

MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165
(212) 317-1200

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

-----X
LEONIDES ROSALES, *individually and on behalf of
others similarly situated,*

Plaintiff,

-against-

TANDOORI TOUCH LLC. (d/b/a TANDOORI
TOUCH), AVREET INC. (d/b/a TANDOORI
TOUCH), PUNJAB KABAB HOUSE INC. (d/b/a
PUNJABI KABAB HOUSE), BABAR RAJA,
SHAWN M., JOHN HO and HASAN SULTAN,

Defendants.

-----X

COMPLAINT

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

ECF Case

Plaintiff Leonides Rosales (“Plaintiff Rosales” or “Mr. Rosales”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., and as against each of Defendants Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House) (“Defendant Corporations”), Babar Raja, Shawn M., John Ho and Hasan Sultan (“Individual Defendants”) (collectively, “Defendants”), alleges upon information and belief as follows:

NATURE OF ACTION

1. Plaintiff Rosales was an employee of Defendants Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House), Babar Raja, Shawn M., John Ho and Hasan Sultan, who own or owned and operate or operated “Tandoori Touch”.

2. “Tandoori Touch” was an Asian restaurant owned by Babar Raja, Shawn M., John Ho and Hasan Sultan which was located at 495 South Broadway, Ste. 18, Hicksville, NY 11801.

3. Upon information and belief, Defendants Babar Raja, Shawn M., John Ho and Hasan Sultan serve or served as owners, managers, principals or agents of Defendant Corporations and through these corporate entities operate or operated the restaurant as a joint or unified enterprise.

4. Plaintiff Rosales is a former employee of Defendants.

5. Plaintiff Rosales worked long days as a cook at the restaurant which was located at 495 South Broadway Ste. 18, Hicksville, NY 11801.

6. Plaintiff Rosales regularly worked for Defendants in excess of 40 hours per week, without appropriate minimum wage and overtime compensation for any of the hours that he worked over 40 each week.

7. Rather, Defendants failed to maintain accurate records of hours worked and failed to pay Plaintiff Rosales appropriately for any hours work, either at the straight rate of pay or for any additional overtime premium.

8. Further, defendants failed to pay Plaintiff Rosales the required “spread of hours” pay for any day in which he worked over 10 hours per day.

9. Defendants’ conduct extended beyond Plaintiff Rosales to all other similarly situated employees.

10. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Rosales 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.

11. Plaintiff Rosales now brings this action on behalf of himself, 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.

12. Plaintiff Rosales seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1337 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Rosales’ state law claims is conferred by 28 U.S.C. § 1367(a).

14. Venue is proper in this District under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their business in this district, and Plaintiff Rosales was employed by Defendants in this district.

PARTIES

Plaintiff

15. Plaintiff Leonides Rosales (“Plaintiff Rosales” or Mr. “Rosales”) is an adult individual residing in Queens County, New York. Plaintiff Rosales was employed as a cook by Defendants from approximately September 2014 until on or about January 29, 2018.

16. Plaintiff Rosales consents to being party plaintiff pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

Defendants

17. At all times relevant to this complaint, Defendants owned, operated and/or controlled an Asian restaurant located at 495 South Broadway Ste. 18, Hicksville, NY 11801 under the name of Tandoori Touch.

18. Upon information and belief, Defendant Tandoori Touch LLC is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintained its principle place of business at 495 South Broadway Ste. 18, Hicksville, NY 11801.

19. Upon information and belief, Defendant Avreet Inc. is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintained its principle place of business at 495 South Broadway Ste. 18, Hicksville, NY 11801.

20. Upon information and belief, Defendant Punjab Kabab House Inc. is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintained its principle place of business at 495 South Broadway Ste. 18, Hicksville, NY 11801.

21. Defendant Babar Raja is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Babar Raja is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations.

Defendant Babar Raja possesses or possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controlled significant functions of Defendant Corporations. Defendant Babar Raja determined the wages and compensation of employees, including Plaintiff Rosales, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

22. Defendant Shawn M. is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Shawn M. is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations. Defendant Shawn M. possesses or possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controlled significant functions of Defendant Corporations. Defendant Shawn M. determined the wages and compensation of employees, including Plaintiff Rosales, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

23. Defendant John Ho is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant John Ho is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations. Defendant John Ho possesses or possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controlled significant functions of Defendant Corporations. Defendant John Ho determined the wages and compensation of employees, including Plaintiff Rosales, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

24. Defendant Hasan Sultan is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Hasan Sultan is

sued individually in his capacity as an owner, officer and/or agent of Defendant Corporations. Defendant Hasan Sultan possesses or possessed operational control over Defendant Corporations, an ownership interest in Defendant Corporations, or controlled significant functions of Defendant Corporations. Defendant Hasan Sultan determined the wages and compensation of employees, including Plaintiff Rosales, established the schedules of employees, maintained employee records, and had the authority to hire and fire employees.

