

Michael Faillace [MF-8436]  
Michael Faillace & Associates, P.C.  
60 East 42nd Street, Suite 4510  
New York, New York 10165  
(212) 317-1200  
*Attorneys for Plaintiff*

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

-----X  
LUIS PEREZ GARCIA, *individually and on behalf of  
others similarly situated,*

*Plaintiff,*

-against-

HIRAKEGOMA INC. (d/b/a NAGOMI), KENSAN  
KIM, SUYEN KIM, and JONG BOK KIM

*Defendants.*  
-----X

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

**ECF Case**

Plaintiff Luis Perez Garcia (“Plaintiff Perez ” or “Mr. Perez”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Hirakegoma Inc. (d/b/a Nagomi) (“Defendant Corporation”), Kensan Kim, Suyen Kim, and Jong Bok Kim (collectively, “Defendants”), upon information and belief, alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Perez was an employee of Defendants Hirakegoma Inc. (d/b/a Nagomi), Kensan Kim, Suyen Kim, and Jong Bok Kim.
2. Nagomi is a Japanese Restaurant owned by Kensan Kim, Suyen Kim, and Jong Bok Kim located at 179 Prince Street, New York, NY 10012.

3. Upon information and belief, Defendants Kensan Kim, Suyen Kim, and Jong Bok Kim serve or served as owners, managers, principals, or agents of Defendant Corporation and through this corporate entity operate or operated the Japanese Restaurant as a joint or unified enterprise.

4. Plaintiff Perez was an employee of Defendants.

5. Plaintiff Perez was employed as a dishwasher, cook, food preparer, and ostensibly as a delivery worker at the Japanese Restaurant located at 179 Prince Street, New York, NY 10012.

6. However, when ostensibly working as a delivery worker, Plaintiff Perez was required to spend several hours each day performing non-tipped duties unrelated to deliveries, including but not limited to dishwashing, stocking items delivered to the Japanese Restaurant in the basement, preparing food, mopping the basement, cleaning the kitchen drainage tank, twisting and tying up cardboard boxes, taking out the garbage, cutting vegetables, peeling shrimp, shopping at the supermarket and organizing and taking out the recyclables (hereinafter, “non-delivery, non-tip duties”).

7. Plaintiff Perez regularly worked for Defendants in excess of 40 hours per week, without appropriate overtime compensation for any of the hours that he worked over 40 each week.

8. Rather, Defendants failed to maintain accurate records of hours worked and failed to pay Plaintiff Perez the required additional overtime premium for any overtime hours worked.

9. Further, Defendants failed to pay Plaintiff Perez the required “spread of hours” pay for any day in which he had to work over 10 hours a day.

10. Defendants employed and accounted for Plaintiff Perez as a delivery worker in their payroll, but in actuality Plaintiff Perez's duties required a significant amount of time spent in non-tipped, non-delivery duties.

11. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Perez and other employees to work in excess of forty (40) hours per week without providing the overtime compensation required by federal and state law and regulations.

12. In addition, Defendants maintained a policy and practice of unlawfully appropriating a percentage of Plaintiff Perez's tips.

13. Defendants' conduct extended beyond Plaintiff Perez to all other similarly situated employees.

14. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Perez and other employees to work in excess of forty (40) hours per week without providing the overtime compensation required by federal and state law and regulations.

15. Plaintiff Perez now brings this action on behalf of himself, and other similarly situated individuals, for unpaid 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. Lab. 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. Plaintiff Perez seeks certification of this action as a collective action on behalf of himself, 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 pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1337 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Perez's state law claims is conferred by 28 U.S.C. § 1367(a).

18. Venue is proper in this District under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their business in this district, and Plaintiff Perez was employed by Defendants in this district.

### **PARTIES**

#### *Plaintiff*

19. Plaintiff Luis Perez Garcia ("Plaintiff Perez" or "Mr. Perez") is an adult individual residing in New York County, New York.

20. Plaintiff Perez was employed by Defendants from approximately 2006 until on or about September 2012 and from approximately March 2015 until on or about September 27, 2017.

21. At all relevant times to this complaint, Plaintiff Perez was employed by Defendants as a food preparer, cook, and ostensibly as a delivery worker at Nagomi, located at 179 Prince Street, New York, NY 10012.

