

CV 15

4425

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK

2015 JUL 29 AM 10:42

MIGUEL YAX, AGUSTIN LACAN PAR,
ANDRES PU, ALBINO PU, TIMOTEO YAX,
JORGE BOCH HERNANDEZ, JULIO GARCIA,
JULIAN MENCHU GARCIA, and HEZEKIAH
DAVIS,

Plaintiffs,

- against -

JASBIR OBHAN, MAGIC WASH & LUBE, INC.,
d/b/a A.J.A. CAR WASH, INC., and MERRICK
MAGIC ENTERPRISES, INC.,

Defendants.

Civil Action No.

BRODIE, J.

SCANLON, M.J.

COMPLAINT

Plaintiffs Miguel Yax, Agustin Lacan Par, Andres Pu, Albino Pu, Timoteo Yax, Jorge Boch Hernandez, Julio Garcia, Julian Menchu Garcia, and Hezekiah Davis ("Plaintiffs"), by and through their attorneys Cohen, Weiss and Simon LLP and Make the Road New York, allege as follows:

PRELIMINARY STATEMENT

1. This is a wage and hour lawsuit on behalf of nine carwash workers that have worked and continue to work for Jasbir Obhan at the carwash he owns and operates at 107-05 Merrick Boulevard in Jamaica, New York. These low-wage workers have usually worked 60 to 70 hours (or more) each week at a carwash that served its customers seven days per week from 7:00 a.m. to 11:00 p.m. or midnight. In return for their labor, the carwash paid them all well below minimum wage and failed to pay them proper overtime pay. The workers

were also frequently required to report for their shift only to be sent home due to rain and were not paid at all for those days, in violation of New York law. The workers bring this action to obtain their lawful minimum wages, including overtime wages.

NATURE OF ACTION

2. Defendants Jasbir Obhan (“Obhan”), Magic Wash & Lube, Inc. d/b/a A.J.A. Car Wash, Inc. (“A.J.A.”), and Merrick Magic Enterprises, Inc. (“Merrick Magic”) (collectively the “Defendants”) own, operate, and control a carwash company located at 107-05 Merrick Boulevard, Jamaica, New York 11433.

3. Defendants employed and continue to employ Plaintiffs as carwash workers. During the course of Plaintiffs’ employment, Defendants violated numerous provisions of the Fair Labor Standards Act and the New York Labor Law by (a) failing to pay Plaintiffs the lawful minimum wage; (b) failing to pay Plaintiffs any overtime compensation despite workweeks significantly exceeding forty hours per week; (c) failing to pay Plaintiffs “spread of hours” pay; (d) failing to provide Plaintiffs with required notices and paystubs; and (e) failing to pay Plaintiffs call-in pay when they reported to work but were sent home soon after arrival due to rain.

4. Plaintiffs bring this action to recover unpaid wages, as well as liquidated damages, prejudgment interest, and attorney’s fees and costs, owed to Plaintiffs under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and under New York Labor Law Article 6 §§ 190 *et seq.* and Article 19, §§ 650 *et seq.*, and the related New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 (collectively, “New York Labor Law” or “NYLL”).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the Fair Labor Standards Act, 29 U.S.C. §§201 *et seq.*, 29 U.S.C. § 216, and 28 U.S.C. §§1331 and 1337.

6. This Court has supplemental jurisdiction over the Plaintiffs' state law claims pursuant to 28 U.S.C. §1367(a).

7. Plaintiffs' state law claims are so closely related to their claims under the Fair Labor Standards Act that they form part of the same case or controversy under Article III of the United States Constitution.

8. Upon information and belief, all Defendants are subject to personal jurisdiction in New York.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) because events or omissions giving rise to the claims occurred in this District.

10. The Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C §§2201 and 2202.

THE PARTIES

A. The Plaintiffs

11. Plaintiffs are or were employed as carwash workers by the Defendants and perform carwash services at Defendants' business located at 107-05 Merrick Boulevard, Jamaica, New York 11433. This work includes, for example, vacuuming the inside of vehicles, washing and shining car rims, cleaning tires, washing, cleaning, and drying the outside of vehicles, and cleaning mirrors.

