

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

BRITTANY BARTLETT, STEPHEN KOCH, BRETT ANAYA, MATTHEW LANYI, RYAN SNANOUDJ, RYAN SPRAGUE, LORETTA MILLER, SEAN KINCAID, CRISTINA NAFFZIGER ODELL, MARLA DEMATOS, KRISTIN ZDONEK, MICHAEL CAIZZI, JESSICA ROOKEWARD, ELORA VON ROSCH, BRENT HILDRETH, KATIE PUSCHEL, JONATHAN MILLER, BRETT TUBBS, CASHION MACIEL, MITCHELL TODD, MICHAEL CALLAHAN, MICHAEL GREEN, JANE COTY, ANTHONY MARTINEZ, DANTE HILL, JUSTIN PEREZ, and JAELYN GAVIN,

Plaintiffs,

-against-

THE SHUBERT ORGANIZATION, INC., THEATER REFRESHMENT CO. OF NEW YORK, INC., and LEONARD LOWENGRUB,

Defendants.

Index No. _____

COMPLAINT

Plaintiffs Brittany Bartlett, Stephen Koch, Brett Anaya, Matthew Lanyi, Ryan Snanoudj, Ryan Sprague, Loretta Miller, Sean Kincaid, Cristina Naffziger Odell, Marla deMatos, Kristin Zdonek, Michael Caizzi, Jessica Rookeward, Elora von Rosch, Brent Hildreth, Katie Puschel, Jonathan Miller, Brett Tubbs, Cashion Maciel, Mitchell Todd, Michael Callahan, Michael Green, Jane Coty, Anthony Martinez, Dante Hill, Justin Perez, and Jaelyn Gavin (collectively, “Plaintiffs”), by and through their attorneys, Menken Simpson & Rozger LLP, complain of their current and former employers, the Shubert Organization, Inc. (“Shubert”), Theater Refreshment Co. of New York, Inc. (“TRC”), and Leonard Lowengrub (collectively, “Defendants”), as follows:

NATURE OF THE ACTION

1. Plaintiffs in this action are current and former bartenders, “lead” bartenders, and water vendors jointly employed by Defendants The Shubert Organization (“Shubert”), Theater Refreshment Co. of New York (“TRC”), and Leonard Lowengrub (“Lowengrub”).

2. Plaintiffs worked concessions at 18 of Shubert’s Broadway theaters in New York and were routinely compensated at rates well below the state minimum wage rates during the relevant statutory period. Defendants’ attempt to justify their wage violations by attempting to take credit for the Plaintiffs’ tips will fail, because Defendants never provided the required tip credit notice and because more than 20% of Plaintiffs’ work was non-tipped work besides.

3. Plaintiffs seek redress under the New York Labor Law (“N.Y.L.L.”) for Defendants’ widespread violations of state wage and hour laws, including failure to pay minimum, spread-of-hours, and overtime wages; failure to provide accurate wage statements; and unlawfully deducting from Plaintiffs’ paychecks to cover uniform costs.

JURISDICTION AND VENUE

4. The Court has original jurisdiction over this action pursuant to Article VI, Section 7, of the New York State Constitution.

5. Venue is proper under C.P.L.R. §§ 503(a) and (c) because Defendants’ principal offices are located in New York County and because the events and omissions giving rise to Plaintiffs’ claims occurred in New York County.

PARTIES

6. Plaintiffs Brittany Bartlett, Stephen Koch, Brett Anaya, Matthew Lanyi, Ryan Snanoudj, Ryan Sprague, Loretta Miller, Sean Kincaid, Cristina Naffziger Odell, Marla deMatos, Kristin Zdonek, Michael Caizzi, Jessica Rookeward, Elora von Rosch, Brent Hildreth, Katie

Puschel, Jonathan Miller, Brett Tubbs, Cashion Maciel, Mitchell Todd, Michael Callahan, Michael Green, Jane Coty, Anthony Martinez, Dante Hill, Justin Perez, and Jaelyn Gavin are adult individuals residing in New York County, New York; Kings County, New York; Queens County, New York; Los Angeles County, California; and Edinburgh, United Kingdom.

7. Defendant The Shubert Organization, Inc. (“Shubert Organization” or “Shubert”), is a New York corporation with its headquarters and principal place of business located at 225 West 44th Street, New York, NY 10036. Shubert owns and operates approximately 20 Broadway and off-Broadway theaters in New York City.

8. Defendant Theater Refreshment Co. of New York, Inc. (“TRC”), is a New York corporation with its headquarters and principal place of business located at 630 9th Avenue, Suite 501, New York, NY 10036. In its employee handbooks, TRC identifies itself as “an independently owned company whose purpose is to provide concession services to Broadway theaters operated by the Shubert Organization.” TRC is the “exclusive concessionaire” to 18 of Shubert’s theaters.

9. Defendant Leonard Lowengrub is an adult individual residing in New York County, New York. Lowengrub is the founder and CEO of Defendant TRC and, at all times relevant to this Complaint, was Plaintiffs’ employer within the meaning of the N.Y.L.L.

10. Lowengrub had the authority to hire and fire employees and at all times was responsible for setting employee compensation rates and determining the manner in which employees were paid.

FACTUAL ALLEGATIONS

Defendants' Joint Employment Relationship

11. Defendants jointly employ two categories of workers who are responsible for running concessions at Shubert theaters: bar staff (bartenders and “lead” bartenders) and water vendors.

12. Bar staff and water vendors are paid and hired by TRC.

13. However, Shubert exercises significant control over the terms and conditions of their employment.

14. All Plaintiffs are issued identification cards from The Shubert Organization and wear name tags identifying them as Shubert employees.

15. All Plaintiffs wear uniforms nearly identical to the uniforms worn by Shubert ushers. Namely, all bar staff, water vendors, and ushers wear Shubert name tags, black vests, black button-down long-sleeved shirts, black pants, and black shoes. The only difference between their uniforms is that bar staff and water vendors wear black ties while ushers wear blue ties with a Playbill theme.

16. All Plaintiffs are required to follow the directions of Shubert Organization employees, including the house managers in charge of each theater, or face termination.

17. All Shubert house managers have the authority to recommend Plaintiffs for termination, bar them from certain theaters, remove them from the theater, correct or reprimand them for any infractions of Shubert policies, and direct the Plaintiffs' work (for example, by modifying the opening or closing times of the bars or directing where and when the bar should be stocked, resupplied, or broken down for the evening).

18. Additionally, a high-level customer service representative named Paul Thomas, also employed by Shubert, regularly visits the theaters and gives Plaintiffs explicit directions on how to do their jobs, including how to speak with patrons, how to pace their work, and how to arrange their displays.

19. All Plaintiffs are required to speak with patrons in the manner specified in Shubert's written policies.

20. Shubert's Customer Service policy, for example, gives specific examples of what Plaintiffs must say during walk-in service and intermission (*e.g.*, "Good Evening. Welcome to Name of Show or Theatre. May I help you?", "Next Patron please," "Enjoy Act Two").

21. When addressing patrons, Plaintiffs are directed to "ask yourself if what you are saying could work equally as well in a bar, hotel or restaurant. If the answer is yes, then it's not Broadway and therefore unacceptable."