22. Plaintiff Perez consents to being party Plaintiff pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

*Defendants*

23. Defendants own, operate and/or control a Japanese Restaurant located at 179 Prince Street, New York, NY 10012 under the name of Nagomi, at all times relevant to this complaint.

24. Upon information and belief, Defendant Hirakegoma Inc. (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principle place of business at 179 Prince Street, New York, NY 10012.

25. Defendant Kensan Kim is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period.

26. Defendant Kensan Kim is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation.

27. Defendant Kensan Kim possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

28. Defendant Kensan Kim determined the wages and compensation of employees, including Plaintiff Perez, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

29. Defendant Suyen Kim is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period.

30. Defendant Suyen Kim is sued individually in her capacity as an owner, officer and/or agent of Defendant Corporation.

31. Defendant Suyen Kim possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

32. Defendant Suyen Kim determined the wages and compensation of employees, including Plaintiff Perez, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

33. Defendant Jong Bok Kim is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period.

34. Defendant Jong Bong Kim is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation.

35. Defendant Jong Bok Kim possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

36. Defendant Jong Bok Kim determined the wages and compensation of employees, including Plaintiff Perez, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

*Defendants Constitute Joint Employers*

37. Defendants own, operate and/or control a Japanese Restaurant located at 179 Prince Street, New York, NY 10012.

38. Individual Defendants Kensan Kim, Suyen Kim, and Jong Bok Kim possess operational control over Defendant Corporation, possess an ownership interest in Defendant Corporation, and control significant functions of Defendant Corporation.

39. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

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

41. Defendants jointly employed Plaintiff Perez, and all similarly situated individuals, and are Plaintiff Perez's (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

42. In the alternative, Defendants constitute a single employer of Plaintiff Perez and/or similarly situated individuals.

43. Upon information and belief, Individual Defendants Kensan Kim, Suyen Kim, and Jong Bok Kim operate Defendant Corporation as either an alter ego of themselves, and/or fail to operate Defendant Corporation as an entity legally separate and apart from themselves, by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;
- (b) defectively forming or maintaining Defendant Corporation, by among 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 Corporation for their own benefit as the sole or majority shareholders;
- (e) operating Defendant Corporation for their own benefit and maintaining control over it as a closed corporation or closely controlled entity;
- (f) intermingling assets and debts of their own with Defendant Corporation;
- (g) diminishing and/or transferring assets of Defendant Corporation to protect their own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

44. At all relevant times, Defendants were Plaintiff Perez's employers within the meaning of the FLSA and NYLL.

45. Defendants had the power to hire and fire Plaintiff Perez, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for Plaintiff Perez's services.

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



47. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. For example, numerous items that were sold in the Japanese Restaurant on a daily basis were produced outside of the State of New York.

*Individual Plaintiff*

48. Plaintiff Perez is a former employee of Defendants, who was employed as a food preparer, cook, and ostensibly as a delivery worker. However, when ostensibly working as a delivery worker, he spent more than 20% of each day performing the non-delivery, non-tip duties outlined above.

49. Plaintiff Perez seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

*Plaintiff Luis Perez Garcia*

50. Plaintiff Perez was employed by Defendants from approximately 2006 until on or about September 2012 and from approximately March 2015 until on or about September 27, 2017.

51. At all relevant times, Plaintiff Perez was employed by Defendants to work as a food preparer, cook and ostensibly as a delivery worker.

52. However, Plaintiff Perez was also required to spend a significant portion of his work day performing the non-tipped, non-delivery duties described above.

53. Although Plaintiff Perez was ostensibly employed as a delivery worker, he spent more than 20% of his work time performing non-delivery work throughout his employment with Defendants.

54. Plaintiff Perez regularly handled goods in interstate commerce, such as food, condiments and supplies necessary to perform his duties as a food preparer and cook.

55. Plaintiff Perez's work duties required neither discretion nor independent judgment.

56. Throughout his employment with Defendants, Plaintiff Perez regularly worked in excess of 40 hours per week.

57. From approximately October 2011 until on or about September 2012, Plaintiff Perez worked from approximately 11:00 a.m. until on or about 11:00 p.m., Mondays through Fridays and from approximately 2:00 p.m. until on or about 11:00 p.m. on Saturdays (typically 69 hours per week).