Defendants Constitute Joint Employers

25. Defendants operate an Asian restaurant located at 495 South Broadway Ste. 18, Hicksville, NY 11801.

26. Individual Defendants Babar Raja, Shawn M., John Ho and Hasan Sultan possess operational control over Defendant Corporations, possess an ownership interest in Defendant Corporations, and control significant functions of Defendant Corporations.

27. 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.

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

29. Defendants jointly employed Plaintiff Rosales, and all similarly situated individuals, and were Plaintiff Rosales' (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

30. In the alternative, Defendants constituted a single employer of Plaintiff Rosales and/or similarly situated individuals.

31. Upon information and belief, Individual Defendants Babar Raja, Shawn M., John Ho and Hasan Sultan operate Defendant Corporations as either alter egos of themselves, and/or fail to operate Defendant Corporation 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 separate and legally distinct entities;
- (b) defectively forming or maintaining Defendant Corporations, by among other things failing to hold annual meetings or maintaining appropriate corporate records;
- (c) transferring assets and debts freely as between all Defendants;
- (d) operating Defendant Corporations for their own benefit as the sole or majority shareholders;
- (e) operating Defendant Corporations for their own benefit and maintaining control over it as closed corporations or closely controlled entities;
- (f) intermingling assets and debts of their own with Defendant Corporations;
- (g) diminishing and/or transferring assets of Defendant Corporations to protect their own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

32. At all relevant times, Defendants were Plaintiff Rosales' employers within the meaning of the FLSA and NYLL.

33. Defendants had the power to hire and fire Plaintiff Rosales, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for Plaintiff Rosales' services.

34. In each year from 2014 to 2018, Defendants, both individually and jointly, had gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

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

Individual Plaintiff

36. Plaintiff Rosales is a former employee of Defendants, who was employed as a cook.

37. Plaintiff Rosales seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

Plaintiff Leonides Rosales

38. Plaintiff Rosales was employed by Defendants from approximately September 2014 until on or about January 29, 2018.

39. At all relevant times, Plaintiff Rosales was employed by Defendants to work as a cook.

40. Plaintiff Rosales regularly handled goods in interstate commerce, such as food, condiments and supplies necessary to perform his duties as a cook.

41. Plaintiff Rosales' work duties required neither discretion nor independent judgment.

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

43. From approximately September 2014 until on or about January 29, 2018, Plaintiff Rosales worked from approximately 11:00 a.m. until on or about 10:00 p.m. Mondays, Wednesdays and Thursdays, from approximately 10:30 a.m. until on or about 11:00 p.m. Fridays and Saturdays and from approximately 11:00 a.m. until on or about 10:30 p.m. on Sundays (typically 69.5 hours per week).

44. Throughout his employment with defendants, Plaintiff Rosales was paid his wages in cash.

45. From approximately September 2014 until on or about January 29, 2018, defendants paid Plaintiff Rosales a flat weekly salary of \$750.00 per week.

46. However, from approximately March 2016 until on or about June 2016, Defendants did not pay Plaintiff Rosales his whole salary and still owe him \$1,750 in unpaid wages and 10 days of work that were not paid (three days of one week, one full week and another day of work of another week).

47. Plaintiff Rosales' wages did not vary regardless of how many additional hours he worked in a week.

48. In fact, Defendants required Plaintiff Rosales to work one hour past his scheduled departure time on Fridays and Saturdays and 30 extra minutes on Sundays without compensating him for the additional time they required him to work.

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

50. Plaintiff Rosales 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. Defendants did not provide Plaintiff Rosales with any document or other statement accounting for his actual hours worked, or setting forth the rate of pay for all of his hours worked.

52. No notification, either in the form of posted notices, or other means, was ever given to Plaintiff Rosales regarding wages as required under the FLSA and NYLL.

53. Defendants did not provide Plaintiff Rosales with each payment of wages a statement of wages, as required by NYLL 195(3).

54. Defendants did not give any notice to Plaintiff Rosales, in English and in Spanish (Plaintiff Rosales' 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

55. Defendants regularly required Plaintiff Rosales to work in excess of forty (40) hours per week without paying him the required minimum wage, spread of hours pay and overtime compensation.

56. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Rosales and all similarly situated employees to work in excess of forty (40) hours per week without paying them appropriate minimum and overtime compensation, as required by federal and state laws.

57. Defendants paid Plaintiff Rosales all of his wages in cash.

58. Plaintiff Rosales was a victim of Defendants' common policy and practices which violated his rights under the FLSA and New York Labor Law by, *inter alia*, not paying him the wages he was owed for the hours he worked.

59. Defendants habitually required Plaintiff Rosales to work additional hours beyond his regular shifts but did not provided him with any additional compensation.

60. As part of their regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiff Rosales by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL.

61. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the Fair Labor Standards Act and New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

62. Defendants paid Plaintiff Rosales a fixed weekly salary regardless of the number of hours he worked each week.

63. Defendants failed to post required wage and hour posters in the restaurant, and did not provide Plaintiff Rosales with statutorily required wage and hour records or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Rosales' relative lack of sophistication in wage and hour laws.

64. Defendants also failed to provide Plaintiff Rosales with statutorily required wage and hour records or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Rosales' relative lack of sophistication in wage and hour laws.

65. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Rosales (and similarly situated individuals) worked,

and to avoid paying Plaintiff Rosales properly for his full hours worked, including minimum wage, overtime compensation and spread of hours pay.

70. 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.

71. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiff Rosales and other similarly situated current and former employees.

72. Defendants failed to provide Plaintiff Rosales and other employees with wage statements at the time of payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employers; address and phone number of employers; 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).

73. Defendants failed to provide Plaintiff Rosales 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 employers; the name of the employers; any "doing business as" names used by the employers; the physical address of the employers' main office or principal place of business, and mailing addresses if different; and the telephone numbers of the employers, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

74. Plaintiff Rosales brings his 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 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"), as employees of Tandoori Touch (the "FLSA Class").

75. At all relevant times, Plaintiff Rosales and other members of the FLSA Class who are and/or were similarly situated, have had substantially similar job requirements and pay provisions, and were subject to Defendants' common practices, policies, programs, procedures, protocols and plans of 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, willfully taking improper wage deductions and other improper credits against Plaintiff Rosales' wages for which Defendants did not qualify under the FLSA, and willfully failing to keep records required by the FLSA.

76. The claims of the Plaintiff stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION

VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA

77. Plaintiff Rosales repeats and realleges all paragraphs above as though fully set forth herein.

78. At all times relevant to this action, Defendants were Plaintiff Rosales's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Rosales (and the FLSA class members), control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for employment.

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

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

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

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

83. Plaintiff Rosales (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

84. Plaintiff Rosales repeats and re-alleges all paragraphs above as though fully set forth herein.

85. Defendants, in violation of the FLSA, failed to pay Plaintiff Rosales (and the FLSA Class members) 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 workweek, in violation of 29 U.S.C. § 207 (a)(1).

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

87. Plaintiff Rosales (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 RATE

88. Plaintiff Rosales repeats and realleges all paragraphs above as though fully set forth herein.

89. At all times relevant to this action, Defendants were Plaintiff Rosales's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Rosales (and the FLSA Class members), controlled terms and conditions of employment, and determine the rates and methods of any compensation in exchange for employment.

90. Defendants, in violation of the NYLL, paid Plaintiff Rosales (and the FLSA Class members) less than the minimum wage in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor.

91. Defendants' failure to pay Plaintiff Rosales (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

92. Plaintiff Rosales (and the FLSA Class Members) 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 LAWS

93. Plaintiff Rosales repeats and re-alleges all paragraphs above as though fully set forth herein.

94. Defendants, in violation of the NYLL and associated rules and regulations, failed to pay Plaintiff Rosales (and the FLSA Class members) 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 workweek, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor.

95. Defendants failed to pay Plaintiff Rosales (and the FLSA Class members) in a timely fashion, as required by Article 6 of the New York Labor Law.

96. Defendants' failure to pay Plaintiff Rosales (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

97. Plaintiff Rosales (and the FLSA Class Members) 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

98. Plaintiff Rosales repeats and re-alleges all paragraphs above as though fully set forth herein.

99. Defendants failed to pay Plaintiff Rosales (and the FLSA Class members) one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Rosales' spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.*, and 650 *et seq.*, and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6.

100. Defendants' failure to pay Plaintiff Rosales (and the FLSA Class members) an additional hour's pay for each day Plaintiff Rosales' (and the FLSA Class members) spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

101. Plaintiff Rosales (and the FLSA Class members) 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

102. Plaintiff Rosales repeats and re-alleges all paragraphs above as though fully set forth herein.

103. Defendants failed to provide Plaintiff Rosales with a written notice, in English and in Spanish (Plaintiff Rosales' primary language), of his rate of pay, regular pay day, and such other information as required by NYLL §195(1).

