

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 DEVENDRA RAJ ACHARYA, Individually and on Behalf of All Others Similarly Situated,
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COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs,

vs.

8 7-ELEVEN, INC. and JIMMY K SOLANKI

9 Defendants.

10 Plaintiff DEVENDRA RAJ ACHARYA (“Plaintiffs”), by and through their undersigned
11 attorney, brings this action individually and on behalf of all other similarly situated current and
12 former employee of Defendant, 7-ELEVEN, INC. (7-ELEVEN or Defendants) and JIMMY K
13 SOLANKI, (collectively “ SOLNANKI” and/or the “Defendants”), alleges as follows, on behalf
14 of themselves and on behalf of all other persons similarly situated:

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16 **NATURE OF THE ACTION**

17 1. Plaintiffs bring this action individually and on behalf of all other similarly situated current
18 and former employees, against Defendants.

19 2. Plaintiffs are former full-time hourly employees in one of Defendant’s stores who worked
20 in positions subject to the overtime provisions of the Fair Labor Standards Act (FLSA) §§ 201 et
21 seq., New York Labor Law, Article 19, §§ 650 et seq., and the supporting the supporting New
22 York State Department of Labor regulations.

23 3. Defendants have willfully engaged in a pattern, practice and policy of unlawful conduct by
24 failing to record, credit, or compensate work performed by its hourly employees in the State of
25 New York, including Plaintiffs and members of the prospective Class (hereinafter “Plaintiff Class”

1 or “the Class”), for hours in excess of forty (40) per week that Defendants have required and
2 permitted such employees to perform work.

3 4. Defendants’ pattern, practice and policy of requiring or permitting work without
4 compensation has violated its employees’ rights under the FSLA, New York Labor Law Article
5 19, §§ 650 et seq., and the supporting New York State Department of Labor regulations, because
6 Plaintiffs and the Class have performed work in excess of forty (40) hours per week without
7 overtime wages.

8 5. Plaintiffs and the Class seek overtime compensation for work in excess of forty (40) hours
9 per week required or permitted by Defendants, and/or other damages as permitted by applicable
10 law, and attorneys’ fees and costs.

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12 **THE PARTIES**

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14 6. Plaintiffs, and other members of the class, are individuals residing in the City of New York
15 and State of New York, who worked for Defendants at their locations.

16 7. Upon information and belief, Defendant 7-ELEVEN is a corporation incorporated under
17 the laws of the State of New York.

18 8. Upon information and belief, Defendant 7-Eleven does business in the State of New York,
19 engaged in business of selling goods.

20 9. Upon information and belief, defendant Jimmy K Solanki, Franchisee of the defendant 7-
21 Eleven.

22 10. Upon information and belief, defendant Solanki is owner subject business.

23 11. Upon information and belief, defendant Solanki is management of subject business.
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1 12. At all relevant times, Defendants have been, and continue to be, employers engaged in
2 interstate commerce and/or the production of good for commerce within the meaning of the FLSA,
3 29 U.S.C. §§ 206(a) and 207(a).

4 13. Upon information and belief, at all relevant times, Defendants have had gross revenue in
5 excess of \$500,000.00.

6 14. Upon information and belief, at all relevant times herein, Defendants have used goods and
7 materials produced in interstate commerce, and have employed at least two individuals who
8 handled such goods and materials.

9 15. The defendants jointly and severally own, operate and manages various location of the
10 businesses.

11 16. Upon information and belief, the defendant Solanki is management and/or officer of the
12 defendant's businesses.

13 17. Upon information and belief, at all relevant times, defendant has constituted an "enterprise"
14 as defined in the FLSA.

15 18. Defendants constitute "employer" of Plaintiffs and the Class as that term is used in the Fair
16 Labor Standards Act, New York Labor Law, and each of their corresponding regulations.

17 19. Upon information and belief, at all relevant times, the defendants have more than 40
18 employees.
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22 **JURISDICTION AND VENUE**

23 20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
24 and 1337, as well as supplemental jurisdiction over Plaintiffs' and the Class's state law claims
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1 pursuant to 28 U.S.C. §1367. In addition, the Court has jurisdiction over the Plaintiffs' and the
2 Class's claims under the FLSA pursuant to 29 U.S.C. §216(b).