12. Plaintiff Miguel Yax has been employed by Defendants as a carwash laborer since approximately August 1999 to the present. He is a covered employee within the

meaning of the FLSA and the NYLL. Miguel Yax is an adult individual who is a resident of Queens, New York.

13. Plaintiff Agustin Lacan Par has been employed by Defendants as a carwash laborer since approximately December 2013 to present. He is a covered employee within the meaning of the FLSA and the NYLL. Lacan Par is an adult individual who is a resident of Queens, New York.

14. Plaintiff Andres Pu has been employed by Defendants as a carwash laborer since approximately December 2004 to the present. He is a covered employee within the meaning of the FLSA and the NYLL. Andres Pu is an adult individual who is a resident of Queens, New York.

15. Plaintiff Albino Pu has been employed by Defendants as a carwash laborer since approximately July 2008 to the present. He is a covered employee within the meaning of the FLSA and the NYLL. Albino Pu is an adult individual who is a resident of Queens, New York.

16. Plaintiff Jorge Boch Hernandez has been employed by Defendants as a carwash laborer since approximately June 2009 to the present. He is a covered employee within the meaning of the FLSA and the NYLL. Boch Hernandez is an adult individual who is a resident of Queens, New York.

17. Plaintiff Julio Garcia has been employed by Defendants as a carwash laborer since approximately December 2009 to the present. He is a covered employee within the meaning of the FLSA and the NYLL. Garcia is an adult individual who is a resident of Queens, New York.

18. Plaintiff Timoteo Yax has been employed by Defendants as a carwash laborer since approximately September 2001 to the present. Since he began his employment with Defendants, in a given year Yax has performed work for Defendants during the months of October through April. He is a covered employee within the meaning of the FLSA and the NYLL. Timoteo Yax is an adult individual who is a resident of Queens, New York.

19. Plaintiff Julian Menchu Garcia has been employed by Defendants as a carwash laborer since approximately January 2, 2015 to the present. He is a covered employee within the meaning of the FLSA and NYLL. Menchu Garcia is an adult individual who is a resident of Queens, New York.

20. Plaintiff Hezekiah Davis has been employed by Defendants as a carwash laborer since approximately 1991 to the present.¹ He is a covered employee within the meaning of the FLSA and the NYLL. Davis is an adult individual who is a resident of Queens, New York.

B. The Defendants

21. Defendant Magic Wash & Lube, Inc. is a domestic New York business corporation located at 107-05 Merrick Boulevard, Suite #300, Jamaica, New York 11433 that, upon information and belief, does business under the name A.J.A. Car Wash, Inc.

22. Defendant Merrick Magic Enterprises, Inc. is a domestic New York business corporation located at 7600 Jericho Turnpike, Suite #300, Woodbury, New York 11797. Merrick Magic Enterprises, Inc. was the name that appeared on Plaintiffs' checks and falsified paystubs.

¹ Davis began employment with the car wash located on this property in approximately 1965, and worked there on-and-off until approximately 1991. Since 1991, Davis has worked at the car wash continuously, with no gaps in his employment.

23. Upon information and belief, Defendant Jasbir Obhan is a resident of New York residing at 79 Parkview Drive, Albertson, New York 11507 who at all relevant times has owned and/or operated Magic Wash & Lube, Inc. and Merrick Magic Enterprises, Inc.

24. Defendant Obhan is a covered employer of Plaintiffs within the meaning of the FLSA and NYLL as, upon information and belief, at all relevant times, he has been the owner of Magic Wash & Lube, Inc., d/b/a A.J.A. Car Wash, Inc., maintained operational control over the corporate Defendants, including by having the power to personally hire and fire employees, set their hours and wages, determine their methods of payment, direct and supervise their work, maintain their employment records, and otherwise control the terms and conditions of employment. Obhan is actively involved in managing day-to-day operations of the corporate Defendants and has and had the power to stop any illegal pay practices that harmed Plaintiffs.