22. Shubert's Customer Service policy also forbids Plaintiffs from using certain language. For example, all guests must be referred to as "patrons," not "customers," and "one word greetings" such as "Hi" and "Next" are not permitted.

23. Shubert's Customer Service policy also gives "Training Talking Points" for training new staff members: "Tell everyone to speak loud enough so that the person behind the person they are serving can hear you. This spreads goodwill. Ask bartenders if patrons are more responsive when they use the new customer service. If the answer is no, then observe them while patrons are in at the bar and let them know that they have to up their game or that you saw patrons responding."

24. Ultimately, Plaintiffs are reminded that the “key thing to customer service is to fulfill the Shubert Organization’s Mission Statement,” which is to “[p]rovide the finest customer service, ensuring patrons a Broadway experience equivalent to the talent on stage.”

25. Shubert Organization employees can require bar staff Plaintiffs to open or close the theater bars early or late.

26. All Plaintiffs are forbidden by Shubert Organization policy from entering any theater when they are not working.

27. Failure to obey any Shubert employee’s wishes may result in immediate termination.

28. During the height of the COVID-19 pandemic, all bar staff and water vendors were also required to abide by Shubert Organization COVID-testing policies, which required them to report to work early one to five times per week for mandatory rapid testing. Bar staff and water vendors were not permitted to work without a current negative test.

29. COVID rapid tests were arranged and paid for by Shubert and administered either in empty Shubert theaters or in rented retail space.

Bar Staff Job Responsibilities

30. Shubert theater bars are staffed by bartenders and “lead” bartenders (collectively, “bar staff”).

31. Lead bartenders, though classified by Defendants as management-level employees, do all the same work as regular bartenders. They also have administrative responsibilities, like taking stock of inventory, counting and distributing tips, and depositing cash at the bank.

32. Lead bartenders do not hire or fire staff, nor are they responsible for assigning shifts or schedules.
33. Regular bartenders can and do fill in for lead bartenders who are unavailable for their shifts.
34. Most bar staff are full-time employees who are scheduled to work at least 8 shows (or shifts) per week.
35. All bar staff are required to wear the Shubert uniform.
36. All bar staff are responsible for setting up and breaking down the bar; serving snacks, alcohol, and soft drinks to Shubert guests; maintaining a clean work environment behind the bar and in the bar office; keeping “bar watch,” which entails staying in sight of the bar to ensure nothing is stolen during showtime; and, periodically, working in the coat check room.
37. Bar staff are required to report to work at least 1.5 hours before showtime to clean and prepare the bars.
38. Prepping the bar involves unpacking and arranging ice, liquors, water, soda, snacks, and napkins; shucking cups; restocking goods; chilling liquor, water, and wine if the theater does not permit ice; carrying inventory up and down multiple flights of stairs; and counting stock to ensure there is enough for the number of anticipated guests.
39. Preparation may vary depending on the needs of a particular show.
40. Bar staff may also be expected to show up earlier than 1.5 hours before showtime—for example, on “delivery days” or during “load-ins” and “load-outs.”
41. On delivery days, bar staff are responsible for unpacking boxes and sorting and putting away various snacks and drinks that are delivered to the theater.

42. During a load-in or load-out (*i.e.*, when a show is opening or closing), bar staff are responsible for heavy cleaning and either boxing up or restocking various items.

43. During the height of the COVID-19 pandemic, bar staff were also required to participate in Shubert-mandated COVID testing up to five times a week, which added anywhere from 15 to 60 minutes to their workday.

44. Lead bartenders can also be required to show up early for “bank runs,” which involve making deposits and/or getting change from the bank before Shubert guests arrive.

45. After prepping their bars and completing these other activities, bar staff work “walk-in service” for at least 30-60 minutes before showtime, which involves serving guests as they arrive at the theater.

46. If the show consists of two separate acts, bar staff spend the first act keeping watch over the bar and/or restocking and cleaning in preparation for intermission.

47. Intermission lasts approximately 15 minutes, during which time bar staff are once again serving guests at the bar.

48. After intermission, bar staff begin the process of breaking down the bar.

49. If the show consists of only one act, bar staff begin breaking down the bar immediately after walk-in service ends.

50. Breaking down the bar involves cleaning all surfaces and packing up the alcohol, snacks, and soft drinks that remain.

51. Bar staff are also required to count and record the remaining inventory of cups, candy, water, and beer.

52. Depending on the show and the location of the bar (*i.e.*, inside versus outside the theater), bartenders may be required to wait before they can begin breaking down the bar to avoid creating unnecessary noise during the performance.

53. Once that work is complete, bartenders must wait for the lead bartender to count out each bar in the theater and distribute tips amongst the group.

54. At each shift, at least one bartender is also assigned to work the coatroom, checking in each guest's items and collecting payment for same. This person must stay until the end of the show and sometimes for an additional 30 minutes after the show ends.

55. In total, for every two-act show, regular bartenders begin work at least 1.5 hours before showtime and continue working during the first act, during intermission, and after intermission for as long as it takes to clean, break down the bar, and count out tips, with some short, compensable breaks. On average, this amounts to around 4 hours of work.

56. For every one-act show, which has no intermission, bartenders' shifts are slightly shorter.

57. Lead bartenders do all of the same work during one- and two-act shows, plus an additional 1-2 hours of work (or more) during each shift performing bank runs and other administrative tasks.

58. On occasion (*e.g.*, during load in/load outs and on delivery days), bartenders and lead bartenders have been required to work for at least 5-10 hours per shift.

59. Bar staff are also required to work double shifts (two shifts in one day), sometimes amounting to more than 10 total hours of work in a single day.

Bar Staff Pay Practices

60. During the relevant statutory period, Plaintiff Bartenders were paid between \$19-\$23 per shift, depending on their length of service. For a two-act show, this could amount to an hourly wage of \$5 or \$7 per hour.

61. On busy days, when Plaintiff Bartenders were required to report to work early and/or stay late (*e.g.*, for a load in/load out or delivery day), their hourly rate could amount to as little as \$2 to \$3 per hour.

62. Plaintiff Lead Bartenders were paid between \$35-\$57 per shift depending on their length of service. For a two-act show, this could amount to an hourly wage of \$8 or \$11 per hour.

63. On busy days, when Plaintiff Lead Bartenders were required to report to work early and/or stay late (*e.g.*, for a load in/load out or delivery day), their hourly rate could amount to as little as \$3 to \$5 per hour.

64. On paper, Lead Bartenders were paid on a weekly “salary” basis. However, their wages were proportionately reduced for every shift they did not work, meaning they were paid per shift.

65. Pursuant to New York regulations governing the hospitality industry, which includes concessionaires, “Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly basis.” 12 N.Y.C.R.R. § 146-2.5.

66. Plaintiff Bartenders and Lead Bartenders have never been paid on an hourly basis in their capacity as bartenders.

67. Plaintiff Bartenders and Lead Bartenders have never been paid for the time they spent undergoing mandatory COVID testing.

