. until on or about 6:00 p.m. two or three Saturdays per month (typically 42 to 45 hours per week).

46. Throughout his employment, Plaintiff Freelyn has been paid his wages in cash.

47. However, Defendants has asked Plaintiff Freelyn to sign pay stubs for weekly paychecks that he has not received because he has always been paid in cash.

48. From approximately August 2014 until on or about August 2015, Plaintiff Freelyn was paid a fixed salary of \$60 per day.

49. From approximately September 2015 until on or about October 2015, Plaintiff Freelyn was paid a fixed salary of \$160 per week.

50. From approximately November 2015 until the present date, Plaintiff Freelyn has been paid a fixed salary of \$140 per week.

51. Plaintiff Freelyn's pay has not varied even when he has been required to stay late or work a longer day than his usual schedule.

52. For example, Defendants have required Plaintiff Freelyn to work an additional hour past his scheduled departure time three days a week, and have not compensated him for the additional time they have required him to work

53. Defendants have never granted Plaintiff Freelyn a meal break or rest period of any length.

54. Before September 2015, Plaintiff Freelyn was not required to keep track of his time, nor to his knowledge did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

55. Defendants have not provided Plaintiff Freelyn with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

56. Defendants have never given any notice to Plaintiff Freelyn, in English and in Spanish (Plaintiff Freelyn's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

57. Defendants have required Plaintiff Freelyn to purchase “tools of the trade” with his own funds—including his uniform which consisted on 8 white shirts, 5 pants, 3 vests and 3 pairs of shoes.

Plaintiff Juan Marine Canela

58. Plaintiff Juan has been employed by Defendants from approximately 2007 until the present date.

59. Defendants has employed Plaintiff Juan as a cook.

60. Plaintiff Juan has regularly handled goods in interstate commerce, such as dishwashing liquids and other supplies produced outside the State of New York.

61. Plaintiff Juan’s work duties have required neither discretion nor independent judgment.

62. From approximately September 2011 until on or about October 2012, Plaintiff Juan worked from approximately 6:00 a.m. until on or about 4:30 p.m. three days per week and from approximately 6:00 a.m. until on or about 5:30 p.m. three days per week (typically 66 hours per week).

63. From approximately November 2012 until on or about April 2013, Plaintiff Juan worked from approximately 6:00 a.m. until on or about 7:30 p.m. four days per week and from approximately 6:00 a.m. until on or about 8:00 p.m. three days per week (typically 96 hours per week).

64. From approximately May 2013 until on or about April 2016, Plaintiff Juan worked from approximately 6:00 a.m. until on or about 4:30 p.m. three days per week and from approximately 6:00 a.m. until on or about 5:30 p.m. three days per week (typically 66 hours per week).

65. From approximately May 2016 until on or about the present date, Plaintiff Juan has worked from approximately 6:00 a.m. until on or about 3:00 p.m. Tuesdays through Sundays (typically 54 hours per week).

66. Throughout his employment with defendants, Plaintiff Juan has been paid his wages

in cash.

67. However, Defendants have asked Plaintiff Juan to sign pay stubs for weekly paychecks that he did not received because he has always been paid in cash.

68. From approximately September 2011 until on or about the present date, Plaintiff Juan has been paid \$12.50 per hour.

69. Throughout his employment, excluding the months from approximately November 2012 until on or about April 2013, Defendants have granted Plaintiff Juan a thirty-minute meal break.

70. No notifications, either in the form of posted notices or other means, have ever been given to Plaintiff Juan regarding overtime and wages under the FLSA and NYLL.

71. Prior to May 2016, Plaintiff Juan was not required to keep track of his time, nor to his knowledge did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

72. Further, the recordkeeping machine that Defendants have been using from approximately June 2016 until the present date, is not accurate and appears to be broken, because it fails to record and display the total hours he has worked.

73. Defendants have not given any notice to Plaintiff Juan, in English and in Spanish (Plaintiff Juan's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

Defendants' General Employment Practices

74. At all times relevant to this Complaint, Defendants have maintained a policy and practice of requiring Plaintiffs (and all similarly situated employees) to work in excess of 40 hours a week without paying them appropriate minimum wage, overtime and spread of hours pay as required by federal and state laws.

75. Plaintiffs have been victims of Defendants' common policy and practices which

violate their rights under the FLSA and New York Labor Law by, *inter alia*, not paying them the wages they are owed for the hours they have worked.

76. Defendants have habitually required Plaintiffs to work additional hours beyond their regular shifts but have not provided them with any additional compensation.

77. Upon information and belief, these practices by Defendants have been done willfully to disguise the actual number of hours Plaintiffs (and similarly situated individuals) have worked, and to avoid paying Plaintiffs properly for their full hours worked.

