UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CUNEYT KUTLUCA and TANIQUA BROWN, individually and on behalf of all others similarly situated, Plaintiffs, vs. PQ NEW YORK, INC.; PQ OPERATIONS, INC.; PQ LICENSING S.A; PQ 933 BROADWAY, INC.; PQ CENTRAL PARK INC.; and DOES 1-51, Defendants.	Civil Action No. 16-cv-3070 **CLASS ACTION COMPLAINT FOR DAMAGES, RESTITUTION AND INJUNCTIVE RELIEF** **JURY TRIAL DEMAND**

Plaintiffs Cuneyt Kutluca and Taniqua Brown ("Plaintiffs"), individually and on behalf of all others similarly situated, by their attorneys, The Law Office of Christopher Q. Davis, allege, upon personal knowledge and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. This is a collective and class action brought by Individual and Representative Plaintiffs Cuneyt Kutluca and Taniqua Brown ("Lead Plaintiffs"), on their own behalf and on behalf of the Proposed Collective Class and Class identified below (collectively, "Plaintiffs"). Plaintiffs are former tipped Servers employed at Defendants' corporately owned Le Pain Quotidien restaurants ("LPQ" or the "Company") throughout the United States.

2. LPQ's Servers at Defendants' corporately owned restaurants were denied lawful minimum wage and overtime compensation pursuant to an unlawful "tip credit" policy, denied lawful "spread of hours" pay, denied lawful reimbursement for the cost of laundering required uniforms, subjected to Defendants' unlawful practice of tip misappropriation, and subjected to

Defendants' unlawful practice of failing to maintain accurate records in violation of federal and state wage and hour laws.

3. The Collective Class is made of all persons who are or have been employed by Defendants as Servers at Defendants' corporate owned restaurants at any time within the United States within three years prior to this action's filing date through the date of the final disposition of this action (the "Collective Class Period") who were subject to Defendants' common unlawful offset policies, including improperly taking advantage of the FLSA's "tip credit" and failing to pay for the cost of laundering required uniforms, resulting in unlawful offsets against Plaintiffs' direct wages, failure to pay Servers the full federal minimum wage for each week of employment, unlawful retention of Servers' earned tips, and failure to pay Servers all earned overtime wages due.

4. The Class is made up of all persons who are or have been employed by Defendants as Servers at Defendants' corporately owned restaurants within the State of New York during the period of six years prior to the filing date of this Complaint ("the Class Period") and who were subject to Defendants' common unlawful policies of: (i) enforcing offsets against Plaintiff's direct wages, including improperly taking advantage of the NYLL's "tip credit" and failing to pay for the cost of laundering required uniforms, resulting in Defendants' failure to pay Servers the full State minimum wage or their regular rate of pay for each week of employment, unlawful retention of Servers' earned tips, and failure to pay Servers all earned overtime wages due; (ii.) failing to reimburse Servers for the cost of laundering required uniforms at statutorily-required rates; (iii.) failing to pay "spread of hours" pay; and (iv.) failing to provide Servers, at the time of hiring, and/or with each weekly payment of wages, with notices and written wage statements, and failing to maintain and update required records regarding wages and tips, as

required by the NYLL, the NYCRR, New York's Wage Theft Prevention Act, and relevant regulations.

5. Plaintiffs seek relief for the Class pursuant to the applicable provisions of the New York Labor Law ("NYLL") and Collective Class under the Fair Labor Standards Act ("FLSA"), to remedy the Defendants failure to pay all wages and tips due and for notice and recordkeeping failures, in addition to injunctive relief.

PARTIES

6. Individual and representative Plaintiff Cuneyt Kutluca lives in Brooklyn, New York. He was previously employed by Defendants as a Server at their restaurant located at 931 Broadway from February 2015 to August 2015.

7. Individual and representative Plaintiff Taniqua Brown resides in New York, New York. She was previously employed by Defendants as a Server at their restaurant located at 922 Seventh Avenue in New York City and as a Barista at their restaurant located at 11th Street and Broadway between 2012 and 2015.

8. Throughout the relevant time period, Plaintiffs performed tipped services as wait staff for Defendants at their corporately owned restaurants located in the New York State.

9. The Defendants operate approximately fifty-three (53) Le Pain Quotidien locations throughout the United States which are corporately owned.

10. PQ New York, Inc. is a Delaware Corporation licensed to conduct business operations in New York State and operating in the US as "Le Pain Quotidien," with its principle place of business at 434 Broadway, New York, NY 10013.

11. PQ Licensing SA is the parent corporation of PQ New York, Inc. and is responsible for managing the company-owned operations in the United States, France and the

U.K. PQ Licensing SA's PQ is an active Foreign Business Corporation conducting business in New York State and the US as "Le Pain Quotidien," with its principle place of business in Brussels, Belgium.

12. PQ Operations Inc. is a subsidiary of PQ New York, Inc. and is responsible, together with PQ New York, Inc., for managing the company-owned operations in the United States. PQ Operations, Inc. is a Delaware corporation licensed to conduct business in New York state and operating in the US as "Le Pain Quotidien." PQ Operations Inc. maintains a principle place of business at 434 Broadway, New York, NY 10013.

13. PQ 931 Broadway, Inc. ("Flatiron") is an active New York Corporation doing business as "Le Pain Quotidien," with its principle place of business at 931 Broadway, New York, NY 10010. Similar to all corporate-owned LPQ restaurant entities in the US, Defendants jointly own and operate the Le Pain Quotidien located at 931 Broadway, New York, NY 10010.