68. Plaintiff Bartenders and Lead Bartenders were only paid for their work during a load-in/load-out or delivery day if they reported to work exclusively for that purpose (*i.e.*, if their entire shift consisted of that work).

69. By contrast, if Plaintiff Bartenders and Lead Bartenders worked extra hours before or after their bartending shift because of a load-in/load-out or delivery day, they were *not* paid extra for that time.

70. Though all full-time Plaintiff Bartenders and Lead Bartenders worked two double-shifts per week, sometimes lasting more than 10 total hours, Plaintiffs have never been paid spread-of-hours wages.

71. Nor have Plaintiff Bartenders and Lead Bartenders ever received call-in pay.

72. All bartenders, including lead bartenders, participated in a tip pool. At the end of each shift, tips were pooled and split equally among all the bar staff who worked that performance.

73. During the training period required at the start of their employment, bartenders were not permitted to partake in the tip pool.

74. Defendants failed to provide Plaintiff Bartenders and Lead Bartenders with the tip notice required by 12 N.Y.C.R.R. § 146-2.2.

75. Moreover, 2 or more hours (and/or more than 20%) of Plaintiff Bartenders' and Lead Bartenders' time was always spent performing non-tipped duties including, but not limited to, unpacking deliveries, cleaning the bar and/or theater, restocking, watching the bar, and setting up and breaking down the bar.

76. Except for a brief period of time in 2019, Defendants failed to keep any record of the hours Plaintiffs worked.

77. Defendant TRC actively discouraged employees from keeping track of their time.

78. Defendants also failed to keep any record of the total tips Plaintiff Bartenders and Lead Bartenders received.

79. Defendants never provided Plaintiff Bartenders and Lead Bartenders with full and accurate wage statements as required by N.Y.L.L. § 195(3).

80. Defendants required Plaintiff Bartenders and Lead Bartenders to pay for their own uniforms and frequently did not reimburse them.

Water Vendor Job Responsibilities

81. Unlike bar staff, water vendors are responsible for selling concessions to Shubert guests in multiple areas of the theater, including inside the theater itself.

82. Water vendors are only permitted to sell concessions in areas of the theater where Shubert house managers allow them to.

83. Each water vendor carries a bucket filled with water, candy, and wine that they are responsible for selling in the aisles, during walk-in service, and during intermission.

84. Water vendors are required to report to the theater at least 1.5 hours before showtime.

85. On arrival, water vendors don their uniforms and prepare their buckets. This involves pouring wine and counting and stocking candy and water.

86. The work is often physically taxing, as water vendors are mobile and required to haul heavy buckets up and down stairs and inside the theater.

87. Most water vendors work on a part-time basis, but some are full-time and regularly work 8 or more shifts per week.

88. In total, for every two-act show, water vendors begin work 1.5 hours before showtime and continue working during the first act, during intermission, and after intermission for as long as it takes to clean their stations and count out tips, with some short compensable breaks. On average, this amounts to around 4 hours of work.

89. For every one-act show, since there is no intermission, water vendors' shifts are slightly shorter.

90. On occasion (*e.g.*, during load in/load outs and on delivery days), water vendors have been required to work for at least 5-10 hours per shift.

91. Water vendors have also been required to work two shifts in one day, sometimes amounting to more than 10 total hours of work.

Water Vendor Pay Practices

92. During the relevant statutory period, Plaintiff Water Vendors were paid \$19 per shift.

93. In addition to shift pay, Plaintiff Water Vendors were also paid in tips and commission.

94. However, Defendants failed to provide Plaintiff Water Vendors with the tip notice required by 12 N.Y.C.R.R. § 146-2.2.

95. Moreover, 2 or more hours (and/or more than 20%) of Plaintiff Water Vendors' time on any given shift was spent performing non-tipped duties, including cleaning, restocking, and setting up their buckets.

96. Plaintiff Water Vendors frequently did not make enough money in commissions to result in wages meeting the minimum wage requirements.

97. Pursuant to New York regulations governing the hospitality industry, which includes concessionaires, “Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly basis.” 12 N.Y.C.R.R. § 146-2.5.

98. Plaintiff Water Vendors have never been paid on an hourly basis.

99. Plaintiff Water Vendors have never been paid for the time they spent undergoing mandatory COVID testing.

100. Plaintiff Water Vendors were only paid for their work during a load-in/load-out or delivery day if they reported to work exclusively for that purpose (*i.e.*, if their entire shift consisted of that work).

101. By contrast, if Plaintiff Water Vendors worked extra hours before or after their water vending shift because of a load-in/load-out or delivery day, they were *not* paid extra for that time.

102. Except for a brief period of time in 2019, Defendants failed to keep any record of the hours Plaintiff Water Vendors worked.

103. Defendant TRC actively discouraged Plaintiff Water Vendors from keeping track of their time.

104. Defendants failed to keep any record of the total tips Plaintiff Water Vendors received.

105. Though Plaintiff Water Vendors sometimes worked two double-shifts per week, each lasting more than 10 total hours, Plaintiffs have never been paid spread-of-hours wages.

106. Nor have Plaintiff Water Vendors ever received call-in pay.

107. Defendants never provided Plaintiff Water Vendors with full and accurate wage statements as required by N.Y.L.L. § 195(3).

108. Defendants required Plaintiff Water Vendors to pay for their own uniforms and did not reimburse them.

INDIVIDUAL FACTUAL ALLEGATIONS

Plaintiff Brittany Bartlett

109. Plaintiff Brittany Bartlett has worked as a full-time bartender for Defendants for over 6 years.

110. During the relevant statutory period, Bartlett worked approximately 30-32 hours per week at rates of between \$19 and \$22.08 per shift, with incremental increases in pay each year.

111. For several weeks in 2017, for example, Bartlett worked 8 shifts per week at the Shubert Theater during its run of “Hello, Dolly!”

112. “Hello, Dolly!” is a 2.5-hour show with one 15-minute intermission.

113. During each of these weeks of “Hello, Dolly!” (*e.g.*, the week of September 25, 2017), Bartlett worked approximately 30-32 hours.

114. During each of these weeks of “Hello, Dolly!” (*e.g.*, the week of September 35, 2017), Defendants paid Bartlett \$19 per shift, or no more than \$5.07 per hour.

115. Similarly, for several weeks in 2023 (*e.g.*, the week of 1/2/2023), Bartlett worked 8 shifts per week during the Shubert’s run of “Some Like It Hot”—another 2.5-hour show with a 15-minute intermission. In exchange for approximately 30-32 hours of work, she was paid no more than \$5.89 per hour, or \$22.08 per shift.

116. Bartlett worked similar hours during the rest of the statutory period, during which her hourly rate rarely (if ever) exceeded \$6 or \$7 per hour.

117. Bartlett was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Stephen Koch

118. Plaintiff Stephen Koch has worked for Defendants for approximately 12 years.

119. During the relevant statutory period, he has worked exclusively as a lead bartender.

120. Koch has never hired or fired anyone, nor has he ever been responsible for scheduling bartenders' shifts.

121. During the relevant statutory period, Koch worked, on average, approximately 34-40 hours per week in exchange for approximately \$46-\$57 per shift, with incremental increases in pay each year.