3 21. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants transact
4 business in this District.

5 22. The defendant Juice Generation maintains its principal executive office in the County of
6 New York and State of New York and within the jurisdiction of the Southern District of New York.

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8 **CLASS ACTION ALLEGATIONS**
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10 23. Plaintiffs bring a collective action for violations of the Fair Labor Standards Act and a class
11 action for violations of the New York Labor Law pursuant to Federal Rules of Civil Procedure
12 Rule 23.

13 24. The claim is brought on behalf of all regular full-time hourly employees of Defendants
14 who have been or will be employed in Defendants' stores located in the State of New York during
15 the applicable statute of limitations prior to the date of the commencement of this action through
16 the date of final disposition of this action ("the class period"), whom Defendants have required or
17 permitted to perform work in excess of forty (40) hours per week without overtime wages.

18 25. Excluded from the Class are Defendants' legal representatives, officers, directors, assigns,
19 and successors, or any individual who has, or who at any time during the Class period has had, a
20 controlling interest in Defendants; the Judge whom this case is assigned and any member of the
21 Judge's immediate family; and all persons who will submit timely and otherwise proper requests
22 for exclusion from the Class.

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24 26. The employees in the Class identified above are so numerous that joinder of all members
25 is impracticable. Although the precise number of such employees is unknown, and facts on which

1 the calculation of that number are presently within the sole control of the Defendants and can be
2 ascertained through appropriate discovery.

3 27. Upon information and belief defendants have substantial numbers of employee which
4 meets requirement of class action.

5 28. When plaintiffs were working for defendants' business located at address known as 107
6 E23rd Street, City of New York, State of New York and Zip Code of 10010 (New York City
7 Location).

8 29. Common questions of law and fact exist as to Plaintiffs and the Class that predominate
9 over any questions only affecting them individually and include, but are not limited, the following:
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11 a. Whether Defendants have violated and continue to violate the Fair Labor Standards Act,
12 29 U.S.C. §§ 200 et seq., and the supporting United States Department of Labor regulations, as
13 alleged herein;

14 b. Whether Defendants have violated and continue to violate New York Labor Law §§ 190 et
15 seq., and 650 et seq., and the supporting New York State Department of Labor Regulations, as
16 alleged herein;

17 c. Whether Defendants have failed to compensate Plaintiffs and the Class for work performed
18 in excess of forty (40) hours per workweek with overtime wages;

19 d. Whether Defendants have engaged in a pattern, practice or policy of encouraging Plaintiffs
20 and members of the Class not to report all time worked;

21 e. Whether Defendants have engaged in a pattern, practice or policy of deleting hours actually
22 worked by Plaintiffs and members of the Class from records of their compensable time;

23 f. Whether Defendants have engaged in a pattern, practice or policy by not providing required
24 wages, hour and overtime notices to worker;
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1 g. Whether Defendants have failed to keep true and accurate time records for all hours worked
2 by Plaintiffs and the Class;

3 h. The nature and extent of class-wide injury and the appropriate measure of damages for the
4 Class.

5 30. The claims of the Plaintiffs are typical of the claims of the Class he seeks to represent.

6 31. Both the Plaintiffs and the Class work or have worked for Defendants as full-time hourly
7 employees in its juice stores in New York State.

8 32. Plaintiffs and the Class were not paid the statutorily mandated overtime rate of one and
9 one-half times the regular rate for each hour worked in excess of forty (40) in a given work week.

10 33. As a result, Plaintiffs and the Class have not been credited or compensated for work in
11 excess of forty (40) hours per week that they have performed for the benefit of Defendants.

12 34. Plaintiff and the Class have suffered damages, including lost overtime compensation,
13 resulting from Defendants' wrongful conduct.

14 35. Defendants required including plaintiffs and other worker to punch in when each worker
15 enter into work and punch out when each worker end of the job shift each day.

