

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 Plaintiff

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

-----X

KELSEY S. VALLE, *individually and on
behalf of others similarly situated,*

Plaintiff,

COMPLAINT

-against-

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

215 SOHO CAFE CORP. (D/B/A SOHO
CAFE & GRILL), 8312 SOHO CAFE CORP.
(D/B/A SOHO CAFE & GRILL), JOSE
ZOSAYAS, RENE BROWN, and JOSE
ALFREDO GALICIA,

ECF Case

Defendants.

-----X

Plaintiff Kelsey S. Valle (“Plaintiff Valle” or “Ms. Valle”), individually and on behalf of others similarly situated, by and through her attorneys, Michael Faillace & Associates, P.C., upon her knowledge and belief, and as against 215 Soho Cafe Corp. (d/b/a Soho Cafe & Grill), 8312 Soho Cafe Corp. (d/b/a Soho Cafe & Grill), (“Defendant Corporations”), Jose Zosayas, Rene Brown, and Jose Alfredo Galicia, (“Individual Defendants”), (collectively, “Defendants”), alleges as follows:

NATURE OF ACTION

1. Plaintiff Valle is a former employee of Defendants 215 Soho Cafe Corp. (d/b/a Soho Cafe & Grill), 8312 Soho Cafe Corp. (d/b/a Soho Cafe & Grill), Jose Zosayas, Rene Brown, and Jose Alfredo Galicia.

2. Defendants own, operate, or control two cafes located at 8312 Fifth Avenue, Brooklyn, New York 11209 (“the Fifth Avenue location”) and at 215 Church Ave, Brooklyn, NY 11218 (“the Church Avenue location”), under the name Soho Cafe & Grill.

3. Upon information and belief, individual Defendants Jose Zosayas, Rene Brown, and Jose Alfredo Galicia, serve or served as owners, managers, principals, or agents of Defendant Corporations and, through these corporate entities, operate or operated the deli restaurants as a joint or unified enterprise.

4. Plaintiff Valle was employed as a cashier and a phone operator at the restaurants located at 215 Church Avenue, Brooklyn, New York, 11218 and 8312 Fifth Avenue, Brooklyn, New York, 11228.

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

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

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

8. In addition, Defendants maintained a policy and practice of unlawfully appropriating Plaintiff Valle’s and other tipped employees’ tips.

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

10. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Valle and other employees to work in excess of forty (40) hours per week without providing the overtime compensation required by federal and state law and regulations.

11. Plaintiff Valle now brings this action on behalf of herself, and other similarly situated individuals, for unpaid 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 Valle seeks certification of this action as a collective action on behalf of herself, 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 under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiff Valle’s state law claims under 28 U.S.C. § 1367(a).

14. 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 restaurants located in this district. Further, Plaintiff Valle was employed by Defendants in this district.

PARTIES

Plaintiff

15. Plaintiff Kelsey S. Valle (“Plaintiff Valle” or “Ms. Valle”) is an adult individual residing in Kings County, New York.

16. Plaintiff Valle was employed by Defendants at Soho Cafe & Grill from approximately June 2013 until on or about May 25, 2018.

17. Plaintiff Valle consents to being a 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

18. At all relevant times, Defendants own, operate, or control two restaurants, located at 215 Church Avenue, Brooklyn, New York, 11218 under the name “Soho Cafe & Grill” and at 8312 Fifth Avenue, Brooklyn, New York, 11228 under the name “Soho Cafe & Grill”.

19. Upon information and belief, 215 Soho Cafe Corp. (d/b/a Soho Cafe & Grill) 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 215 Church Avenue, Brooklyn, New York, 11218.

20. Upon information and belief, 8312 Soho Cafe Corp. (d/b/a Soho Cafe & Grill) 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 8312 Fifth Avenue, Brooklyn, New York, 11228.

21. Defendant Jose Zosayas is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Jose Zosayas is sued individually in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Jose Zosayas possesses operational control over Defendant Corporations, an ownership in Defendant

Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiff Valle, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

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

23. Defendant Jose Alfredo Galicia is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Jose Alfredo Galicia is sued individually in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Jose Alfredo Galicia possesses operational control over Defendant Corporations, an in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiff Valle, 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 restaurants located in multiple neighborhoods in Brooklyn.

25. Individual Defendants, Jose Zosayas, Rene Brown, and Jose Alfredo Galicia, 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 Plaintiff Valle's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Valle, and all similarly situated individuals, referred to herein.

28. Defendants jointly employed Plaintiff Valle (and all similarly situated employees) and are Plaintiff Valle's (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 Plaintiff Valle and/or similarly situated individuals.

30. Upon information and belief, Individual Defendants Jose Zosayas, Rene Brown, and Jose Alfredo Galicia operate Defendant Corporations as either alter egos of themselves and/or fails 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 Plaintiff Valle's employers within the meaning of the FLSA and New York Labor Law. Defendants had the power to hire and fire Plaintiff Valle, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for Plaintiff Valle's services.

32. In each year from 2013 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 deli restaurants on a daily basis are goods produced outside of the State of New York.

