

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

Hector Placido and Geovany Lopez, individually and on behalf all other employees similarly situated,

Plaintiffs,

- against -

ABC Corp. d/b/a Kin Khao Thai Kitchen, Jakrapop Panurach a/k/a Pop, and Bin “Doe” (Legal Name Unknown),

Defendants.

Case No.

**COLLECTIVE ACTION
COMPLAINT**

Plaintiff Hector Placido (“Plaintiff Placido”) and Geovany Lopez (“Plaintiff Lopez”) (collectively “Plaintiffs”) on their own behalf and on behalf of all others similarly situated, by and through their undersigned attorneys, Hang & Associates, PLLC, hereby file this complaint against the Defendants ABC Corp. d/b/a Kin Khao Thai Kitchen, Jakrapop Panurach aka Pop, Bin “Doe”(Legal Name Unknown), (collectively “Defendants”), allege and show the Court the following:

INTRODUCTION

1. This is an action brought by Plaintiffs on their own behalf and on behalf of similarly situated employees, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and the New York Labor Law, arising from Defendants’ various willful and unlawful employment policies, patterns and/or practices.

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA and NYLL by engaging in a pattern and practice of

failing to pay their employees, including Plaintiffs, the correct minimum wage and overtime compensation for all hours worked over forty (40) each workweek.

3. Plaintiffs allege pursuant to the FLSA, that they are entitled to recover from the Defendants: (1) unpaid minimum wages, (2) unpaid overtime compensation, (3) reimbursement for expenses relating to tools of the trade, (4) liquidated damages, (5) prejudgment and post-judgment interest; and (6) attorneys' fees and costs.

4. Plaintiffs further allege pursuant to New York Labor Law § 650 et seq. and 12 New York Codes, Rules and Regulations §§ 146 ("NYCRR") and New York Common law that they are entitled to recover from the Defendants: (1) unpaid minimum wages, (2) overtime compensation, (3) unpaid "Spread of Hours" premium, (4) unpaid agreed upon wages, (5) compensation for failure to provide wage notice at the time of hiring and failure to provide paystubs in violation of the NYLL, (6) liquidated damages equal to the sum of unpaid minimum, unpaid spread of hours premium, and unpaid overtime compensation pursuant to the NY Wage Theft Prevention Act, (7) prejudgment and post-judgment interest; and (8) attorney's fees and costs.

JURISDICTION AND VENUE

5. This Court has original federal question jurisdiction over this controversy under 29 U.S.C. §216(b), 28 U.S.C. § 1331, and has supplemental jurisdiction over the New York Labor Law claims pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, and the acts and omissions giving rise to the claims herein alleged took place in this District.

PLAINTIFFS

7. Plaintiff Placido is a resident of Manhattan and is employed as a delivery and cleaning worker by Defendants, with its principal place of business at 2200 Amsterdam Ave, New York, NY 10032, from on or about December 2017 until present.

8. Plaintiff Geovany Lopez is a resident of the Bronx and is employed as a delivery, food preparer and cleaning worker by Defendants, with its principal place of business at 2200 Amsterdam Ave, New York, NY 10032, from on or about December 2017 until present.

CORPORATE DEFENDANT

9. Upon information and belief, Corporate Defendant, ABC Corp. d/b/a Kin Khao Thai Kitchen, is a domestic business corporation organization and existing under the laws of the State of New York and maintains its principal place of business at 2200 Amsterdam Ave, New York, NY 10032.

10. Upon information and belief, at all times relevant hereto, ABC Corp. d/b/a Kin Khao Thai Kitchen, is a business or enterprise engaged in interstate commerce employing more than two (2) employees and earning gross annual sales over Five Hundred Thousand Dollars (\$500,000).

11. Upon information and belief, at all relevant times hereto, ABC Corp. d/b/a Kin Khao Thai Kitchen have been and continue to be “employers” engaged in interstate “commerce” and/or in the production of “goods” for “commerce”, within the meaning of the Fair Labor Standards Act (“FLSA”), 29 U.S.C § 203.