14. PQ Central Park, Inc. ("Columbus Circle") is an active New York Corporation doing business as "Le Pain Quotidien," with its principle place of business at 922 Seventh Avenue, New York, NY 10010. Similar to all corporate-owned LPQ restaurant entities in the US, Defendants jointly own and operate the Le Pain Quotidien located at 922 Seventh Avenue, New York, NY 10019.

15. Upon information and belief, John Does #1-51 d/b/a Le Pain Quotidien represent other corporate entities that operate Le Pain Quotidien restaurants in the United States.

16. At all relevant times, the Defendants were and continue to be an "enterprise engaged in commerce" within the meaning of the FLSA.

17. At all relevant times, the Defendants were a covered employer within the meaning of the FLSA and the NYLL, and, at all relevant times, employed Plaintiffs and similarly situated employees.

18. According to LPQ's website, all of LPQ's restaurants in the US, UK, and Paris are corporately owned and make up half of our approximately 200 locations around the world. LPQ's corporate owned restaurants in the US are located in the New York City Metro area, Los Angeles, Washington D.C., Connecticut, and Philadelphia. The remaining locations are franchised and not included within the scope of the Class and Collective Class claims alleged herein.

19. According to LPQ's website and publicly available marketing materials, Defendants hold themselves out as a single-enterprise under the branded trade name "Le Pain Quotidien".

20. Defendants' corporately owned restaurants in the United States are commonly operated and managed pursuant to common policies and practices, including common employee compensation and FLSA classification policies applicable to all locations.

21. Defendants have common corporate members and a single Chief Executive Officer who is responsible for managing Defendants' operations for all corporate owned restaurants in the US and Europe.

22. Defendants jointly employed Plaintiffs and similarly situated employees at all times relevant. Each Defendant had substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

23. Defendants' operations are interrelated and unified. During all relevant times, Defendants' corporately owned Le Pain Quotidien restaurants shared common management and were centrally controlled and/or owned by Defendants.

24. The chain of corporately owned restaurants in the United States under the trade name "Le Pain Quotidien" are operated by Defendants as a single common enterprise. Employees are freely interchangeable, the various business operations are marketed as one entity, and all employees are paid by the same payroll methods.

25. At all relevant times, the Defendants maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

26. The Defendants apply the same employment policies, practices, and procedures to all current and formers servers at the Le Pain Quotidien restaurants, including policies, practices, and procedures with respect to the payment of minimum wage, overtime compensation, wage statements, wage notices, retention of tips, and failing to reimburse servers for the cost of maintaining their uniforms.

27. At all relevant times, the Defendants have had the power to declare bankruptcy on behalf of the Le Pain Quotidien restaurants.

28. At all relevant times, the Defendants have had the power to enter into contracts on behalf of the Le Pain Quotidien restaurants.

29. Upon information and belief, at all relevant times, the Defendants' annual gross volume of sales made or business done was not less than $500,000.

30. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by Defendants.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. The Court also has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1332.

32. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 207 *et seq*.

33. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

34. Venue is proper in the United States District Court, Southern District of New York pursuant to 28 U.S.C. § 1391, because the wage violations which give rise to Plaintiffs' claims occurred in this District.

35. Defendants are subject to personal jurisdiction in New York.

COLLECTIVE ACTION ALLEGATIONS

36. Plaintiffs bring FSLA claims on behalf of themselves and other employees similarly situated as authorized under 29 U.S.C. § 216(b). The employees similarly situated are:

Collective Class: All employees who have been employed by Defendants as tipped Servers at any of Defendants' corporately owned restaurants in the United States within three years prior to this action's filing date through the date of the final disposition of this action (the "Collective Class Period") and who were subject to Defendants' common unlawful wage-offset policies, including improperly taking advantage of a "tip credit" and failing to pay for the cost of laundering required uniforms, resulting in unlawful offsets against Plaintiffs' direct wages, and resulting in Defendants' failure to pay Servers the federal minimum wage for each week of employment, unlawful retention of Servers' earned tips, and/or failure to pay Servers all earned overtime wages due.

37. Defendants employed Plaintiffs during the Collective Class Period.

38. On information and belief, Defendants have employed more than 200 other Servers during the collective class period through its US-based corporately owned restaurants, including more than 40 in New York State.

39. Plaintiff Servers performed duties pursuant to common job descriptions and uniform training.

40. During training, Plaintiffs are provided with a wage notice that purports to provide adequate notice of Defendants' tip credit, but which failed to provide necessary or accurate information.

41. Defendants also failed to provide written notice in the Serve's primary language.

42. Plaintiff Kutluca was provided with a written notice that was in English despite the fact that English is not his primary language. The written notice also incorrectly stated his subminimum cash wage, tip credit, minimum wage, and overtime rate rates.

43. Plaintiff and the members of the class were not able to take any rest or meal breaks and typically worked 7 or 8 hour shifts, sometimes more.

44. Servers are provided weekly schedules and typically work four or five shifts per week.

45. The lead plaintiffs were paid a subminimum cash wage of $5.00 an hour and received a tip credit of $3.75 an hour for every hour of work.

46. Upon information and belief, all Servers start employment with Defendants earning the minimum wage.

47. Defendants provide Servers with an apron and a T-shirt with the company logo on it.

48. Servers are expected to wear the T-shirt and use the apron every shift, and they are required to keep their uniforms clean.

