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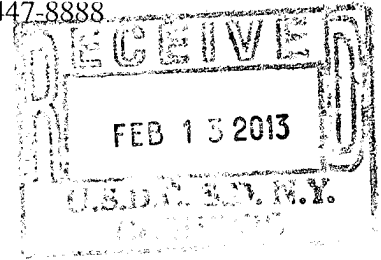
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**MAXCIMO SCOTT and JAY ENSOR on behalf of
themselves and all others similarly situated,**

Plaintiffs,

-against-

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.

12 Civ. 8333 (ALC)(SN)

**FIRST AMENDED
CLASS ACTION
COMPLAINT**

Plaintiffs Maxcimo Scott and Jay Ensor (“Plaintiffs”), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation and spread-of-hours pay for Plaintiffs and their similarly situated co-workers, Apprentices and/or Assistant Managers (hereinafter “Apprentices”), who work or have worked for Defendant Chipotle Mexican Grill, Inc. at Chipotle Mexican Grille Restaurants nationwide (collectively “Chipotle”).

2. Chipotle is a chain of Mexican style Restaurants known for its’ natural ingredients

and assembly line production. According to their website, Chipotle considers itself a “fast-casual” dining establishment, where “customers expect food quality that’s more in line with full-service restaurants, coupled with the speed and convenience of fast food.”

http://www.chipotle.com/en-us/company/about_us.aspx.

3. According to Chipotle’s Form 10-K for the fiscal year ending on December 31, 2011, Chipotle operated 1,350 restaurants, employed 2,570 salaried employees and 28,370 hourly employees. For the fiscal year 2011, Chipotle earned approximately \$2.27 billion dollars in revenue.

4. Chipotle’s restaurants are designed around the concept of an open kitchen, where employees are constantly engaging customers and preparing meals in front of customers in an assembly line production.

5. Chipotle states in its’ 2011 form 10-K that, “All of our restaurant employees are encouraged to interact with customers no matter their job, whether preparing food or serving customers...” Chipotle further states that its’ “employees spend hours preparing our food onsite.”

6. At Chipotle, Apprentices are required to provide customer service while on duty.

7. Apprentices spend the majority of their shifts working the assembly line, filling orders for customers, grilling, operating the cash register, and preparing items for the line including salsa, guacamole, chopped vegetables and other food items.

8. Regardless of the number of hours worked, Apprentices do not receive overtime compensation.

9. Chipotle classifies all Apprentices as “executives” and exempt from overtime pay.

10. However, Apprentice's primary duties are food preparation and customer service and are similar to the duties performed by hourly non-exempt employees.

11. Apprentices should be classified as non-exempt from the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA"), New York Labor Law ("NYLL"), Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.* and the Missouri Labor Law ("MLL"), Rev. Stat. § 290.502 and § 290.505.

12. Upon information and belief, Chipotle applied the same compensation and employment policies, practices, and procedures to all Apprentices nationwide.

13. Plaintiffs bring this action on behalf of themselves and similarly situated current and former Apprentices nationwide who elect to opt-in to this action pursuant to the FLSA, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Chipotle that have deprived Plaintiffs and other similarly situated employees of their lawfully earned wages.

14. Plaintiff Maxcimo Scott also brings this action on behalf of himself and all similarly situated current and former Apprentices who worked in New York pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

15. Plaintiff Jay Ensor also brings this action on behalf of himself and all similarly situated current and former Apprentices who worked in Missouri pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the MLL Rev. Stat. § 290.502 and § 290.505.

THE PARTIES

Plaintiffs

Maxcimo Scott

16. Maxcimo Scott ("Scott") is an adult individual who is a resident of Bronx, New York.

17. From in or around 2007 until 2009 Scott was employed by Defendant as a Crew Member at the Chipotle located at 9 Saint Marks Place, New York, New York 10003 ("St. Marks").

18. From in or around 2009 to October 17, 2011, Scott was employed by Defendant as an Apprentice at the St. Marks Chipotle.

19. As an Apprentice, Scott frequently performed the functions of an hourly Crew member on the line.

20. Scott frequently worked more than 40 hours per week with an average of 50 to 55 hours per week.

21. Pursuant to Chipotle's policy and pattern or practice, Chipotle did not pay Scott premium overtime pay when he worked as an Apprentice for their benefit in excess of 40 hours in a workweek.

