

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SAINT SURIN EDUOARD, on behalf of himself and
others similarly situated,

Plaintiff,

-against-

NIKODEMO OPERATING CORP. d/b/a FLORIDIAN
DINER, DIMITRIOS KALOIDS, IOANIS
PARAPONIARIS and STEVE ZAHARAKIS,

Defendants.

-----X

Case No.:

COMPLAINT

**COLLECTIVE ACTION
UNDER 29 U.S.C. § 216(b) and
RULE 23 CLASS ACTION**

Plaintiff SAINT SURIN EDUOARD, (“Plaintiff”), on behalf of himself and others
similarly situated, by and through his attorneys, FRANK & BOLAND, P.C., brings this Complaint
against Defendants NIKODEMO OPERATING CORP. d/b/a FLORIDIAN DINER, DIMITRIOS
KALOIDS, IOANIS PARAPONIARIS and STEVE ZAHARAKIS (collectively “Defendants”)
and respectfully alleges as follows:

NATURE OF THE ACTION

1. On August 7, 2017, Judge Kiyoo A. Matsumoto of the United States District Court,
Eastern District of New York, granted final approval of a class action settlement in the wage and
hour action entitled *Ramos, et al v. Nikodemo Operating Corp., et al.*, No. 16-cv-1052 (“*Ramos*
Action”). The *Ramos* Action resolved all wage and hour claims against Defendants up to
December 14, 2016. Plaintiff was a participant in this settlement and waived his claims prior to
and including December 14, 2016.

2. However, despite Defendants’ settlement of the *Ramos* Action, Defendants
continued to underpay Plaintiff and other similarly situated employees by automatically

deducting an hour from their pay each day for lunch, regardless of whether or not they took a lunch break and additionally, rounding the hours worked by Plaintiff and other similarly situated employees substantially in Defendants' favor.

3. Moreover, Defendants failed to pay Plaintiff and other similarly situated employees an additional hour at the minimum wage rate for each day that their spread of hours exceeded ten (10).

4. Plaintiff brings this action pursuant to the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL") to recover unpaid wages, unpaid overtime wages and unpaid spread of hours premiums on behalf of himself and other similarly situated employees.

5. Plaintiff additionally brings this action pursuant to the NYLL to recover lost wages caused by Defendants' retaliatory termination of his employment due to his complaints about Defendants' unlawful practice of deducting an hour's pay for lunch breaks that Plaintiff did not take.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all federal claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 and supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims herein occurred in Brooklyn, New York.

PARTIES

8. Plaintiff is a resident of the State of New York who resides in the County of Kings.

9. At all times relevant to the Complaint, Plaintiff was an “employee” within the meaning of 29 U.S.C. § 203(e) and NYLL § 190(2).

10. Upon information and belief, Defendant Nikodemo Operating Corp. d/b/a Floridian Diner (“Nikodemo”) was and still is a domestic business corporation, incorporated under the laws of the State of New York, with a primary place of business at 2301 Flatbush Avenue, Brooklyn, NY 11234.

11. At all times relevant to the Complaint, Defendant Nikodemo was an “employer” within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

12. At all times relevant to the Complaint, Defendants Dimitrios Kaloidis, Ioanis Paraponiaris and Steve Zaharakis co-owned and operated Defendant Nikodemo.

13. At all times relevant to the Complaint, Defendant Dimitrios Kaloidis had authority to make personnel and payroll decisions as to the employees of Defendant Nikodemo.

14. At all times relevant to the Complaint, Defendant Dimitrios Kaloidis was an “employer” within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

15. At all times relevant to the Complaint, Defendant Ioanis Paraponiaris had authority to make personnel and payroll decisions as to the employees of Defendant Nikodemo.

16. At all times relevant to the Complaint, Defendant Ioanis Paraponiaris was an “employer” within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

17. At all times relevant to the Complaint, Defendant Steve Zaharakis had authority to make personnel and payroll decisions as to the employees of Defendant Nikodemo.