12. ABC Corp. d/b/a Kin Khao Thai Kitchen, constitutes an enterprise within the meaning of the FLSA, 29 U.S.C § 203(r).

13. ABC Corp. d/b/a Kin Khao Thai Kitchen has been Plaintiffs' employer within the meaning of the New York State Labor Law ("NYLL") § 2, 190, and 651.

INDIVIDUAL DEFENDANT JAKRAPOP PANURACH

14. Upon information and belief, Defendant Jakrapop Panurach aka Pop ("Defendant Pop") is the owner, officer, director and/or managing agent of ABC Corp. d/b/a Kin Khao Thai Kitchen, at 2200 Amsterdam Ave, New York, NY 10032 and participated in its day-to-day operations, acted intentionally and maliciously, is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with ABC Corp. d/b/a Kin Khao Thai Kitchen.

15. Upon information and belief, Defendant Pop owns the ABC Corp. d/b/a Kin Khao Thai Kitchen and manages and makes all business decisions including but not limited to the amount in salary the employees will receive, and the number of hours employees will work.

16. At all times relevant herein ABC Corp. d/b/a Kin Khao Thai Kitchen was, and continues to be, an "enterprise engaged in commerce" within the meaning of FLSA.

17. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by ABC Corp. d/b/a Kin Khao Thai Kitchen.

18. At all relevant times, Defendant Pop knowingly and willfully failed to pay Plaintiffs their lawfully earned minimum wages and overtime compensation and failed to provide them with a wage notice at the time of hiring in violation of the NYLL.

19. Plaintiffs have fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

INDIVIDUAL DEFENDANT BIN "DOE"

20. Upon information and belief, Defendant Bin “Doe” (“Defendant Bin”) is the owner, officer, director and/or managing agent of ABC Corp. d/b/a Kin Khao Thai Kitchen, at 2200 Amsterdam Ave, New York, NY 10032 and participated in its day-to-day operations, acted intentionally and maliciously, is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2, NYLL §2 and the regulations thereunder, and is jointly and severally liable with ABC Corp. d/b/a Kin Khao Thai Kitchen.

21. Upon information and belief, Defendant Bin owns the ABC Corp. d/b/a Kin Khao Thai Kitchen and manages and makes all business decisions including but not limited to the amount in salary the employees will receive, and the number of hours employees will work.

22. At all times relevant herein ABC Corp. d/b/a Kin Khao Thai Kitchen was, and continues to be, an “enterprise engaged in commerce” within the meaning of FLSA.

23. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by ABC Corp. d/b/a Kin Khao Thai Kitchen.

24. At all relevant times, Defendant Bin knowingly and willfully failed to pay Plaintiff their lawfully earned minimum wages and overtime compensation and failed to provide them with a wage notice at the time of hiring in violation of the NYLL.

25. Plaintiffs have fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

STATEMENT OF FACTS

26. Defendants committed the following alleged acts knowingly, intentionally and willfully.

27. Defendants knew that the nonpayment of minimum wages, overtime pay, spread of hours premium, and failure to provide the required wage notice at the time of hiring would financially injure Plaintiffs and similarly situated employees and violate state and federal laws.

Plaintiff Hector Placido:

28. From on or about December 2017 to present, Plaintiff Placido was hired by Defendants as a delivery and cleaning worker for Defendants' restaurant located at 2200 Amsterdam Ave, New York, NY 10032.

29. Starting on or about December 2017 to present, Plaintiff Placido worked five (5) days per week from 11:30 a.m. to 10:30 p.m. During this period, Plaintiff Placido was not provided with an hour break, and worked approximately fifty-five (55) hours per week.

30. Plaintiff Placido was initially paid an hourly rate of \$10.50 per hour, the proper minimum wage non-tipped employees 2017, and then raised to \$11.00 per hour beginning in 2018, however the correct minimum wage applicable for 2018 is \$12.00 per hour. Plaintiff Placido was not paid overtime compensation, regardless for the total amount of hours worked.

31. Plaintiff Placido was not compensated for New York State's "spread of hours" premium for shifts that lasted longer than ten (10) hours.