49. Defendants do not pay for the cost of laundering the aprons or T-shirts, and do not distribute them in numbers commensurate with the average number of shifts worked per week by the Plaintiffs and the putative class.

50. As a matter of common policy, and pursuant to job descriptions and training guidelines applicable to the Collective Class and Class Members, Plaintiffs spend a substantial amount of time performing non-tip producing work including, but not limited to: slicing and preparing bread; cutting fruit; uncorking wine; bring water, beer and wine to the floor, change kegs; pouring beer and other drinks which are not prepared by the barista; polishing silverware; washing and setting tables; unloading the dishwasher; refilling the jam caddies and placing them on the tables; marrying condiment jars; refilling salt and pepper shakers/mills; refilling sugar dispensers; folding napkins and linens; taking out the garbage; sweeping and mopping floors; bussing tables; resetting tables; cleaning the baseboards; dusting the wine bottles; cleaning the computer screens; cleaning the cupboards; rewriting the specials on the chalk board; restocking napkins, coffee mugs, and silverware; checking and restocking toilet paper in the restrooms; taking chairs off the tables and setting up in the AM, unstacking and setting up outdoor tables, chairs, and umbrellas; stacking and chaining together outdoor tables; sweeping and mopping the floors; preparing bleach water; cleaning and mopping the bathroom and other common areas; clean the coffee section; ringing up customer orders in the cash register for all tables; run and fill out a server report and separate out tips; post-shift cash out and tip accounting; and post-shift cash deposit.

51. Each day, one, one or more servers are assigned to the first shift of the day (an "opener") and the last shift of the day (a "closer").

52. Servers assigned to "open" are scheduled to arrive at work between 30 minutes and one hour before the store opens to prepare the store for customers.

53. During this period, the Server was expected to perform non-tip producing preparation duties.

54. The lead plaintiffs arrived at work for opening shifts 30 minutes to one hour before the store opened and frequently continued performing non-tip producing "opening" duties even after the store opened.

55. Servers assigned to "close" must perform non-tip producing cleaning and "break-down" duties after the last table in their section has left.

56. Non-tip producing "closing" duties lasted approximately 30 minutes to one hour every day.

57. The Lead Plaintiffs each worked "closing" shifts and performed, on average, between 30 minutes and one hour of non-tip producing closing-related duties.

58. Aside from opening and closing duties, Servers also are expected to perform many non-tip producing duties throughout their shift.

59. Given LPQ's business model, which assumes that Servers provide full table service for restaurants with large seating capacity and little or no table bussing support, LPQ Servers are more likely to perform non-tip producing work than direct customer service or other direct tip producing duties each shift.

60. The Lead Plaintiffs performed non-tip producing duties between 40 and 80 percent of each shift.

61. The Lead Plaintiffs have observed the other Servers performing approximately the same percentage of non-tip producing duties in their stores.

62. Coffee drinks are made for the floor by a non-service coffee barista.

63. The non-service coffee barista prepares all drinks for the floor pursuant to a ticketing system in place at all restaurants.

64. "Barista tickets" are food item tickets.

65. Servers place coffee orders at the register and barista tickets are printed.

66. Counter service operates under an entirely different system and involves entirely separate restaurant patrons.

67. The non-service coffee barista works in the coffee-preparation area adjacent to the kitchen and out of the view of the dining area.

68. The non-service coffee barista has negligible contact with dining floor customers.

69. The non-service coffee barista's role in preparing drinks for dining room patrons is not known to dining room patrons.

70. The non-service coffee barista is not a tipped employee as the term has been interpreted under the FLSA and the NYLL, and cannot share in tips pursuant to a mandatory tip sharing policy.

71. Further, Defendants deduct an amount from charged tips that purports to compensate the restaurant for liquidation fees associated with credit card transactions.

72. The percentage of the credit card liquidation fees which Servers must pay for is not disclosed to the Servers, and the deduction does not appear on Servers' paystubs.

73. The agreement between the credit card companies and the restaurant regarding liquidation fees is not known to Servers, nor is it known whether the liquidation fees are deducted from Servers' tips or wages (either direct cash wages or tip credit wages).

74. At all times relevant, Defendants paid Plaintiffs and all similarly situated Class and Collective Action Members a reduced minimum wage rate as tipped employees by availing themselves of a tip credit. Defendants, however, did not satisfy the requirements under the FLSA, the NYLL, the Wage Theft Protection Act, and relevant sections of the Code of Federal Regulation ("CFR") and the New York City Code of Rules and Regulations ("NYCRR") by which they could take a tip credit towards the basic direct cash wage paid to Plaintiffs, Class and Collective Action Members.

75. Defendants are unable to take a tip credit under the FLSA because, according to common policies applicable to all Servers, they (a.) failed to provide Servers with a legally sufficient "tip credit" notice at the time of hiring, including failing to communicate, accurately and completely, the amounts of the cash wage paid and the tip credit taken; that the tip credit portion may not exceed the value of the tips actually received; that all tips received by the employee must be retained by the employee except for amounts contributed toward a valid tip-pooling arrangement; and that the tip credit will not apply to any employee who has not been informed of these requirements; (b.) failed to provide notice of mandatory participation in tip pooling or tip splitting, including the participating employees and splitting percentages; (c.) failed to timely update any "tip credit" notice with cash wage increases due to promotion, merit or COLA increases, and/or statutorily imposed increases in the minimum wage; (d) required Plaintiffs to spend over twenty percent (20%) of their working day performing non tip-producing work; (e) unlawfully included non-service coffee baristas in employer-mandated tip pooling who