25. Upon information and belief, each Defendant has had substantial control of Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein, and the Defendants employed or jointly employed Plaintiffs at all relevant times and have been Plaintiffs' employers and/or joint employer within the meaning of the FLSA and NYLL.

26. Upon information and belief, Defendant Magic Wash & Lube, Inc. is an enterprise engaged in interstate commerce within the meaning of the FLSA in that it (a) has employees engaged in commerce or in the production of goods for commerce and handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and (b) has an annual gross volume of sales not less than \$500,000.

27. Upon information and belief, Merrick Magic Enterprises, Inc. is an enterprise engaged in interstate commerce within the meaning of the FLSA in that it (a) has employees engaged in commerce or in the production of goods for commerce and handling,

selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and (b) has an annual gross volume of sales not less than \$500,000.

FACTUAL BASIS FOR CLAIMS

Failure to Pay Minimum Wage, Overtime Premium, and Spread of Hours Premium

28. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiffs as follows.

29. During their periods of employment as described above in paragraphs 12 to 20, the Plaintiffs were compensated hourly, at all relevant times below the minimum wage. The Plaintiffs were paid -- every Tuesday for the preceding Monday through Sunday -- partially in check and partially in cash (except for Plaintiff Timoteo Yax, who was paid solely in cash). Until early 2015, Plaintiffs received a payroll stub which inaccurately listed Plaintiffs' hours and pay rates along with their checks. Since early 2015, Plaintiffs are no longer provided with any paystubs. The Defendants provide the payments to the Plaintiffs in an envelope that contains both the check and the cash and lists the amount of the check and the amount of cash on the outside of the envelope.

30. Plaintiffs were all regularly required, and suffered and permitted, by Defendants to work in excess of 40 hours per workweek, yet received no overtime premium pay at the rate of one and a half times their regular or lawful hourly rate.

31. The car wash was open seven days each week from approximately 7:00 a.m. to 11:00 p.m. Sunday through Thursday, and remained open until approximately midnight on Friday and Saturday. The Plaintiffs all had scheduled shifts at the car wash for six days (and for some Plaintiffs seven days) per week. Those scheduled shifts would be cancelled if the car wash closed because of the rain.

32. The Plaintiffs were frequently required -- approximately two days per month -- to report to the carwash for their regularly scheduled shift, but, because of the rain were sent home soon after arrival. The Plaintiffs were not paid any wages on those days in which they were required to report but immediately sent home.

33. Miguel Yax was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 7:00 p.m. shift on Monday through Thursday and the 7:00 a.m. to 8:00 p.m. shift on Friday and Saturday. In 2009, his hourly rate of pay was \$4.75; in 2010 through 2011 it was \$5.00; in 2012 through 2014 it was \$6.00; in early 2015 it was \$6.50; and since May 2015 it has been \$7.00.

34. Lacan Par was scheduled to work, and did work if the car wash was not closed due to rain, the 10:00 a.m. to 11:00 p.m. shift on Monday and Tuesday; the 7:00 a.m. to 11:00 p.m. shift on Wednesday; the 9:00 a.m. to 12:00 a.m. shift on Friday and Saturday; and the 11:00 a.m. to 11:00 p.m. shift on Sunday. In July 2015, Lacan Par's schedule changed. On Thursdays, Lacan Par either had a day off or would when scheduled to work, work from 7:00 p.m. to 11:00 p.m. Since July 2015, Lacan Par has been working seven days a week. From Sunday through Thursday, he works from 7:00 p.m. to 11:00 p.m., and from 7:00 p.m. to 12:00 a.m. on Fridays and Saturdays. In 2013, his hourly rate of pay was \$6.00; in 2014 it was increased to \$6.25; in 2015 it was increased to \$6.50; in May 2015 it was increased to \$6.75.

