

MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165
Telephone: (212) 317-1200
Facsimile: (212) 317-1620
Attorneys for Plaintiffs

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

-----X
JOSE DE JESUS ROQUE LOPEZ and
BONIFACIO BARTOLO JUSTO, *individually*
and on behalf of others similarly situated,

Plaintiffs,

-against-

PRONTO PIZZA 02 LLC (D/B/A PRONTO
PIZZA), PRONTO PIZZA 03 LLC (D/B/A
PRONTO PIZZA), KASH MIFTARI,
DASHNOR DASH MIFTARI, and BESNIK
STEVIE MIFTARI,

Defendants.

-----X

COMPLAINT

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

ECF Case

Plaintiffs Jose de Jesus Roque Lopez and Bonifacio Bartolo Justo, individually and on behalf of others similarly situated (collectively, “Plaintiffs”), by and through their attorneys, Michael Faillace & Associates, P.C., upon their knowledge and belief, and as against Pronto Pizza 02 LLC (d/b/a Pronto Pizza), Pronto Pizza 03 LLC (d/b/a Pronto Pizza), (“Defendant Corporations”), Kash Miftari, Dashnor Dash Miftari, and Besnik Stevie Miftari, (“Individual Defendants”), (collectively, “Defendants”), allege as follows:

NATURE OF ACTION

1. Plaintiffs are former employees of Defendants Pronto Pizza 02 LLC (d/b/a Pronto Pizza), Pronto Pizza 03 LLC (d/b/a Pronto Pizza), Kash Miftari, Dashnor Dash Miftari, and Besnik Stevie Miftari.

2. Defendants own, operate, or control two pizzerias, located at 738 Forest Avenue, Staten Island, New York 10310 and at 329 Richmond Avenue, Staten Island, New York 10312 both under the name “Pronto Pizza”.

3. Upon information and belief, individual Defendants Kash Miftari, Dashnor Dash Miftari, and Besnik Stevie Miftari, serve or served as owners, managers, principals, or agents of Defendant Corporations and, through these corporate entities, operate or operated the restaurants as a joint or unified enterprise.

4. Plaintiffs were employed as a cook, a food preparer, and a drain cleaner at the two pizzerias located at 738 Forest Avenue, Staten Island, New York 10310 and 329 Richmond Avenue, Staten Island, New York 10312.

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

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

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

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

9. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiffs and other employees to work in excess of forty (40) hours per week without

providing the minimum wage and overtime compensation required by federal and state law and regulations.

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

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

JURISDICTION AND VENUE

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

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

PARTIES

Plaintiffs

14. Plaintiff Jose de Jesus Roque Lopez (“Plaintiff Roque” or “Mr. Roque”) is an adult individual residing in Richmond County, New York.

15. Plaintiff Roque was employed by Defendants at Pronto Pizza from approximately 2008 until on or about September 25, 2018.

16. Plaintiff Bonifacio Bartolo Justo (“Plaintiff Bartolo” or “Mr. Bartolo”) is an adult individual residing in Richmond County, New York.

17. Plaintiff Bartolo was employed by Defendants at Pronto Pizza from approximately 2010 until on or about June 15, 2017, from approximately June 22, 2017 until on or about February 15, 2018, and from approximately February 22, 2018 until on or about September 25, 2018.

Defendants

18. At all relevant times, Defendants owned, operated, or controlled two pizzerias, located at 738 Forest Avenue, Staten Island, New York 10310 and at 329 Richmond Avenue, Staten Island, New York 10312 both under the name “Pronto Pizza”.

19. Upon information and belief, Pronto Pizza 02 LLC (d/b/a Pronto Pizza) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 738 Forest Avenue, Staten Island, New York 10310.

20. Upon information and belief, Pronto Pizza 03 LLC (d/b/a Pronto Pizza) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 329 Richmond Avenue, Staten Island, New York 10312.

21. Defendant Kash Miftari is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Kash Miftari is sued individually

in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Kash Miftari possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiffs, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

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

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

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

24. Defendants operate two pizzerias located in the West Brighton and Mariner's Harbor sections of Staten Island in New York City.

25. Individual Defendants, Kash Miftari, Dashnor Dash Miftari, and Besnik Stevie Miftari, possess operational control over Defendant Corporations, possess ownership interests in Defendant Corporations, and control significant functions of Defendant Corporations.