Individual Plaintiff

34. Plaintiff Valle is a former employee of Defendants who was employed as a cashier and a phone operator.

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

Plaintiff Kelsey S. Valle

36. Plaintiff Valle was employed by Defendants from approximately June 2013 until on or about May 25, 2018.

37. Defendants employed Plaintiff Valle as a cashier and a phone operator.

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

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

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

41. From approximately June 2013 until on or about November 14, 2014, Plaintiff Valle worked at the Church Avenue location from approximately 6:00 a.m. until on or about 2:20 p.m., Mondays through Saturdays (typically 50 hours per week).

42. From approximately November 15, 2014 until on or about January 31, 2015, Plaintiff Valle worked at the Fifth Avenue location from approximately 6:00 a.m. until on or about 9:00 p.m., 7 days a week (typically 105 hours per week).

43. From approximately February 1, 2015 until on or about August 31, 2015, Plaintiff Valle worked at the Church Avenue location and at the Fifth Avenue location from approximately 6:00 a.m. until on or about 2:20 p.m., 5 days a week and from approximately 6 a.m. until on or about 8 p.m., Tuesdays (typically 55 hours per week).

44. From approximately December 1, 2016 until on or about March 14, 2017, Plaintiff Valle worked at the Church Avenue location from approximately 7:00 a.m. until on or about 2:20 p.m., 6 days a week (typically 44 hours per week).

45. From approximately March 15, 2017 until on or about December 31, 2017, Plaintiff Valle worked at the Church Avenue location from approximately 6:00 a.m. until on or about 2:20 p.m., Tuesdays through Sundays (typically 50 hours per week).

46. From approximately January 1, 2018 until on or about January 31, 2018, Plaintiff Valle worked at the Church Avenue location from approximately 6 a.m. until on or about 2:20 p.m., Tuesdays through Saturdays and from approximately 9 a.m. until on or about 9 p.m., Sundays. (typically 53.65 hours per week).

47. From approximately February 1, 2018 until on or about May 25, 2018, Plaintiff Valle worked at the Church Avenue location from approximately 6:00 a.m. until on or about 2:20 p.m., Mondays through Saturdays and from approximately 9:00 a.m. until on or about 9:00 p.m., Sundays (typically 62 hours per week).

48. From approximately June 2013 until on or about August 2015 and from approximately December 2016 until on or about March 2017, Defendants paid Plaintiff Valle her wages in cash.

49. From approximately March 2017 until on or about May 25, 2018, Defendants paid Plaintiff Valle her wages by check.

50. From approximately June 2013 until on or about December 31, 2014, Defendants paid Plaintiff Valle \$7.25 per hour.

51. From approximately January 1, 2014 until on or about January 31, 2015, Defendants paid Plaintiff Valle \$8.00 per hour.

52. From approximately February 1, 2015 until on or about August 31, 2015, Defendants paid Plaintiff Valle \$8.75 per hour.

53. From approximately December 1, 2016 until on or about December 31, 2016, Defendants paid Plaintiff Valle \$9 per hour.

54. From approximately January 1, 2017 until on or about December 31, 2017, Defendants paid Plaintiff Valle \$11 per hour.

55. From approximately January 1, 2018 until on or about May 25, 2018, Defendants paid Plaintiff Valle \$13 per hour.

56. Plaintiff Valle's pay did not vary even when she was required to stay later or work a longer day than her usual schedule.

57. For example, Defendants required Plaintiff Valle to work an additional 20 minutes to 30 minutes past her scheduled departure time everyday, and did not pay her for the additional time she worked.

58. Defendants withheld a portion of Plaintiff Valle's tips; specifically, Defendants pocketed half of the plaintiff's tips when she worked at both the Church Avenue and Fifth Avenue locations.

59. Prior to 2017, Plaintiff Valle was not required to keep track of her time, nor to her knowledge, did the Defendants utilize any time tracking device such as punch cards, that accurately reflected her actual hours worked.

60. Defendants required Plaintiff Valle to sign a document, the contents of which she was not allowed to review in detail, in order to release her weekly pay.

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

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

63. Defendants did not give any notice to Plaintiff Valle of her rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

Defendants' General Employment Practices

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

65. Plaintiff Valle was a victim of Defendants' common policy and practices which violate her rights under the FLSA and New York Labor Law by, *inter alia*, not paying her the wages she was owed for the hours she worked.

66. Defendants habitually required Plaintiff Valle to work additional hours beyond her regular shifts but did not provide her with any additional compensation.

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

68. Defendants' time keeping system did not reflect the actual hours that Plaintiff Valle worked.

69. Defendants failed to inform Plaintiff Valle who received tips that Defendants intended to take a deduction against Plaintiff Valle's earned wages for tip income, as required by the NYLL before any deduction may be taken.

70. Defendants failed to maintain a record of tips earned by Plaintiff Valle who worked as a cashier and a phone operator for the tips she received. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiff Valle who received tips, by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL. This policy and pattern or practice included depriving the cashier and phone operator of a portion of the tips earned during the course of employment.

71. Defendants unlawfully misappropriated charges purported to be gratuities received by tipped Plaintiff Valle, and other tipped employees, in violation of New York Labor Law § 196-d (2007).