16 36. Defendants had the same practice and procedure to pay wages to other employee who were
17 working with plaintiffs for the defendants.

18 37. Plaintiffs will fairly and adequately represent and protect the interests of the members of
19 the Class.

20 38. Plaintiffs has retained counsel who has done in identifying or investigating potential claims
21 in this action, who has knowledge of the applicable law, and competent and experienced in
22 complex labor and employment litigation.
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FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

39. All the work performed by Plaintiffs and the Class were assigned by their managers and supervisors.

40. Plaintiffs and the Class were suffered and/or permitted by Defendants to work in excess of forty (40) hours per week without the rate of compensation reflective of the statutorily mandated overtime rate of one and one-half times the regular rate.

Failure to Properly Record Hours Worked and Earnings

41. On each workday, Defendants have scheduled Plaintiffs and the Class to work in shifts that begin and end at particular times.

42. Because Defendants have failed to record, or has inaccurately deducted, hours worked by employees', Plaintiffs and the Class have not been properly compensated for, work in excess of forty (40) hours per week performed for the benefit of the Defendants.

43. Defendants have not recorded, reported or maintained records of such work performed for the benefit of Defendants by Plaintiffs and the Class as required by law.

Widespread, Consistent and Willful Nature of Violations

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

45. Defendants' managers and supervisors have known the Defendants' employees, including Plaintiffs and the Class, perform work in excess of forty (40) hours per week that Defendants do not accurately record, report, or compensate such employees.

46. Managers and supervisors observe the employees and often direct them in performing improperly compensated overtime work for the benefit of Defendants.

1 47. Defendants have known that their supervisory and management personnel permitted or
2 required Plaintiffs and the Class to perform work for the benefit of Defendant without properly
3 recording or providing appropriate overtime compensation for such time spent working.

4 48. As part of Defendants' regular business practice, Defendants failed to compensate
5 Plaintiffs and the Class for the hours worked in excess of forty (40) hours per week at the statutorily
6 mandated overtime rate of one and one-half times the regular rate for each hour over forty (40) per
7 week.
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10 **INDIVIDUAL REPRESENTATIVE PLAINTIFFS ALLEGATIONS**

11 **PLAINTIFF ACHARYA**

12 49. Mr. Devendra Raj Acharya was employed by defendants from July 24, 2015 to June 29,
13 2017.

14 50. During the course of his employment with defendants Mr. Acharya was working address
15 known as 107 E 23rd Street, City of New York, State of New York zip code of 10010 .

16 51. Mr. Acharya was a full-time employee regularly scheduled to work in excess of forty (40)
17 hours per week.

18 52. Mr. Acharya has not been properly compensated for approximately 120 hours of regular
19 hours.

20 53. Mr. Acharya has not been properly compensated for approximately 2,443 hours of
21 overtime work performed during his employment period.

22 54. Approximately 120 hours all regular hours should have been compensated at regular rate.

23 55. Approximately, 2,443 overtime hours should have been compensated at the rate of one
24 hundred and fifty times of regular pay rate.
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1 56. Mr. Acharya was compensated at a rate of \$9 for the period July 24 to December 17, 2015,
2 at a rate of \$10 per hour for the period December 18, 2015 to January 19, 2017 and at a rate of \$11
3 per hour for the period January 20, 2017 to January 20 to June 29, 2017.

4 57. Approximately overtime of 670 hours should be paid at a rate of \$13.50.

5 58. Approximately overtime of 1,424 hours should be paid at the rate of \$15.00.

6 59. Approximately overtime of 349 hours should be paid at the rate of \$16.50.

7 60. For an approximate total amount due Mr. Acharya for regular pay and proper overtime
8 compensation of \$14,241.83 and plus interest.
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11 **FIRST CAUSE OF ACTION – FAIR LABOR STANDARDS ACT OVERTIME**

12 **COMPENSATION**

13 61. Plaintiffs, on behalf of themselves and the Class, repeat, re-allege and incorporate by
14 reference the foregoing allegations as if set forth fully and again herein.

15 62. At all relevant times, defendants employed Plaintiffs and the Class within the meaning of
16 the FLSA.

