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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARINO ALBERTO PEREZ,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

-against-

FUNSAN K. CORP. d/b/a BEACON
WINES & SPIRITS, “JOHN DOE” AS
PERSONAL REPRESENTATIVE OF
THE ESTATE OF CHI YOUNG
CHUNG, DECEASED, and KYONG SUK
YI, Jointly and Severally,

Defendants.

COLLECTIVE ACTION
COMPLAINT

Jury Trial Demanded

Plaintiff Marino Alberto Perez (“Perez” or “Plaintiff”), individually and on behalf of all others similarly situated, as collective action representative, upon personal knowledge as to himself and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff is a former stocker, floor employee and delivery employee at Defendants’ liquor store, Beacon Wines & Spirits, located in New York County, New York. Defendants paid Plaintiff and their other similarly situated employees a flat weekly rate that did not compensate

them at the statutory minimum wage or provide overtime premiums for hours worked in excess of forty (40) hours per week

2. Plaintiff brings this action to recover unpaid minimum wage and overtime premium pay owed to him pursuant to both the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.* and the New York Labor Law (“NYLL”) §§ 650 *et seq.* Plaintiff also brings claims for unpaid spread-of-hours premiums, unlawfully withheld gratuities and for Defendants’ failure to provide accurate wage statements and wage notices pursuant to the NYLL and supporting regulations.

3. Plaintiff brings his FLSA claim on behalf of himself and all other similarly situated employees of Defendants and the NYLL claims on behalf of himself and any individual who elects to opt in to this action.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1343, and supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff’s claims under the FLSA pursuant to 29 U.S.C. § 216(b).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district and Defendants maintain business locations in this district.

6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

Plaintiff:

7. Plaintiff Marino Alberto Perez was, at all relevant times, an adult individual

residing in New York County, New York.

8. Throughout the relevant time period, Plaintiff performed work for Defendants at Beacon Wines & Spirits, located at 2120 Broadway, New York, New York 10023.

9. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b), and his written consent form is attached hereto and incorporated by reference.

Defendants:

10. Funsan K. Corp. d/b/a Beacon Wines & Spirits (“Beacon Wines” or “Corporate Defendant”) is an active New York corporation with its principal place of business located at 2120 Broadway, New York, New York 10023.

11. Throughout the relevant time period up until his passing in or around 2017, Chi Young Chung (“Chung”) was an owner and operator of the Corporate Defendant who set the Corporate Defendants’ payroll policies, including the unlawful practices complained of herein. Throughout the relevant time period, Chung was in charge of determining the Corporate Defendant’s policies with respect to payroll, and otherwise running the business of the Corporate Defendant.

12. Defendant “John Doe” as Personal Representative of the Estate of Chi Young Chung, Deceased, is being sued herein pursuant to Fed. R. Civ. P. 25 since Chung is deceased.

13. Defendant Kyong Suk Yi (“Yi” and, together with John Doe, the “Individual Defendants” and, together with Corporate Defendant, the “Defendants”) is an owner and operator of the Corporate Defendant who sets the Corporate Defendant’s payroll policies, including the unlawful practices complained of herein. Throughout the relevant time period, in conjunction with Chung, upon information and belief, Yi was in charge of determining the Corporate Defendant’s policies with respect to payroll, and otherwise running the business of the Corporate Defendant.

14. The Individual Defendants participated in the day-to-day operations of the Corporate Defendant and acted intentionally and maliciously in their direction and control of Plaintiff and the Corporate Defendant's other similarly situated employees, and are each an "employer" pursuant to the FLSA, 29 U.S.C. § 203(d) and regulations promulgated thereunder, 29 C.F.R. § 791.2, as well as the NYLL § 2 and the regulations thereunder, and are each jointly and severally liable with the Corporate Defendant.

15. At all relevant times, the Defendants have been and continue to be employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207 (a).

16. At all relevant times, Defendants employed, and/or continue to employ, Plaintiff and each of the Collective Action Members within the meaning of the FLSA.