72. Plaintiff Valle was paid her wages in a combination of cash and check.

73. 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.

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

75. 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.

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

77. Defendants failed to provide Plaintiff Valle 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).

78. Defendants failed to provide Plaintiff Valle 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

79. Plaintiff Valle brings her FLSA 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").

80. At all relevant times, Plaintiff Valle 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 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 required by the FLSA.

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

FIRST CAUSE OF ACTION

VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA

82. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

83. At all times relevant to this action, Defendants were Plaintiff ' Valle'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 Valle (and the FLSA Class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for her employment.

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

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

86. Defendants, in violation of 29 U.S.C. § 207(a)(1), failed to pay Plaintiff Valle (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.

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

88. Plaintiff Valle (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 NEW YORK STATE LABOR LAW

89. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

90. 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 Plaintiff Valle 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.

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

92. Plaintiff Valle was damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

VIOLATION OF THE SPREAD OF HOURS WAGE ORDER

OF THE NEW YORK COMMISSIONER OF LABOR

93. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

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

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

96. Plaintiff Valle was damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

VIOLATION OF THE NOTICE AND RECORDKEEPING

REQUIREMENTS OF THE NEW YORK LABOR LAW

97. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

98. Defendants failed to provide Plaintiff Valle with a written notice, in English , 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).

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

FIFTH CAUSE OF ACTION

VIOLATION OF THE WAGE STATEMENT PROVISIONS

OF THE NEW YORK LABOR LAW

100. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

101. With each payment of wages, Defendants failed to provide Plaintiff Valle 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).

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

SIXTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM TIPS IN VIOLATION

OF THE NEW YORK LABOR LAW

103. Plaintiff Valle repeats and realleges all paragraphs above as though fully set forth herein.

104. At all relevant times, Defendants were Plaintiff Valle's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651.

105. New York State Labor Law § 196-d prohibits any employer or his agents, including owners and managers, from demanding or accepting, directly or indirectly, any part of the gratuities received by an employee, or retaining any part of a gratuity, or any charge purported to be a gratuity, for an employee.

106. Defendants unlawfully misappropriated a portion of Plaintiff Valle's tips that were received from customers.

107. Defendants knowingly and intentionally retained a portion of Plaintiff Valle's tips in violation of the NYLL and supporting Department of Labor Regulations.

108. Plaintiff Valle was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Valle respectfully requests 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 overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Valle and the FLSA Class members;

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

(d) Declaring that Defendants' violations of the provisions of the FLSA were willful as to Plaintiff Valle and the FLSA Class members;

(e) Awarding Plaintiff Valle and the FLSA Class members damages for the amount of unpaid overtime compensation and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(f) Awarding Plaintiff Valle and the FLSA Class members liquidated damages in an amount equal to 100% of her damages for the amount of unpaid 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);

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

(h) Declaring that Defendants violated the spread-of-hours requirements of the NYLL and supporting regulations as to Plaintiff Valle;

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

(j) Declaring that Defendants' violations of the provisions of the NYLL were willful as to Plaintiff Valle;

(k) Awarding Plaintiff Valle damages for the amount of unpaid 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

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

(m) Awarding Plaintiff Valle liquidated damages in an amount equal to one hundred percent (100%) of the total amount of 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);

(n) Awarding Plaintiff Valle and the FLSA Class members pre-judgment and post-judgment interest as applicable;

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

(p) 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

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

JURY DEMAND

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

Dated: New York, New York

June 14, 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 Plaintiff

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

May 25, 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.)

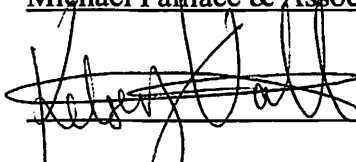
Name / Nombre:

Kelsey S. Valle

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

25 de mayo 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

KELSEY S. VALLE, individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff Kings (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

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

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): 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 06/14/2018 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

KELSEY S. VALLE, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) 215 Soho Cafe Corp. (d/b/a Soho Cafe & Grill) 215 Church Ave, Brooklyn, NY 11218

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 Suite 4510 New York, NY 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.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KELSEY S. VALLE, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) 8312 Soho Café Corp. (d/b/a Soho Café and Grill) 8312 Fifth Avenue, Brooklyn, New York 11209

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 Suite 4510 New York, NY 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.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KELSEY S. VALLE, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jose Alfredo Galicia 215 Church Ave, Brooklyn, NY 11218

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 Suite 4510 New York, NY 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.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KELSEY S. VALLE, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Jose Zosayas, 215 Church Ave, Brooklyn, NY 11218

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 Suite 4510, New York, NY 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.

DOUGLAS C. PALMER, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KELSEY S. VALLE, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

215 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), 8312 SOHO CAFE CORP. (D/B/A SOHO CAFE & GRILL), JOSE ZOSAYAS, RENE BROWN, and JOSE ALFREDO GALICIA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rene Brown, 215 Church Ave, Brooklyn, NY 11218

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 Suite 4510 New York, NY 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.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Soho Cafe & Grill Employee Files Suit Seeking Allegedly Unpaid Wages](#)
