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

10 Roberto Rivas, *on behalf of himself and*)
11 *others similarly situated,*)

Civil Case No.:

12 *Plaintiff,*)

FLSA COLLECTIVE ACTION

13 -v-)

COMPLAINT

14 Ripe Juice Bar & Grill, Freshark Franchise)
15 Corp., Peter Kambitsis, Elias Kalogiros, and)
16 Gabriel Olivera, *jointly and severally,*)

17 *Defendants.*)
18)
19)
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28)

NATURE OF THE ACTION

1. Plaintiff Roberto Rivas, (“Plaintiff”), on behalf of himself and others similarly situated, brings this action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.* in order to remedy Defendants’ wrongful withholding of Plaintiff’s lawfully earned wages and overtime compensation. Plaintiff also brings these claims under New York Labor Law (“NYLL”), Article 6, §§ 190 *et seq.*, and Article 19 §§ 650 *et seq.* as well as the supporting New York State Department of Labor Regulations for violations of minimum wages, overtime wages, spread-of-hours pay, and notice and record-keeping violations.

SUMMARY

2. Plaintiff was employed by Defendants, Ripe Juice Bar & Grill, Freshark

1 Franchise Corp., Peter Kambitsos, Elias Kalogiros, and Gabriel Olivera, as a delivery
2 employee. However, he would also spend significant time each day working in the kitchen,
3 cleaning the restaurant, taking out the trash and stocking supplies.

4 3. Plaintiff consistently worked for Defendants more than 40 hours per week.

5 4. Defendants consistently paid the Plaintiff below minimum wage. They also
6 failed to pay him his due overtime wages and spread of hours premium.
7

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

11 6. As a result of Defendants' actions, Plaintiff has suffered great hardship and
12 damages.
13

14 7. Defendants' conduct extended beyond the Plaintiff to all other similarly situated
15 employees. Plaintiff seeks certification of this action as a collective action on behalf of himself
16 individually and those other similarly situated employees and former employees of Defendants
17 pursuant to 29 U.S.C. § 216(b).
18

19 **JURISDICTION AND VENUE**

20 **Federal Question Jurisdiction and Supplemental Jurisdiction**

21 8. This Court has original subject matter jurisdiction over this action under 28
22 U.S.C. § 1331 because the civil action herein arises under the laws of the United States,
23 namely, the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Additionally, this Court also
24 has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367(a).
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1 **Personal Jurisdiction**

2 9. This Court may properly maintain personal jurisdiction over Defendants under
3 Rule 4 of the Federal Rules of Civil Procedure because Defendants' contacts with this state and
4 this judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply
5 with traditional notions of fair play and substantial justice.
6

7 **Venue**

8 10. Venue is proper in the Eastern District of New York under 28 U.S.C. §§ 1391
9 (b) (1) and (2) because Defendants reside and conduct business in this judicial district and
10 because a substantial part of the acts or omissions giving rise to the claims set forth herein
11 occurred in this judicial district.
12

13 **THE PARTIES**
14 **Plaintiff**

14 **Roberto Rivas**

15 11. Plaintiff Roberto Rivas ("Rivas") is an adult individual residing in the state of
16 New York, County of Queens.
17

18 12. Rivas is a covered employee within the meaning of the FLSA, 29 U.S.C. §
19 203(e) and the NYLL § 190.
20

21 13. Rivas worked for Defendants from December 2015 to April 2016 and from
22 August 2016 to September, 2016.
23

24 14. Rivas was employed at Ripe Juice Bar & Grill, located at 70-13 Austin Street,
25 Forest Hills, NY, 11375.
26

27 15. Rivas was employed and accounted for by the Defendants as a delivery person.
28 However, apart from performing deliveries, he would also spend significant time cleaning the
restaurant, cleaning the kitchen, taking out the trash, buying supplies, and stocking supplies.

1 16. Rivas regularly handled goods in interstate commerce during his employment,
2 such as food and drinks made from ingredients that were imported from outside the State of
3 New York.

4 17. Since starting work in December 2015 to April 2016 and from August 2016 to
5 September 2016, Rivas worked seven days per week. Rivas' hours worked were averaging
6 around seventy-seven (77) hours per week and approximately ten to eleven hours per day.
7

8 18. Throughout Rivas' employment with Defendants, Defendants did not utilize a
9 time clock system or any other system in which to accurately keep track of Rivas' hours of
10 work.