32. Plaintiff Placido was paid weekly in cash throughout his employment with the Defendants, however, Defendants constantly paid Plaintiff Placido late.

33. Plaintiff Placido was not provided a written wage notice, in English and in Spanish (the primary language identified by Plaintiff Placido) when he was hired, including but not limited

to information about his rate of pay and basis thereof, allowances, including tip and meals credits, claimed by Defendants, and the regular pay day designated by Defendants.

34. Defendants knowingly and willfully operated their business with a policy of not reimbursing Plaintiff Placido for expenses incurred in relation to tools of the trade used by Plaintiff Placido to make deliveries for the Defendants. Defendants specifically required Plaintiff Placido to purchase and maintain an electric bicycle which was never reimbursed by Defendants. Plaintiff Placido spent \$1,750.00 to purchase the electric bicycle, spent approximately \$30.00 per month to maintain and repair the electric bicycle, and was not reimbursed by the Defendants. While making deliveries for the Defendant on the electric bicycle, Plaintiff Placido received a \$700.00 fine for the electronic bike, for which he was only reimbursed \$300.00 by Defendants.

35. Under the FLSA, the Plaintiff Placido is entitled to a credit for expenses for tools of trade.

Plaintiff Geovany Lopez:

36. From on or about December 2017 to present, Plaintiff Lopez was hired by Defendants as a food preparer, cleaning and delivery worker for Defendants' restaurant located at 2200 Amsterdam Ave, New York, NY 10032.

37. Starting on or about December 2017 to present, Plaintiff Lopez worked three (3) days per week. On Tuesdays, Plaintiff Lopez worked as a delivery worker from 5:00 p.m. to 10:30 p.m. As a delivery worker Plaintiff Lopez was paid \$8.00 per hour, the proper minimum wage for tipped employees in 2017, but his hourly rate remained the same in 2018 when it should have been raised to \$9.00 per hour.

38. On Saturdays and Sundays, Plaintiff Lopez worked as a food preparer, cleaning and delivery worker from 11:30 a.m. to 10:30 p.m. In this position, Plaintiff was paid as a non-tipped

employee and received \$10.50 per hour in 2017, which was the proper minimum wage rate for 2017. However, beginning in 2018, Plaintiff Lopez's hourly rate was raised to \$11.00, but the proper minimum wage rate Lopez should have received was \$12.00 per hour.

39. During this period, Plaintiff Lopez was not provided with an hour break, and worked approximately twenty-seven and a half (27.5) hours per week.

40. Plaintiff Lopez was not compensated for New York State's "spread of hours" premium for shifts that lasted longer than ten (10) hours.

41. Plaintiff Lopez was paid weekly in cash throughout his employment with the Defendants. Plaintiff Lopez was always paid late.

42. Plaintiff Lopez was not provided a written wage notice, in English and in Spanish (the primary language identified by Plaintiff Lopez) when he was hired, including but not limited to information about his rate of pay and basis thereof, allowances, including tip and meals credits, claimed by Defendants, and the regular pay day designated by Defendants.

43. As a delivery person, Plaintiff Lopez was entitled to received tips. Defendants always retained part of the tips, and Plaintiff Lopez received what was given without an accountability or a controlled "tip pool."

44. Defendants knowingly and willfully operated their business with a policy of not reimbursing Plaintiff Lopez for expenses incurred in relation to tools of the trade used by Plaintiff Lopez to make deliveries for the Defendants. Plaintiff Lopez was required to purchase and maintain an electric bicycle which was never reimbursed by Defendants. Plaintiff Lopez spent \$1,500.00 to purchase the bicycle and spent approximately \$30.00 per month to maintain and repair the electric bicycle, and was not reimbursed by the Defendants.

45. Under the FLSA, the Plaintiff Lopez is entitled to a credit for expenses for tools of trade.

46. Defendants did not compensate Plaintiffs overtime compensation according to state and federal laws.

47. Plaintiffs were not compensated for New York State's "spread of hours" premium for shifts that lasted longer than ten (10) hours, one day each week.