18. At all times relevant to the Complaint, Defendant Steve Zaharakis was an “employer” within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

19. At all times relevant to the Complaint, Defendant Nikodemo was and is “an enterprise engaged in interstate commerce” within the meaning of the FLSA.

20. At all times relevant to the Complaint, Defendant Nikodemo has and has had employees engaged in commerce or in the production of goods for commerce and handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

21. At all times relevant to the Complaint, Defendant Nikodemo has and has had annual gross volume of sales in excess of \$500,000.

STATEMENT OF FACTS

Wage and Hour Allegations

22. Plaintiff was employed by the Defendant as a non-exempt kitchen worker from in or around June 2013 until his unlawful termination on March 2, 2018.

23. From December 14, 2016¹ until the end of 2016, Plaintiff was paid at a rate of nine dollars (\$9) per hour. For the calendar year 2017, Plaintiff was paid at a rate of eleven dollars (\$11) per hour. Starting in January 2018 and continuing until the end of his employment, Plaintiff was paid at rate of thirteen (\$13) dollars per hour.

24. From December 14, 2016 to end of Plaintiff’s employment, Plaintiff regularly worked between forty-six (46) and sixty (60) hours per week. For example, during the week ending on November 26, 2017, Plaintiff worked the following hours:

| <u>Day</u> ² | <u>Time In</u> | <u>Time Out</u> | <u>Total Hours</u> |
|-------------------------|----------------|-----------------|--------------------|
|-------------------------|----------------|-----------------|--------------------|

¹ In 2017, Plaintiff joined the settlement class in the *Ramos* Action and waived his claims related to the underpayment of wages for the period from March 2, 2010 through December 14, 2016. Thus, this action covers only the period on or after December 15, 2016.

² Plaintiff worked nights, so the day indicated here is the start day.

| | | | |
|--------------------|---------|----------|-------|
| Monday | 4:50 PM | 2:03 AM | 9:13 |
| Tuesday | 5:08 PM | 12:59 AM | 7:51 |
| Wednesday | 5:00 PM | 4:02 AM | 11:02 |
| Friday | 9:00 PM | 6:33 AM | 9:33 |
| Saturday | 8:57 PM | 6:07 AM | 9:10 |
| Sunday | 5:04 PM | 2:03 AM | 8:59 |
| Total Hours | | | 55:48 |

25. Despite accurately tracking Plaintiff’s start and end time, Defendants automatically deducted one hour as a lunch break each day that Plaintiff worked, notwithstanding the fact that Plaintiff, due to the nature of his job, never took a lunch break of any length.

26. Thus, Defendants failed to pay Plaintiff for at least one (1) hour of work each day that he worked for Defendants.

27. In addition to failing to pay Plaintiff for this supposed lunch hour, Defendants also rounded Plaintiff’s hours worked to the nearest hour. This rounding substantially reduced the amount of time for which Plaintiff was compensated.³

28. Consequently, through Defendants’ automatic adjustments and deductions to Plaintiff’s time worked, Defendants failed to pay Plaintiff for all hours he worked each week as demonstrated in the chart below (which uses the same example as above):

| <u>Day</u> | <u>Hours Worked</u> | <u>Hours Paid</u> |
|------------|---------------------|-------------------|
| Monday | 9:13 | 8:00 |

³ Remarkably, Defendants continued this practice throughout the duration of Plaintiff’s employment, despite the fact that the *Ramos* Action contained substantially the same allegations.

| | | |
|---------------|-------|-------|
| Tuesday | 7:51 | 7:00 |
| Wednesday | 11:02 | 10:00 |
| Friday | 9:33 | 8:00 |
| Saturday | 9:10 | 8:00 |
| Sunday | 8:59 | 8:00 |
| Totals | 55:48 | 49:00 |

29. Thus, for the week ending November 26, 2017, Plaintiff was underpaid six hours and forty-eight minutes (6:48) of overtime hours. As Plaintiff regularly worked six (6) days per week, Plaintiff was regularly underpaid at least six (6) hours per week in addition to whatever amount of time that he lost due to Defendants' impermissible rounding policies.