35. Andres Pu was and is scheduled to work, and did work if the car wash was not closed due to rain, the 9:00 a.m. to 11:00 p.m. shift on Monday, Thursday, Saturday and Sunday; the 7:00 a.m. to 11:00 p.m. shift on Tuesday; the 1:00 p.m. to 11:00 p.m. shift on Wednesday; and the 9:00 a.m. to 12:00 a.m. shift on Friday. In 2009 through 2012, his hourly

rate of pay was \$5.00; in 2013 it was \$6.00; in January through November 2014 it was \$6.50; in December 2014 it was \$6.75; and in 2015 it was increased to \$7.00.

36. Albino Pu was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 7:00 p.m. shift on all days except Tuesday. In 2009 through 2014, his hourly rate of pay was \$5.50; in 2015 his hourly rate was increased to \$6.25.

37. From June 2009 until approximately two years ago, Boch Hernandez was scheduled to work, and did work if the car wash was not closed due to rain, the 8:00 a.m. to 7:00 p.m. shift on Tuesday, Thursday, Friday, Saturday, and Sunday. For the past two years for most of the year, Boch Hernandez was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 11:00 p.m. shift on Thursday; the 9:00 a.m. to 12:00 a.m. shift on Friday and Saturday; the 9:00 a.m. to 11:00 p.m. shift on Sunday; the 9:00 a.m. to 11:00 p.m. shift on Tuesday; and the 7:00 p.m. to 11:00 p.m. shift on Wednesday. On Mondays, Boch Hernandez either had a day off or would when scheduled to work, worked from 7:00 p.m. to 11:00 p.m. During the summer months of June through August, Boch Hernandez worked on Tuesday from 12:00 p.m. to 11:00 p.m., and on Thursday from 12:00 p.m. to 11:00 p.m. In 2009 through 2012, his hourly rate of pay was \$5.00; in 2013 it was \$5.25; in 2014 it was \$5.50; and in 2015 it was increased to \$6.00. In approximately February 2015, it was raised to \$6.75.

38. Garcia was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 7:00 p.m. shift on all days except Thursday. In 2009 through 2011, his hourly rate of pay was \$5.00; in 2012 it was \$5.50; in 2013 through September 2014 it was \$5.75; and in October 2014 it was increased to \$7.00.

39. Timoteo Yax was and is scheduled to work, and did work if the car wash was not closed due to rain, the 8:00 a.m. to 6:00 p.m. shift on Monday through Wednesday and

the 8:00 a.m. to 8:00 p.m. shift Friday through Sunday. In 2009 through October 2014, his hourly rate of pay was \$5.00; in November 2014, his rate of pay was increased to \$6.00.

40. Menchu Garcia was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 7:00 p.m. shift on all days except Thursday. His hourly rate of pay was \$5.00 in January 2015; \$5.50 in February through June, 2015; and since July 1, 2015 is \$6.00 per hour.

41. Davis was and is scheduled to work, and did work if the car wash was not closed due to rain, the 7:00 a.m. to 7:00 p.m. shift on all days except Tuesday. From 2009 through the present, his hourly rate of pay has been, and currently is, \$6.00.

42. Plaintiffs each received tips of between approximately \$3 and \$15 per day. Even including these tips, Defendants failed to pay Plaintiffs the required minimum wage.

43. Defendants, however, were not entitled to reduce the statutory minimum wage by applying the tip credit allowance permitted in certain circumstances under the FLSA and NYLL.

44. Defendants failed to inform Plaintiffs of their intention to utilize the tip credit allowance and failed to inform the plaintiffs of the provisions of the section of the FLSA permitting the tip credit.

45. Defendants also maintained an unlawful tip pool by requiring that the Plaintiffs' tips be shared with an employee that did not customarily and regularly receive tips: the cashier.

46. Defendants also failed to provide to Plaintiffs the information required for Defendants to claim a tip allowance under NYLL, including an accurate weekly wage record recording as a separate item the amount of the allowance.

47. Defendants willfully failed and refused to pay the Plaintiffs the minimum wage or overtime premium as required by the FLSA and NYLL.