22. Pursuant to Chipotle's policy and pattern or practice, Chipotle did not pay Scott spread-of-hours pay when the length of his workday was greater than 10 hours.

23. Scott is a covered employee within the meaning of the FLSA and the NYLL.

24. A written consent form for Scott was filed as an attachment to the original Class Action Complaint.

Jay Ensor

25. Jay Ensor (“Ensor”) is an adult individual who is a resident of Kansas City, Missouri.

26. From in or around May 2010 until July 2010, Ensor was employed by Defendant as an Apprentice at the Chipotle located at 15100 West 119th Street, Olathe, Kansas 66062.

27. From in or around July 2010 to March 2011, Ensor was employed by Defendant as an Apprentice at the Chipotle located at 306 South 9th Street, Columbia, Missouri 65201.

28. From in or around March 2011 until June 2011, Ensor was employed by Defendant as an Apprentice at the Chipotle located at 2540 Broadway Bluffs Drive, Columbia, Missouri 65201.

29. As an Apprentice, Ensor frequently performed the functions of an hourly Crew member on the line.

30. Ensor frequently worked more than 40 hours per week with an average of 50 to 60 hours per week.

31. Pursuant to Chipotle’s policy and pattern or practice, Chipotle did not pay Ensor premium overtime pay when he worked as an Apprentice for their benefit in excess of 40 hours in a workweek.

32. Ensor is a covered employee within the meaning of the FLSA and the NYLL.

33. A written consent form for Ensor was previously filed with the Court.

Defendant

Chipotle Mexican Grill, Inc.

34. Chipotle has owned and/or operated the Chipotle restaurants during the relevant period.

35. Chipotle is a foreign business corporation organized and existing under the laws

of Delaware.

36. Upon information and belief, Chipotle's principal executive office is located at 1401 Wynkoop Street, Suite 500, Denver, Colorado, 80202.

37. At all times relevant, Chipotle has been the corporate entity listed on Plaintiffs' paychecks and W-2 forms.

38. Chipotle is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiffs and similarly situated employees.

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

40. Chipotle applies the same employment policies, practices, and procedures to all Apprentices at the Chipotle restaurants, including policies, practices, and procedures with respect to the payment of overtime compensation and spread-of-hours pay.

41. Upon information and belief, at all times relevant, Chipotle's annual gross volume of sales made or business done was not less than \$500,000.00.

JURISDICTION AND VENUE

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

43. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

44. The amount in controversy in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

45. At least one member of the proposed class is a citizen of a state different from that of at least one Defendant.

46. Plaintiffs' claims involve matters of national or interstate interest.

47. Citizenship of the members of the proposed class is dispersed among a substantial number of states.

48. Upon information and belief, greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are not citizens of the same state.

49. Upon information and belief, Defendant resides in Delaware.

50. Upon information and belief, Defendant is subject to personal jurisdiction in New York.

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

52. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

53. Plaintiffs bring the First Cause of Action, an FLSA claim, on behalf of themselves and all similarly situated persons who have worked as Apprentices at Chipotle restaurants nationwide, who elect to opt-in to this action (the "FLSA Collective").

54. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other similarly situated Apprentices.

55. Consistent with Defendant's policy and pattern or practice, Plaintiffs and the members of the FLSA Collective were not paid premium overtime compensation when they

worked beyond 40 hours in a workweek.

56. All of the work that Plaintiffs and the members of the FLSA Collective have performed has been assigned by Defendant, and/or Defendant has been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

57. As part of its regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the members of FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiffs and the members of the FLSA Collective, premium overtime wages for hours that they worked in excess of 40 hours per workweek;
- (b) willfully misclassifying Plaintiffs and the members of the FLSA collective as exempt from the protections of the FLSA; and
- (c) willfully failing to record all of the time that its employees, including Plaintiffs and the members of the FLSA Collective, have worked for the benefit of Defendant.

58. Defendant is aware or should have been aware that federal law required them to pay Plaintiffs and the members of the FLSA Collective overtime premiums for hours worked in excess of 40 per workweek.