do not provide direct customer service to dining room patrons, who are not recognized by dining room customers when they leave tips, and who would not otherwise receive tips if they were not included in the tip pool; (f) requiring Servers to regularly contribute an unreasonable and disproportionate percentage of tips to mandatory tip pool by requiring Servers to contribute over 3% of gross sales per shift from cash tips only, and failing to adjust splitting percentages for instances of customer walk out or no tip left by a customer, resulting in instances where cash tips for a shift do not satisfy the required tip out amounts and Servers must pay out of pocket; (g) failing to pay the full minimum wage for non-tip producing duties performed during distinct periods of time, such as mandatory cleaning and preparation duties performed before opening or after closing; (h) and imposing the cost of doing business upon Servers, in the form of charging them for the costs of laundering mandatory uniforms since Defendant LPQ has a policy requiring the wearing of clean uniforms, and since doing so requires offset against direct wages, including minimum wages.

76. During these periods, Defendants unlawfully compensated Plaintiffs at the tipped minimum wage rate rather than the full hourly non-tipped minimum wage rate.

77. As a result, Defendants miscalculated Plaintiffs' regular rate of pay, and did not pay Plaintiffs the proper wages, minimum wages or overtime wages for all of the time they performed compensable work each workweek.

78. Further, Defendants unlawfully failed to reimburse Plaintiffs for misappropriated tips having unlawfully availed themselves of the tip credit, and failed to subsidize the cost of laundering required uniforms resulting in separate-transaction deductions from minimum wage compensation earned by Plaintiffs.

79. A collective action is appropriate in this circumstance because Plaintiffs and the Collective Action Members are similarly situated, in that they have had substantially similar job requirements, were subject to common employment-related compensation and operational policies, and were all subjected to Defendants' illegal policies of failing to pay the proper minimum wage for all hours worked, failing to pay all earned tips, and/or failing to pay correct overtime premiums for work performed over forty (40) hours each week, having subjected subminimum direct wages to an improper offset by unlawfully asserting the ability to take a "tip credit" and failing to pay for the laundering of required uniforms.

80. The claims for relief are properly brought under and maintained as an opt-in collective action pursuant to 29 U.S.C. § 216(b). The FLSA Collective Class Members are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from the Defendants. Notice can be provided to the FLSA Collective Class Members via first class mail to the last address known to Defendants.

81. Consistent with Defendants' policy, pattern and/or practice, Plaintiffs and the Collective Class Members were not paid minimum wages for all hours worked, all earned tips, and premium overtime compensation for all hours worked beyond forty (40) per workweek.

82. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith, and has caused significant damages to Plaintiffs and the Collective Class.

83. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs and the Collective Class, and as such, notice should be sent to the Collective Class. There are numerous similarly situated current and former employees of Defendant who were subject to the aforementioned policy in violation of the FLSA and who would benefit from the issuance of a Court supervised notice of the present lawsuit and the opportunity to join in the

present lawsuit. Those similarly situated employees are known to the Defendants and are readily identifiable through Defendants' records.

CLASS ALLEGATIONS

84. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following defined class:

Proposed Classes:

Tipped Employee Offset Class: All employees who have been employed by Defendants as tipped Servers at any of Defendants' corporate owned restaurants in New York State within six years prior to this action's filing date through the date of the final disposition of this action (the "Class Period") and who were subject to Defendants' common unlawful offset policies, including improperly taking advantage of the NYLL's "tip credit" resulting in Defendants' failure to reimburse Plaintiffs for the cost of laundering Plaintiffs' required uniforms, unlawful reduction of Plaintiffs' direct wages and tips, and resulting in Defendants' failure to pay Plaintiffs the full NY State minimum wage for each week of employment, unlawful retention of Servers' earned tips, and, having miscalculated the regular rate of pay, failing to pay Plaintiffs all earned overtime wages due.

Spread of Hours Class: All employees who have been employed by Defendants as tipped Servers at any of Defendants' corporate owned restaurants in New York State within six years prior to this action's filing date through the date of the final disposition of this action (the "Class Period") and who were subject to Defendants' common unlawful policy of improperly denying spread of hours compensation when lawfully earned, and failing to include spread of hours compensation in the regular rate of pay when calculating and paying overtime.

Wage Statements: All employees who have been employed by Defendants as tipped Servers at any of Defendants' corporate owned restaurants in New York State within six years prior to this action's filing date through the date of the final disposition of this action (the "Class Period") and who were subject to Defendants' common unlawful policy of failing to provide and update introductory and/or biweekly wage statements, and failing to maintain lawful recordkeeping practices for wage and tip records, pursuant to the NYLL Section 195, the Wage Theft Protection Act, NYLL 198 *et al*, and/or 12 NYCRR Subparts 137-2 and 146-1.

> **Uniform Laundering Class**: All employees who have been employed by Defendants as tipped Servers at any of Defendants' corporate owned restaurants in New York State within six years prior to this action's filing date through the date of the final disposition of this action (the "Class Period") and who were subject to Defendants' common unlawful policy of failing to provide uniform maintenance pay pursuant to 12 NYCRR Sections 137-1.8 and 146-1.7, and also failing to include this premium in the regular rate of pay calculation for the purposes of paying overtime premiums for hours worked over 40 in a workweek.