48. Defendants also regularly required Plaintiffs to work more than 10 hours in a workday, but willfully failed and refused to pay the Plaintiffs an additional hour or “spread of hours” pay at the minimum wage rate during such days.

49. Plaintiffs had no designated meal breaks throughout the day. Plaintiffs took five to ten minute breaks to eat only when business slowed.

Defendants Failed to Keep Accurate Records, Failed to Comply with Notice Posting Requirements, and Failed to Provide Wage Statements

50. On information and belief, Defendants failed to properly document and record the number of hours Plaintiffs worked each week and the wages paid to Plaintiffs each week.

51. Prior to 2009, Defendants paid Plaintiffs in cash and did not provide Plaintiffs with paystubs or any other documentation indicating the hours worked or the applicable rate of pay.

52. Starting in or about 2009, Defendants began paying Plaintiffs partially in cash and partially by check each pay period. From October 26, 2009 to April 8, 2011, Defendants failed to provide employees with a wage statement with every payment of wages in violation of NYLL § 195(3). In or about 2009, Defendants also began providing Plaintiffs with paystubs that reflected inaccurate numbers of hours Plaintiffs worked, their rate of pay, and the amount of tips each Plaintiff received. The paystubs also included deductions for meal breaks that Plaintiffs never received.

53. Since April 9, 2011, Defendants failed to provide accurate wage statements to Plaintiffs with information required by NYLL §§ 195(3) and 198(1-d) then in effect.

54. On information and belief, starting in early 2015, without explanation, Defendants stopped providing Plaintiffs with paystubs indicating the hours worked and the applicable rate of pay.

55. From April 9, 2011 through December 28, 2014, Defendants failed during the relevant years to provide Plaintiffs with an annual wage notice in English, or in their primary language, Spanish, as then-required by NYLL §§ 195(1) and 198(1-b). The annual wage notice must include information such as the rate of pay and any allowances claimed as part of the minimum wage.

56. On information and belief, Defendants began posting FLSA and/or NYLL notice postings starting in early 2015. Prior to early 2015, Defendants failed to comply with the FLSA and NYLL notice posting requirements.

Defendants Illegally Retained Portions of Plaintiffs' Tips

57. Throughout the course of Plaintiffs' employment, until early 2015, Defendants prevented Plaintiffs from retaining portions of the gratuities given to the car washers, in violation of the FLSA and NYLL.

58. Defendants require that gratuities given by customers be combined together into a tip pool and split evenly among recipients. Defendants determined which employees received distributions from the tip pool.

59. Throughout the course of Plaintiffs' employment, until early 2015, the car wash cashier (the "Cashier") received an equal share of the tip pool at the end of each day. These distributions were made without the consent of the Plaintiffs.

60. The Cashier's job duties primarily involved working at the cash register and directing employees to perform work and the Cashier did not receive tips from customers.

61. These tip pooling practices violated the FLSA and NYLL.

FIRST CLAIM
(Minimum Wage Against All Defendants – Fair Labor Standards Act)

62. Plaintiffs reallege and incorporate by reference all allegations in all the preceding paragraphs as if fully set forth herein.

63. Throughout the relevant period that Plaintiffs have worked for the Defendants, Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the Fair Labor Standards Act.

64. Sections 6 and 7 of the FLSA, 29 U.S.C. §§206 and 207, require that every person covered by the FLSA who is "suffered or permitted to work" must be paid a minimum wage for all hours worked and overtime pay at one and one-half times the person's regular rate for all hours worked in excess of forty hours per week. Section 16(b) of the FLSA, 29 U.S.C. §216(b), entitles such persons to recover all unpaid wages plus interest, an equivalent amount as liquidated damages, and reasonable attorney's fees and costs

65. Throughout the relevant period that Plaintiffs have worked for Defendants, Defendants have failed to pay Plaintiffs the lawful minimum hourly wage for all hours worked in violation of the FLSA, 29 U.S.C. §§206(a).

66. Defendants' failure to pay Plaintiffs the lawful minimum hourly wage was willful.

67. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid minimum wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, pursuant to the FLSA, all in an amount to be determined at trial. 29 U.S.C. § 216(b).