104. Defendants are liable to Plaintiff Rosales 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

105. Plaintiff Rosales repeats and re-alleges all paragraphs above as though set forth fully herein.

106. Defendants did not provide Plaintiff Rosales with wage statements upon each payment of wages, as required by NYLL 195(3).

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

EIGHTH CAUSE OF ACTION

VIOLATION OF THE TIMELY PAYMENT PROVISIONS

OF THE NEW YORK LABOR LAW

108. Plaintiff Rosales repeats and realleges all paragraphs above as though set forth fully herein.

109. Defendants did not pay Plaintiff Rosales on a regular weekly basis, in violation of NYLL §191.

110. Defendants are liable to Plaintiff Rosales in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rosales respectfully request that this Court enter judgment against Defendants:

(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 promptly to 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 Plaintiff Rosales 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 Plaintiff Rosales 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 Plaintiff Rosales' and the FLSA class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Rosales and the FLSA class members;

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

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

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Rosales and the members of the FLSA Class;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Rosales and the members of the FLSA

Class;

(j) Declaring that defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiff Rosales;

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

(l) Declaring that Defendants violated the timely payment provisions of the NYLL as to Plaintiff Rosales and the members of the FLSA Class;

(m) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Order were willful as to Plaintiff Rosales and the FLSA Class members;

(n) Awarding Plaintiff Rosales and the FLSA class members damages for the amount of unpaid minimum and overtime wages, damages for any improper deductions or credits taken against wages, as well as spread of hours pay under the NYLL, as applicable;

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

(p) Awarding Plaintiff Rosales and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, spread of hours pay and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(q) Awarding Plaintiff Rosales and the FLSA class members pre-judgment and post-judgment interest as applicable;

(r) Awarding Plaintiff Rosales and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(s) 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

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

JURY DEMAND

Plaintiff Rosales demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
February 28, 2018

MICHAEL FAILLACE & ASSOCIATES, P.C.

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

MICHAEL FAILLACE & ASSOCIATES, P.C.

Employment and Litigation Attorneys

One Grand Central Place
60 E 42nd Street, Suite 4510
New York, New York 10165

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Facsimile: (212) 317-1620
Email: Faillace@employmentcompliance.com

July 25, 2017

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:

Leonides Rosales

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

July 25, 2017

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

LEONIDES ROSALES, individually and on behalf of 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) Michael A. Faillace, Michael Faillace & Associates, P.C. 60 East 42nd Suite 4510 New York, NY 10165

DEFENDANTS

TANDOORI TOUCH LLC. (d/b/a TANDOORI TOUCH) et al.,

County of Residence of First Listed Defendant Nassau (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): Plaintiff seeks 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 02/28/2018 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? Yes
 - 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

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

LEONIDES ROSALES, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House), Babar Raja, Shawn M., John Ho and Hasan Sultan

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Avreet Inc. 495 South Broadway, Ste. 18 Hicksville, NY 11801

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:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

LEONIDES ROSALES, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House), Babar Raja, Shawn M., John Ho and Hasan Sultan

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Punjab Kabab House Inc. 495 South Broadway, Ste. 18 Hicksville, NY 11801

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

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Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

LEONIDES ROSALES, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House), Babar Raja, Shawn M., John Ho and Hasan Sultan

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Babar Raja 495 South Broadway, Ste. 18 Hicksville, NY 11801

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

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:

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Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

LEONIDES ROSALES, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet Inc. (d/b/a Tandoori Touch), Punjab Kabab House Inc. (d/b/a Punjabi Kabab House), Babar Raja, Shawn M., John Ho and Hasan Sultan

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John Ho 495 South Broadway, Ste. 18 Hicksville, NY 11801

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:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

LEONIDES ROSALES, individually and on behalf of
others similarly situated,

Plaintiff(s)

v.

Tandoori Touch LLC (d/b/a Tandoori Touch), Avreet
Inc. (d/b/a Tandoori Touch), Punjab Kabab House
Inc. (d/b/a Punjabi Kabab House), Babar Raja,
Shawn M., John Ho and Hasan Sultan

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Hasan Sultan
495 South Broadway, Ste. 18
Hicksville, NY 11801

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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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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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Cook for Tandoori Touch and Punjabi Kabab House Sues Over Alleged Wage Violations](#)