48. Defendants did not provide Plaintiffs with a wage notices at the time of their hiring.

49. Defendants did not reimburse Plaintiffs for expenses incurred in relation to tools of the trade used by Plaintiff to make deliveries for the Defendant.

50. Defendants committed the following alleged acts knowingly, intentionally and willfully.

51. Defendants knew that the nonpayment of overtime and minimum wage would economically injure Plaintiffs and the Collective Members by their violation of federal and state laws.

52. While employed by Defendants, Plaintiffs were not exempt under federal and state laws requiring employers to pay employees overtime.

53. Defendants failed to keep full and accurate records of Plaintiffs' hours and wages.

54. Defendants did not provide Plaintiffs and other Collective Action Members with written notices about the terms and conditions of their employment upon hire in relation to their rate of pay, regular pay cycle and rate of overtime pay. These notices were similarly not provided upon Plaintiffs and other Collective Members' pay increase(s).

COLLECTIVE ACTION ALLEGATIONS

55. Defendants knowingly and willfully operated their business with a policy of not paying either the FLSA minimum wage or the New York State minimum wage to Plaintiffs or other similarly situated employees.

56. Defendants knowingly and willfully operated their business with a policy of not paying the New York State unpaid “Spread of Hours” premium to Plaintiffs and other similarly situated employees.

57. Defendants knowingly and willfully operated their business with a policy of not paying Plaintiffs and other similarly situated employees either the FLSA overtime rate (of time and one-half), or the New York State overtime rate (of time and one-half), in violation of the FLSA and New York Labor Law and the supporting federal and New York State Department of Labor Regulations.

58. Defendants knowingly and willfully operated their business with a policy of not paying the New York State “spread of hours” premium to Plaintiffs and other similarly situated employees.

59. Plaintiffs bring this action individually and on behalf of all other and former non-exempt employees who have been or were employed by the Defendants at their restaurant location for up to the last three (3) years, through entry of judgment in this case (the “Collective Action Period”) and whom failed to receive minimum wages, spread-of-hours pay, and/or overtime compensation for all hours worked in excess of forty (40) hours per week (the “Collective Action Members”), and have been subject to the same common decision, policy, and plan to not provide required wage notices at the time of hiring, in contravention to federal and state labor laws.

60. Upon information and belief, the Collection Action Members are so numerous the joinder of all members is impracticable. The identity and precise number of such persons are

unknown, and the facts upon which the calculations of that number may be ascertained are presently within the sole control of the Defendants. Upon information and belief, there are more than ten (10) Collective Action Members, who have worked for or have continued to work for the Defendants during the Collective Action Period, most of whom would not likely file individual suits because they fear retaliation, lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiffs submit that this case should be certified as a collection action under the FLSA, 29 U.S.C. §216(b).

61. Plaintiffs will fairly and adequately protect the interests of the Collective Action Members and have retained counsel that is experienced and competent in the field of employment law and class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those members of this collective action.

62. This action should be certified as collective action because the prosecution of separate action by individual members of the collective action would risk creating either inconsistent or varying adjudication with respect to individual members of this collective that would as a practical matter be dispositive of the interest of the other members not party to the adjudication, or subsequently impair or impede their ability to protect their interests.

63. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation makes it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as collective action.

64. Questions of law and fact common to members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the questions of fact common to Plaintiffs and other Collective Action Members are:

- a. Whether the Defendants employed Collective Action members within the meaning of the FLSA;
- b. Whether the Defendants failed to pay the Collective Action Members the minimum wage in violation of the FLSA and the regulations promulgated thereunder;
- c. Whether the Defendants failed to pay the Collective Action Members spread of hours payment for each day an employee worked over 10 hours;
- d. Whether the Defendants failed to pay the Collective Action Members overtime wages for all hours worked above forty (40) each workweek in violation of the FLSA and the regulation promulgated thereunder;
- e. Whether the Defendants failed to pay the Collective Action Members spread of hours payment for each day an employee worked over 10 hours;
- f. Whether the Defendants failed to provide the Collective Action Members with a wage notice at the time of hiring as required by the NYLL;
- g. Whether the Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA; and,
- h. Whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive, and statutory damages, interest, costs and disbursements and attorneys' fees.

65. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

66. Plaintiffs and others similarly situated have been substantially damaged by Defendants' unlawful conduct.

STATEMENT OF CLAIM

COUNT I

[Violations of the Fair Labor Standards Act—Minimum Wage Brought on behalf of the Plaintiffs and the FLSA Collective]

67. Plaintiffs re-alleges and incorporate by reference all preceding paragraphs as though fully set forth herein.

68. At all relevant times, upon information and belief, Defendants have been, and continue to be, “employers” engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the meaning of the FLSA, 29 U.S.C. §§206(a) and §§207(a). Further, Plaintiffs are covered within the meaning of FLSA, U.S.C. §§206(a) and 207(a).

69. At all relevant times, Defendants employed “employees” including Plaintiff, within the meaning of FLSA.

70. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.

71. The FLSA provides that any employer engaged in commerce shall pay employees the applicable minimum wage. 29 U.S.C. § 206(a).

72. At all relevant times, Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiff, and the collective action members, for some or all of the hours they worked.

73. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §206 shall be liable to the employees affected in the amount of their unpaid minimum compensation, and in an additional equal amount as liquidated damages.

74. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by failing to compensate Plaintiff and Collective Class Members at the statutory minimum wage when they knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action members.

COUNT II
**[Violation of New York Labor Law—Minimum Wage
Brought on behalf of Plaintiffs]**

75. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

76. At all relevant times, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§2 and 651.

77. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay the minimum wage shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

78. Defendants knowingly and willfully violated Plaintiffs' rights by failing to pay them minimum wages in the lawful amount for hours worked.

COUNT III
**[Violations of the Fair Labor Standards Act—Overtime Wage
Brought on behalf of the Plaintiffs and the FLSA Collective]**

79. Plaintiff Placido re-alleges and incorporate by reference all preceding paragraphs as though fully set forth herein.

80. The FLSA provides that no employer engaged in commerce shall employ a covered employee for a work week longer than forty (40) hours unless such employee receives compensation for employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he or she is employed, or one and one-half times the minimum wage, whichever is greater. 29 USC §207(a).

81. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §207 shall be liable to the employees affected in the amount of their unpaid overtime compensation, and in an additional equal amount as liquidated damages. 29 USC §216(b).

82. Defendants' failure to pay Plaintiff Placido and the FLSA Collective their overtime pay violated the FLSA.

83. At all relevant times, Defendants had, and continue to have, a policy of practice of refusing to pay overtime compensation at the statutory rate of time and a half to Plaintiff Placido and Collective Action Members for all hours worked in excess of forty (40) hours per workweek, which violated and continues to violate the FLSA, 29 U.S.C. §§201, et seq., including 29 U.S.C. §§207(a)(1) and 215(a).

84. The FLSA and supporting regulations required employers to notify employees of employment law requires employers to notify employment law requirements. 29 C.F.R. §516.4.

85. Defendants willfully failed to notify Plaintiff Placido and FLSA Collective of the requirements of the employment laws in order to facilitate their exploitation of Plaintiff Placido's and FLSA Collectives' labor.

86. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiff Placido and Collective Members the statutory overtime rate of time and one half for all hours worked in excess of forty (40) per week when they

knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action Members.

COUNT IV
[Violation of New York Labor Law—Overtime Pay]

87. Plaintiff Placido re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

88. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay proper overtime compensation shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

89. Defendants' failure to pay Plaintiff Placido and the FLSA Collective their overtime pay violated the NYLL.

90. Defendants' failure to pay Plaintiff Placido and the FLSA Collective was not in good faith.

COUNT V
[Violation of New York Labor Law—Spread of Hour Pay]

91. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

92. The NYLL requires employers to pay an extra hour's pay for every day that an employee works an interval in excess of ten hours pursuant to NYLL §§190, et seq., and §§650, et seq., and New York State Department of Labor regulations §146-1.6.

