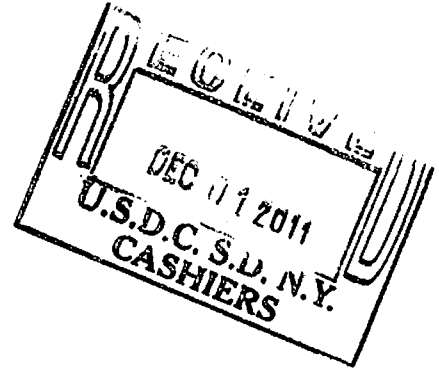


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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**  
-----X

REGINO PEREZ, and CARLOS PEREZ,  
*individually and on behalf of others similarly  
situated,*

*Plaintiffs,*

-against-

GRANNY SAYZ LLC, HEALTHALITIOUS  
NYC INC. (d/ b/a HEALTHALICIOUS),  
BENNETT ORFALY and MICHAEL  
GRIMM,

*Defendants.*  
-----X

**COMPLAINT**

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

**ECF Case**

Plaintiffs Regino Perez and Carlos Perez, individually and on behalf of others similarly situated (collectively the "Plaintiffs"), by and through their attorneys, Michael Faillace & Associates, P.C., upon their knowledge and belief, and as against Defendants Granny Sayz LLC and Healthalicious NYC Inc. (d/b/a Healthalicious) (each a Corporate Defendant, and collectively, the "Defendant Corporations"), and Bennett Orfaly and Michael Grimm, (together with Defendant Corporations, the "Defendants"), allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs are former employees of Defendants Granny Sayz LLC, Healthalicious NYC Inc., Bennett Orfaly and Michael Grimm.
2. Defendants owned, operated, and/or controlled a health food takeout restaurant located at 1594 2nd Avenue, New York, New York 10028, under the name Healthalicious.
3. Upon information and belief, Individual Defendants Michael Grimm and Bennett Orfaly, serve or served as owners, managers, principals or agents of Corporate Defendants Granny Sayz LLC and Healthalicious NYC Inc., and, upon information and belief, these corporate entities operate or operated the restaurant known as Healthalicious as a joint or unified enterprise.
4. Plaintiffs are former employees of the Defendants. They were primarily employed as deliverymen. However, each position often entailed additional, extensive responsibilities that were not related to the principal duties of each job.
5. At all times relevant to this complaint, Plaintiffs worked for Defendants in excess of forty (40) hours per week, without appropriate compensation for the hours over forty (40) per week that they worked. Rather, Defendants failed to maintain accurate recordkeeping of their hours worked, failed to pay Plaintiffs appropriately for any hours worked over forty (40), either at the straight rate of pay, or for any additional overtime premium. Further, Defendants failed to pay Plaintiffs the required "spread of hours" pay for any day in which they had to work over ten (10) hours a day.
6. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiffs and other employees to work in excess of forty (40) hours per

week without paying them the minimum wage and overtime compensation required by federal and state law and regulations.

7. Defendants employed and accounted for all Plaintiffs as deliverymen in their payroll, but in actuality their duties included greater or equal time spent in non-delivery, non-tipped functions such as maintenance, cleaning, receiving and stocking incoming deliveries, and kitchen assistance.

8. Defendants paid these Plaintiffs at the lower tip-credited rate.

9. However, under both the FLSA and NYLL Defendants were not entitled to take a tip credit because Plaintiffs' non-tipped duties exceeded 20% of each workday, or 2 hours per day (whichever was less in each day) (12 N.Y.C.R.R. §146).

10. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiffs' actual duties in payroll records to avoid paying Plaintiffs at the minimum wage rate, and to enable them to pay Plaintiffs at the lower tip-credited rate by designating them deliverymen instead of non-tipped employees.

11. Defendants' conduct extended beyond the Plaintiffs to all other similarly situated employees.

12. Plaintiffs now bring this action on behalf of themselves, and other similarly situated individuals, for unpaid minimum wages and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA"), and for violations of the N.Y. Labor Law §§ 190 *et seq.* and 650 *et seq.* (the "NYLL"), and the "spread of hours" and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 137-1.7 (2006) (herein the "Spread of Hours Wage Order"), including applicable liquidated damages, interest, attorneys' fees, and costs.