17. At all relevant times, Plaintiff and any opt-in plaintiffs were employed by Defendants within the meaning of the NYLL, §§ 2 and 651.

18. Upon information and belief, at all relevant times, the Corporate Defendant has had gross revenues in excess of \$500,000.00.

FLSA COLLECTIVE ACTION ALLEGATIONS

19. Pursuant to 29 U.S.C. §§ 206, 207 & 216(b), Plaintiff brings his First and Second Causes of Action as a collective action under the FLSA on behalf of himself and the following collective:

All persons employed by Defendants at any time since May 21, 2015 and through the entry of judgment in this case (the "Collective Action Period") who worked at Beacon Wines as stockers, floor workers, delivery employees, or other non-management employees (the "Collective Action Members").

20. A collective action is appropriate in this circumstance because Plaintiff and the Collective Action Members are similarly situated, in that they were all subjected to Defendants'

illegal policies of failing to compensate them at minimum wage for all hours worked and failing to provide overtime premiums for hours worked in excess of forty (40) hours per week. As a result of these policies, Plaintiff and the Collective Action Members did not receive the statutory minimum wage for all hours worked or overtime premium payments for all hours worked in excess of forty (40) hours per week.

21. Plaintiff and the Collective Action Members have similar job duties and are paid pursuant to a similar, if not the same, payment structure.

STATEMENT OF FACTS

Defendants' Stores

22. At all relevant times, Defendants have operated two (2) liquor stores in the Upper West Side neighborhood of Manhattan: Beacon Wines, located at 2120 Broadway, New York, NY 10023 and Mitchell's Wine & Liquors, located at 200 West 86th Street, New York, NY 10024.

23. According to the New York State Department of State – Division of Corporations filings, Chung's son, Chu Han Chung is the Chief Executive Officer of Beacon's Wines.

24. Up until his passing, Defendant Chung was present on a daily basis at Beacon Wines, where he maintained an office, oversaw the operations of the store, supervised employees and implemented the policies complained of herein.

25. Upon information and belief, Defendant Yi is frequently present at Beacon Wines where she oversees the operations of the store, supervises employees, handles payroll matters, speaks frequently with managers, and implements the policies complained of herein.

Plaintiff's Work for Defendants

26. Plaintiff Perez worked for Defendants as a stocker, floor worker and delivery employee from in or around July 2014 to in or around April 2018 (the "Perez Employment

Period”).

27. Plaintiff’s duties included unloading boxes from delivery trucks and placing them in storage, replacing inventory on the shelves, cleaning, disposing of boxes, making deliveries on foot and assisting delivery drivers.

28. Throughout the Perez Employment Period, Perez typically worked six (6) days a week, beginning at approximately twelve in the afternoon (12:00 pm) through approximately ten in the evening (10:00 pm). On occasion, Perez was required to stay twenty to thirty (20-30) minutes past his shift in order to complete deliveries.

29. Prior to around March of 2016, Perez was rarely able to take a break, and when he was able, his break typically lasted no more than twenty (20) minutes.

30. After March of 2016, Perez was given a full one (1) hour break each day.

31. Plaintiff often observed defendants Chung and Yi at Beacon Wines. He observed Defendant Chung at both store locations. Defendant Chung brought the money to pay employees, worked in his office at Beacon Wines, and viewed security camera footage.

32. Moreover, Plaintiff frequently observed Defendant Yi communicating with managers and supervising employees, including Plaintiff. Defendant Yi would sometimes scold Plaintiff or the other employees if she was not happy with their work.

33. From the beginning of the Perez Employment Period through in or around September or October of 2014, Plaintiff was paid a flat salary of four hundred and forty dollars (\$440) per week. This increased in or around October of 2014 through the end of 2014, when Plaintiff was paid a flat salary of four hundred and sixty dollars (\$460) per week. Plaintiff’s pay again increased to a flat salary of four hundred and eighty dollars (\$480) per week in 2015, and again to a flat salary of five hundred dollars (\$500) per week in 2016.