30. Additionally, Defendants provided Plaintiff with a paystub which falsely stated fewer hours than he actually worked.

31. Therefore, Defendants failed to compensate Plaintiff for all hours worked and failed to compensate Plaintiff at a rate of at least one and one-half times his regular hourly rate for hours worked in excess of forty (40) per week.

32. Defendants also failed to compensate Plaintiff for an additional hour's work at the applicable minimum wage rate whenever his spread of hours for the day exceeded ten (10), which, as shown above, occurred approximately once (1x) per week.

Retaliation Allegations

33. In June 2015, Plaintiff complained to his boss, John (Last Name Unknown), that his weekly pay was for six (6) hours fewer than he actually worked.

34. John ignored Plaintiff's complaints and made an excuse that the lesser number of hours was due to tax withholdings.

35. Plaintiff did not want to lose his job so he continued to work for Defendants despite Defendants' continued failure to pay him for all hours that he worked.

36. On January 1, 2018, following the final dismissal of the *Ramos* Action, Plaintiff again complained to John that his weekly pay was for six (6) hours fewer than he actually worked.

37. John again ignored Plaintiff's complaint and stated "it's the law."

38. Although Defendants ignored his complaints and continued to pay Plaintiff for fewer hours than he was entitled, Plaintiff continued to work for Defendants because he wanted to retain his job.

39. On February 3, 2018, Plaintiff took a month of approved leave from work to travel to Haiti to care for his sick father. Plaintiff remained in Haiti until February 28, 2018 when he returned to New York.

40. On March 2, 2018, the first day that he was scheduled to return to work, Plaintiff attempted to return to Defendants' diner but was prevented from doing so by the supervisor Jimmy (Last Name Unknown). Specifically, Jimmy blocked Plaintiff's path to the time clock and told Plaintiff that he was terminated.

41. Plaintiff asked Jimmy to call John so Plaintiff could speak with him regarding his termination. John then told Plaintiff over the phone that he was fired and that if he did not leave John would "call 911." Neither Jimmy nor John provided Plaintiff with any reason for his termination.

COLLECTIVE ACTION ALLEGATIONS

42. Plaintiff brings his FLSA claim as a collective action, pursuant to 29 U.S.C. § 216(b), on behalf of all similarly situated non-exempt persons who are or were employed by Defendants on or after December 15, 2016 (“FLSA Collective”).

43. At all relevant times, Plaintiff, and other members of the FLSA Collective, have had substantially similar job requirements and pay provisions.

44. At all relevant times, Plaintiff and other members of the FLSA Collective, have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them at least one and one-half times their regular rate for every hour of work in excess of forty (40) hours per workweek.

45. The claims of Plaintiff stated herein are similar to those of the Defendants’ other employees.

46. The FLSA Collective is readily identifiable and locatable through the use of Defendants’ records. The FLSA Collective should be notified of and allowed to opt-in to this action pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice the FLSA Collective, who have been unlawfully deprived of overtime wages in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld by Defendants.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings his NYLL claims (with the exception of his retaliation claim) as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated non-exempt employees of Defendants who were not paid for all hours worked; who were not

paid overtime for all hours worked in excess of forty (40) each workweek; who were not paid spread of hours wages; and who were not given accurate wage statements.

48. Plaintiff is a member of the Class he seeks to represent.

49. Plaintiff reserves the right to amend the Class definition based on discovery.

Efficiency of Class Prosecution of Class Claims

50. Upon information and belief, there are many current and former employees who are similarly situated to Plaintiff, who have been underpaid in violation of the FLSA and NYLL. The named Plaintiff is a representative of those other workers and is acting on behalf of the Defendants' current and former employees' interests as well as his own interest in bringing this action.