58. From approximately March 2015 until on or about September 27, 2017, Plaintiff Perez worked from approximately 11:00 a.m. until on or about 11:00 p.m. Mondays through Fridays and from approximately 2:00 p.m. until on or about 11:00 p.m. on Saturdays (typically 69 hours per week).

59. Throughout his entire period of employment, defendants paid Plaintiff Perez his wages in cash.

60. From approximately October 2011 until on or about September 2012, defendants paid Plaintiff Perez a fixed salary of \$550 per week.

61. From approximately March 2015 until on or about June 2015, defendants paid Plaintiff Perez a fixed salary of \$750 per week.

62. From approximately July 2015 until on or about December 2016, defendants paid Plaintiff Perez a fixed salary of \$800 per week.

63. From approximately January 2017 until on or about September 27, 2017, defendants paid Plaintiff Perez a fixed salary of \$900 per week.

64. Plaintiff Perez was never notified by Defendants that his tips were being included as an offset for wages.

65. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Perez's wages.

66. Defendants withheld a portion of Plaintiff Perez's tips; specifically, Defendants pocketed a portion of all tips Plaintiff Perez was paid on all delivery orders he made.

67. Plaintiff Perez was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device, such as sign in sheets or punch cards, that accurately reflected his actual hours worked.

68. Defendants did not provide Plaintiff Perez with any document or other statement accounting for his actual hours worked, or setting forth the rate of pay for all of his hours worked.

69. No notification, either in the form of posted notices, or other means, was ever given to Plaintiff Perez regarding wages as required under the FLSA and NYLL.

70. Defendants did not provide Plaintiff Perez with each wage statement, a statement of payment, as required by NYLL § 195(3).

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

72. Defendants required Plaintiff Perez to purchase "tools of the trade" with his own

funds—including one electric bicycle, one helmet, a chain and lock, bike maintenance, and three sets of lights.

*Defendants' General Employment Practices*

73. Defendants regularly required Plaintiff Perez to work in excess of forty (40) hours per week without paying him the appropriate overtime compensation and spread of hours pay.

74. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Perez and all similarly situated employees to work in excess of forty (40) hours per week without paying them the overtime compensation required by federal and state laws.

75. Defendants required Plaintiff Perez to perform general non-delivery, non-tipped Japanese Restaurant tasks in addition to his primary duties as a delivery worker.

76. Plaintiff Perez was employed ostensibly as a tipped employee by Defendants, although his actual duties included a significant amount of time spent performing non-tipped duties.

77. 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).

78. Plaintiff Perez’s duties were not incidental to his occupation as a delivery worker, but instead constituted entirely unrelated general Japanese Restaurant work with duties including the non-tipped, non-delivery duties described above.

79. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiff Perez by engaging in a pattern, practice, and/or policy of violating

the FLSA and the NYLL. This policy and pattern or practice included depriving Plaintiff Perez of a portion of the tips earned during the course of employment.

80. Defendants unlawfully misappropriated charges purported to be gratuities received by Plaintiff Perez, and other tipped employees, in violation of New York Labor Law § 196-d (2007).

81. Defendants failed to maintain a record of tips earned by Plaintiff Perez for the deliveries he made to customers.

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

83. Defendants also failed to post required wage and hour posters in the restaurant, and did not provide Plaintiff Perez with statutorily required wage and hour records or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Perez's relative lack of sophistication in wage and hour laws.

84. Defendants paid Plaintiff Perez all of his wages in cash.

85. By employing these practices, Defendants avoided paying Plaintiff Perez the appropriate overtime compensation of time and a half for all of his hours worked in excess of forty (40) hours per week.

86. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Perez (and similarly situated individuals) worked, and to avoid paying Plaintiff Perez properly for (1) his full hours worked, (2) for overtime due and (3) his spread of hours pay.

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

88. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiff Perez and other similarly situated current and former delivery workers.

89. Defendants 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 failed to provide Plaintiff Perez and other employees with wage statements at the time of 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 failed to provide Plaintiff Perez 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. Plaintiff Perez brings his FLSA overtime compensation 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, or any of them, on or after the date that is three years before the filing of the complaint in this case (the "FLSA Class Period"), as employees of Nagomi (the "FLSA Class").

93. At all relevant times, Plaintiff Perez and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA and willfully failing to keep records required by the FLSA.

94. The claims of Plaintiff Perez stated herein are similar to those of the other employees.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA)**

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

96. Defendants, in violation of the FLSA, failed to pay Plaintiff Perez (and the FLSA Class members) 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 workweek, in violation of 29 U.S.C. § 207 (a)(1).