SECOND CLAIM
(Overtime Wages Against All Defendants – Fair Labor Standards Act)

68. Plaintiffs reallege and incorporate by reference all allegations in all the preceding paragraphs as if fully set forth herein.

69. Throughout the relevant period that Plaintiffs have worked for Defendants, Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the Fair Labor Standards Act.

70. Throughout the relevant period that Plaintiffs have worked for Defendants, Defendants have failed to pay Plaintiffs overtime wages at a rate of at least one and one-half times the regular rate of pay for each hour worked in excess of forty hours per workweek, in violation of 29 U.S.C. § 207(a)(1).

71. Defendants' failure to pay Plaintiffs their overtime wages was willful.

72. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, pursuant to the FLSA, all in an amount to be determined at trial. 29 U.S.C. § 216(b).

THIRD CLAIM
(Minimum Wage Against All Defendants – NYLL)

73. Plaintiffs reallege and incorporate by reference all allegations in all the preceding paragraphs as if fully set forth herein.

74. Throughout the relevant period that Plaintiffs have worked for Defendants, Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the New York Labor Law.

75. Throughout the relevant period that Plaintiffs worked for Defendants, Defendants have failed to pay Plaintiffs the lawful minimum hourly wage, in violation of the New York Labor Law, including but not limited to NYLL § 652 *et seq.* and its accompanying regulations and orders of the New York State Department of Labor.

76. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid minimum wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, all in an amount to be determined at trial, pursuant to NYLL § 663.

FOURTH CLAIM
(Overtime Wages Against All Defendants – NYLL)

77. Plaintiffs reallege and incorporate by reference all allegations in all the preceding paragraphs as if fully set forth herein.

78. Throughout the relevant period that Plaintiffs have worked for Defendants, Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the New York Labor Law.

79. Throughout the relevant period that Plaintiffs worked for Defendants, Defendants have failed to pay Plaintiffs overtime wages, in violation of the New York Labor Law and supporting regulations and orders of the New York State Department of Labor.

80. Defendants knew or should have known that the practices described in this Count were unlawful under New York Labor Law and 12 NYCRR § 142-2.2. Defendants' violations of Plaintiffs' rights under the New York Labor Law and 12 NYCRR § 142-2.2 were

willful. Defendants have failed to make a good faith effort to comply with 12 NYCRR § 142-2.2 with respect to the compensation of Plaintiffs.

81. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, all in an amount to be determined at trial pursuant to NYLL §663.

FIFTH CLAIM
(Spread Of Hours Pay Against All Defendants – NYLL)

82. Plaintiffs reallege and incorporate by reference all allegations in all the preceding paragraphs as if fully set forth herein.

83. Throughout the relevant period that Plaintiffs have worked for Defendants Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the New York Labor Law.

84. Plaintiffs regularly worked more than 10 hours in a workday.

85. Defendants willfully violated Plaintiffs' rights by failing to pay Plaintiffs an additional hour of pay for days in which the worker worked in excess of ten hours (spread of hours), in violation of the New York Labor Law.

86. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid spread of hours wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, all in an amount to be determined at trial, pursuant to New York Labor Law § 663.

SIXTH CLAIM

(Notice and Record Keeping Requirements Against All Defendants -- NYLL)

87. Plaintiffs reallege and incorporate by reference all allegations in all of the preceding paragraphs herein.

88. Throughout the relevant period that Plaintiffs have worked for Defendants Plaintiffs were Defendants' employees and Defendants were Plaintiffs' employers within the meaning of the New York Labor Law.

89. Throughout the relevant period that Plaintiffs have worked for Defendants, Defendants failed to provide Plaintiffs with wage notices required by NYLL § 195(1).

90. Throughout the relevant period that Plaintiffs have worked for Defendants, Defendants failed to consistently provide Plaintiffs with accurate wage statements with every payment of wages containing information outlined in NYLL § 195(3), including the rate of pay, basis of pay, gross wages, and any allowances claimed as part of the minimum wage.