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

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

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

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

30. Upon information and belief, Individual Defendants Kash Miftari, Dashnor Dash Miftari, and Besnik Stevie Miftari operate Defendant Corporations as either alter egos of themselves and/or failed to operate Defendant Corporations as entities legally separate and apart from themselves, by among other things:

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

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

32. In each year from 2012 to 2018, Defendants, both separately and jointly, had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

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

Individual Plaintiffs

34. Plaintiffs are former employees of Defendants who were employed as a cook, food preparer and a drain cleaner.

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

Plaintiff Jose de Jesus Roque Lopez

36. Plaintiff Roque was employed by Defendants from approximately 2008 until on or about September 25, 2018.

37. Defendants employed Plaintiff Roque as a cook.

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

39. Plaintiff Roque's work duties required neither discretion nor independent judgment.

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

41. From approximately October 2012 until on or about September 25, 2018, Plaintiff Roque worked from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays through Thursdays and from approximately 10:00 a.m. until on or about 12:00 p.m., Fridays and Saturdays (typically 80 hours per week).

42. Throughout his employment, Defendants paid Plaintiff Roque his wages in cash.

43. From approximately October 2012 until on or about December 2012, Defendants paid Plaintiff Roque a fixed salary of \$400 per week.

44. From approximately January 2013 until on or about December 2013, Defendants paid Plaintiff Roque a fixed salary of \$425 per week.

45. From approximately January 2014 until on or about December 2014, Defendants paid Plaintiff Roque a fixed salary of \$450 per week.

46. From approximately January 2015 until on or about December 2015, Defendants paid Plaintiff Roque a fixed salary of \$475 per week.

47. From approximately January 2016 until on or about December 2016, Defendants paid Plaintiff Roque a fixed salary of \$500 per week.

48. From approximately January 2017 until on or about September 25, 2018, Defendants paid Plaintiff Roque a fixed salary of \$550 per week.

49. Defendants never granted Plaintiff Roque any breaks or meal periods of any kind.

50. Plaintiff Roque was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

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

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

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

54. Defendants required Plaintiff Roque to purchase “tools of the trade” with his own funds—including six shirts, eight pairs of pants, thirty pairs of shoes, and thirty hats.

Plaintiff Bonifacio Bartolo Justo

55. Plaintiff Bartolo was employed by Defendants at Pronto Pizza from approximately 2010 until on or about June 15, 2017, from approximately June 22, 2017 until on or about February 15, 2018, and from approximately February 22, 2018 until on or about September 25, 2018.

56. Defendants employed Plaintiff Bartolo as a food preparer and a drain cleaner.

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

58. Plaintiff Bartolo’s work duties required neither discretion nor independent judgment.

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

60. From approximately October 2012 until on or about March 2017, Plaintiff Bartolo worked at the Forest Avenue location from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays, Wednesdays, and Thursdays, from approximately 10:00 a.m. until on or about 12:00 a.m., Fridays and Saturdays, and from approximately 11:00 a.m. until on or about 11:00 p.m., on Sundays (typically 75 hours per week).

61. From approximately March 2017 until on or about May 2017, Plaintiff Bartolo worked at the Richmond Avenue location from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays, Wednesdays, and Thursdays, from approximately 10:00 a.m. until on or about 11:00 p.m., Fridays and Saturdays, and from approximately 11:00 a.m. until on or about 11:00 p.m., Sundays (typically 75 hours per week).

62. From approximately May 2017 until on or about June 15, 2017, from approximately June 22, 2017 until on or about February 15, 2018, and from approximately February 22, 2018 until on or about June 2018, Plaintiff Bartolo worked at the Forest Avenue location from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays, Wednesdays, and Thursdays, from approximately 10:00 a.m. until on or about 11:00 p.m., Fridays and Saturdays, and from approximately 11:00 a.m. until on or about 11:00 p.m., Sundays (typically 75 hours per week).

63. From approximately June 2018 until on or about August 2018, Plaintiff Bartolo worked at the Forest Avenue location from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays through Thursdays, from approximately 10:00 a.m. until on or about 12:00 a.m., Fridays and Saturdays, and from approximately 11:00 a.m. until on or about 11:00 p.m., Sundays (typically 92 hours per week).