97. Defendants' failure to pay Plaintiff Perez (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

98. Plaintiff Perez (and the FLSA Class members) were damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF**  
**THE NEW YORK STATE LABOR LAWS)**

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

100. Defendants, in violation of the NYLL and associated rules and regulations, failed to pay Plaintiff Perez (and the FLSA Class members) 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 workweek, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor.

101. Defendants' failure to pay Plaintiff Perez (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

102. Plaintiff Perez (and the FLSA Class Members) were damaged in an amount to be determined at trial.



**THIRD CAUSE OF ACTION**  
**(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**  
**OF THE NEW YORK COMMISSIONER OF LABOR)**

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

104. Defendants failed to pay Plaintiff Perez (and the FLSA Class members) one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Perez's 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.

105. Defendants' failure to pay Plaintiff Perez (and the FLSA Class members) an additional hour's pay for each day Plaintiff Perez's (and the FLSA Class members) spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

106. Plaintiff Perez (and the FLSA Class members) were damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF THE NOTICE AND RECORDKEEPING REQUIREMENTS OF THE**  
**NEW YORK LABOR LAW)**

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

108. Defendants failed to provide Plaintiff Perez with a written notice, in English and in Spanish (Plaintiff Perez's primary language), of their rate of pay, regular pay day, and such other information as required by NYLL §195(1).

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

**FIFTH CAUSE OF ACTION**  
**(VIOLATION OF THE WAGE STATEMENT PROVISIONS  
OF THE NEW YORK LABOR LAW)**

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

111. Defendants did not provide Plaintiff Perez with wage statements upon each payment of wages, as required by NYLL 195(3).

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

**SIXTH CAUSE OF ACTION**  
**(RECOVERY OF EQUIPMENT COSTS)**

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

114. Defendants required Plaintiff Perez 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 bicycles, 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.

115. Plaintiff Perez was damaged in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION**  
**(VIOLATION OF THE TIP WITHHOLDING PROVISIONS  
OF THE NEW YORK LABOR LAW)**

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

117. Defendants unlawfully and without permission from Plaintiff Perez misappropriated and withheld gratuities paid by customers which should have been retained by Plaintiff Perez.

118. Defendants' action violated NYLL §196-d.

119. Defendants are liable to Plaintiff Perez in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Perez respectfully requests that this Court enter judgment against Defendants:

(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 promptly to file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Perez and the FLSA class members;

(c) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Perez's and the FLSA class members' compensation, hours, wages, and any deductions or credits taken against wages;

(d) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Perez and the FLSA class members;

(e) Awarding Plaintiff Perez and the FLSA class members damages for the amount of unpaid overtime wages and damages for any improper deductions or credits taken against wages

under the FLSA as applicable;

(f) Awarding Plaintiff Perez and the FLSA class members liquidated damages in an amount equal to 100% of their damages for the amount of unpaid 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);

(g) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Perez and the members of the FLSA Class;

(h) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Perez's and the FLSA Class members' compensation, hours, wages; and any deductions or credits taken against wages;

(i) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Perez and the FLSA Class members;

(j) Awarding Plaintiff Perez and the FLSA class members damages for the amount of unpaid overtime wages, spread of hours pay, and damages for any improper deductions or credits taken against wages, under the NYLL as applicable;

(k) Awarding Plaintiff Perez and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the total amount of overtime compensation and spread of hours pay shown to be owed pursuant to NYLL § 663 as applicable;

(l) Awarding Plaintiff Perez and the FLSA class members pre-judgment and post-judgment interest as applicable;

(m) Awarding Plaintiff Perez and the FLSA class members the expenses incurred in this action, including costs and attorneys' fees;

- (n) 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
- (o) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Perez demands a trial by jury on all issues triable by a jury.

Dated: New York, New York  
October 4, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace  
By: Michael Faillace [MF-8436]  
Michael Faillace & Associates, P.C.  
Michael A. 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 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

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

\_\_\_\_\_  
Faillace@employmentcompliance.com

October 3, 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: Luis Perez Garcia

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

Signature / Firma: Luis Perez

Date / Fecha: 03 de octubre de 2017

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NYC Japanese Restaurant Nagomi Facing Unpaid Wage Lawsuit](#)

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