17 63. At all relevant times, defendants had a policy, practice and procedure of refusing to pay the
18 statutorily mandated overtime compensation to their employees for hours worked in excess of forty
19 (40) hours per work week.

20 64. As a result of defendants' failure to compensate their employees, including Plaintiffs and
21 the Class, at a rate not less than one and one-half times the regular rate of pay for work performed
22 in excess of forty (40) hours per workweek, defendants have violated, and continue to violate, the
23 FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).
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1 65. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the
2 meaning of 29 U.S.C. §§ 255(a).

3 66. Due to defendants' FLSA violations, Plaintiffs and the Class are entitled to recover from
4 defendants their unpaid overtime compensation, an additional equal amount as liquidated damages,
5 interest, reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29
6 U.S.C. § 216(b).

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8 **SECOND CAUSE OF ACTION - NEW YORK LABOR LAW OVERTIME**

9 **COMPENSATION**

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11 67. Plaintiffs, on behalf of themselves and the Class, repeat, re-allege and incorporate by
12 reference the foregoing allegations as if set forth fully and again herein.

13 68. At all relevant times, Plaintiffs and the Class were employed by the defendants within the
14 meaning of the New York Labor Law, §§ 2, 190, and 651.

15 69. Defendants willfully violated Plaintiffs' and the Class's rights by failing to pay full
16 overtime compensation at rates not less than one and one-half times the regular rate of pay for each
17 hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§
18 190 et seq., and 650 et seq., and its supporting regulations in 12 N.Y.C.R.R. § 146.

19 70. Defendant's failure to pay overtime was willful and lacked a good faith basis, within the
20 meaning of the New York Labor Law §§ 198, 663 and supporting regulations.

21 71. Due to defendants' New York Labor Law Violations, Plaintiffs and the Class are entitled
22 to recover from defendants, their unpaid overtime compensation, liquidated damages equal to one
23 hundred percent of the total amount of the wages found to be due, prejudgment interest, all
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1 reasonable attorney's fees and costs, and disbursements of the action, pursuant to New York Labor
2 Law §§ 198 and 663.

3 **THIRD CAUSE OF ACTION – NEW YORK LABOR LAW WAGE THEFT**

4 **PREVENTION ACT**

5 72. Plaintiffs, on behalf of themselves and the Class, repeat, re-allege and incorporate by
6 reference the foregoing allegations as if set forth fully and again herein.

7 73. Defendants willfully violated Plaintiffs' and the Class's rights by failing to provide them
8 with the wage notices required by the Wage Theft Prevention Act when Plaintiffs and the Class
9 were hired, or at any time thereafter.

10 74. Defendants willfully violated Plaintiffs' and the Class's rights by failing to provide them
11 with proper notice as required by New York Labor Law § 195 at any time during their employment.

12 75. New York Labor Law § 195(1) provides, inter alia, that every employer shall furnish a
13 notice containing the rate or rates of pay, the regular pay day, name of employer and employer's
14 contact information as well as any such other information as deemed material and necessary by
15 the commissioner of labor of the state of New York.

16 76. Defendants willfully violated Plaintiffs' and the Class's rights by failing to provide them
17 with accurate weekly wage statements as required by New York Labor Law § 195 at any time
18 during their employment.

19 77. New York Labor Law § 195(3) provides, inter alia, that every employer shall furnish each
20 employee with every payment of wages, with a statement, listing gross wages, deductions and net
21 wages, the regularly hourly rate of pay, as well as the overtime rate of pay, and upon the request
22 of an employee furnish an explanation of how such wages were computed.
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1 78. Due to defendants' violations of the New York Labor Law, Plaintiffs and the Class are
2 entitled to recover from defendants statutory damages of \$50.00 for each work day, up to \$5,000.00
3 total, defendants' failed to provide a notice as required by New York Labor Law §195(1), together
4 with costs and reasonable attorney's fees.

5 79. Due to defendants' violations of the New York Labor Law, Plaintiffs and the Class are
6 entitled to recover from defendants statutory damages of \$250.00 for each work day, up to
7 \$5,000.00, defendants failed to provide accurate weekly wage statements as required by New York
8 Labor Law 195(3), together with costs and reasonable attorney's fees.