64. From approximately September 1, 2018 until on or about September 25, 2018, Plaintiff Bartolo worked at the Forest Avenue location from approximately 10:00 a.m. until on or about 11:00 p.m., Mondays through Wednesdays, from approximately 10:00 a.m. until on or about 12:00 a.m., Fridays and Saturdays, and from approximately 11:00 a.m. until on or about 11:00 p.m., Sundays (typically 79 hours per week).

65. Throughout his employment, Defendants paid Plaintiff Bartolo his wages in cash.

66. From approximately October 2012 until on or about December 2012, Defendants paid Plaintiff Bartolo a fixed salary of \$325 per week.

67. From approximately January 2013 until on or about December 2013, Defendants paid Plaintiff Bartolo a fixed salary of \$345 per week.

68. From approximately January 2014 until on or about December 2014, Defendants paid Plaintiff Bartolo a fixed salary of \$370 per week.

69. From approximately January 2015 until on or about December 2015, Defendants paid Plaintiff Bartolo a fixed salary of \$395 per week.

70. From approximately January 2016 until on or about February 2017, Defendants paid Plaintiff Bartolo a fixed salary of \$445 per week.

71. From approximately March 2017 until on or about June 2018, Defendants paid Plaintiff Bartolo a fixed salary of \$500 per week.

72. From approximately June 2018 until on or about August 2018, Defendants paid Plaintiff Bartolo a fixed salary of \$590 per week.

73. From approximately September 1, 2018 until on or about September 25, 2018, Defendants paid Plaintiff Bartolo a fixed salary of \$500 per week.

74. Defendants never granted Plaintiff Bartolo any breaks or meal periods of any kind.

75. Plaintiff Bartolo was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

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

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

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

Defendants' General Employment Practices

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

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

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

82. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets and payroll records.

83. Defendants paid Plaintiffs their wages in cash.

84. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

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

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

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

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

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

FLSA COLLECTIVE ACTION CLAIMS

90. Plaintiffs bring their FLSA minimum wage, overtime compensation, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons (the "FLSA Class members"), i.e., persons who are or were

employed by Defendants or any of them, on or after the date that is three years before the filing of the complaint in this case (the “FLSA Class Period”).

91. At all relevant times, Plaintiffs and other members of the FLSA Class were similarly situated in that they had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans including willfully failing and refusing to pay them the required minimum wage, overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA, and willfully failing to keep records as required under the FLSA.

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

FIRST CAUSE OF ACTION

VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA

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

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

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

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

97. Defendants failed to pay Plaintiffs (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

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

99. Plaintiffs (and the FLSA Class members) were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION

VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA

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

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

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

103. Plaintiffs (and the FLSA Class members) were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

VIOLATION OF THE NEW YORK MINIMUM WAGE ACT

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

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

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

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

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

FOURTH CAUSE OF ACTION

VIOLATION OF THE OVERTIME PROVISIONS

OF THE NEW YORK STATE LABOR LAW

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

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

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

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

FIFTH CAUSE OF ACTION

VIOLATION OF THE SPREAD OF HOURS WAGE ORDER

OF THE NEW YORK COMMISSIONER OF LABOR

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

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

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

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

SIXTH CAUSE OF ACTION

VIOLATION OF THE NOTICE AND RECORDKEEPING

REQUIREMENTS OF THE NEW YORK LABOR LAW

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

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

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

SEVENTH CAUSE OF ACTION

VIOLATION OF THE WAGE STATEMENT PROVISIONS

OF THE NEW YORK LABOR LAW

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

121. With each payment of wages, Defendants failed to provide Plaintiffs with an accurate statement listing each of the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross

wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

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

EIGHTH CAUSE OF ACTION

RECOVERY OF EQUIPMENT COSTS

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

124. Defendants required Plaintiffs to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform their jobs, further reducing their wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

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

PRAYER FOR RELIEF

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

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

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

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

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

(e) Declaring that Defendants' violations of the provisions of the FLSA were willful as to Plaintiffs and the FLSA Class members;

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

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

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

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

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

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

(l) Declaring that Defendants' violations of the provisions of the NYLL and spread of hours wage order were willful as to Plaintiffs;

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

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

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

(p) Awarding Plaintiffs and the FLSA Class members pre-judgment and post-judgment interest as applicable;

(q) Awarding Plaintiffs and the FLSA Class members the expenses incurred in this action, including costs and attorneys' fees;

(r) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

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

JURY DEMAND

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

Dated: New York, New York
October 9, 2018

MICHAEL FAILLACE & ASSOCIATES, P.C.