91. As a result of Defendants' violations of NYLL § 195(1) for the period April 9, 2011 through February 26, 2015, Plaintiffs may recover damages of fifty dollars for each work week Defendants failed to provide Plaintiffs with wage notices, not to exceed a total of two thousand five hundred dollars per Plaintiff, together with costs and reasonable attorney's fees in accordance with NYLL § 198.

92. As a result of Defendants' violations of NYLL § 195(1) since February 27, 2015, Plaintiffs may recover damages of fifty dollars for each work day Defendants failed to provide Plaintiffs with wage notices, not to exceed a total of five thousand dollars per Plaintiff, together with costs and reasonable attorney's fees in accordance with NYLL § 198.

93. As a result of Defendants' violations of NYLL § 195(3), for the period April 9, 2011 through February 26, 2015, Plaintiffs may recover damages of one hundred dollars

for each work week Defendants failed to provide Plaintiffs with wage statements, not to exceed a total of two thousand five hundred dollars per Plaintiff, together with costs and reasonable attorney's fees in accordance with NYLL § 198.

94. As a result of Defendants' violations of NYLL § 195(3) since February 27, 2015, Plaintiffs may recover damages of two hundred fifty dollars for each work day Defendants failed to provide Plaintiffs with wage statements, not to exceed a total of five thousand dollars per Plaintiff, together with costs and reasonable attorney's fees in accordance with NYLL § 198.

SEVENTH CLAIM

(Call-in Pay Against All Defendants - 12 N.Y.C.R.R. § 142-2.3)

95. Plaintiffs reallege and incorporate by reference all allegations in all of the preceding paragraphs herein.

96. Throughout the relevant period, approximately two days per month, Plaintiffs regularly reported to work for their regularly scheduled shifts but were sent home soon after arrival due to rain and were not paid any wages for those days.

97. Throughout the relevant period that Plaintiffs have worked for Defendants, Defendants have consistently failed to pay Plaintiffs the required call-in pay: at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage, on days when Plaintiffs reported to work upon request or permission by Defendants but were sent home due to rain before they worked for four hours in violation N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.3.

98. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid call-in pay wages, liquidated damages, pre- and post-judgment interest, as well as reasonable attorney's fees and costs of the action, all in an amount to be determined at

trial, pursuant to minimum wage requirements and N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.3 and New York Labor Law § 663.

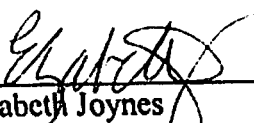
PRAYER FOR RELIEF

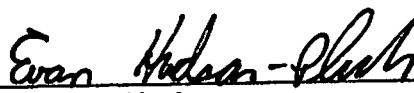
WHEREFORE, Plaintiffs respectfully request that judgment be granted:

- A. Declaring Defendants' conduct complained of herein to be in violation of the FLSA and NYLL;
- B. Awarding Plaintiffs their unpaid minimum wages and overtime wages under NYLL;
- C. Awarding Plaintiffs their unpaid spread-of-hours wages due under the NYLL;
- D. Awarding Plaintiffs statutory damages for the failure to provide wage notices and wage statements under the NYLL;
- E. Awarding Plaintiffs their call-in pay under the NYLL;
- F. Awarding Plaintiffs liquidated damages pursuant to the FLSA and NYLL;
- G. Awarding Plaintiffs pre- and post- judgment interest;
- H. Awarding Plaintiffs the costs of this action, together with reasonable attorney's fees; and
- I. Awarding such other relief as this Court deems appropriate, just and proper.

Dated: July 28, 2015
New York, New York

Respectfully submitted,

By: 
Elizabeth Joynes
MAKE THE ROAD NEW YORK
92-10 Roosevelt Avenue
Jackson Heights, New York 11372
(718) 565-8500 x 4425

By: 
Evan Hudson-Plush
Rebecca A. Hayes
Hiram M. Arnaud
COHEN, WEISS and SIMON LLP
330 West 42nd Street
New York, New York 10036
(212) 563-4100