

MICHAEL FAILLACE & ASSOCIATES, P.C.  
Michael A. Faillace [MF-8436]  
60 East 42nd Street, suite 2540  
New York, New York 10165  
Telephone: (212) 317-1200  
Facsimile: (212) 317-1620  
*Attorneys for Plaintiffs*

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

-----X  
ADOLFO PATRICIO AGAPITO AND JOSE  
FRANCISCO REQUELME PLIEGO,  
*individually and on behalf of others similarly  
situated,*

*Plaintiffs,*

-against-

AHDS BAGEL LLC (d/b/a PICK A BAGEL),  
1101 BAGEL CORP. (d/b/a PICK A BAGEL),  
ARIEY NUSSBAUM, AVI SHARABANI and  
HAIM WYSOKI,

*Defendants.*

-----X

**COMPLAINT**

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

**ECF Case**

Plaintiffs Adolfo Patricio Agapito and Jose Francisco Requelme Pliego, individually and on behalf of others similarly situated (collectively, “Plaintiffs”), by and through their attorneys, Michael Faillace & Associates, P.C., upon their knowledge and belief, and as against AHDS Bagel LLC (d/b/a Pick A Bagel), 1101 Bagel Corp. (d/b/a Pick A Bagel) (“Defendant Corporations”), Ariey Nussbaum, Avi Sharabani and Haim Wysoki, allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs are former employees of defendants AHDS Bagel LLC (d/b/a Pick a Bagel), 1101 Bagel Corp. (d/b/a Pick A Bagel), Ariey Nussbaum, Avi Sharabani and Haim Wysoki (collectively “Defendants”).

2. Defendants own, operate, or control a bagel restaurant located at 1101 Lexington Avenue, New York, New York 10075 under the name Pick a Bagel.

3. Upon information and belief, individual defendants Ariey Nussbaum, Avi Sharabani and Haim Wysoki, serve or served as owners, managers, principals, or agents of Defendant Corporations and, through these corporate entities, operate or operated the restaurant as a joint or unified enterprise.

4. Plaintiffs were employed as a bagel cook and ostensibly as a delivery worker. However, the delivery worker was required to spend a considerable part of his work day performing non-tipped, non-delivery duties, including but not limited to various restaurant duties such as, transporting the large containers of cream cheese and spread from the second to the first floor, refilling the main containers of cream cheese, refilling the salad bar with vegetables that were brought down from upstairs, making juices and muffins, cutting bread, cleaning tables outside, bringing soda cases from the basement refilling the refrigerators, cleaning the restaurant stairs and floor, mopping and dishwashing (hereafter the “non-tipped, non-delivery duties”).

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

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

7. Further, Defendants failed to pay Plaintiffs the required “spread of hours” pay for any day in which they had to work over 10 hours a day.

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

9. Regardless, at all relevant times, Defendants paid Plaintiff Patricio at the tip-credit rate.

10. In addition, under state law, Defendants were not entitled to take a tip credit because Plaintiff Patricio’s non-tipped duties exceeded 20% of each workday, or 2 hours per day, whichever is less in each day. 12 N.Y. C.R.R. §146.

11. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Patricio’s actual duties in payroll records by designating him as a delivery worker instead of non-tipped employee. This allowed Defendants to avoid paying Plaintiff Patricio at the minimum wage rate and enabled them to pay him at the lower tip-credited rate.

12. Defendants’ conduct extended beyond Plaintiffs to all other similarly situated employees.

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

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

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

### **JURISDICTION AND VENUE**

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

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

### **THE PARTIES**

*Plaintiffs*

18. Plaintiff Adolfo Patricio Agapito (“Plaintiff Patricio” or “Mr. Patricio”) is an adult individual residing in Bronx County, New York. Plaintiff Patricio was employed by Defendants from approximately December 2013 until on or about October 7, 2016.

19. Plaintiff Jose Francisco Requelme Pliego (“Plaintiff Requelme” or “Mr. Requelme”) is an adult individual residing in Bronx County, New York. Plaintiff Requelme was employed by Defendants from approximately February 2000 until on or about October 1, 2016.

*Defendants*

20. At all relevant times, Defendants own, operate, or control a bagel restaurant located at 1101 Lexington Avenue, New York, New York 10075 under the name “Pick a Bagel”.

21. Upon information and belief, AHDS Bagel LLC (d/b/a Pick a Bagel) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 1101 Lexington Avenue, New York, New York 10075.

22. Upon information and belief, 1101 Bagel Corp. (d/b/a Pick a Bagel) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 1101 Lexington Avenue, New York, New York 10075.

23. Defendant Ariey Nussbaum is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Ariey Nussbaum is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporations. Defendant Ariey Nussbaum possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants,

including Plaintiffs, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

24. Defendant Avi Sharabani is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Avi Sharabani is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporations. Defendant Avi Sharabani possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiffs, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

25. Defendant Haim Wysoki is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Haim Wysoki is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporations. Defendant Haim Wysoki possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiffs, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

26. Defendants operate a bagel restaurant located in the Upper East Side section of Manhattan in New York City.

27. The individual defendants, Ariey Nussbaum, Avi Sharabani and Haim Wysoki, possess operational control over Defendant Corporations, possess ownership interests in Defendant Corporations, and control significant functions of Defendant Corporations.