51. Certification of this class is the most efficient and economical means of resolving questions of law and fact that are common to Plaintiff and members of the proposed class.

52. Plaintiff's individual claims and their resolution will resolve the common questions of the proposed class.

53. A class action is superior to other available methods for the fair and efficient adjudication of this litigation, particularly in the context of a wage and hour 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. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of the efforts and expense that numerous individual actions would engender. The adjudication of individual litigation claims would result in a great expenditure of court and public resources. However, treating the claims as a class action would result in a significant savings of these costs. The

members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices and procedures. Although the relative damages suffered by the individual Rule 23 Class are not de minimis, such damages are small compared to the expense and burden of individual prosecution of this litigation. Additionally, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

Numerosity and Impracticability of Joinder

54. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

55. The Rule 23 Class Members are readily ascertainable. For the purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants.

56. Unless the Court promptly issues such notice, persons similarly situated to Plaintiff, who have been unlawfully deprived of regular wages and overtime wages in violation of the FLSA and NYLL as well as spread of hours premiums, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendants.

57. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing those risks.

Common Questions of Law and Fact

58. The adjudication of Plaintiff's claims will directly result in the adjudication of numerous questions of law and fact common to the members of the proposed class.

59. These common issues include, but are not limited to: (a) whether Defendants unlawfully failed to pay proper overtime compensation for hours worked in excess of forty (40) per week in violation of and within the meaning of the FLSA and NYLL; (b) whether Defendants unlawfully failed to pay regular wages for all hours worked; (c) whether Defendants impermissibly rounded the hours worked by Plaintiff and the Rule 23 Class; (d) the nature and extent of the Rule 23 Class-wide injury and the appropriate measure of damages for the class; and (e) whether Defendants' general practice of failing and/or refusing to pay Plaintiff and the Rule 23 Class proper compensation was done willfully or with reckless disregard of the FLSA and NYLL.

60. The policies, procedures, and practices implemented by Defendants were applied to all members of the proposed class.

61. The claims of Plaintiff are typical of the claims of the Rule 23 Class he seeks to represent. Plaintiffs' claims are typical of those claims which could be alleged by any member of the Rule 23 Class, and the relief sought is typical of the relief which would be sought by each member of the proposed class in separate actions.

62. Plaintiff seeks the following relief for her individual claims and for the claims of the proposed class: (1) unpaid overtime wages for all hours worked in excess of forty (40) per week at a rate of one and one-half times her regular rate of pay, (2) unpaid regular wages for all hours worked, (3) unpaid spread of hours premiums, (4) an equal amount of liquidated damages and (5) damages for Defendants' failure to provide proper wage statements.

Adequacy of Representation

63. Plaintiff's interests are akin to those of the members of the proposed class.

64. Plaintiff is willing and able to represent the members of the proposed class and will fairly and adequately represent and protect the interest of the Rule 23 Class.

65. Plaintiff has retained counsel competent and experienced in complex class actions in labor and employment litigation for over fifty (50) years. Plaintiff's counsel can competently litigate the individual and class claims sufficiently to satisfy Rule 23(a)(4) of the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION **Failure to Pay Overtime in Violation of the FLSA** **(On Behalf of Plaintiff and the FLSA Collective)**

66. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

67. By automatically deducting one (1) hour each day from Plaintiff and other similarly situated employees for a supposed lunch break they did not receive and by impermissibly rounding Plaintiff's and other similarly situated employees' hours in favor of themselves, Defendants willfully failed to compensate Plaintiff and other similarly situated employees for the time worked in excess of forty (40) hours each week at a rate of at least one and one-half times their regular hourly rate in violation of the FLSA.

68. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiff and other similarly situated employees their full overtime wages.