122. For several weeks in 2023, for example (*e.g.*, the week of January 2, 2023), Koch worked 8 shifts per week during the Shubert's run of "Some Like It Hot"—a 2.5-hour show with one 15-minute intermission. In exchange for approximately 34-40 hours of work, he was paid between \$11 and \$14 per hour.

123. Koch worked similar hours during the rest of the statutory period, during which his hourly rate rarely (if ever) met minimum wage requirements.

124. Koch was required to purchase his own uniform(s) during the statutory period and was not reimbursed.

Plaintiff Brett Anaya

125. Plaintiff Brett Anaya has worked as a full-time bartender for Defendants since in or around March 2022.

126. During the relevant statutory period, Anaya has worked approximately 30-32 hours per week at rates of between \$19 and \$19.50 per shift, with incremental increases in pay each year.

127. For several weeks in 2022, for example, Anaya worked 8 shifts per week at the Majestic Theater during its run of “The Phantom of the Opera”—a 2.5-hour show with one 15-minute intermission.

128. During each of these weeks of “The Phantom of the Opera” (*e.g.*, the week of April 4, 2022), he worked approximately 30-32 hours.

129. During each of these weeks of “The Phantom of the Opera” (*e.g.*, the week of April 4, 2022), Defendants paid Anaya \$19 per shift, or no more than \$5.07 per hour.

130. Anaya worked similar hours in 2023.

131. During the statutory period, his hourly rate rarely (if ever) exceeded \$6 or \$7 per hour.

132. Anaya was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Matthew Lanyi

133. Plaintiff Matthew Lanyi has worked for Defendants since in or around October 2021. He worked for six months as a water vendor before becoming a bartender in April 2022.

134. As a bartender, Lanyi worked approximately 30-32 hours per week during the relevant statutory period at rates of between \$19 and \$19.25 per shift, with incremental increases in pay on January 1 of each new year.

135. For several weeks in 2022, for example, Lanyi worked 8 shifts per week at the Shubert Theater during its run of “POTUS”—a 2-hour show with one 15-minute intermission.

136. During each of these weeks of “POTUS” (e.g., the week of May 30, 2022), he worked approximately 30-32 hours.

137. During each of these weeks of “POTUS” (e.g., the week of May 30, 2022), Defendants paid Lanyi \$19 per shift, or no more than \$5.07 per hour.

138. Lanyi worked similar hours in late 2021 and 2023. During this time, his hourly rate rarely (if ever) exceeded \$6 or \$7 per hour.

139. Lanyi was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

140. During his six-month stint as a water vendor in 2017, there were multiple weeks where Lanyi made relatively little in commission (e.g., \$200) and Defendants failed to supplement his pay to meet minimum wage requirements.

Plaintiff Ryan Snanoudj

141. Plaintiff Ryan Snanoudj has worked full time as a bartender for Defendants since in or around December 2017.

142. During the relevant statutory period, Snanoudj worked approximately 30-32 hours per week at rates of between \$19 and \$21 per shift, with incremental increases in pay each new year.

143. For several weeks in 2017 and 2018, for example, Snanoudj worked 8 shifts per week at the Broadhurst Theater during its run of “Anastasia”—a 2.5-hour show with one 15-minute intermission.

144. During each of these weeks of “Anastasia” in 2017 (e.g., the week of December 18, 2017), he worked approximately 30-32 hours.

145. During each of these weeks of “Anastasia” in 2017 (*e.g.*, the week of December 18, 2017), Defendants paid Snanoudj \$19 per shift, or no more than \$5.07 per hour.

146. Similarly, during the week of March 27, 2023, Snanoudj worked 8 shifts at the Shubert Theater during its run of “Some Like It Hot,” another two-act show. In exchange for 30-32 hours of work, he was paid \$21 per shift, or no more than \$5.60 per hour.

147. Snanoudj worked similar hours in 2018, 2019, early 2020, and late 2021. During this time, his hourly rate rarely, if ever, exceeded \$6 or \$7 per hour.

148. Snanoudj was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Ryan Sprague

149. Plaintiff Ryan Sprague worked as a full-time bartender for Defendants intermittently between 2013 and 2022.

150. During the relevant statutory period, Sprague worked approximately 30-32 hours per week at a rate of \$19 per shift.

151. For several weeks in 2019, for example, Sprague worked 8 shifts per week at the Shubert Theater during its run of “To Kill A Mockingbird”—a 2.5-hour show with one 15-minute intermission.

152. During each of these weeks of “To Kill A Mockingbird” (*e.g.*, the week of June 10, 2019), he worked approximately 30-32 hours.

153. During each of these weeks of “To Kill A Mockingbird” (*e.g.*, the week of June 10, 2019), Defendants paid Sprague \$19 per shift, or no more than \$5.07 per hour.

154. Similarly, during the week of March 28, 2022, Sprague worked 6 shifts during the Longacre Theater’s run of “Macbeth” and 2 shifts during performances of “The Music Man” at Winter Garden—both two-act shows with 15-minute intermissions.

155. In exchange for approximately 30-32 hours of work during the week of March 28, 2022, Sprague was paid no more than \$5.07 per hour.

156. Sprague worked similar hours during the rest of the statutory period, during which his hourly rate rarely, if ever, exceeded \$6 or \$7 per hour.

157. Sprague was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Loretta Miller

158. Plaintiff Loretta Miller worked full-time as a bartender and lead bartender for Defendants between October 17, 2016, and July 2020.

159. When she worked as a bartender during the relevant statutory period, Miller worked approximately 30-32 hours per week in exchange for \$19 per shift or \$19.50 per shift.

160. When she worked as a lead bartender during the relevant statutory period, Miller worked at least 34-40 hours per week in exchange for \$22 per shift.

161. Miller has never hired or fired anyone, nor has she ever been responsible for scheduling bartenders’ shifts.

162. For several weeks in 2019, Miller worked 7 shifts per week as a lead bartender at the Shubert Theater during its run of “To Kill A Mockingbird”—a 2.5-hour show with one 15-minute intermission.

163. During each of these weeks of “To Kill A Mockingbird” (e.g., the week of September 16, 2019), she worked approximately 30-35 hours.

164. During each of these weeks of “To Kill A Mockingbird” (e.g., the week of September 16, 2019), Defendants paid Miller \$22 per shift, or no more than \$5.13 per hour.

165. Miller worked similar hours during the rest of the statutory period, during which her hourly rate rarely, if ever, exceeded \$6 or \$7 per hour.

166. Moreover, for several weeks in 2018 and 2019 (e.g., the week of March 25, 2019), Miller worked 7 shifts per week as an on-stage bartender at the Belasco Theater during its full run of “Network,” a two-hour show with no intermission.

167. In addition to standing on stage during the full two-hour performance and serving approximately 30 guests a four-course meal, Miller was required to report for work 1.5 to 2 hours before showtime to prep the tables with glassware, stock the stage bar, cut fruit garnishes, pre-batch a specialty cocktail, and serve guests.

168. During the show, Miller was also required to deal with guests who interfered with the show by using their phones or otherwise disrupting the performance. This job was ordinarily done by Shubert-employed ushers.