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

### **JURISDICTION AND VENUE**

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

15. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district. Upon information and belief, the Defendants maintain their corporate headquarters and offices within this district. Defendants operate a health food takeout restaurant within this district. Further, Plaintiffs were employed by Defendants in this district.

### **THE PARTIES**

#### *Plaintiffs*

16. Plaintiff Regino Perez ("Plaintiff Perez" or "Mr. Perez") is an adult individual residing in Kings County, New York. Plaintiff Perez was employed by Defendants from approximately April 2007 until on or about March 25, 2011.

17. Plaintiff Carlos Perez ("Plaintiff Carlos" or "Mr. Carlos") is an adult individual residing in Kings County, New York. Plaintiff Carlos was employed by Defendants from approximately March 2010 until on or about March 10, 2011.

*Defendants*

18. At all relevant times, Defendants owned, operated, and/or controlled a health food takeout restaurant located at 1594 2nd Avenue, New York, New York 10028, under the name of Healthalicious.

19. Upon information and belief, Granny Sayz LLC, (“Granny Sayz”) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains as its principal place of business a health food takeout restaurant located at 1594 2nd Avenue, New York, New York 10028, under the name of Healthalicious.

20. Upon information and belief, Healthalicious NYC Inc. (“Healthalicious”) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains as its principal place of business a health food takeout restaurant located at 1594 2nd Avenue, New York, New York 10028, under the name of Healthalicious.

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

22. Defendant Bennett Orfaly is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Bennett Orfaly is

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

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

23. Defendants operate a health food takeout restaurant located in the Upper East Side of Manhattan, under the name Healthalicious.

24. The Individual Defendants Michael Grimm and Bennett Orfaly possess or possessed operational control over Defendant Corporations, possess or possessed an ownership interest in Defendant Corporations, and control or controlled significant functions of Defendant Corporations.

25. 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.

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

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

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

29. Upon information and belief, Individual Defendant Michael Grimm operates the Defendant Corporations, as either an alter ego of himself, and/or fails to operate the Defendant Corporations as an entity legally separate and apart from himself, by, among other things:

- a. failing to adhere to the corporate formalities necessary to operate Defendant Corporations as separate and legally distinct entities;
- b. defectively forming or maintaining Defendant Corporations, by among other things failing to hold annual meetings or maintaining appropriate corporate records;
- c. transferring assets and debts freely as between all Defendants;
- d. operating Defendant Corporations for his own benefit as the sole or majority shareholder;
- e. operating Defendant Corporations for his own benefit and maintaining control over them as closed corporations or closely held controlled entities;
- f. intermingling assets and debts of his own with Defendant Corporations;
- g. diminishing and/or transferring assets to protect his own interests; and
- h. other actions evincing a failure to adhere to the corporate form.

30. Upon information and belief, Individual Defendant Bennett Orfaly operates the Defendant Corporations, as either an alter ego of himself, and/or fails to operate the Defendant

Corporations as an entity legally separate and apart from himself, by, among other things:

- a. failing to adhere to the corporate formalities necessary to operate Defendant Corporations as separate and legally distinct entities;
- b. defectively forming or maintaining Defendant Corporations, by among other things failing to hold annual meetings or maintaining appropriate corporate records;
- c. transferring assets and debts freely as between all Defendants;
- d. operating Defendant Corporations for his own benefit as the sole or majority shareholder;
- e. operating Defendant Corporations for his own benefit and maintaining control over them as closed corporations or closely held controlled entities;
- f. intermingling assets and debts of his own with Defendant Corporations;
- g. diminishing and/or transferring assets to protect his own interests; and
- h. other actions evincing a failure to adhere to the corporate form.

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

32. In each year from 2005 to the present, the Defendants had gross annual 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, the Defendants and/or their enterprise were directly engaged in interstate commerce. For example, numerous items that were used in



the restaurant on a daily basis such as fruits, vegetables, bread, meat, dishwashing soaps, and beverages were goods produced outside of the state of New York.

