

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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WUISTONG MENDOZA on behalf of himself	:	
and on behalf of similarly situated individuals,	:	
	:	
Plaintiff,	:	Index No.:
	:	
v.	:	
	:	<u>CLASS ACTION COMPLAINT</u>
RANA USA LLC d/b/a RANA PASTIFICIO &	:	
CUCINA,	:	
	:	<u>JURY TRIAL DEMAND</u>
Defendant.	:	
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Plaintiff Wuistong Mendoza (“Plaintiff” or “Mr. Mendoza”), on behalf of himself and on behalf of other similarly situated individuals, by and through his undersigned counsel Wigdor LLP, as and for his Complaint in this action against Defendant Rana USA, LLC d/b/a Rana Pastificio & Cucina (“Defendant” or “Rana Pastificio”), hereby alleges as follows:

NATURE OF THE CLAIMS

1. Mr. Mendoza was an employee of Rana Pastificio from July 2013 until July 2017. Throughout his employment, Mr. Mendoza regularly worked double shifts where the interval of time between Mr. Mendoza’s start and end time exceeded ten (10) hours. However, Mr. Mendoza was not paid a Spread of Hours Premium, as required by the New York Labor Law (“NYLL”) and the implementing regulations for employees working in the hospitality industry (“Hospitality Wage Order”). 12 NYCRR § 146-1.6.

2. Mr. Mendoza brings this class action on behalf of himself and all similarly situated employees governed by the Hospitality Wage Order who, since the opening of Rana Pastificio in or around November 2012 through the present (the “Class Period”), were not or

continue to not be paid a Spread of Hours Premium. Mr. Mendoza and all other such similarly situated employees are jointly referred to herein as the “Class.”

JURISDICTION AND VENUE

3. Pursuant to CPLR § 301 and/or § 302, this Court has jurisdiction over Rana Pastificio because it is authorized to do business in New York and/or contract to provide services within the state.

4. The Court also has jurisdiction over Rana Pastificio because the unlawful employment practices and events in which they are alleged to have participated and which gave rise to the claims herein occurred in New York County, New York.

5. Venue is proper in this county pursuant to CPLR § 503, as Rana Pastificio has its principal place of business and resides in New York County.

PARTIES

6. Plaintiff Wuistong Mendoza was employed by Rana Pastificio as a Busser from July 2013 until July 2017. At all relevant times, Mr. Mendoza was an “employee” within the meaning of all applicable statutes.

7. Defendant Rana USA, LLC d/b/a Rana Pastificio & Cucina is a domestic business corporation organized under the laws of the State of Delaware, with a principal place of business located in New York City. At all relevant times herein, Defendant Rana Pastificio has met the definition of “employer” under all relevant statutes.

FACTUAL ALLEGATIONS

8. In or around July 2013, Mr. Mendoza began working at Rana Pastificio as a Busser.

9. Throughout his employment, Mr. Mendoza was regularly scheduled to work double shifts on Wednesdays and Fridays.

10. On the days that he worked a double shift, Mr. Mendoza typically began work at 11:00 a.m. and ended work at 10:00 p.m. – an interval of time exceeding ten (10) hours.

11. In addition to his own scheduled double shifts, Mr. Mendoza would also sometimes cover another employee’s shift that also resulted in a work day exceeding ten (10) hours between the start and end time.

12. Mr. Mendoza was not paid a Spread of Hours Premium on these days when he was scheduled for a double shift or covered another employee’s shift.

CPLR § 901 CLASS ACTION ALLEGATIONS

13. Mr. Mendoza brings his claim as a class action pursuant to CPLR § 901 on behalf of himself and the Class.

14. The Class consists of all service and food employees at Rana Pastificio who are governed by the Hospitality Wage Order and are therefore entitled to a Spread of Hours Premium where the interval of time between the employee’s start and end time exceeds ten (10) hours.

15. Upon information and belief, the Class, like Plaintiff, has been subjected to the same unlawful policy and practice of not paying a Spread of Hours Premium.

16. As a result of Defendant’s conduct as alleged herein, Defendant violated the NYLL and/or the Hospitality Wage Order and is liable to Plaintiff and the Class for the payment of a Spread of Hours Premium, plus the attorneys’ fees and costs incurred by Plaintiff and the Class.

17. Certification of the claims as a class action is the most efficient and economical means of resolving the questions of law and fact common to Plaintiff's claim and the claims of the Class. Plaintiff has standing to seek such relief because of the adverse effects that Defendant's unlawful compensation policies and practices have had on him individually, as well as upon similarly situated individuals. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiff, the Class and Defendant.