34. During the time that he was paid a flat salary, Plaintiff was not paid the statutory minimum wage or overtime at time and a half his regular hourly rate for hours worked in excess of forty (40) hours in a week.

35. Moreover, during the time he was paid a flat salary, Plaintiff was not paid spread-of-hours pay for days in which he worked shifts or split-shifts in excess of ten (10) hours.

36. In or around March of 2016, Defendants began paying Plaintiff and their other employees on an hourly basis. Beginning in March of 2016, Plaintiff was paid nine dollars and twenty-five cents (\$9.25) per hour. In 2017, this increased to eleven dollars (\$11) per hour. In 2018, this increased to thirteen dollars (\$13) per hour.

37. At Beacon Wines, Plaintiff was able to keep the cash tips that he received when he made deliveries. If he received credit card tips, however, he would not always receive the tips and, if he did, he only received a portion of the tips. It was Plaintiff's understanding that Defendants did not take a set amount of the credit card tips but that the amount they took varied.

38. Throughout the Perez Employment Period up until in or around March of 2016, Defendants did not provide Perez with any method to track his time worked.

39. Beginning in or around March of 2016, Perez and Defendants' other employees began clocking in and clocking out on a timeclock machine.

40. Throughout the Perez Employment Period until in or around April 2017, Perez was paid in cash, once per week, which he received in an envelope that had his name on it.

41. From the beginning of the Perez Employment Period until in or around April of 2017, Perez' wages were not accompanied by any paystub, wage statement or other record showing his hours worked, rates of pay, tip amounts or any other payment information.

42. Beginning in or around April of 2017, Perez began to receive a paystub with his

wages. The paystubs showed his hourly rate and overtime rate at time and a half his regular hourly rate.

43. Although Perez typically worked well over forty (40) hours per week and performed non-exempt duties, he was paid a flat weekly rate that, for his work until in or around March of 2016, did not compensate him at the statutory minimum wage or provide overtime premiums for all hours worked in excess of forty (40) per week.

44. Throughout the Perez Employment Period, Perez occasionally worked in excess of ten (10) hours per day, yet Defendants failed to pay Perez spread-of-hours premiums.

45. At no point during Perez's employment did he receive a wage notice showing his hourly or overtime rate.

46. Plaintiff's work was performed in the normal course of Defendants' business and was integrated into Defendants' business.

Defendants' Unlawful Corporate Policies

47. Plaintiff and the Collective Action Members were all paid pursuant to the same corporate policies of Defendants, specifically failing to pay minimum wage for all hours worked, failing to pay overtime premiums, and failing to pay spread-of-hours premiums.

48. Defendants had a policy of paying set weekly rates that effectively paid non-exempt employees like Plaintiff at hourly rates below the full statutory minimum wage. Since Defendants failed to provide notice to Plaintiff and Collective Action Members that Defendants were using the "tip credit" in calculating employees' wages and Plaintiff and Collective Action Members primarily performed non-tipped duties, Defendants are not eligible to claim the tip credit and therefore must pay the full New York state statutory wages to Plaintiff and the Collective Action Members.

49. Plaintiff has spoken with other employees of Defendants who were similarly paid below minimum wage for all hours worked. Defendants' failure to pay Plaintiff minimum wages for all hours worked is a corporate policy of Defendants which applies to all of their stockers, floor workers, delivery employees or other non-management employees throughout the relevant time period.

50. Plaintiff has spoken with other employees of Defendants, who similarly worked in excess of forty (40) hours during the relevant time period and were similarly paid a flat weekly rate for non-exempt work that did not provide overtime premiums of one and one-half (1.5) times their regular hourly rate for all hours worked over (40) per week. Defendants' failure to pay Plaintiff and the Collective Action Members overtime compensation for all hours worked over forty (40) hours per week was a corporate policy of Defendants, which applied to all stockers, floor workers, delivery employees and other non-management employees.

