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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BOBBY THAPA,
on behalf of herself and similarly situated employees,

Case No.

Plaintiff,

COMPLAINT

-against-

PALATE RESTAURANT LLC d/b/a ASYA and
VIPIN AGARWAL,

ECF Case,

Defendants.

Plaintiff, BOBBY THAPA, on behalf of herself and similarly situated employees, by and through their undersigned attorneys, Law Offices of James F. Sullivan, P.C., file this Complaint against Defendants, PALATE RESTAURANT LLC d/b/a ASYA (hereinafter "ASYA") and VIPIN AGARWAL (collectively, "the Defendants"), and state as follows:

INTRODUCTION

1. Plaintiff alleges that, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, et seq. ("FLSA"), she and similarly situated employees are entitled to recover from the Defendants: (1) unpaid wages at the minimum wage rate; (2) unpaid wages at the overtime rate

for all work hours over forty (40) hours in a work week; (3) liquidated damages; (4) prejudgment and post-judgment interest; and (5) attorneys' fees and costs.

2. Plaintiff further alleges that, pursuant to the New York Labor Law ("NYLL"), she and similarly situated employees are entitled to recover from the Defendants: (1) unpaid wages at the minimum wage rate; (2) unpaid wages at the overtime rate for all work hours over forty (40) hours in a work week; (3) unpaid "spread of hours" pay; (4) statutory penalties; (5) liquidated damages; (6) prejudgment and post-judgment interest; and (7) attorneys' fees and costs.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. §216(b), 28 U.S.C. §§ 1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiff state law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in the Eastern District pursuant to 28 U.S.C. § 1391 because the conduct making up the basis of the complaint took place in this judicial district.

PARTIES

5. Plaintiff is an adult resident of Queens County, New York.

6. Upon information and belief, Defendant, ASYA, is a domestic business corporation, organized and existing under the laws of the State of New York, with a place of business located at 46 Henry Street, Brooklyn, New York 11201.

7. Upon information and belief, Defendant, VIPIN AGARWAL, is an owner, officer, director and/or managing agent of ASYA, who maintains a business address of 46 Henry Street, Brooklyn, New York 11201, and who participated in the day-to-day operations of ASYA, and acted intentionally and maliciously and is an "employer" pursuant to the FLSA, 29 U.S.C. §

203(d) and Regulations promulgated thereunder, 29 C.F.R. § 791.2, as well as NYLL§ 2 and the Regulations thereunder, and is jointly and severally liable with ASYA.

8. Plaintiff was employed by Defendants from in or about January 2012 until on or about May 23, 2018.

9. At all relevant times, ASYA was, and continues to be, an "enterprises engaged in commerce" within the meaning of the FLSA.

10. At all relevant times, Plaintiff and similarly situated employees' work regularly involved interstate commerce.

11. At all relevant times, the work performed by Plaintiff and similarly situated employees was directly essential to the business operated by ASYA.

12. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff and similarly situated employees a wage at the minimum wage rate and at the overtime rate for all hours worked over forty (40) hours in a work week in contravention of the FLSA and NYLL.

13. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

STATEMENT OF FACTS

14. In or about 2012, Plaintiff was hired by Defendants to work in Defendants' restaurant as a cashier located at 46 Henry Street, Brooklyn, New York 11201.

15. In or about June, 2015, Plaintiff began working as a server at Defendant's restaurant.

16. In or about May 2018, Plaintiff was constructively terminated from her employment with Defendants due to Defendants' failure to pay wages.

17. During Plaintiff's employment by Defendants, she worked an average of seventy eight (78) hours a week.

18. Plaintiff worked six (6) days a week and thirteen hours (13) hours each day from 10:30 a.m. to 11:30 p.m.

19. Defendants did not regularly compensate Plaintiff an hourly wage for her hours worked.

20. Further, Defendants' did not provide Plaintiff with a tip credit notice.

21. When Defendants compensated Plaintiff for her hours worked, Defendants' only compensated \$300.00 a week, or \$3.84 dollars an hour, an amount far below the minimum wage in the State of New York.

22. Additionally, Defendants' did not compensate Plaintiff a "spread of hours" pay for each day lasting ten (10) hours.

23. Defendant, VIPIN AGARWAL, is an individual who, upon information and belief, owns the stock of ASYA, owns ASYA, and manages and makes all business decisions, including but not limited to, the decisions of what salary the employees will receive and the number of hours the employees will work.

24. Defendant, VIPIN AGARWAL, exercised control over the terms and conditions of Plaintiff and similarly situated employees' employment, in that he has and has had the power to: (i) hire and fire employees, (ii) determine rates and methods of pay, (iii) determine work schedules, (iv) supervise and control the work of the employees, and (v) otherwise affect the quality of the employees' employment.

25. Defendants knowingly and willfully operated their businesses with a policy of not paying Plaintiff and similarly situated employees a wage at the overtime rate for the hours worked over forty (40) hours in a work week, in violation of the FLSA and NYLL and the supporting Federal and New York State Department of Labor Regulations.