169. After the show, Miller would be required to clear the tables, wipe them down, clean the bar, and take out the trash.

170. In total, during all seven weekly showings of “Network,” Miller spent at least 42 hours working.

171. For her work during each of these weeks (e.g., the week of March 25, 2019), Miller was paid a flat rate of \$600 and was not permitted to take part in the employee tip pool.

172. Miller was never paid overtime premiums for those hours over 40 in a week.

173. Twice a week during “Network,” Miller worked double shifts lasting longer than 10 hours and never received spread-of-hours pay.

174. Miller was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Sean Kincaid

175. Plaintiff Sean Kincaid worked for Defendants for approximately 6 years, beginning in 2015. He worked as a water vendor for three years, a bartender for two years, and a lead bartender for 1 year.

176. As a water vendor during the relevant statutory period, Kincaid frequently did not make enough money in commissions to meet state and city minimum wage requirements. Defendants did not supplement his pay.

177. As a bartender during the relevant statutory period, Kincaid worked approximately 30-32 hours per week at rates of between \$19 and \$20 per shift.

178. As a lead bartender during the relevant statutory period, Kincaid worked approximately 34-40 hours per week at a rate of \$23 per shift.

179. For several weeks in 2019, for example, Kincaid worked 8 shifts per week at the Lyceum Theater during its run of “The Play that Goes Wrong”—a 2-hour show with one 15-minute intermission.

180. During each of these weeks of “The Play That Goes Wrong” (*e.g.*, the week of January 1, 2019), he worked 30-32 hours.

181. During each of these weeks of “The Play That Goes Wrong” (*e.g.*, the week of January 1, 2019), Defendants paid Kincaid approximately \$20 per shift, or no more than \$5.33 per hour.

182. Kincaid also regularly worked as a solo bartender at Stage 42 during its run of “Fiddler on the Roof,” which lasted from February 21 to September 7, 2019. As the only person

staffing the bar, Kincaid had to set up and break down the bar by himself, stay for the entirety of the three-hour show, and work the coat room.

183. Single shifts for “Fiddler on the Roof” began around 5:00 p.m. and ended around 10:00 p.m. Double shifts began around 11:30 a.m. and ended around 10:30 p.m.

184. During those weeks when Kincaid was the only bartender on staff for “Fiddler on the Roof” (e.g., the week of March 4, 2019), he was paid approximately \$6 per hour (\$20-\$23 per shift, depending on whether it was a single or double shift, plus \$10 extra for working the coat room).

185. Kincaid never received spread-of-hours wages for shifts exceeding 10 hours.

186. Kincaid worked similar hours during the rest of the statutory period and his hourly rate rarely (if ever) met minimum wage requirements.

Plaintiff Cristina Naffziger Odell

187. Plaintiff Cristina Naffziger Odell has worked as a full-time bartender for Defendants since in or around April 2017. In late October 2018, she became a lead bartender.

188. When she worked as a bartender during the relevant statutory period, Naffziger Odell worked approximately 30-32 hours per week at a rate of \$19 per shift.

189. For several weeks in 2018, for example, Naffziger Odell worked 8 shifts per week at the Broadhurst Theater during its run of “Anastasia”—a 2.5-hour show with one 15-minute intermission.

190. During each of these weeks of “Anastasia” (e.g., the week of January 15, 2018), she worked 30-32 hours.

191. During each of these weeks of “Anastasia” (e.g., the week of January 15, 2018), Defendants paid Naffziger Odell \$19 per shift, or no more than \$5.07 per hour.

192. While she was a lead bartender, Naffziger Odell worked approximately 34-40 hours per week at a rate of \$32.50 per shift.

193. For several weeks in 2019, for example, Naffziger Odell worked 8 shifts per week at the Booth Theater during its run of “Gary”—a 90-minute show with no intermission.

194. During each of these weeks of “Gary” (e.g., the week of April 1, 2019), she worked at least 34 hours.

195. During each of these weeks of “Gary” (e.g., the week of April 1, 2019), Defendants paid Naffziger Odell \$35.50 per shift, or no more than \$8.35 per hour

196. Naffziger Odell worked similar hours in exchange for similar rates of pay for the entirety of her employment, during which her hourly rate rarely (if ever) exceeded \$10 per hour.

197. Naffziger Odell was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Marla DeMatos

198. Plaintiff Marla DeMatos has worked for Defendants since November 2014. She began as water vendor and became a bartender in the spring of 2016.

199. During the relevant statutory period, DeMatos worked approximately 30-32 hours per week at rates of between \$19 and \$22 per shift, with incremental increases in pay on January 1 of each new year.

200. For several weeks in 2017, for example, DeMatos worked 7 shifts per week at the Shubert Theater during its run of “Hello, Dolly!”—a 2.5-hour show with one 15-minute intermission.

201. During each of these weeks of “Hello, Dolly!” (e.g., the week of December 11, 2017), she worked approximately 30-32 hours.

202. During each of these weeks of “Hello, Dolly!” (*e.g.*, the week of December 11, 2017), Defendants paid DeMatos approximately \$19.50 per shift, or no more than \$5.20 per hour.

203. Similarly, during the week of April 3, 2023, DeMatos worked 8 shifts at the Booth Theater during “Kimberly Akimbo,” another two-act show. In exchange for 30-32 hours of work, she was paid no more than \$5.87 per hour.

204. DeMatos worked similar hours during the rest of the statutory period and her hourly rate rarely (if ever) exceeded \$6 or \$7 per hour.

205. DeMatos was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Kristin Zdonek

206. Plaintiff Kristin Zdonek has worked as a full-time bartender for Defendants since December 2013.

207. As a bartender during the relevant statutory period, Zdonek worked approximately 30-32 hours per week at rates of between \$19 and \$24.50 per shift, with incremental increases in pay each year.

208. For several weeks in 2017, for example, Zdonek worked 8 shifts per week at the Imperial Theater during its run of “The Great Comet”—a 2.5-hour show with one 15-minute intermission.

209. During each of these weeks of “The Great Comet” (*e.g.*, the week of August 14, 2017), she worked 30-32 hours.

210. During each of these weeks of “The Great Comet” (*e.g.*, the week of August 14, 2017), Defendants paid Zdonek approximately \$22 per shift, or no more than \$5.87 per hour.

211. Similarly, during the week of April 3, 2023, Zdonek worked 8 shifts at the Majestic Theater during its run of “The Phantom of the Opera,” another two-act show. In exchange for approximately 30-32 hours of work, she was paid no more than \$6.53 per hour.

212. Zdonek worked similar hours during the rest of the statutory period and her hourly rate rarely (if ever) exceeded \$7 per hour.

213. Zdonek was required to purchase her own uniform(s) during the statutory period and was not reimbursed.

Plaintiff Michael Caizzi

214. Plaintiff Michael Caizzi has worked for Defendants since September 2017. He started as a water vendor, became a bartender in March 2019, and became a lead bartender in April 2019.

215. As of this writing, Caizzi works part time as a bartender and occasional lead bartender.

216. When he worked as a full-time lead bartender during the relevant statutory period, Caizzi worked approximately 34-40 hours per week at rates of between \$30 and \$35 per shift.