18. Plaintiff's claims raise questions of law and fact common to the Class. Among these questions are:

- a. Whether Defendant employed Plaintiff and the Class members within the meaning of the NYLL and/or Hospitality Wage Order; and
- b. Whether Defendants had a policy and practice of failing to pay a Spread of Hours Premium to Plaintiff and the Class where the length of time between the employees' start and end time exceeded ten (10) hours.

19. These common questions of law and fact arise from the same course of events, and each Class member will make similar legal and factual arguments to prove liability.

20. Plaintiff is a member of the Class that he seeks to represent. Plaintiff's claim is typical of the claims of the Class. The relief that Plaintiff seeks for the unlawful policy and practice complained of herein is also typical of the relief which is sought on behalf of the Class.

21. Plaintiff's interests are co-extensive with those of the Class that he seeks to represent in this case. Plaintiff is willing and able to represent the Class fairly and to vigorously pursue their similar individual claims in this action. Plaintiff has retained counsel who are

qualified and experienced in labor and employment class action litigation, and who are able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity.

The combined interests, experience and resources of Plaintiff and his counsel to litigate the individual and Class claims at issue in this case satisfy the adequacy of representation requirement of CPLR §901(a)(4).

22. Defendant has acted or refused to act on grounds generally applicable to the Class, making final injunctive and declaratory relief appropriate with regard to the Class as a whole.

23. The common issues of fact and law affecting Plaintiff's claim and those of the Class members, including the common issues identified above, predominate over any issues affecting only individual claims.

24. A class action is superior to other available means for the fair and efficient adjudication of Plaintiff's claim and the claims of the Class. There will be no difficulty in the management of this action as a class action.

25. The cost of proving Defendant's violation of the NYLL and/or the Hospitality Wage Order makes it impracticable for Plaintiff and the Class to pursue their claims individually. Maintenance of a class action promotes judicial economy by consolidating a large class of plaintiffs litigating identical claims. The claims of the Class interrelate such that the interests of the members will be fairly and adequately protected in their absence. Additionally, the questions of law and fact common to the Class arise from the same course of events and each class member makes similar legal and factual arguments to prove the Defendant's liability.

26. The Class is so numerous that joinder of all members is impracticable. While the exact number of the Class is unknown to Plaintiff at the present time, upon information and

belief, there have been hundreds of employees covered by the Hospitality Wage Order who have worked at Rana Pastificio during the Class Period.

27. Plaintiff is currently unaware of the identities of the Class members. Accordingly, Defendant should be required to provide Plaintiff with names of employees covered by the Class, along with their last known addresses, telephone numbers and e-mail addresses, so Plaintiff can give the Class notice of this action and an opportunity to make an informed decision about whether to participate in it.

FIRST CLAIM FOR RELIEF
(“Spread of Hours” Pay Violations)

28. Plaintiff, on behalf of himself and the NYLL Class, realleges and incorporates by reference, all preceding paragraphs as though they were set forth again herein.

29. During the Class Period, Plaintiff and members of the Class regularly worked days where the time between their start and end time exceeded ten (10) hours.

30. Defendant failed to fully compensate Plaintiff and members of the Class one hour’s pay at the basic New York minimum hourly wage rate, as required by New York law.

31. Due to Defendant’s NYLL violations, Plaintiff and the NYLL Class members are entitled to recover from Defendant the “Spread of Hours” pay underpayment, as well as attorneys’ fees, costs, and interest.

32. In the event that the Court declines to certify this action as a class action under CPLR §§ 901 and 902, Defendant also is liable to Plaintiff for any applicable liquidated damages and/or statutory penalties in connection with their willful violations of the NYLL.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that this Court:

- A. Declare that the practices complained of herein are unlawful under applicable state law;
- B. Declare this action to be maintainable as a class action pursuant to CPLR § 901, and direct Defendant to provide Plaintiff with a list of all members of the NYLL Class, including all last known addresses, telephone numbers and e-mail addresses of each such person, so Plaintiff can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;
- C. Designate Plaintiff as representative of the Class, and his counsel of record, Wigdor LLP, as Class counsel;
- D. Determine the damages sustained by Plaintiff and the Class as a result of Defendant's violations of the NYLL and/or its regulations, and award those damages against Defendant and in favor of the Plaintiff and the Class, plus such pre-judgment and post-judgment interest as may be allowed by law;
- E. In the event this action is not certified as a class action, award Plaintiff an additional amount as liquidated damages pursuant to the NYLL because Defendant's violations were willful and/or without a good faith basis;
- F. Award Plaintiff and the Class their reasonable attorneys' fees and costs and disbursements in this action, including, but not limited to, any accountants' or experts' fees; and

G. Grant Plaintiff and the Class such other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and on behalf of all other similarly situated employees, hereby demands a trial by jury on all issues of fact and damages.

Dated: August 10, 2017
New York, New York

Respectfully submitted,

WIGDOR LLP

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Putative NYLL Class*