26. Plaintiff and similarly situated employees have been substantially damaged by the Defendants' wrongful conduct.

STATEMENT OF CLAIMS

COUNT 1

[Violation of the Fair Labor Standards Act]

27. Plaintiff and similarly situated employees re-allege and re-aver each and every allegation and statement contained in paragraphs "1" through "26" of this Complaint as if fully set forth herein.

28. At all relevant times, upon information and belief, Defendants were and continue to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a). Further, Plaintiff and similarly situated employees are covered individuals within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

29. At all relevant times, Defendants employed Plaintiff and similarly situated employees within the meaning of the FLSA.

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

31. Plaintiff and similarly situated employees were and continue to be entitled to be paid a wage at the minimum wage rate and wage at the overtime rate for all hours worked over forty (40) hours in a work week as provided for in the FLSA.

32. Defendants failed to pay Plaintiff and similarly situated employees' compensation at the minimum wage rate and at the overtime wage rate for all hours worked over (40) in a work week as provided for in the FLSA.

33. At all relevant times, each of the Defendants had, and continue to have a policy and practice of refusing to pay Plaintiff and similarly situated employees at the minimum wage rate and a wage at the overtime rate for all hours worked over forty (40) in a work week, which violated and continues to violate the FLSA, 29 U.S.C. §§ 201, et seq., including 29 U.S.C. §§ 206(a)(1), 207(a)(1), and 215(a).

34. Defendants knowingly and willfully disregarded the provisions of the FLSA, as evidenced by their failure to compensate Plaintiff and similarly situated employees an overtime wage, when they knew or should have known such was due and that non-payment of an overtime wage would financially injure Plaintiff and similarly situated employees.

35. Records, if any, concerning the number of hours worked by Plaintiff and similarly situated employees and the actual compensation paid to Plaintiff and similarly situated employees are in the possession and custody of the Defendants. Plaintiff and similarly situated employees intends to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, will then seek leave of Court to amend this Complaint to set forth the precise amount due.

36. Defendants failed to properly disclose or apprise Plaintiff and similarly situated employees of their rights under the FLSA.

37. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiff and similarly situated employees are entitled to liquidated damages pursuant to the FLSA.

38. Due to the intentional, willful and unlawful acts of the Defendants, Plaintiff and similarly situated employees suffered damages, in an amount not presently ascertainable of unpaid overtime, an equal amount as liquidated damages, and prejudgment interest thereon.

39. Plaintiff and similarly situated employees are entitled to an award of their reasonable attorneys' fees, costs and expenses, pursuant to 29 U.S.C. § 216(b).

COUNT 2

[Violation of the New York Labor Law §§ 190 et. al.]

40. Plaintiff and similarly situated employees re-allege and re-aver each and every allegation and statement contained in paragraphs "1" through "39" of this Complaint as if fully set forth herein.

41. The wage provisions of the NYLL apply to Defendants and protect the Plaintiff and similarly situated employees.

42. Defendants, pursuant to their policies and practices, refused and failed to pay a wage at the minimum wage rate and a wage at the overtime wage rate for all hours worked over forty (40) hours in a work week to Plaintiff and similarly situated employees.

43. By failing to compensate Plaintiff and similarly situated employees a wage at the minimum wage rate and a wage at the overtime wage rate for all hours worked over forty (40) hours in a work week, Defendants violated Plaintiff's statutory rights under the NYLL.

44. Also, by failing to compensate Plaintiff and similarly situated employees a "spread of hours" pay for all days longer than ten (10) hours, Defendants violated Plaintiff's statutory rights under the NYLL and accompanying regulations.

45. The foregoing conduct, as alleged, constitutes a willful violation of the NYLL without a good or reasonable basis.

46. Therefore, Defendants knowingly and willfully violated Plaintiff and similarly situated employees' rights by failing to pay Plaintiff and similarly situated employees a wage at the

minimum wage rate, a wage at the overtime wage rate for all hours worked over forty (40) hours in a work week, and a “spread of hours” pay.

47. Due to the Defendants' NYLL violations, Plaintiff and similarly situated employees are entitled to recover from Defendants unpaid wages at the minimum wage rate, unpaid wages at the overtime wage rate for all hours worked over forty (40) hours in a work week, unpaid “spread of hours” pay, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to NYLL § 663(1) et al. and § 198. Plaintiff and similarly situated employees also seek liquidated damages pursuant to NYLL § 663(1).

COUNT 3

[Failure to provide a Wage Notice]

48. Plaintiff and similarly situated employees re-allege and re-aver each and every allegation and statement contained in paragraphs "1" through "47" of this Complaint as if fully set forth herein.

49. The New York State Wage Theft Prevention Act and NYLL § 195(1) requires every employer to notify its employees, in writing, among other things, of the employee's rate of pay and regular pay day.