51. Defendants' failure to pay Plaintiff spread-of-hours premiums for days in which Plaintiff has worked a spread of more than ten hours or a split shift has been a corporate policy which applies to all of their non-management employees who worked more than ten (10) hours in a day and/or a split shift throughout the relevant time period.

52. Plaintiff has spoken with other employees of Defendants, who similarly were paid in cash and were not provided with any wage statement. Defendants' failure to provide wage statements in accordance with the requirements of the NYLL was a corporate policy that applied to all stockers, floor workers, delivery employees and other non-management employees throughout the relevant time period.

53. Defendants did not provide Plaintiff and the opt-in plaintiffs with proper wage notices at the time of hire of by February 1 of each year. Defendants' failure to provide wage

notices in accordance with the requirements of the NYLL was a corporate policy that applied to stockers, floor workers, delivery employees and other non-management employees.

54. Upon information and belief, throughout the relevant time period and continuing to today, Defendants have failed to maintain accurate and sufficient time and payroll records or provide such records to employees.

55. Throughout the relevant time period and, upon information and belief, continuing until today, Defendants have employed other individuals like Plaintiff in the normal course of business and in positions that require little skill and no capital investment.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT – UNPAID MINIMUM WAGE
(Brought on Behalf of Plaintiff and the Collective Action Members)

56. Plaintiff, on behalf of himself and the Collective Action Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

57. By failing to pay the statutory minimum wage for all hours worked and failing to provide Plaintiff and the Collective Action Members with notice that Defendants were using the “tip credit” to calculate employees’ wages and failing to pay overtime premiums, and since employees did not perform primarily tipped work, Defendants are not permitted to pay the “tipped minimum wage.” Therefore, by failing to pay the statutory minimum wage, Defendants have violated and continue to violate the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 206 and 215(a)(2).

58. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

59. Defendants' failure to pay minimum wages for all hours worked caused Plaintiff and the Collective Action Members to suffer loss of wages and interest thereon. Plaintiff and the Collective Action Members are entitled to recover from Defendants their full unpaid minimum wages, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
FAIR LABOR STANDARDS ACT – UNPAID OVERTIME
(Brought on Behalf of Plaintiff and the Collective Action Members)

60. Plaintiff, on behalf of himself and the Collective Action Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

61. Defendants violated the FLSA overtime rights of Plaintiff and the Collective Action Members by paying a flat weekly rate that did not include overtime premiums for hours worked in excess of forty (40) per week.

62. By failing to pay overtime at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours per week, Defendants have violated and continue to violate the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a)(2).

63. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

64. Defendants' failure to pay overtime caused Plaintiff and the Collective Action Members to suffer loss of wages and interest thereon. Plaintiff and the Collective Action Members are entitled to recover from Defendants their unpaid overtime premium compensation, damages

for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

THIRD CAUSE OF ACTION
NEW YORK LABOR LAW – UNPAID MINIMUM WAGE
(Brought on Behalf of Plaintiff and Opt-in Plaintiffs)

65. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

66. Defendants willfully violated Plaintiff's and Opt-in Plaintiffs' rights by failing to pay the correct statutory minimum wage for all hours worked, in violation of the NYLL and regulations promulgated thereunder.

67. Defendants' failure to pay minimum wages for all hours worked caused Plaintiff and the Opt-in Plaintiffs to suffer loss of wages and interest thereon. Plaintiff and the Opt-in Plaintiffs are entitled to recover from Defendants their full unpaid minimum wages, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq.*

FOURTH CAUSE OF ACTION
NEW YORK LABOR LAW – UNPAID OVERTIME
(Brought on Behalf of Plaintiff and the Opt-in Plaintiffs)

68. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

69. Defendants violated the NYLL overtime rights of the Plaintiff and the Opt-in Plaintiffs by improperly paying a flat weekly rate that failed to provide overtime premiums

consisting of one and one-half (1.5) times the regular hourly rate for hours worked in excess of forty (40) hours per week.