85. Plaintiffs incorporate by reference the facts alleged in the above.

86. A class action is appropriate in this circumstance because Plaintiffs and the Class Action Members are similarly situated with respect to the Tipped Employee Offset Class, in that they have substantially similar job requirements, were subject to common employment-related compensation and operational policies, and were all subject to Defendants' illegal policy of subjecting Plaintiff's direct wages to unlawful offset by instituting an unlawful tip credit and failing to reimburse Plaintiffs for the cost of laundering required uniforms, resulting in their failure to pay the proper minimum wage for all hours worked, failing to pay all earned tips, and/or failing to pay lawful overtime premiums for work performed over forty (40) hours each week.

87. Plaintiff Brown and other members of the putative class worked a double or "split" shift, approximately 16 hours, without any spread of hours compensation and without being paid the appropriate overtime rate for hours worked in excess of 40.

88. Plaintiffs and the Class Action Members are similarly situated with respect to the Spread of Hours Class because they have had substantially similar job requirements, were subject to common employment-related compensation and operational policies, and were all subjected to Defendants' illegal policy of failing to pay spread of hours compensation when

earned for an additional hour of pay at the minimum wage for each day Plaintiffs had a spread of hours in excess of ten hours per day, in violation of the New York Labor Law.

89. Plaintiffs and the Class Action Members are similarly situated with respect to the Uniform Laundering Maintenance Class because they have had substantially similar job requirements, were subject to common employment-related compensation and operational policies, and were all subjected to Defendants' illegal policy of failing to pay uniform laundering maintenance pay under the NYCRR and failing to properly calculate the regular rate of pay in paying overtime premiums for hours worked in excess of 40 hours in a workweek.

90. Plaintiffs and the Class Action Members are similar situated with respect to the Wage Statement Class because they had substantially similar job requirements, were subject to common employment-related compensation and operational policies, and who were subject to Defendants' common unlawful policy of failing to provide adequate introductory, updated and/or biweekly wage statements, or maintain lawful recordkeeping practices, pursuant to NYLL Section 195 *et al*, the Wage Theft Protection Act, NYLL 198 *et al*, and/or 12 NYCRR Subparts 137-2 and 146-2. .

91. Defendants are unable to take a tip credit under the NYLL and relevant regulations because, according to common policies applicable to all Servers, they (a.) failed to provide Servers with a writing at the time of hiring in the primary language of the employee which provided lawful notice of Defendants' intention to take a "tip credit" and other wage and tip-related notices which satisfied the requirements of 12 NYCRR Subparts 146-1 and 146-2 and NYLL Section 195; (b.) failed to provide notice of Defendants' mandatory tip pooling policy pursuant to NYLL Section 195 and 12 NYCRR Section Subpart 146-2, including providing information on participating employees and splitting percentages; (c.) failed to timely update any

"tip credit" notices pursuant to 12 NYCRR Section 146-2.2 and NYLL Section 195 when Servers received cash wage increases due to promotion, merit or other reason, and/or because of statutorily imposed increases in the minimum wage; (d) required Plaintiffs to spend over twenty percent (20%) or two hours of their working day, whichever is less, performing non tip-producing work in violation of 12 NYCRR Section 146-2.9; (e) unlawfully including non-service baristas in employer-mandated tip pooling who do not provide direct customer service to dining room patrons, who are not recognized by dining room customers when they leave tips, and who would not otherwise receive tips if they were not included in the tip pool in violation of 12 NYCRR Section 146-2.14; (f) requiring Servers to contribute a greater percentage of their tips than is customary and reasonable to indirectly tipped employees (busboys and non-service baristas) in violation of 12 NYCRR Section 146-2.14; (g) requiring Servers to contribute an unreasonable and disproportionate percentage of tips to mandatory tip pool by requiring Servers to contribute over 3% of gross sales per shift, requiring mandatory tip splitting with indirectly tipped employees based on a percentage of gross sales each shift from only cash tips, and failing to adjust splitting percentages for instances of customer walk out or no tip left by a customer, resulting in instances where cash tips for a shift do not satisfy the required tip out amounts and Servers must pay out of pocket; (h) failing to pay the full minimum wage for non-tip producing duties performed during distinct periods of time, such as mandatory cleaning and preparation duties performed before opening or after closing; (i) failing to establish, maintain, and preserve wage and tip statements pursuant to NYLL Section 195, *et al*, the Wage Theft Protection Act, and/or 12 NYCRR Subparts 137-2 and 146-2; (j) failing to provide weekly pay statements and daily tip logs for Servers pursuant to 12 NYCRR Subpart 146-2and NYLL Section 195; and (k) requiring Plaintiffs to pay to launder mandatory uniforms (aprons and t-shirts) resulting in

kickback of their wages, including minimum wages, and forcing Plaintiffs to pay Defendants' operating costs.

92. The claims of Plaintiffs are typical of the claims of the Class Members they seek to represent. Plaintiffs and all of the Class Members work, or have worked, for Defendants as Servers at the Le Pain Quotidien restaurants in New York. Plaintiffs and the Class Members enjoy the same statutory rights under the NYLL, including to be paid for all hours worked to be paid all tips earned, to be paid overtime wages, and to be reimbursed for the cost of maintaining their uniforms. Plaintiffs and the Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs and the Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

93. Numerosity: The Proposed Classes are so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the relevant time period, Defendant employed in excess of 200 people who satisfy the definition of the Proposed Classes.

94. Typicality: The Plaintiffs' claims are typical of the members of the Proposed Classes. Plaintiff is informed and believes that, like other Servers, the putative plaintiffs were subject to the aforementioned unlawful policies during the Class Period. Plaintiffs had the same duties and responsibilities as other Class members.

95. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

96. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Proposed Classes, and have retained counsel experienced in complex FLSA and NYLL class and collective action litigation.

97. Commonality: Common questions of law and fact exist to all members of the Proposed Classes and predominate over any questions solely affecting individual members of the Proposed Classes, including but not limited to:

a. Whether Defendants subjected Servers' wages to unlawful offset by instituting an illegal tip credit policy under the NYLL;

b. Whether Defendants failed to compensate Plaintiffs for the cost of laundering required uniforms under the NYLL;

c. Whether Defendants failed to pay lawful minimum wages to Plaintiffs and the Proposed Class under the NYLL;

d. Whether Defendants failed to pay spread of hours compensation to Plaintiffs as required by the NYLL;

e. Whether Defendants unlawfully failed to pay appropriate overtime compensation to members of the Proposed Class in violation of NYLL for hours worked over 40 during a workweek;

f. Whether Defendants employed Plaintiff and the Proposed Classes within the meaning of New York law;

g. Whether Defendants failed to maintain accurate timekeeping records as required by the NYLL, the Wage Theft Protection Act, and the NYCRR;

h. The proper measure of damages sustained by the Proposed Classes; and

i. Whether Defendants' actions were "willful."

98. The case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the class would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendants. Further, adjudication of each individual member's claim as a separate action would be dispositive of the interest of other individuals not party to this action, impeding their ability to protect their interests.

99. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Proposed Classes predominate over any questions affecting only individual members of the Proposed Classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants common and uniform policies and practices denied the Proposed Classes the wages to which they are entitled. The damages suffered by the individual members of the Proposed Classes are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

100. Plaintiffs intend to send notice to all members of the Proposed Classes to the extent required by Rule 23. The names and addresses of the Proposed Classes are available from Defendant

AS AND FOR A FIRST CAUSE OF ACTION
(Unpaid Minimum Wages Under the Fair Labor Standards Act)

101. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

102. Plaintiffs' consent in writing to be a part of this action, pursuant to 20 U.S.C. § 216(b).

103. Plaintiffs, on behalf of themselves and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

104. Defendants failed to pay Plaintiffs and the Collective Action Members the minimum wages to which they are entitled under the FLSA.

105. Defendants failed to pay the full minimum wage by relying on an unlawful tip credit and by failing to reimburse Servers for the cost of laundering required uniforms, practices that resulted in deductions from their minimum cash wage by separate transaction.

106. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class and Collective Action Complaint.

107. Defendants were required to pay directly to Plaintiffs and the Collective Action Members the full federal minimum wage rate for all hours worked.

108. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.,* because Defendants failed to inform Plaintiffs and the Collective Action Members of the provisions of subsection 203(m) of the FLSA.

109. Defendants were further not eligible to avail themselves of the federal tipped minimum wage under the FLSA, 29 U.S.C. §§ 201 *et seq.,* because Defendants required Plaintiffs and the Collective Action Members to perform a substantial amount of non-tipped work in excess of twenty-percent (20%) of their working day.

110. Defendants were further not eligible to avail themselves of the federal tipped minimum wage under the FLSA for the reasons set forth in paragraph 75, *infra.*

111. During these periods, Defendants compensated Plaintiffs and the Collective Action Members at the tipped minimum wage rate rather than the full hourly minimum wage rate as required by 29 U.S.C. §§ 201 *et seq.*

112. As a result of Defendants' violations of the FLSA, Plaintiffs and the Collective Action Members have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

113. Defendants' unlawful conduct, as described in this Class and Collective Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class and Collective Action Complaint were unlawful.

114. Because Defendants' violations of the FLSA have been willful, a three (3) year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

AS AND FOR A SECOND CAUSE OF ACTION
(New York Labor Law Article 6 and 12 NYCRR 142-2.2: Unpaid Overtime Wages)

115. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

116. At all relevant times, Plaintiff was an employee and Defendants have been an employer within the meaning of the NYLL.

117. Defendants knowingly and intentionally failed to pay Plaintiffs overtime at a rate of one and one-half times their regular rate for each hour worked in excess of forty (40) hours per week in violation of New York Labor Law Article 19, §§ 650 *et seq.* and the supporting

regulation of the New York State Department of Labor, including but not limited to the regulations in 12 N.Y.C.R.R. Part 142.

118. Defendants' failure to pay Plaintiff's overtime premiums was willful within the meaning of the N.Y. Lab. Law § 663.

119. Due to Defendants' violations of the New York Labor Law, Plaintiff is entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

AS AND FOR A THIRD CAUSE OF ACTION
(Unpaid Minimum Wage Compensation Under the New York Labor Law and the New York Code of Rules and Regulations)

120. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

121. At all relevant times, Plaintiffs and Class Members were employed by the Defendants within the meaning of the New York Labor Law, §§ 2 and 651 and the supporting

122. New York State Department of Labor regulations.

123. Defendants willfully violated Plaintiffs' and the Class Members' rights by failing to pay minimum wage for all hours worked, in violation of the NYLL and regulations promulgated thereunder.

124. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in the Class and Collective Action Complaint.

125. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor regulations apply to Defendants, and protect Plaintiffs and the Class Members.