*Individual Plaintiffs*

34. The Plaintiffs are former employees of the Defendants, who were ostensibly employed as deliverymen. However, individual Plaintiffs were often required to perform extensive additional duties beyond the scope of their primary job responsibilities. These additional, non-related duties occupied a significant amount of Plaintiffs' time during each workday.

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

*Plaintiff Regino Perez*

36. Plaintiff Perez was employed by Defendants from approximately April 2007 until on or about March 25, 2011.

37. Defendants ostensibly employed Plaintiff Perez as a deliveryman.

38. Plaintiff Perez's duties included making deliveries to customers, bringing things up from the basement for the food preparer (approximately half an hour daily), bringing down deliveries to the basement (approximately half an hour daily), and cleaning the restaurant (approximately 1 hour and 30 minutes daily).

39. Although Plaintiff Perez was ostensibly employed as a deliveryman, he spent approximately 2 hours and 30 minutes on a daily basis performing non-delivery work throughout his employment with Defendants.

40. Plaintiff Perez regularly handled goods in interstate commerce, such as beverages and cleaning supplies produced outside the State of New York.

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

42. Plaintiff Perez regularly worked in excess of 40 hours per week.

43. From approximately April 2007 until on or about March 25, 2011, Plaintiff Perez worked a schedule of Sundays through Fridays from 10:00 a.m. to 9:00 p.m. (typically 66 hours per week).

44. Plaintiff Perez was paid at the rate of \$4.65 per hour in cash from approximately April 2007 to October 2010. He then was paid the same hourly rate in cash and check from approximately October 2010 to February 2011.

45. Plaintiff Perez was paid at the rate of \$5.00 per hour in cash and check from approximately February 2011 to on or about March 25, 2011.

46. Although Plaintiff Perez received tips for deliveries he made to customers, he was never notified by Defendants that his tips would be included as an offset for wages.

47. Defendants did not account for these tips in any daily, weekly, or other accounting of Plaintiff Perez's wages.

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

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

*Plaintiff Carlos Perez*

50. Plaintiff Carlos was employed by Defendants from approximately March 2010 until on or about March 10, 2011.

51. Defendants ostensibly employed Plaintiff Carlos as a deliveryman.

52. Plaintiff Carlos's duties included making deliveries to customers, bringing things up from the basement for the food preparer (approximately half an hour daily), bringing down deliveries to the basement (approximately half an hour daily), and cleaning the restaurant (approximately 1 hour and 30 minutes daily).

53. Although Plaintiff Carlos was ostensibly employed as a deliveryman, he spent approximately 2 hours and 30 minutes on a daily basis performing non-delivery work throughout his employment

54. Plaintiff Carlos regularly handled goods in interstate commerce, such as beverages and cleaning supplies produced outside the State of New York.

55. Plaintiff Carlos's work duties required neither discretion nor independent judgment.

56. Plaintiff Carlos regularly worked in excess of 40 hours per week.

57. From approximately March 2010 until on or about March 10, 2011, Plaintiff Carlos worked a schedule of Tuesdays through Saturdays from 5:00 p.m. to 12:00 a.m. and Sundays from 10:00 a.m. to 9:00 p.m. (typically 46 hours per week).

58. Plaintiff Carlos was paid at the rate of \$4.65 per hour in cash from approximately March 2010 to October 2010 and \$4.65 per hour in cash and check from approximately October 2010 to February 2011.

59. Plaintiff Carlos was paid at the rate of \$5.00 per hour in cash and check from approximately February 2011 to on or about March 10, 2011.

60. Although Plaintiff Carlos received tips for deliveries he made to customers, he was never notified by Defendants that his tips would be included as an offset for wages.

61. Defendants did not account for these tips in any daily, weekly, or other accounting of Plaintiff Carlos's wages.

62. Defendant did not provide Mr. Carlos with any document or other statement accounting for his actual hours worked, or setting forth the rate of pay for all of his hours worked.

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

*Defendants' General Employment Practices*

64. Defendants regularly required the Plaintiffs to work in excess of forty (40) hours per week without paying them the proper minimum and overtime wages or spread of hours compensation.