28. 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.

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

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

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

32. Upon information and belief, individual defendants Ariey Nussbaum, Avi Sharabani and Haim Wysoki, operate Defendant Corporations as either as alter egos of themselves and/or fail to operate Defendant Corporations as entities legally separate and apart from themselves, by among other things:

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

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

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

34. In each year, from 2010 to 2016, Defendants, both separately and jointly, had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

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

*Individual Plaintiffs*



36. Plaintiffs are former employees of Defendants who were employed as a bagel cook and ostensibly as a delivery worker. However, the delivery worker spent a considerable amount of time performing the non-tipped, non-delivery duties described above.

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

*Plaintiff Adolfo Patricio Agapito*

38. Plaintiff Patricio was employed by Defendants from approximately December 2013 until on or about October 7, 2016.

39. Defendants ostensibly employed Plaintiff Patricio as a delivery worker.

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

41. Although Plaintiff Patricio ostensibly was employed as a delivery worker, he spent over 20% of each day performing non-delivery work throughout his employment with Defendants.

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

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

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

45. On or about December 2013, Plaintiff Patricio worked from approximately 2:30 p.m. until on or about 11:30 p.m. four days a week and from approximately 2:30 p.m. until on or about 1:30 a.m. two days a week (typically 58 hours per week).

46. From approximately January 2014 until on or about June 2014, Plaintiff Patricio worked from approximately 2:30 p.m. until on or about 11:30 p.m. Sundays through Mondays (typically 54 hours per week).

47. From approximately June 2014 until on or about July 2015, Plaintiff Patricio worked from approximately 5:00 a.m. until on or about 8:00 p.m. or 9:00 p.m. on Mondays and from approximately 5:00 a.m. until on or about 2:30 p.m. Wednesdays through Sundays (typically 63 hours per week).

48. From approximately July 2015 until on or about October 7, 2016 Plaintiff Patricio worked from approximately 5:00 a.m. until on or about 2:30 p.m. six days a week (typically 57 hours per week).

49. On or about December 2013, defendants paid Plaintiff Patricio his wages in cash.

50. From approximately January 2014 until on or about October 7, 2016, defendants paid Plaintiff Patricio his wages in a combination of check and cash.

51. On or about December 2013, defendants paid Plaintiff Patricio a fixed salary of \$355 per week.

52. From approximately January 2014 until on or about February 2016, defendants paid Plaintiff Patricio approximately \$355 to \$370 per week.

53. From approximately February 2016 until on or about October 7, 2016, defendants paid Plaintiff Patricio approximately \$475 to \$500 per week.

54. Defendants did not grant Plaintiff Patricio any breaks or meal periods when he worked morning shifts.

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

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

57. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Patricio regarding overtime and wages under the FLSA and NYLL.

58. Defendants did not provide Plaintiff Patricio an accurate statement of wages, as required by NYLL 195(3).

59. Instead, defendants provided Plaintiff Patricio pay stubs falsely showing that he only worked 40 hours a week.

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

*Plaintiff Jose Francisco Requelme Pliego*

61. Plaintiff Requelme was employed by Defendants from approximately February 2000 until on or about October 1, 2016.

62. Defendants employed Plaintiff Requelme as a bagel maker.

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

64. Plaintiff Requelme's work duties required neither discretion nor independent judgment.

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

66. From approximately October 2010 until on or about June 2016, Plaintiff Requelme worked from approximately 4:00 a.m. until on or about 1:30 p.m. two days a week

and from approximately 4:00 a.m. until on or about 2:00 p.m. or 2:30 p.m. four days a week (typically 60 hours per week).

67. From approximately June 2016 until on or about August 31, 2016, Plaintiff Requelme worked from approximately 3:00 a.m. until on or about 1:00 p.m. or 1:30 p.m. Tuesdays through Sundays (typically 61.5 hours per week).

68. From approximately September 1, 2016 until October 1, 2016 Plaintiff Requelme worked from approximately 2:00 a.m. until on or about 1:00 p.m. or 2:00 p.m. Tuesdays through Sundays (typically 69 hours per week).

69. At all relevant times, Plaintiff Requelme was paid his wages in a combination of check and cash.

70. From approximately October 2010 until on or about 2012, defendants paid Plaintiff Requelme a fixed salary of \$400 per week.

71. From approximately 2012 until on or about March 2014, defendants paid Plaintiff Requelme a fixed salary of \$450 per week.

72. From approximately March 2014 until on or about October 2014, defendants paid Plaintiff Requelme a fixed salary of \$470 per week.

73. From approximately October 2014 until on or about March 2015, defendants paid Plaintiff Requelme a fixed salary of \$550 per week.

74. From approximately March 2015 until on or about July 2016, defendants paid Plaintiff Requelme a fixed salary of \$650 per week.

75. From approximately July 2016 until on or about October 1, 2016, Defendants paid Plaintiff Requelme a fixed salary of \$750 per week.