78. Defendants' pay practices have resulted in Plaintiffs not receiving payment for all their hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum wage, tip-credit and overtime rate, as well as failing to provide Plaintiffs with the spread of hours compensation that they are owed.

79. From approximately September 2015 until the present date, Plaintiff Freelyn has been employed ostensibly as tipped employee by Defendants, although his actual duties include most of his time being spent in the non-tipped functions described above.

80. Nevertheless, from approximately September 2015 until the present date, defendants have paid Plaintiff Freelyn at a rate that is lower than the required tip-credited rate; however, under state law, Defendants have not been entitled to a tip-credit because Plaintiff Freelyn's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less) (12 N.Y.C.R.R. § 146).

81. New York State regulations provide that an employee cannot be classified as a tipped employee "on any day . . . in which he has been assigned to work in an occupation in which tips are not customarily received." (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

82. Plaintiff Freelyn's duties have not been incidental to his occupation as busboy, but

instead have constituted entirely unrelated occupations with duties including the non-tip duties described above.

83. In violation of federal and state law as codified above, Defendants have classified Plaintiff Freelyn as a tipped employee, but have paid him below the tip-credited rate, when they should have classified him as a non-tipped employee and pay him at the minimum wage rate.

84. Throughout their employment, Plaintiffs have been paid their wages in cash but have been required to sign paychecks that they have never been allowed to keep.

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

86. Defendants have engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

87. Defendants' unlawful conduct has been intentional, willful, in bad faith, and have caused significant damages to Plaintiffs and other similarly situated current and former workers.

88. Defendants have required Plaintiff Freelyn to provide his own tools for the job, and have refused to compensate him or reimburse him for these expenses.

89. Defendants have failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

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

91. Defendants have failed to provide Plaintiffs and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

92. Plaintiffs bring their FLSA Minimum wage, overtime, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants on or after the date that is three years before the filing of this Complaint (the "FLSA Class Period"), as employees of Defendants (the "FLSA Class").

93. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions.

94. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or

have been similarly situated, have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum wage and overtime at a one and one-half times their regular rates for work in excess of forty (40) hours per workweek.

95. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have been subject to Defendants' willful failure to keep records required by the FLSA.

96. The claims of Plaintiffs stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION

VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA

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

98. At all times relevant to this action, Defendants have been Plaintiff Freelyn's employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants have had the power to hire and fire Plaintiff Freelyn, have controlled the terms and conditions of employment, and have determined the rate and method of any compensation in exchange for his employment.

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

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

101. In violation of 29 U.S.C. § 206(a), Defendants have failed to pay Plaintiff Freelyn at the applicable minimum hourly rate.

102. Defendants' failure to pay Plaintiff Freelyn at the applicable minimum hourly rate has been willful within the meaning of 29 U.S.C. § 255(a).

103. Plaintiff Freelyn has been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION

VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA

104. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

105. Defendants, in violation of 29 U.S.C. § 207(a)(1), have failed to pay Plaintiffs' overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

106. Defendants' failure to pay Plaintiffs, and the putative FLSA Class members, overtime compensation has been willful within the meaning of 29 U.S.C. § 255(a).

107. Plaintiffs have been damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

VIOLATION OF THE NEW YORK MINIMUM WAGE ACT

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

109. At all times relevant to this action, Defendants have been Plaintiff Freelyn's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants have had the power to hire and fire Plaintiff Freelyn, have controlled his terms and conditions of employment, and have determined the rates and methods of any compensation in exchange for his employment.

110. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, have paid Plaintiff Freelyn less than the minimum wage.

111. Defendants' failure to pay Plaintiff Freelyn the minimum wage has been willful within the meaning of N.Y. Lab. Law § 663.

112. Plaintiff Freelyn has been damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

**VIOLATION OF THE OVERTIME PROVISIONS OF THE
NEW YORK STATE LABOR LAW**

113. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

114. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.*, and supporting regulations of the New York State Department of Labor, have failed to pay Plaintiffs overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

115. Defendants' failure to pay Plaintiffs overtime compensation has been willful within the meaning of N.Y. Lab. Law § 663.

116. Plaintiffs have been damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

**VIOLATION OF THE SPREAD OF HOURS WAGE ORDER
OF THE NEW YORK COMMISSIONER OF LABOR**

117. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

118. Defendants have failed to pay Plaintiffs one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiffs' spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.* and 650 *et seq.* and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6.

119. Defendants' failure to pay Plaintiffs an additional hour's pay for each day Plaintiffs' spread of hours exceeded ten hours has been willful within the meaning of New York Lab. Law § 663.