11 19. Rivas' weekly pay, as determined by Defendants, was One Hundred and Eighty
12 Dollars (\$180), regardless of the actual number of hours worked. Rivas also received
13 approximately \$400 per week in tips.
14

15 20. Rivas received his pay in cash at all times.

16 21. Defendants paid Rivas below minimum wage at all times.
17

18 22. Defendants repeatedly suffered or permitted Rivas to work over Forty (40)
19 hours per week without paying him the appropriate premium overtime pay of one and one half
20 times the statutory minimum.

21 23. Defendants have failed to pay Rivas spread-of-hours compensation of one
22 hour's pay at the basic minimum hourly wage rate for each day during which Rivas' shift
23 extended for more than ten (10) hours.
24

25 24. Rivas was not provided with a notice containing the rate and basis of his pay;
26 the designated pay date; and the employer's name, address and telephone number at the time of
27 hiring or at any point thereafter.
28

1 e. Defendants each had either functional and/or formal control over the terms
2 and conditions of work of Plaintiff and similarly situated employees.

3 f. Plaintiff and similarly situated employees performed work integral to each
4 Corporate Defendant's operation.

5
6 31. In the alternative, all Defendants functioned together as a single integrated
7 employer of Plaintiff within the meaning of the FLSA and NYLL.

8 32. Upon information and belief, Corporate Defendants Ripe Juice Bar & Grill, and
9 Freshark Franchise Corp. are related entities and operate together as a single integrated
10 enterprise. Specifically, both corporations and/or branch locations are owned, managed, and
11 operated by the same core team of Individual Defendants; Peter Kambitsis, Elias Kalogiros,
12 and Gabriel Olivera. They offer similar services; namely fresh juice and smoothies, and they
13 utilize the same media platforms for advertizing purposes. *See:*
14 <http://www.ripejuicebar.com/location/>. They have also designated the same address for service
15 of process.
16

17
18 33. Upon information and belief, non-exempt workers associated with Ripe Juice
19 Bar & Grill, and Freshark Franchise Corp., perform the same job duties, and are subject to the
20 same employment policies and practices, and are directed and/or permitted by Defendants to
21 perform work at multiple locations without retraining.
22

23 34. Accordingly, all non-exempt employees working at any one Corporate
24 Defendant at a particular instance were simultaneously considered and accounted for as
25 employees of all Corporate Defendants collectively.
26
27
28

Corporate Defendants

Ripe Juice Bar & Grill

35. Ripe Juice Bar & Grill ("Ripe") is the trade name of a domestic corporation organized and existing under the laws of the State of New York. Its principal place of business is located at 70-13 Austin Street, Forest Hills, NY 11375.

36. Ripe is engaged in the retail sale of food and beverage items where customers order or select items and pay before consuming them. Such items can be consumed on the premises or delivered to customer's homes via delivery employees such as Plaintiff.

37. Ripe is open daily seven (7) days per week and several hours per day. It employs a number of staff including cooks, waiters, cashiers, bussers, runners, and delivery employees.

38. At all relevant times, Ripe was a covered employer within the meaning of the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

39. At all relevant times, Ripe maintained control, oversight, and direction over the Plaintiff, including timekeeping, payroll, and other employment practices that applied to him.

40. At all relevant times, Ripe was "an enterprise engaged in commerce" within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were handling food made from ingredients imported from out of state and distributed in New York. In addition, Ripe conducted business with vendors and other businesses outside the State of New York, and engaged in credit card transactions involving banks and other institutions outside the State of New York.

41. Upon information and belief, at all relevant times, Ripe's annual gross volume of sales made, or business done, was not less than \$500,000.00, exclusive of separate retail

1 excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii). In the alternative,
2 Ripe was part of an integrated enterprise whose annual gross volume of sales exceeded
3 \$500,000.

4 **Freshark Franchise Corp.**

5 42. Freshark Franchise Corp. ("Freshark") is a domestic corporation organized and
6 existing under the laws of the State of New York with initial filing date of August 30, 2011.
7

8 43. Upon information and belief, Freshark owns and operates Ripe, a sit down
9 restaurant serving food and drinks to customers, located at 70-13 Austin Street, Forest Hills,
10 NY 11375.