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

70. As a result of Defendants' willful and unlawful failure to pay Plaintiff and other similarly situated employees overtime wages, Plaintiff and other similarly situated employees are entitled to recover their unpaid overtime wages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
Failure to Pay Overtime in Violation of the NYLL
(On Behalf of Plaintiff and the Rule 23 Class)

71. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

72. By automatically deducting one (1) hour each day from Plaintiff and the Rule 23 Class for a supposed lunch break they did not receive and by impermissibly rounding Plaintiff's and the Rule 23 Class' hours in favor of themselves, Defendants willfully failed to compensate Plaintiff and other similarly situated employees for the time worked in excess of forty (40) hours each week at a rate of at least one and one-half times their regular hourly rate in violation of the NYLL.

73. Defendants willfully violated the NYLL by knowingly and intentionally failing to pay Plaintiff and the Rule 23 Class overtime wages.

74. Due to Defendants' violation of the NYLL, Plaintiff and the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
Failure to Pay Spread of Hours Wages in Violation of the NYLL
(On Behalf of Plaintiff and the Rule 23 Class)

75. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

76. Defendants willfully failed to pay Plaintiff and the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which they worked more than ten (10) hours.

77. By Defendants' failure to pay Plaintiff and the Rule 23 Class spread-of-hours pay, Defendants willfully violated the NYLL and its supporting regulations including, but not limited to, 12 N.Y.C.R.R. § 142-2.4.

78. Due to Defendants' violation of the NYLL and its supporting regulations Plaintiff and the Rule 23 Class are entitled to recover from Defendants their unpaid "spread of hours" premium, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
Failure to Pay Earned Wages in Violation of NYLL § 191
(On Behalf of Plaintiff and the Rule 23 Class)

79. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

80. As manual workers, Defendants were required by NYLL § 191 to pay Plaintiff and the Rule 23 Class weekly for all hours worked and not more than seven days after the end of each pay period.

81. By automatically deducting one (1) hour each day from Plaintiff and the Rule 23 Class for a supposed lunch break they did not receive and by impermissibly rounding Plaintiff's and the Rule 23 Class' hours in favor of themselves, Defendants failed to compensate Plaintiff and the Rule 23 Class for all hours that they worked.

82. Due to Defendants' violation of the NYLL and its supporting regulations Plaintiff and the Rule 23 Class are entitled to recover from Defendants their unpaid wages, liquidated

damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

**Failure to Provide Accurate Wage Statements in Violation of NYLL § 195(3)
(On Behalf of Plaintiff and the Rule 23 Class)**

83. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

84. Defendants failed to provide Plaintiff and Rule 23 Class with an accurate statement of their hours worked in violation of NYLL §195(3).

85. Defendants' violations of the NYLL and its supporting regulations entitle Plaintiffs to recover damages of \$250 per work day, up to a maximum of \$5,000, and attorneys' fees and costs.

SIXTH CAUSE OF ACTION

**Retaliation in Violation of NYLL § 215
(On Behalf of Plaintiff Only)**

86. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

87. On January 1, 2018, Plaintiff made a second complaint to Defendants about their failure to pay him for all hours that he worked in violation of the NYLL.

88. Instead of ceasing their unlawful practices, Defendants retaliated against Plaintiff by terminating his employment after he returned from his approved leave.

89. As a result of Defendants' unlawful termination, Plaintiff suffered and continues to suffer economic and other related injuries.

90. Plaintiff is entitled to recover lost wages and benefits from the date of Defendants' unlawful actions, liquidated damages, reasonable attorneys' fees and costs of this action and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

- (a) Unpaid overtime wages, and an additional equal amount as liquidated damages, plus interest at the statutory compounded rate of 9% per annum pursuant to New York Labor Law;
- (b) Unpaid spread of hours premiums, and an additional equal amount as liquidated damages, plus interest at the statutory compounded rate of 9% per annum pursuant to the New York Labor Law;
- (c) Unpaid wages, and an additional equal amount as liquidated damages, plus interest at the statutory compounded rate of 9% per annum pursuant to the New York Labor Law;
- (d) An award of civil penalties as a result of Defendants' violation of the New York Labor Law's notice provisions pursuant to NYLL § 198(1-d);
- (e) An award of back pay and benefits;
- (f) Issuance of a declaratory judgment that the practices complained of in this complaint are unlawful under the Fair Labor Standards Act and the New York Labor Law;
- (g) All reasonable attorneys' fees and costs incurred in prosecuting these claims; and
- (h) Such other relief as this Court deems just and proper.