70. Defendants willfully violated Plaintiff's and the Opt-in Plaintiffs' rights by failing to pay overtime compensation at a rate of not less than one and one-half times the regular rate of pay for hours worked in excess of forty (40) each week, in violation of the NYLL and regulations promulgated thereunder.

71. Defendants' failure to pay overtime premium compensation caused Plaintiff and the Opt-in Plaintiffs to suffer loss of wages and interest thereon. Plaintiff and the Opt-in Plaintiffs are entitled to recover from Defendants their unpaid overtime compensation, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq.*

FIFTH CAUSE OF ACTION
NEW YORK LABOR LAW – UNPAID SPREAD-OF-HOURS
(Brought on Behalf of Plaintiff and the Opt-in Plaintiffs)

72. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

73. Defendants willfully violated Plaintiff's and the Opt-in Plaintiffs' rights by failing to pay compensation in an amount equal to one hour's pay at the relevant minimum wage in all instances where the Opt-in Plaintiffs worked either a split shift or more than 10 hours per day, in violation of the NYLL §§ 650, *et seq.*, and the regulations promulgated thereunder including N.Y. Comp. Code R. & Regs. tit. 12, §§ 137-1.7 (2010), 146.16 (2012).

74. Defendants' failure to pay spread-of-hours compensation caused Plaintiff and the Opt-in Plaintiffs to suffer loss of wages and interest thereon. Plaintiff and the Opt-in Plaintiffs are

entitled to recover from Defendants their unpaid spread-of-hours compensation, damages for unreasonably delayed payment of wages, liquidated damages, reasonable attorneys' fees and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq.*

SIXTH CAUSE OF ACTION
NEW YORK LABOR LAW – UNLAWFUL WITHHOLDING OF GRATUITIES
(Brought on Behalf of Plaintiff and the Opt-in Plaintiffs)

75. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

76. Defendants have willfully failed to compensate Plaintiff and the Opt-in Plaintiffs for all gratuities earned by withholding a portion of gratuities left by customers for Plaintiff and the Opt-in Plaintiffs, in violation of § 196-d of the NYLL. Accordingly, Defendants are required to compensate Plaintiff and the Opt-in Plaintiffs for all gratuities withheld by Defendants.

77. Due to the Defendants' NYLL violations, Plaintiff and the Opt-in Plaintiffs are entitled to recover from Defendants their unpaid gratuities, damages for unreasonably delayed payment of wages liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et al.*, 196-d.

SEVENTH CAUSE OF ACTION
NEW YORK LABOR LAW – WAGE STATEMENT VIOLATIONS
(Brought on Behalf of Plaintiff and the Opt-in Plaintiffs)

78. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

79. Defendants have willfully failed to supply Plaintiff and the Opt-in Plaintiffs a proper wage statements as required by Article 6, § 195(3).

80. Due to Defendants' violations of the NYLL, Plaintiff and the Opt-in Plaintiffs are entitled to recover from Defendants two hundred and fifty dollars (\$250) per employee for each workweek that the violations occurred or continue to occur, or a total of five thousand dollars (\$5,000) per employee, as provided for by NYLL §§ 198(1-d) liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and injunctive and declaratory relief.

EIGHTH CAUSE OF ACTION
NEW YORK LABOR LAW –WAGE NOTICE VIOLATIONS
(Brought on Behalf of Plaintiff and the Opt-in Plaintiffs)

81. Plaintiff, on behalf of himself and the Opt-in Plaintiffs, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

82. Defendant has willfully failed to supply Plaintiff and the Opt-in Plaintiffs notice as required by Article 6, § 195, on the date of hire and February 1 of each year, in English or in the language identified by Plaintiff and the Opt-in Plaintiffs as their primary language, containing Plaintiff's and Class Members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; or 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; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