120. Plaintiffs have been damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

VIOLATION OF THE NOTICE AND RECORDKEEPING

REQUIREMENTS OF THE NEW YORK LABOR LAW

121. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

122. Defendants have failed to provide Plaintiffs with a written notice, in English and in Spanish (Plaintiffs' primary language), containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by NYLL §195(1).

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

SEVENTH CAUSE OF ACTION

VIOLATION OF THE WAGE STATEMENT PROVISIONS

OF THE NEW YORK LABOR LAW

124. Plaintiffs repeat and re-allege all paragraphs above as though set forth fully herein.

125. With each payment of wages, Defendants have failed to provide Plaintiffs with a statement listing each the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

126. Defendants are liable to each Plaintiff for statutory damages in the amount of \$5,000, together with costs and attorneys' fees.

EIGHTH CAUSE OF ACTION

RECOVERY OF EQUIPMENT COSTS

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

128. Defendants have required Plaintiff Freelyn to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and “tools of the trade” required to perform his job, such as shirts, pants and shoes, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

129. Plaintiff Freelyn has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

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

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members apprising them of the pendency of this action, and permitting them to promptly file consents to be Plaintiffs in the FLSA claims in this action;

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

(c) Declaring that Defendants have violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiffs (including the prospective collective class members);

(d) Declaring that Defendants have violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiffs’ (and the prospective collective class members’) compensation, hours, wages, and any deductions or credits taken against

wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA has been willful as to Plaintiffs (including the prospective collective class members);

(f) Awarding Plaintiffs (including the prospective collective class members) damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiffs (including the prospective collective class members) liquidated damages in an amount equal to 100% of their damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants have violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Freelyn;

(i) Declaring that Defendants have violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiffs;

(j) Declaring that Defendants have violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiffs;

(k) Declaring that Defendants have violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiffs' compensation, hours, wages and any deductions or credits taken against wages;

(l) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Order have been willful as to Plaintiffs;

(m) Awarding Plaintiffs damages for the amount of unpaid minimum and overtime wages, and for any improper deductions or credits taken against wages, as well as awarding spread of hours pay under the NYLL, as applicable;

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

(o) Awarding Plaintiffs liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, spread of hours pay and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable; and liquidated damages pursuant to NYLL § 198(3);

(p) Awarding Plaintiffs (including the prospective collective class members) pre-judgment and post-judgment interest as applicable;

(q) Awarding Plaintiffs (including the prospective collective class members) the expenses incurred in this action, including costs and attorneys' fees;

(r) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(s) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury.

Dated: New York, New York
September 8, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

By: /s/ Michael Faillace
Michael Faillace [MF-8436]
60 East 42nd Street, Suite 4510
New York, New York 10165
Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 2020
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 29, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre:

Freelyn Marine Abreu

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

29 de marzo de 2017

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 2540
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

March 27, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Juan Marine Canela

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

27 de marzo de 2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FREELYN MARINE ABREU and JUAN MARINE CANELA, individually and on behalf of others similarly situated,

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

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

DEFENDANTS

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), FTELIA ASSOCIATES INC. (d/b/a ESQUIRE DINER), ALPHA DINER CORP. (d/b/a ESQUIRE DINER), PETER ATHANASOPOULOS and DIMITRI

County of Residence of First Listed Defendant Queens
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Plaintiffs seek unpaid overtime wages pursuant to The Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.
Brief description of cause:
unpaid overtime wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 09/08/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Faillace

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Michael Faillace, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Michael Faillace

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

FREELYN MARINE ABREU, et al.

Plaintiff(s)

v.

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Alpha Diner Corp. (d/b/a Esquire Diner)
105-45 Cross Bay Blvd
Jamaica, NY 11417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

FREELYN MARINE ABREU, et al.

Plaintiff(s)

v.

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Dimitrio Doe
105-45 Cross Bay Blvd
Jamaica, NY 11417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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Save As...

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

FREELYN MARINE ABREU, et al.

Plaintiff(s)

v.

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Ftelia Associates Inc. (d/b/a Esquire Diner)
105-45 Cross Bay Blvd
Jamaica, NY 11417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

FREELYN MARINE ABREU, et al.

Plaintiff(s)

v.

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Peter Athanasopoulos
105-45 Cross Bay Blvd
Jamaica, NY 11417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Southern District of New York

FREELYN MARINE ABREU, et al.

Plaintiff(s)

v.

SPUTNIK RESTAURANT CORP. (d/b/a ESQUIRE DINER), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Sputnik Restaurant Corp. (d/b/a Esquire Diner)
105-45 Cross Bay Blvd
Jamaica, NY 11417

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Esquire Diner Faces Employees' Wage and Hour Lawsuit](#)