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11 **FOURTH CASE OF ACTION – QUANTUM MERUIT (PLED IN THE ALTERNATIVE)**

12 80. Plaintiffs, on behalf of themselves and the Class, repeat, re-allege and incorporate by
13 reference the foregoing allegations as if set forth fully and again herein .

14 81. Plaintiffs and members of the Class have performed numerous and valuable services at the
15 request and for the benefit of the Defendants. The reasonable value of those services for which
16 Plaintiffs and the Class have not been paid is believed in an amount to be determined at trial, plus
17 interest, costs and professional fees.

18 82. Plaintiffs and the Class seek payment from the Defendants for the reasonable value of
19 services provided to the Defendants.

20 83. The Defendants have never paid the Plaintiffs at the correct prevailing overtime wage.

21 84. By reason of the foregoing, the Defendants are liable to Plaintiffs and the Class in an
22 amount to be determined at trial, plus interest and professional fees.
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PRAYER FOR RELIEF

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2 WHEREFORE, Plaintiff on behalf of himself and all members of the proposed Class pray for relief
3 as follows:

4 1. Certification of this case as a collective action pursuant to the Fair Labor Standards Act
5 and as a class action pursuant to Federal Rules of Civil Procedure Rule 23.

6 2. Designation of Representative Plaintiffs Acharya as representative of the Class, and their
7 counsel of record as Class Counsel;

8 3. Award Plaintiffs and the Class their unpaid overtime wages due under the Fair Labor
9 Standards Act and New York Labor Law in an amount that cannot be currently calculated with
10 specificity;

11 4. Award Plaintiffs and the Class the liquid damages and statutorily mandated penalties under
12 the Fair Labor Standards Act and New York Labor Law as stated above;

13 5. Award Plaintiffs and the Class the costs of this action incurred herein, including reasonable
14 attorneys' fees and expert fees;

15 6. Award Plaintiffs and the Class Pre-Judgment and Post-Judgment interest, as provided by
16 law;

17 7. Award plaintiff Acharya sum of approximately more than \$ 56,564.09 plus continuing
18 interest, litigation cost, and attorney fee and
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20 8. Grant such other and further legal relief as this Court deems necessary, just and proper.
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23 **DEMAND FOR TRIAL BY JURY**

24 Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiffs and the Class demand a
25 trial by jury on all issues so triable

1 Dated: Jackson Heights, New York
2 September 1st, 2018

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4 Durga P. Bhurtel, Esq.
5 Attorney for Plaintiffs,
6 Devendra Raj Acharya, Individually and on
7 Behalf of All Others Similarly Situated
8 37-49 75th Street, 2nd Floor
9 Jackson Heights, New York 11372
10 Tel: (718) 509-6181
11 Fax: (917) 396-4622
12 Email: deb@attorneybhurtel.com
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CONSENT TO SUE

By my signature below, I hereby declare and authorize the filing and prosecution of claims in my name and on my behalf to contest 7- Eleven Franchisee, its owners and affiliates to pay me, *inter alia*, minimum wage and overtime wages as required under state and/or Federal law, and also authorize the filing of this consent in the lawsuit challenging such conduct, and consent to being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning this lawsuit. I have been provided with a copy of a retainer agreement with the Bhurtel Law Firm PLLC, and I agree to be bound by its terms.



Devendra Raj Acharya

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No:

DEVENDRA RAJ ACHARYA, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

V.

7-ELEVEN, INC. and JIMMY K SOLANKI

Defendants.

COMPLAINT

Bhurtel Law Firm PLLC
Attorney for Plaintiff(s)

Office and Post office Address, Telephone

3749 75th Street 2nd Floor
Jackson Heights, NY 11372
Phone # 718-509-6181

Service of a copy of the within is hereby admitted by Attorney for the defendant on Dated,
by

.....
Attorney(s) for defendants BY:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [New York City 7-Eleven, Franchisee Hit with Unpaid Overtime Lawsuit](#)