83. Due to Defendants' violations of the NYLL, Plaintiff and the Opt-in Plaintiffs are entitled to recover from Defendants fifty dollars (\$50) per employee for each workweek that the

violations occurred or continue to occur, or a total of five thousand dollars (\$5,000) per employee, as provided for by NYLL, Article 6, § 198(1-b)., liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and injunctive and declaratory relief.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and all other similarly situated Collective Action Members, respectfully requests that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and ordering the prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b) and appointing Plaintiff and his counsel to represent the Collective Action Members;
- b. An order tolling the statute of limitations;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NYLL;
- d. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- e. An award of compensatory damages as a result of Defendants' failure to pay minimum wage and overtime compensation pursuant to the FLSA and the NYLL and supporting regulations;

- f. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay minimum wage and overtime compensation pursuant to the FLSA and the NYLL and supporting regulations;
- g. An award of damages for the non-payment of spread-of-hours pay for each split shift and/or shift worked in New York in excess of ten hours;
- h. An award of damages for the unlawful withholding of gratuities left by customers of Defendants for Plaintiff and the Opt-in Plaintiffs;
- i. An award of two hundred fifty dollars (\$250) per Plaintiff and each of the Class Members for each day that the violations of NYLL, Article 6 § 195(3), pertaining to distribution of wage statements, occurred or continue to occur, or a total of five thousand dollars (\$5,000) per Plaintiff and each of the Class Members as provided for by NYLL, Article 6 § 198(1-d);
- j. An award of fifty dollars (\$50) per Plaintiff and each of the Class Members for each day that the violations of NYLL, Article 6 § 195(1), pertaining to distribution of wage notice, occurred or continue to occur, or a total of five thousand dollars (\$5,000) per Plaintiff and each of the Class Members as provided for by NYLL § 198(1-b);
- k. An award of prejudgment and post-judgment interest;
- l. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- m. Such other and further relief as this Court deems just and proper.


DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
May 21, 2018

Respectfully submitted,

PELTON GRAHAM LLC

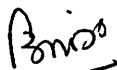
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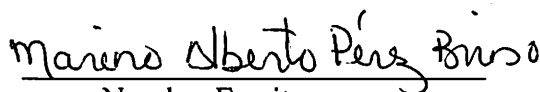
Attorneys for Plaintiff and the putative FLSA collective

CONSENTIMIENTO PARA SER UN DEMANDANTE

Por mi firma abajo yo autorizo la presentación y tramitación de una acción legal bajo la Ley Federal de Normas Razonables de Trabajo y/o las Normas Laborales del Estado de Nueva York arriba mencionadas, en mi nombre y representación en contra de Beacon Wines y Mitchell's Wines y sus respectivos propietarios, gerentes, oficiales, directores, sucesores, predecesores, subsidiarias y afiliados (el "Empleador"). Yo autorizo ser nombrado como **demandante representativo** en esta acción legal para tomar decisiones en nombre de otros demandantes a quienes pueda concernir el resultado de este proceso, el método y la manera en cómo debe llevarse a cabo este litigio, y la decisión de llegar a un acuerdo dentro de la causa y todo lo que concierna a los honorarios profesionales y costas del proceso y cualesquiera otras decisiones relacionadas con este litigio. Yo entiendo que estaré representado por Pelton Graham LLC sin tener que pagar por adelantado costas u honorarios de abogados. Yo entiendo que si los demandantes tienen éxito, los costos asumidos por los abogados en mi nombre serán deducidos de la porción de mi acuerdo en una conciliación o como resultado de una sentencia en juicio. Yo entiendo que mis Abogados podrán solicitar a la Corte que les sean retribuidos los honorarios y costas procesales por parte de los demandados en nombre mío. Yo entiendo que los valores de retención de los Abogados podrán ser ya sea el monto recibido por parte de los demandados o el monto aproximado de 1/3 (33.33%) del total del acuerdo de conciliación o del valor obtenido a través de la sentencia (incluyendo honorarios), cual sea la suma más alta.



Firma



Nombre Escrito

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NYC's Beacon Wines & Spirits Hit with Wage and Hour Case](#)