93. Defendants' failure to pay Plaintiff and FLSA Collective spread-of-hours pay was not in good faith.

COUNT VI
[Violation of the Fair Labor Standards Act —Failure Reimburse for Expenses relating to Tools of the Trade]

94. Plaintiffs on behalf of himself and all other similarly situated Collective Action Members and members of the Class repeats and re-alleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

95. At all relevant times, the Defendants had a policy and practice of refusing to reimburse Plaintiffs for expenses incurred in relation to tools of the trade used by Plaintiffs in order to make deliveries for Defendant's restaurant business.

96. Defendants failed to pay Plaintiffs for expenses incurred in relation to tools of the trade, which includes but is not limited to purchasing an electric bicycle and the cost of maintaining and repairing the electric bicycle due to its constant use for the Defendant's restaurant. At all relevant times, the Defendants had a policy and practice of refusing to reimburse Plaintiff for expenses incurred in relation to tools of the trade used by Plaintiffs in order to make deliveries for Defendants.

97. Defendants knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by their failure to reimburse Plaintiffs for expenses incurred in relation to tools of the trade used by Plaintiffs when Defendants knew or should have known such was due.

COUNT VII

[Violation of New York Labor Law—Time of Hire Wage Notice Requirement]

98. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

99. The Defendants failed to furnish to the Plaintiffs at the time of hiring a notice 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 in accordance with section one hundred ninety-one of this article; 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; the telephone number of the employer, and anything otherwise required by law; in violation of the NYLL, § 195(1).

100. Due to the defendants’ violation of the NYLL, § 195(1) Plaintiffs are entitled to recover from Defendants, jointly and severally, \$50 for each workday that the violation occurred or continued to occur, up to \$5,000, together with costs and attorneys’ fees pursuant to New York Labor Law. N.Y. Lab. Law §198(1-b).

COUNT VIII

[Violation of New York Labor Law—New York Pay Stub Requirement]

101. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

102. The NYLL and supporting regulations require employers to provide detailed paystub information to employees every payday. NYLL §198-1(d).

103. Defendants have failed to make a good faith effort to comply with the New York Labor Law with respect to compensation of Plaintiffs and did not provide the pay stub on or after each Plaintiff’s payday.

104. Due to Defendants’ violations of New York Labor Law, Plaintiffs are entitled to recover from Defendants, jointly and severally, \$250 for each workday of the violation, up to \$5,000 for Plaintiff for costs and attorneys’ fees pursuant to New York Labor Law N.Y. Lab. Law §198(1-d).

Prayer for Relief

WHEREFORE, Plaintiffs, on behalf of themselves and the FLSA collective members, respectfully requests that this court enter a judgment providing the following relief:

a) Authorizing Plaintiffs at the earliest possible time to give notice of this collective action, or that the court issue such notice, to all persons who are presently, or have been employed by defendants as non-exempt employees. Such notice shall inform them that the civil notice has been filed, of the nature of the action, of their right to join this lawsuit if they believe they were denied proper hourly compensation and overtime wages;

b) Certification of this case as a collective action pursuant to FLSA;

c) Issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b), and appointing Plaintiffs and his counsel to represent the Collective Action Members;

d) A declaratory judgment that the practices complained of herein are unlawful under FLSA and New York Labor Law;

e) An injunction against ABC Corp. d/b/a Kin Khao Thai Kitchen, Jakrapop Panurach, Bin “Doe” its officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of unlawful practices and policies set forth herein;

f) An award of unpaid wages and minimum wages due to Plaintiffs under the FLSA and New York Labor Law, plus compensatory and liquidated damages in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after May 1, 2011 under NY Wage Theft Prevention Act, and interest;

g) An award of unpaid overtime wages due under FLSA and New York Labor Law, plus compensatory and liquidated damages in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after May 1, 2011 under NY Wage Theft Prevention Act, and interest;

h) An award of unpaid “spread of hours” premium due under the New York Labor Law;

i) An award of unpaid expenses relating to tools of the trade due under the FLSA;

j) An award of damages for Defendants’ failure to provide wage notice at the time of hiring as required under the New York Labor Law.