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

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

67. All Plaintiffs were paid their wages wholly in cash until approximately October 2010 and in a combination of cash and check from approximately October 2010 to March 2011.

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

avoid paying Plaintiffs properly for (1) their full hours worked, (2) for overtime due, and (3) for spread of hours pay.

69. Defendants failed to inform the Plaintiffs that did receive tips that Defendants intended to take a deduction against Plaintiffs' earned wages for tip income, as required by the NYLL before any deduction may be taken.

70. Defendants failed to maintain a record of the tips earned by Plaintiffs for the deliveries they made to customers.

71. Defendants required Plaintiffs to perform the jobs of multiple employees in addition to their primary responsibilities as deliverymen. These responsibilities included everything from bringing specific food items to chefs from the basement, cleaning the restaurant, receiving and accommodating incoming deliveries, cleaning tables, cleaning the windows, and other maintenance functions. These extra responsibilities constituted a significant portion of these Plaintiffs' hours worked.

72. Defendants required Plaintiffs to perform the jobs of multiple employees in addition to their primary responsibilities as deliverymen. These responsibilities included everything from bringing specific food items to food preparers from the basement, cleaning the restaurant, receiving and stocking incoming deliveries, cleaning tables, cleaning the windows, and other maintenance functions. These extra responsibilities constituted a significant portion of these Plaintiffs' hours worked.

73. Several Plaintiffs were ostensibly employed as deliverymen (tipped employees) by Defendants, although their actual duties included greater or equal time spent in non-delivery, non-tipped functions such as maintenance, cleaning, receiving deliveries, and other duties.

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

**FLSA COLLECTIVE ACTION CLAIMS**

75. Plaintiffs bring their FLSA minimum wage, overtime, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants or any of them, on or after the date that is three years before the filing of the complaint in this case (the “FLSA Class Period”), as employees of Defendants (the “FLSA Class”).

76. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them at a one and one-half their regular rates for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA.

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

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA)**

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

79. At all times relevant to this action, Defendants were Plaintiffs’ employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to

hire and fire Plaintiffs, control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for their employment.

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

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

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

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

84. Plaintiffs have been damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA)**

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

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

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

88. Plaintiffs have been damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF THE NEW YORK MINIMUM WAGE ACT)**

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

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

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

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

93. Plaintiffs have been damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE**  
**NEW YORK STATE LABOR LAW)**

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

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

96. Defendants failed to pay Plaintiffs in a timely fashion, as required by Article 6 of the New York Labor Law.

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

98. Plaintiffs have been damaged in an amount to be determined at trial.



**FIFTH CAUSE OF ACTION**  
**(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**  
**OF THE NEW YORK COMMISSIONER OF LABOR)**

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

100. Defendants failed to pay Plaintiffs one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff's spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.* and 650 *et seq.* and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 137-1.7 and 137-3.11.

101. Defendants' failure to pay Plaintiffs an additional hour's pay for each day Plaintiffs' spread of hours exceeded ten hours was willful within the meaning of New York Lab. Law § 663.

102. Plaintiffs have been damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

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

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

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

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

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

(e) Declaring that Defendants' violations of the provisions of the FLSA were willful as to Plaintiffs (including the prospective collective class members);

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

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

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

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

(j) Declaring that Defendants have violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiffs;

(k) Declaring that the Defendants have violated the recordkeeping requirements of

the NYLL with respect to Plaintiffs' compensation, hours, wages; and any deductions or credits taken against wages;

(l) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Order were willful as to Plaintiffs;

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

(n) Awarding Plaintiffs liquidated damages in an amount equal to twenty-five percent (25%) of the total amount of minimum wage, spread of hours pay, and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(o) Awarding Plaintiffs (including the prospective collective class members) pre-judgment and post-judgment interest as applicable;

(p) Awarding Plaintiffs (including the prospective collective class members) the expenses incurred in this action, including costs and attorneys' fees; and

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

Dated: New York, New York

12-1-11

MICHAEL FAILLACE & ASSOCIATES, P.C.

By:



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