59. Plaintiffs and the members of the FLSA Collective perform or performed the same primary duties.

60. Defendant's unlawful conduct has been widespread, repeated, and consistent.

61. There are many similarly situated current and former Apprentices who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

62. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

63. Those similarly situated employees are known to Defendant, are readily identifiable and can be located through Defendant's records.

NEW YORK CLASS ACTION ALLEGATIONS

64. Plaintiff Scott brings the Second and Fourth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as an Apprentice and/or Assistant Manager and similar employees at Chipotle restaurants in New York between November 15, 2006 and the date of final judgment in this matter (the "NY Rule 23 Class").

65. Excluded from the NY Rule 23 Class are Defendant, Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the NY Rule 23 Class.

66. The members of the NY Rule 23 Class are so numerous that joinder of all members is impracticable.

67. Upon information and belief, the size of the NY Rule 23 Class is at least 100 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendant.

68. Defendant has acted or has refused to act on grounds generally applicable to the NY Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the NY Rule 23 Class as a whole.

69. Common questions of law and fact exist as to the NY Rule 23 Class that predominate

over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendant violated NYLL, Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- (b) whether Defendant failed to compensate Plaintiff Scott and the NY Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (c) whether Defendant misclassified Plaintiff Scott and the NY Rule 23 Class;
- (d) whether Defendant failed to keep true and accurate time and pay records for all hours worked by Plaintiff Scott and the NY Rule 23 Class, and other records required by the NYLL;
- (e) whether Defendants failed to provide Plaintiff Scott and the NY Rule 23 Class spread-of-hours pay when the length of their workday was greater than 10 hours;
- (f) whether Defendant failed to furnish Plaintiff Scott and the NY Rule 23 Class with an accurate statement of wages, hours worked, rates paid, and the gross wages as required by the NYLL;
- (g) whether Defendant's policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (h) the nature and extent of class-wide injury and the measure of damages for those injuries.

70. The claims of Plaintiff Scott are typical of the claims of the NY Rule 23 Class he seeks to represent.

71. Plaintiff Scott and all of the NY Rule 23 Class members work, or have worked, for Defendant as Apprentices at Chipotle.

72. Plaintiff Scott and the NY Rule 23 Class members enjoy the same statutory rights under the NYLL, including to be paid for all hours worked, to be paid overtime wages and spread-of-hours pay. Plaintiff Scott and the NY Rule 23 Class members have all sustained similar types of damages as a result of Defendant's failure to comply with the NYLL. Plaintiff Scott and the NY Rule 23 Class members have all been injured in that they have been under-compensated due to Defendant's common policies, practices, and patterns of conduct.

73. Plaintiff Scott will fairly and adequately represent and protect the interests of the members of the NY Rule 23 Class. Plaintiff Scott understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff Scott recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff Scott understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff Scott recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff Scott understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff Scott has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff Scott and the NY Rule 23 members.

74. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the NY Rule 23 Class have been damaged and are entitled to recovery as a result of Defendant's violations of the NYLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual NY Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of Defendant's timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendant to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

75. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

MISSOURI CLASS ACTION ALLEGATIONS

76. Plaintiff Ensor brings the Third Cause of Action, a MLL claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as an Apprentice and/or Assistant Manager and similar employees at Chipotle restaurants in Missouri between February 13, 2011 and the date of final judgment in this matter (the “MO Rule 23 Class”).

77. Excluded from the MO Rule 23 Class are Defendant, Defendant’s legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the MO Rule 23 Class.

78. The members of the MO Rule 23 Class are so numerous that joinder of all members is impracticable.

79. Upon information and belief, the size of the MO Rule 23 Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendant.

80. Defendant has acted or has refused to act on grounds generally applicable to the MO Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the MO Rule 23 Class as a whole.

81. Common questions of law and fact exist as to the MO Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to,

the following:

- (i) whether Defendant violated MLL § 290.502 and § 290.505;
- (j) whether Defendant failed to compensate Plaintiff Ensor and the MO Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (k) whether Defendant misclassified Plaintiff Ensor and the MO Rule 23 Class; and
- (l) the nature and extent of class-wide injury and the measure of damages for those injuries.