11 44. At all relevant times, Freshark was a covered employer within the meaning of
12 the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.
13

14 45. At all relevant times, Freshark maintained control, oversight, and direction over
15 the Plaintiff, including timekeeping, payroll and other employment practices that applied to
16 him.
17

18 46. At all relevant times, Freshark was "an enterprise engaged in commerce" within
19 the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were handling food
20 made from ingredients imported from out of state and distributed in New York. In addition,
21 Freshark conducted business with vendors and other businesses outside the State of New York,
22 and engaged in credit card transactions involving banks and other institutions outside the State
23 of New York.
24

25 47. Upon information and belief, at all relevant times, Freshark's annual gross
26 volume of sales made, or business done, was not less than \$500,000.00, exclusive of separate
27 retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii). In the
28

1 alternative, Freshark was part of an integrated enterprise whose annual gross volume of sales
2 exceeded \$500,000.

3 **Individual Defendants**

4 **Peter Kambitsis**

5 48. Upon information and belief, at all relevant times, Peter Kambitsis
6 (“Kambitsis”) was, at the time of Plaintiff’s employment owner, principal, authorized operator,
7 manager, shareholder and/or agent of Corporate Defendants.
8

9 49. At all relevant times throughout Plaintiff’s employment, Kambitsis had the
10 discretionary power to create and enforce personnel decisions on behalf of the Corporate
11 Defendants, including but not limited to: hiring and terminating employees; setting and
12 authorizing issuance of wages; maintaining employee records; setting Plaintiff’s schedule;
13 instructing and supervising Plaintiff; and otherwise controlling the terms and conditions for the
14 Plaintiff while he was employed by Defendants.
15

16 50. At all relevant times throughout Plaintiff’s employment, Kambitsis was actively
17 involved in the day-to-day operations of Corporate Defendants and was in charge of their
18 finances.
19

20 51. At all relevant times throughout Plaintiff’s employment, Kambitsis was a
21 “covered employer” within the meaning of the FLSA and the NYLL, and employed or jointly
22 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to 29
23 U.S.C. § 203(d).
24

25 **Elias Kalogiros**

26 52. Upon information and belief, at all relevant times, Elias Kalogiros (“Kalogiros”)
27 was, at the time of Plaintiff’s employment owner, principal, authorized operator, manager,
28

1 shareholder and/or agent of Corporate Defendants.

2 53. At all relevant times throughout Plaintiff's employment, Kalogiros had the
3 discretionary power to create and enforce personnel decisions on behalf of the Corporate
4 Defendant, including but not limited to: hiring and terminating employees; setting and
5 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;
6 instructing and supervising Plaintiff; and otherwise controlling the terms and conditions for the
7 Plaintiff while he was employed by Defendants.
8

9 54. At all relevant times throughout Plaintiff's employment, Kalogiros was actively
10 involved in the day-to-day operations of the Corporate Defendants and was in charge of their
11 finances.
12

13 55. At all relevant times throughout Plaintiff's employment, Kalogiros was a
14 "covered employer" within the meaning of the FLSA and the NYLL, and employed or jointly
15 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to 29
16 U.S.C. § 203(d).
17

18 **Gabriel Olivera**

19 56. Upon information and belief, at all relevant times, Gabriel Olivera ("Olivera")
20 was, at the time of Plaintiff's employment owner, principal, authorized operator, manager,
21 shareholder and/or agent of Corporate Defendants.
22

23 57. At all relevant times throughout Plaintiff's employment, Olivera had the
24 discretionary power to create and enforce personnel decisions on behalf of the Corporate
25 Defendant, including but not limited to: hiring and terminating employees; setting and
26 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;
27 instructing and supervising Plaintiff; and otherwise controlling the terms and conditions for the
28

1 Plaintiff while they were employed by Defendants.

2 58. At all relevant times throughout Plaintiff's employment, Olivera was interacting
3 with the Plaintiff and other employees at Ripe, was in-charge of clocking the Plaintiff's and
4 other employees' hours, and was responsible for interviewing, hiring, and firing them.