126. Defendants were required to pay Plaintiffs and Class Members the full minimum wage at a rate of (a) $7.15 per hour for all hours worked from January 1, 2007 through July 23, 2009; (b) $7.25 per hour for all hours worked from July 24, 2009 through December 30, 2013; (c) $8.00 per hour for all hours worked from December 31, 2013 through December 31, 2014; (d) $8.75 per hour for all hours worked on December 31, 2014 through December 31, 2015; and (e) $9.00 per hour for all hours on December 31, 2015 through December 31, 2016, under the NYLL §§ 650 et seq. and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

127. Defendants failed to pay the full minimum wage by relying on an unlawful tip credit and by failing to reimburse Servers for the cost of laundering required uniforms, a practice that resulted in deductions from their minimum cash wage by separate transaction.

128. Defendants cannot claim the tip credit because Defendants failed to furnish with every payment of wages to Plaintiffs and the Class Members a statement listing hours worked, rates paid, gross wages, and tip allowances claimed as part of their minimum hourly wage rate, in violation of the NYLL Section 195, and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

129. Defendants cannot claim the tip credit because Defendants failed to provide notice to Plaintiffs and the Class Members at the time of hire which included their: rate of pay, including overtime rate of pay, how the employee is paid, the regular payday, address and phone number of the employer's main office or principal location and allowances taken as part of the minimum wage (i.e., tip credit).

130. Defendants cannot claim the tip credit because Defendants required Plaintiffs and the Class Members to perform a substantial amount of non-tipped work in excess of twenty

percent (20%) of their time at work. During these periods, Defendants compensated Plaintiffs and the Class Members at the tipped minimum wage rate rather than the full hourly minimum wage rate as required by 12 NY.C.R.R. Part 237 and Part 146.

131. Defendants were further not eligible to avail themselves of the federal tipped minimum wage under the NYLL for the reasons set forth in paragraph 91, *infra.*

132. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiffs and the Class Members, Defendants have willfully violated the NYLL, Article 19, §§ 650 et seq., and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

133. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unpaid Overtime Wages Under the Fair Labor Standards Act)

134. Defendants failed to pay Plaintiffs and the Class Members one and one-half (1.5) times the regular rate of pay for hours worked in excess of forty (40) per workweek.

135. Defendants improperly availed themselves of the tip credit and miscalculated the regular rate of pay and overtime rate of pay.

136. Defendants also failed to include laundering maintenance pay in the regular rate of pay for the sake of calculating overtime rates of pay.

137. Through their knowing or intentional failure to pay Plaintiffs and the Class Members overtime wages for hours worked in excess of forty (40) per week, Defendants have

willfully violated the NYLL, Article 19, §§ 650 et seq., and the supporting New York State Department of Labor regulations.

138. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

AS AND FOR A FIFTH CAUSE OF ACTION

(Recordkeeping violations, including failing to provide adequate introductory, updated and/or biweekly wage and tip statements pursuant to NYLL Section 195 *et al*, the Wage Theft Protection Act, NYLL 198 *et al,* and/or 12 NYCRR Subparts 137-2 and 146-2.)

139. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

140. Defendants have willfully failed to supply Plaintiffs and the Class Members with wage statements in the language identified by Plaintiffs and the Class Members as their primary language.

141. Defendants have willfully failed to supply Plaintiffs and the Class Members with written and accurately stated notice of the following at the start of their employment, and in the event any of the data in the notice changes one week in advance of any change: rates of pay, including overtime rate of pay, how the employee is paid, the official name of the employer and another other names used for business (DBA's); address and phone number of the employers main office, and allowances taken as part of the minimum wage including tip credits and deductions.

142. Defendants have failed to maintain wage and hour records for six years and on an ongoing basis, including accurate records of hours worked by employees and wages, including,

for each week an employee works, records of hours worked (regular and overtime), rates of pay (regular and overtime), how the employee is paid, employees gross and net wages, itemized deductions, and itemized allowances and credits claims by the employer, including tip credits.

143. Defendants have also failed to provide payroll statements each pay period with hours worked, rates paid, gross wages, credits claimed (for tips, meals and lodging) if any, deductions, net wages, the employee's name, employer's name, address and phone number, and dates covered by the payment.

144. Defendants have also failed to maintain the following records a required by the NYCRR: (1) a daily log of tips collected by each employee on each shift; (2) a list of occupations deemed eligible to receive tips through the top sharing or tip pool system; (3) the shares of tips that each occupation receives; and (4) the amount in tips that each employee receives.

145. Among other violations, Defendants failed to provide timely and accurately stated information on credit card tips paid to Servers. Credit card tips were paid the week following the week in which the tips were earned, and were paid without any itemization of deductions taken out for credit card processing fees.

146. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants statutory penalties, as provided for by NYLL, Article 6, §§ 190 *et seq*., liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and injunctive and declaratory relief.

AS AND FOR A SIXTH CAUSE OF ACTION

(Failure to Pay Uniform Maintenance Pay in violation of the New York Labor Law and the New York City Code of Rules and Regulations)

147. Plaintiffs, on behalf of themselves and the Class Members, repeat, reallege and incorporate by reference the foregoing allegations as if set forth fully and again herein.

148. Defendants required Plaintiffs and the Class Members to wear a certain uniform (T-shirt with a logo and apron) when they worked for Defendants, but did not reimburse Plaintiffs or the Class Members for the cleaning of these uniforms as required by New York law.

149. Defendants did not provide t-shifts with logos or aprons to Servers in sufficient numbers consistent with the average number of days per week worked by the employees, and Defendants did not offer to launder Servers' uniforms themselves.

150. Accordingly, Defendants are required to compensate Plaintiffs and the Class Members uniform maintenance pay in statutorily proscribed amounts.