82. The claims of Plaintiff Ensor are typical of the claims of the MO Rule 23 Class he seeks to represent.

83. Plaintiff Ensor and all of the MO Rule 23 Class members work, or have worked, for Defendant as Apprentices at Chipotle.

84. Plaintiff Ensor and the MO Rule 23 Class members enjoy the same statutory rights under the MLL, including to be paid for all hours worked and to be paid overtime wages. Plaintiff Ensor and the MO Rule 23 Class members have all sustained similar types of damages as a result of Defendant's failure to comply with the MLL. Plaintiff Ensor and the MO Rule 23 Class members have all been injured in that they have been under-compensated due to Defendant's common policies, practices, and patterns of conduct.

85. Plaintiff Ensor will fairly and adequately represent and protect the interests of the members of the MO Rule 23 Class. Plaintiff Ensor understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff Ensor recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff Ensor understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff Ensor recognizes that any

resolution of a class action must be in the best interest of the class. Plaintiff Ensor understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff Ensor has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff Ensor and the MO Rule 23 members.

86. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the MO Rule 23 Class have been damaged and are entitled to recovery as a result of Defendant's violations of the MLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual MO Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of Defendant's timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendant to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

87. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

COMMON FACTUAL ALLEGATIONS

88. Throughout their employment with Defendant, Plaintiffs and the members of the FLSA Collective, the NY Rule 23 Class, and the MO Rule 23 Class (collectively "Class Members") consistently worked more than 40 hours per week.

89. Plaintiffs' duties were assigned to them by their superiors.

90. Defendant was aware that Plaintiffs and the Class Members worked more than 40 hours per workweek, yet Defendant failed to pay overtime compensation for hours worked over 40 in a workweek.

91. Defendant did not keep accurate records of hours worked by Plaintiffs or the Class Members.

92. Plaintiffs' and Class Members' work hours are not recorded on paystubs.

93. Defendant did not require Plaintiffs or the Class Members to clock in or out, or otherwise record their time.

94. Plaintiffs and the Class Members' primary duties were routine, non-exempt tasks including, but not limited to:

- a. greeting customers;
- b. serving customers,
- c. grilling and preparing food; and
- d. operating the cash register.

95. Plaintiffs and Class Members spent the majority of their time serving customers, working on the assembly line, and performing the same or similar tasks to hourly non-exempt employees.

96. Plaintiffs and Class Members' duties did not differ substantially from the duties of hourly non-exempt employees.

97. Plaintiffs and Class Members' primary job duties as Apprentices did not include:

- a. Hiring;
- b. Firing;

- c. Making recommendations for hiring, firing, or other employment decisions;
- d. Scheduling; or
- e. Disciplining other employees.

98. Plaintiffs' and the Class Members' primary duty was not directly related to Defendant or Defendant's customers' management or general business operations.

99. Plaintiffs' and the Class Members' primary duty did not include the exercise of discretion or independent judgment regarding matters of significance.

100. In that regard, Plaintiffs:

- a. were not involved in planning Defendant's long or short term business objectives;
- b. could not formulate, affect, implement or interpret Defendant's management policies or operating practices;
- c. did not carry out major assignments that affected Defendant's business operations;
- d. did not have authority to commit Defendant's in matters that have significant financial impact; and
- e. could not waive or deviate from Defendant's established policies or procedures without prior approval.

101. Plaintiffs' primary duties were manual in nature.

102. The performance of manual labor duties occupied the majority of Plaintiffs' working hours.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages

103. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

104. Defendant has engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Complaint.

105. At all relevant times, Plaintiffs and the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

106. At all relevant times, Chipotle employed Plaintiffs and the FLSA Collective.

107. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendant.

108. At all relevant times, Chipotle has been an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

109. At all times relevant, Plaintiffs and the FLSA Collective were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

110. Defendant has failed to pay Plaintiffs and the FLSA Collective the overtime wages to which they are entitled under the FLSA.

111. Chipotle's violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional.

112. Chipotle has not made a good faith effort to comply with the FLSA with respect to its' compensation of Plaintiffs and the FLSA Collective.

113. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

114. As a result of Defendant's willful violations of the FLSA, Plaintiffs and the FLSA Collective have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

115. As a result of the unlawful acts of Defendant, Plaintiffs and the FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recover of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

New York Labor Law – Unpaid Overtime

(Brought on behalf of Plaintiff Scott and the members of the NY Rule 23 Class)

116. Plaintiff Scott realleges and incorporates by reference all allegations in all preceding paragraphs.

117. Defendant engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

118. At all times relevant, Plaintiff Scott and the members of the NY Rule 23 Class have been employees and Chipotle has been their employer within the meaning of the NYLL.

119. Plaintiff Scott and the NY Rule 23 Class are covered by the NYLL.

120. Chipotle employed Plaintiff Scott and the NY Rule 23 Class as an employer.

121. Chipotle has failed to pay Plaintiff Scott and the members of the NY Rule 23 Class overtime wages to which they are entitled under the NYLL Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

122. Chipotle failed to pay Plaintiff Scott and the members of the NY Rule 23 Class overtime at a wage rate of one and one-half times their regular rate of pay.

123. Chipotle failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff Scott and the members of the NY Rule 23 Class.

124. Chipotle's violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

125. Due to Chipotle's violations of the NYLL, Plaintiff Scott and the members of the NY Rule 23 Class are entitled to recover from Defendant unpaid overtime, reasonable attorneys' fees and costs of the action, liquidated damages as provided for by NYLL Article 6 § 198, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION

Missouri Labor Law – Unpaid Overtime

(Brought on behalf of Plaintiff Ensor and the members of the MO Rule 23 Class)

126. Plaintiff Ensor realleges and incorporates by reference all allegations in all preceding paragraphs.

127. Plaintiff Ensor brings this count as a Rule 23 class action on behalf of himself and a class of similarly situated Missouri employees.

128. Defendant violated Missouri law, in relevant part, by failing to pay overtime to Plaintiff Ensor and similarly situated employees as required by MLL Rev. Stat. § 290.502 and § 290.505.

129. At all times relevant, Plaintiff Ensor and the members of the MO Rule 23 Class have been employees and Defendant has been their employer within the meaning of the MLL.

130. Plaintiff Ensor and the MO Rule 23 Class are covered by the MLL.

131. Defendant employed Plaintiff Ensor and the MO Rule 23 Class as an employer.

132. Plaintiff Ensor and similarly situated employees are entitled to recover unpaid wages, liquidated damages in an amount equal to their compensatory damages, attorneys' fees, and costs, and pre-judgment and post-judgment interest pursuant to MLL Rev. Stat. § 290.527.

FOURTH CAUSE OF ACTION

New York Labor Law – Spread-of-Hours Pay

(Brought on behalf of Plaintiff Scott and the members of the NY Rule 23 Class)

133. Plaintiff Scott realleges and incorporates by reference all allegations in all preceding paragraphs.

134. Defendants willfully failed to pay Plaintiff Scott and the members of the NY Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

135. By Defendants' failure to pay Plaintiff Scott and the members of the NY Rule 23 Class spread-of-hours pay, Defendants have willfully violated the NYLL, and the supporting New York State Department of Labor regulations, 12 NYCRR 146-1.6.

136. Due to Defendants' violations of the NYLL, Plaintiff Scott and the members of the NY Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all Apprentices and similarly situated employees who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at Chipotle. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime pay and an additional and equal amount as liquidated damages

pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff Scott as representative of the NY Rule 23 Class and counsel of record as Class Counsel;

E. Designation of Plaintiff Ensor as representative of the MO Rule 23 Class and counsel of record as Class Counsel;

F. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL, Article 6, §§ 190 *et seq.*, NYLL, Article 19, §§ 650 *et seq.*, and MLL Rev. Stat. § 290.527.

G. Unpaid overtime pay, spread-of-hours pay and liquidated damages permitted by law pursuant to the NYLL;

H. Unpaid overtime pay and liquidated damages permitted by law pursuant to the MLL;

I. Prejudgment and post-judgment interest;

J. An injunction requiring Defendant to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL and MLL;

K. Reasonable attorneys' fees and costs of the action; and

L. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
February 13, 2013

Respectfully submitted,



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