5 59. At all relevant times throughout Plaintiff's employment, Olivera was actively
6 involved in the day-to-day operations of the Corporate Defendants and was in charge of their
7 finances.
8

9 60. At all relevant times throughout Plaintiff's employment, Olivera was a "covered
10 employer" within the meaning of the FLSA and the NYLL, and employed or jointly employed
11 Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to 29 U.S.C. §
12 203(d).
13

14 **COLLECTIVE ACTION ALLEGATIONS**

15 61. Pursuant to 29 U.S.C. §§ 203, 206, 207, 211(c) and 216(b), Plaintiff bring his
16 First, Second, and Third Causes of Action as a collective action under the FLSA on behalf of
17 himself and the following collective:
18

19 All persons employed by Defendants at any time since October 25,
20 2013, and through the entry of judgment in this case (the "Collective
21 Action Period") who worked as waiters, busers, runners, cashiers,
22 delivery employees and other non-management employees (the
23 "Collective Action Members").
24

25 62. A collective action is appropriate in these circumstances because Plaintiff and
26 the Collective Action Members are similarly situated, in that they were all subject to
27 Defendants' illegal policies of failing to pay minimum wage for all hours worked and overtime
28

1 premiums for work performed in excess of forty (40) hours each week. Plaintiff and the
2 Collective Action Members have substantially similar job duties and are paid pursuant to a
3 similar, if not the same, payment structure.

4 63. The claims of the Plaintiff stated herein are similar to those of the other
5 employees.

6
7 **FIRST CAUSE OF ACTION**

8 **Fair Labor Standards Act – Minimum Wages**

9 64. Plaintiff, on behalf of himself and the Collective Action Members, realleges and
10 incorporates by reference the allegations made in all preceding paragraphs as if fully set forth
11 herein.

12 65. At all relevant times, Plaintiff and the Collective Action Members were
13 employees and employed by Defendants within the meaning of the FLSA, 29 U.S.C. § 203(d),
14 (e)(1), and (g).

15 66. At all times relevant, Defendants have been employers of Plaintiff and the
16 Collective Action Members, and were engaged in commerce and/or the production of goods for
17 commerce within the meaning of 29 U.S.C. §§ 203 (s)(1) and 206 (a).

18 67. Defendants were required to pay directly to Plaintiff and the Collective Action
19 Members, the applicable federal minimum wage rate for all hours worked pursuant to 29 U.S.C.
20 § 206.

21 68. Defendants failed to pay Plaintiff and the Collective Action Members, their
22 earned minimum wages for all hours worked to which they were entitled to under the FLSA.

23 69. As a result of Defendants' violations of the FLSA, Plaintiff and the Collective
24 Action Members have suffered damages by being denied minimum wages in accordance with
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1 the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts,
2 liquidated damages, reasonable attorneys' fees, costs, and other compensation pursuant to 29
3 U.S.C. § 216 (b).

4 70. Defendants' unlawful conduct, as described in this Complaint, has been willful
5 and intentional. Defendants were aware, or should have been aware, that the practices described
6 in this Complaint were unlawful.

7
8 71. Defendants have not made a good faith effort to comply with the FLSA with
9 respect to the compensation of the Plaintiff and the Collective Action Members.

10 72. Defendants failed to post or keep posted conspicuous notices of Plaintiff's rights
11 as required by the U.S. Department of Labor pursuant to 29 C.F.R. § 516.4, further evincing
12 Defendants' lack of good faith.

13
14 73. Because Defendants' violations of the FLSA have been willful, a three-year
15 statute of limitations applies pursuant to 29 U.S.C. § 255(a).

16 **SECOND CAUSE OF ACTION**

17 **Fair Labor Standards Act – Unpaid Overtime Wages**

18
19 74. Plaintiff and the Collective Action Members reallege and incorporate by
20 reference the allegations made in all preceding paragraphs as if fully set forth herein.

21 75. The overtime wage provisions set forth in the FLSA, 29 U.S.C. § 207 (a)(1) and
22 the supporting federal regulations, apply to Defendants and protect Plaintiff and the Collective
23 Action Members.

24
25 76. Defendants have failed to pay Plaintiff and the Collective Action Members
26 overtime wages at a rate of one and one-half times the regular rate at which they were employed
27
28

1 for but under no instance less than one and one-half times the statutory minimum wage for all of
2 the hours that they worked in excess of forty (40) hours per workweek.