217. For several weeks in 2019, for example, Caizzi worked 8 shifts per week at the Lyceum Theater during its run of “A Christmas Carol”—a two-hour show with one 15-minute intermission.

218. During each of these weeks of “A Christmas Carol” (*e.g.*, the week of November 25, 2019), he worked approximately 34-40 hours.

219. During each of these weeks of “A Christmas Carol” (*e.g.*, the week of November 25, 2019), Defendants paid Caizzi \$30 or \$35 per shift, or no more than \$7.06-\$8.24 per hour.

220. Caizzi worked similar hours during the rest of the statutory period and his hourly rate rarely (if ever) met minimum wage requirements.

221. The longest shifts Caizzi worked lasted approximately 11 hours, from 12:30 p.m. to 11:30 p.m.—for example, when he worked a double shift of “Fiddler on the Roof” at the Little Shubert Theater on September 25, 2019, as the only bartender on staff. Caizzi did not receive spread-of-hours pay.

222. Caizzi was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Jessica Rookeward

223. Plaintiff Jessica Rookeward worked as a water vendor for Defendants for four years between 2015 and 2019.

224. As a water vendor during the relevant statutory period, Rookeward worked approximately 30-32 hours per week at a rate of \$19 per shift.

225. During the week of November 26, 2018, for example, Rookeward worked 7 shifts at the Ambassador Theater during its run of “Chicago”—a 2.5-hour show with one 15-minute intermission.

226. For her work during the week of November 26, 2018, Defendants paid Rookeward \$19 per shift plus (at most) \$100 in commission, amounting to no more than \$7.76 per hour.

227. Rookeward worked similar hours during the remainder of the statutory period and her hourly wages rarely, if ever, met minimum wage requirements.

228. The longest shifts Rookeward worked lasted approximately 13 hours, from 10:00 a.m. until 11:00 p.m. These days would consist of double-shifts where Rookeward was responsible for working two shows and doing inventory work between shows.

229. Rookeward never received spread-of-hours pay for shifts lasting longer than 10 hours.

230. Rookeward was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Elora von Rosch

231. Plaintiff Elora von Rosch has worked as a full-time bartender for Defendants since in or around November 2022.

232. During the relevant statutory period, von Rosch worked approximately 30-32 hours per week at a rate of \$19 per shift.

233. For several weeks in 2022, for example, von Rosch worked 8 shifts per week at the Jacobs Theater during its run of “Almost Famous”—a 2.5-hour show with one 15-minute intermission.

234. During each of these weeks of “Almost Famous” (*e.g.*, the week of December 5, 2022), she worked approximately 30-32 hours.

235. During each of these weeks of “Almost Famous” (*e.g.*, the week of December 5, 2022), Defendants paid von Rosch \$19 per shift, or no more than \$5.07 per hour.

236. Von Rosch has worked similar hours in 2023. Her hourly rate has rarely (if ever) met minimum wage requirements.

237. Von Rosch was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Brent Hildreth

238. Plaintiff Brent Hildreth has worked as a full-time bartender for Defendants since October 2014. On or around November 24, 2017, Hildreth became a lead bartender.

239. As a lead bartender during the relevant statutory period, Hildreth worked approximately 34-40 hours per week at rates between \$37.50 and \$53.82 per shift.

240. The majority of Hildreth's shifts were at least 5 hours long.

241. During the week of December 26, 2022, for example, Hildreth worked 9 shifts at the Majestic Theater during its run of "The Phantom of the Opera," a two-act show. In exchange for over 45 hours of work, Hildreth was paid \$10 or \$11 per hour.

242. Hildreth worked similar hours during the rest of the statutory period and his hourly rate rarely (if ever) met minimum wage requirements.

243. Hildreth has never paid overtime premiums for working more than 40 hours in a week.

244. Hildreth was required to purchase his own uniform(s) during the statutory period and has never been fully reimbursed.

Plaintiff Katie Puschel

245. Plaintiff Katie Puschel worked as a part-time water vendor for Defendants from July 2018 until November 2018.

246. As a water vendor during the relevant statutory period, Puschel worked approximately 16-32 hours per week at a rate of \$19 per shift, plus commissions.

247. During the week of October 7, 2018, for example, Puschel worked 5 shifts (around 20 hours) at the Lyceum Theater during its run of "The Play That Goes Wrong"—a 2-hour show with one 15-minute intermission.

248. For her work during the week of October 7, 2018, Defendants paid Puschel \$19 per shift plus (at most) \$100 in commission, amounting to no more than \$9.75 per hour.

249. Puschel was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Jonathan Miller

250. Plaintiff Jonathan Miller worked as a full-time bartender for Defendants from October 2015 until June 2021.

251. During the relevant statutory period, Miller worked approximately 30-32 hours per week at a rate of \$19 per shift.

252. For several weeks in 2019, for example, Miller worked 8 shifts per week at the Broadhurst Theater during its run of “Frankie and Johnny”—a two-act show.

253. During each of these weeks of “Frankie and Johnny” (*e.g.*, the week of May 27, 2019), he worked approximately 30-32 hours per week and was paid \$19 per shift, or no more than \$5.07 per hour.

254. Miller worked similar hours during the rest of his employment and his hourly rate rarely (if ever) met minimum wage requirements.

255. Miller was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Brett Tubbs

256. Plaintiff Brett Tubbs worked as a full-time bartender for Defendants from September 23, 2013 through November 21, 2021.

257. During the relevant statutory period, Tubbs worked approximately 32-35 hours per week at rates between \$19 and \$24.50 per shift.

258. During the week of November 1, 2021, for example, Tubbs worked 7 shifts at the Ambassador Theater during its run of “Chicago,” a two-act show. In exchange for 32-35 hours of work that week, Tubbs was paid \$24.50 per shift, or no more than \$5.36 per hour.

259. Tubbs worked similar hours during the rest of his employment and his hourly rate rarely (if ever) met minimum wage requirements.

260. Tubbs was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Cashion Maciel

261. Plaintiff Cashion Maciel has worked 5-8 shifts per week as a water vendor for Defendants since October 2021.

262. During the relevant statutory period, Defendants have paid Maciel \$19 per shift, plus commissions.

263. There have been multiple weeks where Maciel made relatively little in commission and Defendants failed to supplement his pay to meet minimum wage requirements.

264. During the week of May 2, 2022, for example, Maciel worked 6 total shifts (around 24 hours) at the Barrymore Theater, the Belasco Theater, and the Music Box during performances of “Paradise Square,” “Girl From the North Country,” and “Dear Evan Hansen”—all two-act shows.

265. For his work during the week of May 2, 2022, Maciel was paid \$329.27 (\$19 per shift plus commission), or approximately \$13.72 per hour.

266. Maciel was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Mitchell Todd

267. Plaintiff Mitchell Todd has worked 5-10 shifts per week as a water vendor for Defendants since January 2023.

268. During the relevant statutory period, Defendants have paid Todd \$19 per shift, plus commissions.

269. There have been multiple weeks where Todd made relatively little in commission and Defendants failed to supplement his pay to meet minimum wage requirements.