Dated: Farmingdale, New York
September 17, 2018

FRANK & BOLAND, P.C.

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Attorneys for Plaintiffs

JS 44 (Rev. 01/29/2018)

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

SAINT SURIN EDOUARD, on behalf of himself and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Frank & Boland, P.C.
500 Bi-County Boulevard, Suite 465, Farmingdale, New York 11735
(631) 756-0400

DEFENDANTS

NIKODEMO OPERATING CORP. d/b/a FLORIDIAN DINER,
DIMITRIOS KALOIDIS, IOANIS PARAPONIARIS and STEVE
ZAHARAKIS

County of Residence of First Listed Defendant _____
(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)

Click here for: Nature of Suit Code Descriptions.

| 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"/> 835 Patent - Abbreviated New Drug Application <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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 | | | |
| <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 | | | |

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 - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

U.S.C. § 216

Brief description of cause:

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):

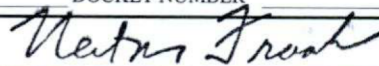
JUDGE _____

DOCKET NUMBER _____

DATE

10/02/2018

SIGNATURE OF ATTORNEY OF RECORD



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, Neil M. Frank, Esq., counsel for Plaintiff, 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:

N/A

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? Yes 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? Yes 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 No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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? Yes No

(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: Neil M. Frank

Civil Action No. 18-cv-5554

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

Eastern District of New York

SAINT SURIN EDOUARD, on behalf of himself and others similarly situated

Plaintiff(s)

v.

NIKODEMO OPERATING CORP. d/b/a FLORIDIAN DINER, DIMITRIOS KALOIDIS, IOANIS PARAPONIARIS and STEVE ZAHARAKIS,

Defendant(s)

Civil Action No. 18-cv-5554

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DOMITRIOS KALOIDIS 2301 FLATBUSH AVE BROOKLYN, NY 11234

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:

Frank & Boland, P.C. 500 Bi-County Boulevard, Suite 465 Farmingdale, New York 11735

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. 18-cv-5554

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

Eastern District of New York

SAINT SURIN EDOUARD, on behalf of himself and others similarly situated

Plaintiff(s)

v.

NIKODEMO OPERATING CORP. d/b/a FLORIDIAN DINER, DIMITRIOS KALOIDIS, IOANIS PARAPONIARIS and STEVE ZAHARAKIS,

Defendant(s)

Civil Action No. 18-cv-5554

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) IOANIS PARAPONIARIS 2301 FLATBUSH AVE BROOKLYN, NY 11234

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:

Frank & Boland, P.C. 500 Bi-County Boulevard, Suite 465 Farmingdale, New York 11735

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. 18-cv-5554

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

Eastern District of New York

SAINT SURIN EDOUARD, on behalf of himself and others similarly situated

Plaintiff(s)

v.

NIKODEMO OPERATING CORP. d/b/a FLORIDIAN DINER, DIMITRIOS KALOIDIS, IOANIS PARAPONIARIS and STEVE ZAHARAKIS,

Defendant(s)

Civil Action No. 18-cv-5554

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) STEVE ZAHARAKIS 2301 FLATBUSH AVE BROOKLYN, NY 11234

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:

Frank & Boland, P.C. 500 Bi-County Boulevard, Suite 465 Farmingdale, New York 11735

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. 18-cv-5554

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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)*:

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

Date: _____

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Additional information regarding attempted service, etc:

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Suit Filed Against Floridian Diner by Ex-Employee](#)