151. The Defendants' NYLL violations have caused Plaintiffs and Class Members irreparable harm for which there is no adequate remedy at law.

152. Due to Defendants' NYLL violations, Plaintiffs and the Class Members are entitled to recover damages from Defendants the statutorily proscribed uniform maintenance pay amounts for which Plaintiffs and the Class Members incurred, plus liquidated damages, damages for unreasonably delayed payment of wages, interest, reasonable attorneys' fees and costs and disbursements.

AS AND FOR A SEVENTH CAUSE OF ACTION

Tip Misappropriation under State Law

153. Section 196–d states that "[n]o employer or his agent or an officer or agent of any

corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee." N.Y. Lab. Law § 196–d.

154. It further states that §196–d shall not be construed as affecting "the sharing of tips by a waiter with a busboy or similar employee," i.e. another food service workers who provides personal customer service as a principal or regular part of their duties.

155. Pursuant to Defendants mandatory tip splitting policy, Servers in Defendants corporately owned stores are forced to split tips with non-service baristas who do not provide personal customer service to dining room patrons.

156. Defendants are liable for non-payment of tips and must reimburse Plaintiffs appropriated tips.

157. Plaintiffs and the Class Members incurred, plus liquidated damages, damages for unreasonably delayed payment of tips, interest, reasonable attorneys' fees and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq*. and § 196-d.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Unlawful Deductions from Wages in Violation of NYLL § 193, 198-b (2), and § NYCCRR 137-2.5)

158. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

159. At all relevant times, Plaintiffs were employees and Defendants have been an employer within the meaning of the New York Labor Law.

160. Each of the Defendants exercised control over the nature and structure of the employment relationship and economic control over the relationship such that they are "employers" under the FLSA and NYLL and are therefore individually subject to liability.

161. Section 193 and 198-b of the New York Labor Law expressly prohibits an employer from making unauthorized deductions from employees' wages.

162. Section 193 prohibits deductions from employees' wages unless the deductions are (1) expressly authorized by and for the benefit of the employee and (2) limited to the enumerated categories of permissible deductions.

163. Defendants made deductions from the wages of the Plaintiffs for purposes which are not permissible under the statute namely, unlawfully applying a tip credit against wages and reducing wages by requiring Plaintiffs to pay for the costs of laundering mandatory uniforms (separate transaction deductions).

164. The deductions made by Defendants were not made with the informed authorization of the employee and were not for Plaintiffs' benefit.

165. By Defendants' practice of making unlawful deductions from Plaintiff's earned wages, Plaintiff was damaged in an amount to be proven at trial.

166. Section 198-b(2) provides, "Whenever any employee who is engaged to perform labor shall be promised an agreed rate of wages for his or her services, be such promise in writing or oral, or shall be entitled to be paid or provided prevailing wages or supplements pursuant to article eight or nine of this chapter, it shall be unlawful for any person, either for that person or any other person, to request, demand, or receive, either before or after such employee is engaged, a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment."

167. Defendants have separately violated Section 198-b (2) by requiring Plaintiff to return earned wages to Defendants.

168. Due to Defendants' violations of the New York Labor Law, Plaintiff is entitled to recover from Defendants all wages deducted or charged, and all payments required by separate transaction plus reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

AS AND FOR AN NINTH CAUSE OF ACTION
Failure to pay Spread of Hours Pay Under New York Law

169. Under New York law, employers must pay "one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required [by New York's minimum wage law], for any day in which (a) the spread of hours exceeds 10 hours; or (b) there is a split shift; or (c) both situations occur." N.Y. Comp.Codes R. & Regs. tit. 12, § 142–2.4.

170. "Spread of hours" is defined as "the interval between the beginning and end of an employee's workday."

171. In the hospitality industry, "spread of hours" pay must be paid to employees for any days in which their spread is over 10 hours, regardless of how much the employee makes.

172. This includes "split shifts" where the spread of hours exceeds 10 hours.

173. Plaintiff Taniqua Brown regularly worked shifts which exceeded 10 hours, including split shifts, as did members of the putative Class.

174. Plaintiffs and the Class Members incurred, plus liquidated damages, damages for unreasonably delayed payment of wages, interest, reasonable attorneys' fees and costs and disbursements of the action pursuant to NYLL §§ 663(1) *et seq*. and § 196-d.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Proposed Classes, pray for relief as follows:

A. That the Court determine that this action may proceed as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure;

B. That Defendants are found to have violated the provisions of the New York Labor Law, the New York Wage Theft Prevention Act, the New York Code of Rules and Regulations, and the Fair Labor Standards Act as to Plaintiffs and the Class;

C. That Defendants' violations as described above are found to be willful;

D. An award to Plaintiffs and the Class for the amount of unpaid wages owed, unpaid tips, including interest thereon, and penalties, including liquidated damages, subject to proof at trial;

E. That Defendant further be enjoined to cease and desist from unlawful activities in violation of the FLSA and the NYLL;

F. An award of reasonable attorneys' fees and costs pursuant to the NYLL and 29 U.S.C. § 216 and/or other applicable law; and

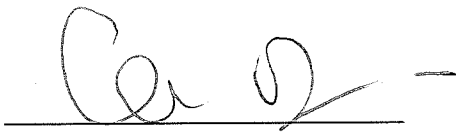
G. For such other and further relief, in law or equity, as this Court may deem appropriate and just, including incentive awards for the Lead Plaintiffs.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury as to all issues so triable.

DATED: April 26, 2016

The Law Office of Christopher Q. Davis, PLLC



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