76. Plaintiff Requelme's pay did not vary even when he was required to stay late or

work a longer day than his usual schedule.

77. Specifically, defendants regularly required Plaintiff Requelme to work at least 30 minutes past his scheduled departure time and did not compensate him for the additional time they required him to work.

78. Defendants never granted Plaintiff Requelme a meal break or rest period of any kind.

79. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Requelme regarding overtime and wages under the FLSA and NYLL.

80. Defendants did not provide Plaintiff Requelme an accurate statement of wages, as required by NYLL 195(3).

81. Instead, defendants provided Plaintiff Requelme pay stubs falsely showing that he only worked 40 hours a week.

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

*Defendants' General Employment Practices*

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

84. Plaintiffs were victims of Defendants' common policy and practices which violate their rights under the FLSA and New York Labor Law by, *inter alia*, not paying them the wages they were owed for the hours they worked.

85. Defendants' pay practices resulted in Plaintiffs not receiving payment for all their hours worked, and resulting in Plaintiffs' effective rate of pay falling below the required minimum wage rate.

86. Defendants habitually required Plaintiff Requelme to work additional hours beyond his regular shifts but did not provide him with any additional compensation.

87. Defendants required all delivery workers, including Plaintiff Patricio, to perform general non-delivery, non-tipped restaurant tasks in addition to their primary duties as delivery workers.

88. Plaintiff Patricio, and all similarly situated employees, ostensibly were employed as tipped employees by Defendants, although their actual duties included a significant amount of time spent performing non-delivery, non-tipped duties.

89. Plaintiff Patricio and all other delivery workers were paid at the lower tip-credit rate by Defendants. However, under state law, Defendants were not entitled to a tip credit because the delivery worker's and Plaintiff Patricio's non-tipped duties exceed 20% of each workday (or 2 hours a day, whichever is less) (12 N.Y.C.R.R. § 146).

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

91. The delivery workers', including Plaintiff Patricio's, duties were not incidental to their occupation as delivery workers, but instead constituted entirely unrelated general restaurant work with duties, including the non-tipped duties described above.

92. In violation of federal and state law as codified above, Defendants classified Plaintiff Patricio and other delivery workers as tipped employees, and paid them at the tip-credit rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

93. Defendants failed to inform Plaintiffs who received tips that Defendants intended to take a deduction against Plaintiffs' earned wages for tip income, as required by the NYLL before any deduction may be taken.

94. Defendants failed to inform Plaintiffs that their tips were being credited towards the payment of the minimum wage.

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

96. Plaintiffs were paid their wages in a combination of check and cash.

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

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

99. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiffs and other similarly situated current and former workers.

100. 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.

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

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

### **FLSA COLLECTIVE ACTION CLAIMS**

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



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

105. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum wage and overtime at a one and one-half times their regular rates for work in excess of forty (40) hours per workweek.

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

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA)**

107. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

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

109. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

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

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

112. Defendants' failure to pay Plaintiffs at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

113. Plaintiffs were damaged in an amount to be determined at trial.

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

114. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

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

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

117. Plaintiffs were damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF THE NEW YORK MINIMUM WAGE ACT)**

118. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

119. At all times relevant to this action, Defendants were Plaintiffs' employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiffs, controlled their terms and conditions of employment, and determined the rates and methods of any compensation in exchange for their employment.

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

121. Defendants' failure to pay Plaintiffs the minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

122. Plaintiffs were damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE  
NEW YORK STATE LABOR LAW)**

123. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

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

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

126. Plaintiffs were damaged in an amount to be determined at trial.

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

127. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

128. Defendants failed to pay Plaintiffs one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiffs' spread of hours exceeded ten hours in violation of NYLL §§ 650 *et seq.* and 12 N.Y.C.R.R. §§ 146-1.6.

129. Defendants' failure to pay Plaintiffs an additional hour's pay for each day Plaintiffs' spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

130. Plaintiffs were damaged in an amount to be determined at trial.

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

131. Plaintiffs repeat and reallege all paragraphs above as though fully set forth herein.

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

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

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

134. Plaintiffs repeat and reallege all paragraphs above as though set forth fully herein.

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

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

**PRAYER FOR RELIEF**

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

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

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

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

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

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

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

(g) Awarding Plaintiffs (including the prospective collective class members)

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

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

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

(j) Declaring that Defendants violated the spread-of-hours requirements of the NYLL and supporting regulations;

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

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

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

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

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

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

(q) 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

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

#### JURY DEMAND

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

Dated: New York, New York  
October 19, 2016

MICHAEL FAILLACE & ASSOCIATES, P.C.

By:           /s/ Michael Faillace            
Michael Faillace [MF-8436]  
MICHAEL FAILLACE & ASSOCIATES, P.C.  
Michael A. Faillace [MF-8436]  
60 East 42nd Street, suite 2540  
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 2020  
New York, New York 10165

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

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

September 26, 2016

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:

Adolfo Patricio Agapito

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

26 de septiembre de 2016



# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

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

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

September 26, 2016

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:

Jose Francisco Requelme Pliego

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

26 de septiembre de 2016

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pick a Bagel Hit with FLSA Class Action Suit](#)

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