By: /s/ Michael Faillace
Michael Faillace [MF-8436]
60 East 42nd Street, Suite 4510
New York, New York 10165
Telephone: (212) 317-1200
Facsimile: (212) 317-1620
Attorneys for Plaintiffs

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 4510
New York, New York 10165

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

Faillace@employmentcompliance.com

October 3, 2018

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Jose de Jesus Roque Lopez

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

Signature / Firma:  _____

Date / Fecha: Octubre 3, 2018

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 4510
New York, New York 10165

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

Faillace@employmentcompliance.com

October 8, 2018

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Bonifacio Bartolo Justo

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

Signature / Firma:



Date / Fecha: 08 de octubre de 2018

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

JOSE DE JESUS ROQUE LOPEZ and BONIFACIO BARTOLO JUSTO, individually and on behalf of others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael A. Faillace, Michael Faillace & Associates, P.C. 60 East 42nd Suite 4510 New York, NY 10165

DEFENDANTS

PRONTO PIZZA 02 LLC (D/B/A PRONTO PIZZA), PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA), KASH MIFTARI, DASHNOR DASH MIFTARI, and BESNIK STEVIE MIFTARI,

County of Residence of First Listed Defendant Kings (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Plaintiffs seek unpaid overtime wages pursuant to The Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. Brief description of cause: unpaid overtime wages

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 10/09/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Faillace

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, Michael Faillace, 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? N/A

(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: /s/ Michael Faillace

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSE DE JESUS ROQUE LOPEZ and BONIFACIO
BARTOLO JUSTO, individually and on behalf of
others similarly situated,

Plaintiff(s)

v.

Civil Action No.

PRONTO PIZZA 02 LLC (D/B/A PRONTO PIZZA),
PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA),
KASH MIFTARI, DASHNOR DASH MIFTARI, and
BESNIK STEVIE MIFTARI

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Pronto Pizza 02 LLC
c/o Pronto Pizza
738 Forest Avenue
Staten Island, New York 10310

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: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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.

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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSE DE JESUS ROQUE LOPEZ and BONIFACIO
BARTOLO JUSTO, individually and on behalf of
others similarly situated,

Plaintiff(s)

v.

Civil Action No.

PRONTO PIZZA 02 LLC (D/B/A PRONTO PIZZA),
PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA),
KASH MIFTARI, DASHNOR DASH MIFTARI, and
BESNIK STEVIE MIFTARI

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Kash Miftari
c/o Pronto Pizza
738 Forest Avenue
Staten Island, New York 10310

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:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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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.

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Server's signature

Printed name and title

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UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSE DE JESUS ROQUE LOPEZ and BONIFACIO
BARTOLO JUSTO, individually and on behalf of
others similarly situated,

Plaintiff(s)

v.

Civil Action No.

PRONTO PIZZA 02 LLC (D/B/A PRONTO PIZZA),
PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA),
KASH MIFTARI, DASHNOR DASH MIFTARI, and
BESNIK STEVIE MIFTARI

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Dashnor Dash Miftari
c/o Pronto Pizza
738 Forest Avenue
Staten Island, New York 10310

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: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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.

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))

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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

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UNITED STATES DISTRICT COURT

for the

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JOSE DE JESUS ROQUE LOPEZ and BONIFACIO
BARTOLO JUSTO, individually and on behalf of
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Plaintiff(s)

v.

Civil Action No.

PRONTO PIZZA 02 LLC (D/B/A PRONTO PIZZA),
PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA),
KASH MIFTARI, DASHNOR DASH MIFTARI, and
BESNIK STEVIE MIFTARI

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Besnik Stevie Miftari
c/o Pronto Pizza
738 Forest Avenue
Staten Island, New York 10310

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: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____ 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)*:

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Plaintiff(s)

v.

Civil Action No.

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PRONTO PIZZA 03 LLC (D/B/A PRONTO PIZZA),
KASH MIFTARI, DASHNOR DASH MIFTARI, and
BESNIK STEVIE MIFTARI

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Pronto Pizza 03 LLC
c/o Pronto Pizza
329 Richmond Avenue
Staten Island, New York 10312

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: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

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.

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Signature of Clerk or Deputy Clerk

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_____ 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

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pronto Pizza Hit with Former Employees' Wage and Hour Suit](#)