270. During the week of July 3, 2023, for example, Todd worked 8 total shifts (around 32 hours) and was paid \$427.42 (\$19 per shift plus commission), or approximately \$13.36 per hour.

271. Todd was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Michael Callahan

272. Plaintiff Michael Callahan has worked for Defendants since April 2015. During the relevant statutory period, Callahan has worked exclusively as a lead bartender.

273. As a lead bartender during the relevant statutory period, Callahan worked approximately 34-40 hours per week at rates between \$37.50 and \$51.50 per shift.

274. During the week of February 27, 2023, for example, Callahan worked 8 shifts at the Booth Theater during its run of “Kimberly Akimbo,” a two-act show. In exchange for over 34-40 hours of work, Callahan was paid no more than \$12 per hour.

275. Callahan worked similar hours during the rest of the statutory period and his hourly rate rarely (if ever) met minimum wage requirements.

276. Callahan was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Michael Green

277. Plaintiff Michael Green has worked as a full-time bartender for Defendants for approximately 7 years.

278. During the relevant statutory period, Green worked approximately 30-32 hours per week at rates between \$19 and \$20 per shift.

279. For several weeks in 2022 and 2023, for example, Green worked 8 shifts per week at the Shubert Theater during its run of “Some Like It Hot”—a two-act show.

280. During each of these weeks of “Some Like It Hot” (e.g., the week of December 26, 2022), he worked approximately 30-32 hours per week and was paid \$20 per shift, or no more than \$5.33 per hour.

281. Green worked similar hours during the rest of his employment and his hourly rate rarely (if ever) met minimum wage requirements.

282. Green was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Jane Coty

283. Plaintiff Jane Coty worked for Defendants for approximately six years, from May 2015 until June 2022.

284. During the relevant statutory period, Coty worked as a water vendor and as a bartender.

285. As a bartender, she worked approximately 30-32 hours per week at rates between \$19 and \$19.75 per shift.

286. As a water vendor, Coty sometimes did not make enough money in commissions to meet minimum wage requirements. Defendants did not supplement her wages.

287. For several weeks in 2022 (*e.g.*, the week of February 14, 2022), Coty worked 8 shifts per week as a bartender at the Majestic Theater during its run of “The Phantom of the Opera,” a two-act show.

288. During each of these weeks of “The Phantom of the Opera” (*e.g.*, the week of February 14, 2022), Coty worked approximately 30-32 hours per week and was paid \$19.75 per shift, or no more than \$5.27 per hour.

289. Coty worked similar hours during the rest of her employment and her hourly rate rarely (if ever) met minimum wage requirements.

290. Coty never received spread-of-hours wages for working shifts longer than 10 hours, as she sometimes did during double shifts.

291. Coty was required to purchase her own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Anthony Martinez

292. Plaintiff Anthony Martinez has worked as a full-time bartender and lead bartender for Defendants since in or around November 2013.

293. He worked as a lead bartender between 2017 and 2019, a regular bartender between 2019 and 2021, and a lead bartender again between 2021 and the present.

294. During the relevant statutory period, Martinez has worked upwards of 35 hours per week.

295. Martinez has never hired or fired anyone, nor has he ever been responsible for scheduling bartenders’ shifts.

296. His current rate of pay is \$50 per shift.

297. During the week of December 26, 2022, Martinez worked 9 shifts as lead bartender at the Ambassador Theater during its run of “Chicago,” a two-act play with one intermission.

298. During the week of December 26, 2022, Martinez worked approximately 45 hours in exchange for \$40 per shift, or no more than \$8 per hour.

299. Martinez never received overtime premiums for hours worked in excess of 40 in a week.

300. Martinez worked similar hours during the rest of his employment and his hourly rate rarely (if ever) met minimum wage requirements.

301. Martinez never received spread-of-hours wages for working shifts longer than 10 hours, as he sometimes did during double shifts.

302. Martinez was required to purchase his own uniform(s) during the statutory period and has never been fully reimbursed.

Plaintiff Dante Hill

303. Plaintiff Dante Hill has worked full-time for Defendants since early 2017. He worked as a bartender between 2017 and 2022 before becoming a lead bartender in June 2022.

304. While he was a bartender during the relevant statutory period, Hill worked approximately 30-32 hours per week at rates of between \$19 and \$21.50 per shift, with incremental increases in pay each new year.

305. During the week of December 18, 2017, for example, Hill worked 7 shifts at the Winter Garden Theater during its run of “School of Rock”—a 2-hour show with one 15-minute intermission.

306. For his work during the week of December 18, 2017, Hill was paid \$19 per shift, or no more than \$5.07 per hour.

307. While he was a lead bartender during the relevant statutory period, Hill worked approximately 34-40 hours per week at a rate of \$42 per shift.

308. For several weeks in 2023, for example, Hill worked 8 shifts per week at the Winter Garden Theater during its run of “The Music Man”—a nearly three-hour show with one 15-minute intermission.

309. During each of these weeks of “The Music Man” (e.g., the week of January 2, 2023), he worked approximately 34-40 hours.

310. During each of these weeks of “The Music Man” (e.g., the week of January 2, 2023), Defendants paid Hill \$42 per shift, or no more than \$9.88 per hour.

311. Hill worked similar hours during the rest of the statutory period and his hourly rate rarely (if ever) met minimum wage requirements.

312. Hill was required to purchase his own uniform(s) during the statutory period and was not fully reimbursed.

Plaintiff Justin Perez

313. Plaintiff Justin Perez has worked as full-time bartender for Defendants since October 2016, primarily working 30-32 hours per week at rates between \$19 and \$21 per shift.

314. During the week of January 9, 2023, for example, Perez worked 8 shifts at the Schoenfeld Theater during its run of “Take Me Out,” a two-act show with one 15-minute intermission.

315. In exchange for 30-32 hours of work that week, Perez was paid \$21 per shift, or no more than \$5.60 per hour.

316. Between September 2018 and May 2019, Perez also worked five days a week in the TRC office and warehouse.

317. On a typical day in the office and/or warehouse, Perez would report for work at 6:00 a.m. and spend anywhere from 8 to 12 hours, *inter alia*, making deliveries, creating and updating delivery logs, and organizing inventory.

318. For this work, Perez was paid on an hourly basis at the applicable minimum wage rates.

319. After completing his work in the office and/or warehouse, Perez would report to his bartending shift, where he was paid on a per-shift basis like everyone else.

320. Perez also worked weekend shifts as a bartender during this time period.

321. During this time period, Perez regularly worked more than 40 hours in a week and more than 10 hours in a day.

322. For example, during the week of April 22, 2019, Perez worked 40-60 hours in the office and/or warehouse and, on top of that, 8 shifts bartending at the Winter Garden Theater during its run of "Beetlejuice," a two-act show.

323. In total, during the week of April 22, 2019, he worked at least 72 hours and was paid no more than \$10 an hour.

324. Perez was never paid overtime premiums at a rate of one and one-half times his regular hourly rate.

325. Nor was Perez ever paid any spread-of-hours wages for days when he worked more than 10 total hours between the office/warehouse and the theater.