k) An award of liquidated and/or punitive damages as a result of Defendants’ knowing and willful failure to pay minimum wages, and overtime compensation pursuant to 29 U.S.C. §216;

l) An award of liquidated and/or punitive damages as a result of Defendants’ willful failure to pay minimum wages, “spread of hours” premium, and overtime compensation pursuant to New York Labor Law;

m) An award of costs and expenses of this action together with reasonable attorneys’ and expert fees pursuant to 29 U.S.C. §216(b) and NYLL §§198 and 663;

n) The cost and disbursements of this action;

o) An award of prejudgment and post-judgment fees;

p) Providing that if any amounts remain unpaid upon the expiration of ninety days following the 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

q) Such other and further legal and equitable relief as this Court deems necessary, just,

and proper.

Dated: Flushing, New York
December 3, 2018

HANG & ASSOCIATES, PLLC

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EXHIBIT 1

**CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed Kin Khao Thai Kitchen and/or related entities.

I consent to be a plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Contingent Fee Retainer signed by the named plaintiff in this case.

SPANISH TRANSLATION:

**CONSENTIMIENTO PARA DEMANDAR BAJO
LEY DE NORMAS LABORALES FEDERALES**

Soy un empleado actualmente o fui empleado anteriormente por Sumo Sushi y/o entidades relacionadas.

Doy mi consentimiento para ser demandante en una acción para cobrar los salarios no pagados. Estoy de acuerdo en que estoy obligado por los términos del Retención Contingente de Tarifas firmados por el demandante nombrado en este caso.

Hector Placido
Full Legal Name (Print)


Signature

9/14/18
Date

**CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed Kin Khao Thai Kitchen and/or related entities.

I consent to be a plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Contingent Fee Retainer signed by the named plaintiff in this case.


SPANISH TRANSLATION:

**CONSENTIMIENTO PARA DEMANDAR BAJO
LEY DE NORMAS LABORALES FEDERALES**

Soy un empleado actualmente o fui empleado anteriormente por Sumo Sushi y/o entidades relacionadas.

Doy mi consentimiento para ser demandante en una acción para cobrar los salarios no pagados. Estoy de acuerdo en que estoy obligado por los términos del Retención Contingente de Tarifas firmados por el demandante nombrado en este caso.

Geovany Lopez
Full Legal Name (Print)


Signature

9/14/18
Date

JS 44 (Rev. 11/27/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Hector Placido and Geovany Lopez, individually and on behalf all other employees similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>New York County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> HANG & ASSOCIATES, PLLC 136-20 38th Ave., Suite 10G Flushing, NY 11354 (718)-353-8588</p>	<p>DEFENDANTS ABC Corp. d/b/a Kin Khao Thai Kitchen, Jakrapop Panurach a/k/a Pop, and Bin "Doe" (Legal Name Unknown), County of Residence of First Listed Defendant <u>New York County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
FLSA 29 USC 216(b)

Brief description of cause:
UNPAID MIN WAGE, UNPAID WAGES FOR OVERTIME OF WORK

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 12/03/2018 SIGNATURE OF ATTORNEY OF RECORD: s/ Lorena P. Duarte

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Lorena P. Duarte, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Hector Placido and Geovany Lopez, individually and on behalf all other employees similarly situated

Plaintiff(s)

v.

ABC Corp. d/b/a Kin Khao Thai Kitchen, Jakrapop Panurach a/k/a Pop, and Bin "Doe" (Legal Name Unknown),

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ABC Corp. d/b/a Kin Khao Thai Kitchen Jakrapop Panurach a/k/a Pop, Bin "Doe" (Legal Name Unknown) 2200 Amsterdam Avenue New York, NY 10032

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lorena P. Duarte, Esq. Hang & Associates, PLLC 136-20 38th Ave., Suite 10G Flushing, NY 11354 718-353-8588

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kin Khao Thai Kitchen Sued by Employees Over Alleged Wage Infractions](#)