3 77. As a result of Defendants' violations of the FLSA, Plaintiff and the Collective
4 Action Members have been deprived of overtime compensation and other wages in amounts to
5 be determined at trial, and are entitled to recovery of such amounts, liquidated damages,
6 attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216 (b).
7

8 **THIRD CAUSE OF ACTION**

9 **Fair Labor Standards Act – Failure to Keep Accurate Records**

10 78. Plaintiff and the Collective Action Members reallege and incorporate by
11 reference all allegations in all preceding paragraphs.
12

13 79. Defendants were required to make, keep and preserve accurate payroll records
14 reflecting the actual hours worked by employees and the wages received by them pursuant to
15 the FLSA, 29 U.S.C. § 211(c) and the supporting Federal regulations, 29 C.F.R. §§ 516.2,
16 516.5, and 516.28.
17

18 80. By arbitrarily failing to count hours worked by Plaintiff and the Collective
19 Action Members to determine their wages, Defendants also violated 29 C.F.R. § 785.47, which
20 requires employers to compensate employees for any practically ascertainable period of time
21 worked, however small.
22

23 81. As a result, Plaintiff and the Collective Action Members, have suffered damages
24 by being deprived of their proper minimum and overtime compensation according to the actual
25 number of hours worked.
26
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28

FOURTH CAUSE OF ACTION

New York Labor Law – Minimum Wage

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2
3
4 82. Plaintiff realleges and incorporates by reference all allegations in all preceding
5 paragraphs.

6 83. Defendants have engaged in a widespread pattern, policy, and practice of
7 violating the NYLL, as detailed in this Complaint.

8
9 84. At all relevant times referenced herein, Plaintiff has been an employee of
10 Defendants, and Defendants have been employers of Plaintiff within the meaning of the NYLL
11 §§ 190, 651 (5), 652, and the supporting New York State Department of Labor Regulations.

12 85. The minimum wage provisions of Article 19 of the NYLL and the supporting
13 New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff.

14
15 86. From December 31, 2014, to December 30, 2015 the applicable hourly minimum
16 wage in the State of New York was \$8.75, and from December 31, 2015 onwards it was \$9.00
17 pursuant to NYLL § 652 and the New York State Department of Labor Regulations, 12
18 N.Y.C.R.R. Part 146-1.2.

19
20 87. Defendants were required to pay Plaintiff no less than the applicable statutory
21 minimum wage for all hours worked under the NYLL § 652 and the supporting New York State
22 Department of Labor regulations, 12 N.Y.C.R.R. Part 146-1.2.

23
24 88. Through their knowing and intentional failure to pay minimum hourly wages to
25 Plaintiff, Defendants have violated the NYLL Article 19, §§ 650 *et seq.*, and 12 N.Y.C.R.R.
26 Part 146-1.2.

27
28 89. Defendants did not even pay Plaintiff at the lower tip-credited rate frequently
claimed for food service employees.

1 90. Defendants also failed to post conspicuous notices of the Plaintiff's rights under
2 the law, as required by the NYLL § 661 and the New York State Department of Labor
3 Regulations, 12 N.Y.C.R.R. Part 146-2.4, further evincing Defendants' lack of good faith.

4 91. Defendants' failure to pay Plaintiff the minimum wage was willful within the
5 meaning of NYLL § 663.

6 92. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
7 Defendants his unpaid minimum wages, liquidated damages as provided for by the NYLL,
8 reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest, pursuant to
9 NYLL § 198 (1-a).
10

11 **FIFTH CAUSE OF ACTION**

12 **New York Labor Law – Unpaid Overtime Wages**

13 93. Plaintiff realleges and incorporates by reference all allegations in all preceding
14 paragraphs.
15

16 94. The overtime wage provisions as set forth in NYLL §§ 190 *et seq.* and the
17 supporting New York State Department of Labor Regulations apply to Defendants and protect
18 Plaintiff.
19

20 95. Defendants have failed to pay Plaintiff proper overtime which he was entitled to
21 at a wage rate of one and one-half times his regular rate but under no instance less than one and
22 one-half times the statutory minimum wage as defined by the New York State Department of
23 Labor regulations, 12 N.Y.C.R.R. Part 146-1.4.
24

25 96. Through their knowing or intentional failure to pay Plaintiff proper overtime
26 wages for hours worked in excess of forty (40) hours per workweek, Defendants have violated
27 the NYLL §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.
28

1 97. Defendants' failure to pay Plaintiff overtime compensation was willful within the
2 meaning of NYLL § 663.