50. Defendants have willfully failed to supply Plaintiff and similarly situated employees with a wage notice, as required by NYLL, § 195(1), within ten (10) days of the start of their employment.

51. Through their knowing or intentional failure to provide the Plaintiff and similarly situated employees with the wage notice required by the NYLL, Defendants willfully violated NYLL Article 6, §§ 190 et. seq., and supporting New York State Department of Labor Regulations.

52. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiff and similarly situated employees are entitled to statutory penalties of fifty (\$50.00) dollars each day that Defendants failed to provide Plaintiff and similarly situated employees with a wage notice and reasonable attorney's fees and costs as provided for by NYLL, Article 6 §198(1-b).

COUNT 4

[Failure to provide Wage Statements]

53. Plaintiff and similarly situated employees re-allege and re-aver each and every allegation and statement contained in paragraphs "1" through "52" of this Complaint as if fully set forth herein.

54. Defendants have willfully failed to supply Plaintiff and similarly situated employees with an accurate wage statement, as required by NYLL, § 195(3).

55. Through their knowing or intentional failure to provide the Plaintiff and similarly situated employees with a wage statement as required by the NYLL, Defendants willfully violated NYLL Article 6, §§ 190 et. seq., and supporting New York State Department of Labor Regulations.

56. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiff and similarly situated employees are entitled to statutory penalties of two hundred and fifty dollars (\$250.00) dollars each day that Defendants failed to provide Plaintiff and similarly situated employees with wage statement and reasonable attorney's fees and costs as provided for by NYLL, Article 6 §198(1-d).

PRAYER FOR RELIEF

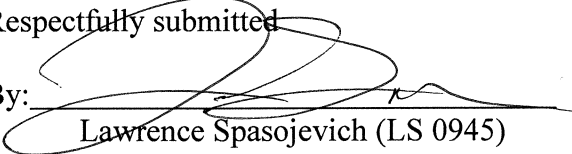
WHEREFORE, Plaintiff, BOBBY THAPA, on behalf of herself and similarly situated employees respectfully requests that this Court grant the following relief:

- (a) An award of unpaid wages at the minimum wage rate and unpaid overtime wages for all hours worked over forty (40) in a work week due under the FLSA;
- (b) An award of liquidated damages as a result of Defendants' failure to pay wages at the minimum wage rate and failure to pay wages at the overtime rate pursuant to 29 U.S.C. § 216;
- (c) An award of unpaid wages at the minimum wage rate, unpaid overtime wages for all hours worked over forty (40) in a work week, and "spread of hours" pay due under the NYLL;
- (d) An award of liquidated damages and statutory penalties as a result of Defendants' failure to pay wages at the minimum wage rate, failure to pay wages at the overtime rate for all hours worked over forty (40) hours in a work week, failure to pay a "spread of hours" pay, failure to provide wage notices, and failure to provide wage statements pursuant to the NYLL;
- (g) An award of prejudgment and post-judgment interest;
- (h) An award of costs and expenses associated with this action, together with reasonable attorneys' fees; and,
- (i) Such other and further relief as this Court determines to be just and proper.

Dated: New York, New York
June 26, 2018

Respectfully submitted

By:



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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

BOBBY THAPA,
on behalf of herself and similarly situated employees

Plaintiff(s)

v.

PALATE RESTAURANT LLC d/b/a ASYA and
VIPIN AGARWAL,

Defendant(s)

Civil Action No. 1:18-cv-3788

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PALATE RESTAURANT LLC
253-22 Union Turnpike
Glen Oaks, New York 11004

VIPIN AGARWAL
46 Henry Street
Brooklyn, New York 11201

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:

Law Offices of James F. Sullivan, P.C.
52 Duane Street, 7th Floor
New York New York 10007
212-374-0009

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

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:18-cv-3788

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:

JS 44 (Rev. 01/29/2018)

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
BOBBY THAPA,
on behalf of herself and similarly situated employees,
(b) County of Residence of First Listed Plaintiff Queens
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Offices of James F. Sullivan, P.C.
52 Duane Street, 7th Floor, New York New York 10007
212-374-0009

DEFENDANTS
PALATE RESTAURANT LLC d/b/a ASYA and
VIPIN AGARWAL,
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
[X] 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)
(For Diversity Cases Only)
PTF DEF
Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from Another District (specify)
[] 6 Multidistrict Litigation - Transfer
[] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §§ 201, et seq.
Brief description of cause:
Unpaid wages at the minimum wage rate, unpaid wages at the overtime rate, "spread of hours" pay, NYLL198.

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 [X] No

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

DATE 06/29/2018 SIGNATURE OF ATTORNEY OF RECORD

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, _____, counsel for _____, 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? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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

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

BAR ADMISSION

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

- Yes No

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

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fmr. Employee of Brooklyn's Asya Restaurant Claims Wages Fell 'Far Below' Minimum Rate](#)