326. Perez was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

Plaintiff Jaelyn Gavin

327. Plaintiff Jaelyn Gavin has worked as full-time bartender for Defendants since October 2015, primarily working 30-32 hours per week at rates between \$19 and \$21 per shift.

328. During the week of January 2, 2023, for example, Gavin worked 8 shifts at the Barrymore Theater during its run of “The Piano Lesson,” a two-act show with one 15-minute intermission.

329. In exchange for 30-32 hours of work that week, Gavin was paid \$21 per shift, or no more than \$5.60 per hour.

330. Between September 2018 and May 2019, Gavin also worked five days a week in the TRC office and warehouse.

331. On a typical day in the office and/or warehouse, Gavin would report for work at 6:00 a.m. and spend anywhere from 8 to 12 hours, *inter alia*, making deliveries, creating and updating delivery logs, and organizing inventory.

332. For this work, Gavin was paid on an hourly basis at the applicable minimum wage rates.

333. After completing his work in the office and/or warehouse, Gavin would report to his bartending shift, where he was paid on a per-shift basis like everyone else.

334. Gavin also worked weekend shifts as a bartender during this time period.

335. During this time period, Gavin regularly worked more than 40 hours in a week and more than 10 hours in a day.

336. For example, during the week of October 8, 2018, Gavin worked 40-60 hours in the office and/or warehouse and, on top of that, 8 shifts bartending at the Booth Theater during its run of “Anastasia,” a two-act show.

337. In total, during the week of October 8, 2018, he worked at least 70 hours and was paid no more than \$10 an hour.

338. Gavin was never paid overtime premiums at a rate of one and one-half times his regular hourly rate.

339. Nor was Gavin ever paid any spread-of-hours wages for days when he worked more than 10 total hours between the office/warehouse and the theater.

340. Gavin was required to purchase his own uniform(s) during the statutory period and has never been reimbursed.

FIRST CAUSE OF ACTION

New York Labor Law – Unpaid Minimum Wages

341. Plaintiffs repeat and incorporate by reference all of the above allegations as though fully set forth herein.

342. Defendants have engaged in a widespread pattern and practice of violating the N.Y.L.L., as detailed in this Complaint.

343. Defendants willfully violated the rights of Plaintiffs by failing to pay them the minimum wage for each hour worked in each discrete work week, in violation of the N.Y.L.L.

344. Defendants are liable to Plaintiffs for their unpaid minimum wages, plus an additional equal amount as liquidated damages, reasonable attorney's fees and costs, and any other appropriate relief pursuant to N.Y.L.L. § 198(1-a).

SECOND CAUSE OF ACTION

New York Labor Law – Unlawful Deductions

345. Plaintiffs repeat and incorporate by reference all of the above allegations as though fully set forth herein.

346. Defendants have engaged in a widespread pattern and practice of violating the N.Y.L.L., as detailed in this Complaint.

347. Defendants willfully violated the rights of Plaintiffs by unlawfully deducting wages from their paychecks to cover uniform costs, in violation of N.Y.L.L. § 193.

348. Defendants are liable to Plaintiffs for their deducted wages, plus an additional equal amount as liquidated damages, reasonable attorney's fees and costs, and any other appropriate relief pursuant to N.Y.L.L. § 198(1-a).

THIRD CAUSE OF ACTION

New York Labor Law – Failure to Provide Accurate Wage Statements

349. Plaintiffs repeat and incorporate by reference all of the above allegations as though fully set forth herein.

350. Pursuant to N.Y.L.L. § 195(3), every employer is required to

furnish each employee with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

351. Defendants knowingly failed to comply with this provision by failing to provide Plaintiffs with wage statements meeting the requirements laid on in N.Y.L.L. § 195(3).

352. N.Y.L.L. § 198(1)(d) provides that any employee not provided appropriate wage statements may collect damages of \$250 for each work day that the violation occurred or continued to occur, up to a total of \$5,000 per employee (together with reasonable costs and attorney's fees as well as appropriate injunctive and/or declaratory relief).

353. During the course of Plaintiffs and Class Members' employment, Defendants consistently and willfully failed to provide them with adequate wage statements as required by New York law.

354. Defendants are therefore liable to Plaintiffs and Class Members in the amount of \$5,000 per employee, plus reasonable attorney's fees and costs and any other relief appropriate under N.Y.L.L. § 198.

FOURTH CAUSE OF ACTION
New York Labor Law – Unpaid Spread-of-Hours Wages

355. Plaintiffs repeat and incorporate by reference all of the above allegations as though fully set forth herein.

356. Defendants failed to pay Plaintiffs "spread of hours" premiums as required by 12 N.Y.C.R.R. § 142-2.4.

357. Defendants willfully violated the rights of Plaintiffs by failing to pay them wages due and owing for work performed in violation of the New York State Labor Law.

358. Due to Defendants' New York Labor Law violations, Plaintiffs are entitled to recover from Defendants their unpaid spread-of-hours premium wages, reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, and other compensatory and equitable relief pursuant to New York Labor Law Article 6 §§ 190 *et seq.*, and Article 19 §§ 650 *et seq.*

FIFTH CAUSE OF ACTION
New York Labor Law – Unpaid Overtime Wages
(Plaintiffs Justin Perez, Jaelyn Gavin, Brent Hildreth, Anthony Martinez, and Loretta Miller)

359. Plaintiffs Perez, Gavin, Hildreth, and Miller repeat and incorporate by reference all of the above allegations as though fully set forth herein.

360. 12 N.Y.C.R.R. § 142-2.2 requires employers to compensate their employees at a rate not less than one and one-half times their regular rate of pay for hours worked in excess of 40 per week.

361. Defendants willfully failed to pay Plaintiffs Perez, Gavin, Hildreth, Martinez, and Miller overtime wages of not less than one and one-half times their regular rate of pay for hours worked in excess of 40 per week.

362. In the alternative, Defendants failed to pay overtime at the rate of one and one-half times the New York State minimum wage rate for each hour worked in excess of 40 hours per week.

363. Defendants willfully violated the rights of Plaintiffs Perez, Gavin, Hildreth, Martinez, and Miller by failing to pay them wages due and owing for work performed in violation of the New York State Labor Law.

364. Due to Defendants' New York Labor Law violations, Plaintiffs Perez, Gavin, Hildreth, Martinez, and Miller are entitled to recover from Defendants their unpaid overtime premium wages, reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, and other compensatory and equitable relief pursuant to New York Labor Law Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- a. Unpaid wages, attorneys' fees, costs, and interest pursuant to N.Y.L.L. § 198(1-a);
- b. Liquidated damages pursuant to N.Y.L.L. § 198(1-a);
- c. Statutory damages pursuant to N.Y.L.L. § 198(1-d);

- d. Issuance of a declaratory judgment that the practices complained of herein are unlawful under the N.Y.L.L.;
- e. An injunction enjoining Defendant's unlawful conduct; and
- f. Such additional and further relief as the Court finds just and proper.

Dated: August 18, 2023
New York, New York

MENKEN SIMPSON & ROZGER LLP

/s/

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