3 98. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
4 Defendants his unpaid overtime wages, liquidated damages as provided for by the NYLL,
5 reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest,
6 pursuant to NYLL § 198 (1-a).
7

8 **SIXTH CAUSE OF ACTION**

9 **New York Labor Law– Spread-of-Hours Pay**

10
11 99. Plaintiff realleges and incorporates by reference all allegations in all preceding
12 paragraphs.

13 100. The spread-of-hours provisions as set forth in NYLL §§ 190 *et seq.* and the
14 supporting New York State Department of Labor Regulations apply to Defendants and protect
15 Plaintiff.
16

17 101. Defendants have failed to pay Plaintiff spread-of-hours compensation of one
18 hour's pay at the basic minimum hourly wage rate for each day during which Plaintiff's shift
19 exceeded ten (10) hours, as defined by the New York State Department of Labor regulations, 12
20 N.Y.C.R.R. Part 146-1.6.
21

22 102. Through their knowing or intentional failure to pay Plaintiff spread-of-hours
23 compensation, Defendants have willfully violated the NYLL §§ 190 *et seq.*, and the supporting
24 New York State Department of Labor Regulations.
25

26 103. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
27 Defendants his unpaid spread-of-hours pay, liquidated damages as provided for by the NYLL,
28

1 reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest, pursuant to
2 NYLL § 198 (1-a).

3
4 **SEVENTH CAUSE OF ACTION**

5 **New York Labor Law– Failure to Keep Accurate Records**

6
7 104. Plaintiff realleges and incorporates by reference all allegations in all preceding
8 paragraphs.

9
10 105. Defendants were required to establish, maintain and preserve for not less than six
11 years contemporaneous, true, and accurate payroll records showing, *inter alia*, for each week
12 worked the regular hourly rate of pay, the overtime rate of pay, the number of regular hours
13 worked, and the number of overtime hours worked pursuant to NYLL §§ 195(4) and 661 and
14 the New York Department of Labor Regulations, 12 NYCRR 146-2.1.

15
16 106. By intentionally failing to account for Plaintiff's entire amount of hours worked,
17 Plaintiff has suffered damages by being deprived of his proper compensation according to the
18 actual number of hours worked.

19
20 **EIGHTH CAUSE OF ACTION**

21 **New York Labor Law– Failure to Provide Notice at the Time of Hiring**

22
23 107. Plaintiff realleges and incorporates by reference all allegations in all preceding
24 paragraphs.

25
26 108. Defendants have failed to provide Plaintiff, at the time of hiring or at any point
27 thereafter, a notice containing the rate of pay and basis thereof, whether paid by the hour, shift,
28 day, week, salary, piece, commission, or other; the regular pay day designated by the employer;

1 the physical address of the employer's main office or principal place of business; the telephone
2 number of the employer, and anything otherwise required by law, in violation of NYLL §
3 195(1).

4 109. Due to Defendants' violations of the NYLL § 195(1), Plaintiff is entitled to
5 recover from Defendants statutory damages of Fifty dollars (\$50) per workday that the violation
6 occurred, up to a maximum of Five Thousand Dollars (\$5,000), pursuant to NYLL § 198 (1-b).

7
8 **NINTH CAUSE OF ACTION**

9 **New York Labor Law– Failure to Provide Wage Statements**

10 110. Plaintiff realleges and incorporates by reference all allegations in all preceding
11 paragraphs.

12 111. Defendants have failed to provide Plaintiff with wage statements listing all his
13 hours of work; rate of pay; basis of pay; the period covered; and overtime pay, in violation of
14 NYLL § 195(3).

15 112. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from
16 Defendants statutory damages of Two Hundred and Fifty dollars (\$250) per workday that the
17 violation occurred, up to a maximum of Five Thousand Dollars (\$5,000), pursuant to NYLL §
18 198 (1-d).

19
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21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff seeks the following relief:

23 A. Designating this action as a collective action and authorizing prompt issuance of
24 notice pursuant to 29 U.S.C. § 216(b) to all putative collective action members, apprising them
25 of the pendency of this action, and permitting them promptly to file consents to be Plaintiff in
26 the FLSA claims in this action;
27
28

1 B. An order tolling the statute of limitations;

2 C. Issuance of a declaratory judgment that the practices complained of in this
3 complaint are unlawful under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, New
4 York Labor Law, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting
5 New York State Department of Labor Regulations;

6 D. Unpaid minimum wages, and overtime pay under the FLSA and an additional
7 and equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and the supporting
8 United States Department of Labor regulations;

9 E. Unpaid minimum wages, overtime wages, and spread-of-hours pay under
10 NYLL, and an additional and equal amount as liquidated damages pursuant to NYLL §198(1-
11 a) and § 663(1);

12 F. Civil penalties of One Thousand One Hundred Dollars (\$1,100) for each of
13 Defendants' willful and repeated violations of the FLSA pursuant to 29 U.S.C. § 216(b);

14 G. An award of statutory damages for Defendants' failure to provide Plaintiff with
15 a wage notice at the time of hiring pursuant to NYLL § 198 (1-b);

16 H. An award of statutory damages for Defendants' failure to provide Plaintiff with
17 wage statements pursuant to NYLL § 198 (1-d);

18 I. A permanent injunction requiring Defendants to pay all statutorily required
19 wages pursuant to the FLSA and NYLL;

20 J. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b), are not awarded,
21 an award of prejudgment interest pursuant to 28 U.S.C. § 1961;

22 K. An award of pre-judgment interest of nine per centum per annum (9%)
23 pursuant to the New York Civil Practice Law and Rules §§ 5001-5004;

1 L. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the
2 New York Civil Practice Law and Rules § 5003;

3 M. An award of attorney's fees, costs, and further expenses up to fifty dollars,
4 pursuant to 29 U.S.C. § 216(b), and NYLL §§ 198 and 663(1);

5 N. Such other relief as this Court shall deem just and proper.
6

7 Dated: October 25, 2016
8
9

10 Respectfully submitted,
11 **PARDALIS & NOHAVICKA, LLP**

12 By: /s/Ariadne Panagopoulou
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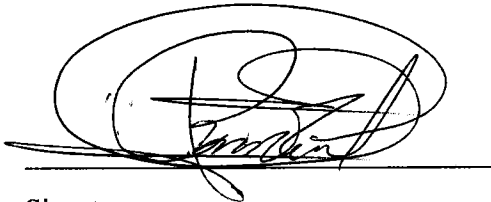
NOTICE OF CONSENT TO JOIN, PURSUANT TO 29 U.S.C. 216(b)

FAIR LABOR STANDARDS ACT CONSENT FORM

I consent to be a party plaintiff in a lawsuit against **Ripe Restaurant** and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. Section 216(b). I hereby designate Pardalis & Nohavicka LLP to represent me in such a lawsuit.

Dated: 9/19/2016

Astoria, New York

A handwritten signature in black ink, appearing to read "Roberto Rivas", is written over a horizontal line. The signature is somewhat stylized and cursive.

Signature

Roberto Rivas

Print Name

9814 Alstine Ave

Address

347.813.2855

Telephone

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Roberto Rivas, on behalf of himself and others)
 similarly situated,)

Plaintiff(s)

v.)

Ripe Juice Bar & Grill, Freshark Franchise Corp.,)
 Peter Kambitsis, Elias Kalogiros, and Gabriel Olivera,)
 jointly and severally,)

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ripe Juice Bar & Grill, Peter Kambitsis, Gabriel Olivera
 70-13 Austin Street
 Forest Hills, NY 11375

Freshark Franchise Corp., Elias Kalogiros
 312 Sunrise Hwy
 Rockville Centre, NY 11570

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:

PARDALIS & NOHAVICKA, LLP
 35-10 Broadway, Suite 201
 Astoria, NY 11106

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

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

ROBERTO RIVAS, on behalf of himself and others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

PARDALIS & NOHAVICKA LLP
35-10 Broadway; Astoria, NY, 11106; 718-777-0400

DEFENDANTS

RIPE JUICE BAR & GRILL, FRESHARK FRANCHISE CORP.,
PETER KAMBITSIS, ELIAS KALOGIROS, and GABRIEL OLIVERA,
jointly and severally.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPER RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX CLAIMS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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):
29 USC 201 et. seq.

Brief description of cause:
Unpaid minimum and overtime wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 200,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 10/25/2016

SIGNATURE OF ATTORNEY OF RECORD

Anadine

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, Ariadne Panagopoulou, 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:

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? 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? 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

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?

(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: Ariadne

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ripe Juice Bar & Grill Squeezed with FLSA Class Action](#)
