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

**NESTOR TORRES, on behalf of himself and all others
similarly situated,**

Plaintiff,

-against-

RED RABBIT, LLC, and RHYS WAYNE POWELL,

Defendants.

**CLASS ACTION
COMPLAINT**

Plaintiff Nestor Torres (“Torres” or “Plaintiff”), individually and on behalf of all others similarly situated, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation, spread of hours pay, and statutory penalties for Plaintiff and his similarly situated co-workers – cooks, food buyers, porters, and other “Non-Exempt Workers” – who work or have worked for Red Rabbit, LLC (“Red Rabbit”).

2. Founded in 2005 by former equity trader and Massachusetts Institute of Technology (“MIT”) graduate, Rhys Wayne Powell (“Powell” and together with Red Rabbit, “Defendants”), Red Rabbit’s business focuses on the preparation of healthy school meals for over 150 schools in the New York City area.

3. Since the company’s inception, Red Rabbit’s sales have steadily increased year after year to its current level of well over ten million dollars. As a result, Red Rabbit was awarded the 2013 Manhattan Small Business of the Year Award by New York City and was one of the recipients

of the Goldman Sachs 10,000 Small Business Awards.

4. Powell has been the primary day-to-day operator of Red Rabbit since 2005, and according to his LinkedIn profile, he identifies himself as the owner, founder, and president of Red Rabbit.

5. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff was employed as porter, food buyer, and cook.

6. While employed by Defendants, Plaintiff consistently worked over 40 hours per week, regardless of his position, without ever receiving the appropriate premium overtime pay for all of the hours Plaintiff worked beyond 40 per workweek.

7. While employed by Defendants, Plaintiff consistently worked shifts over 10 hours per day – including working time plus time off for meals plus intervals off duty – regardless of his position, without ever receiving spread of hours pay.

8. Upon information and belief, Defendants applied the same compensation and employment policies, practices, and procedures to all Non-Exempt Workers companywide.

9. Plaintiff brings this action on behalf of himself and all similarly situated current and former Non-Exempt Workers who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, 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 Defendants that have deprived Plaintiff and other similarly situated employees of their lawfully earned wages.

10. Plaintiff also brings this action on behalf of himself and all similarly situated current and former Non-Exempt Workers in New York pursuant to Federal Rule of Civil Procedure 23 ("Rule 23") to remedy violations of the New York Labor Law ("NYLL"), Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

THE PARTIES

Plaintiff

Nestor Torres

11. Torres is an adult individual who is a resident of the Bronx, New York.
12. Torres has been employed by Defendants as a porter, food buyer, and cook from in or around May 2015 to on or about March 3, 2016.
13. Torres is a covered employee within the meaning of the FLSA and the NYLL.
14. A written consent form for Torres is being filed with this Class Action Complaint.

Defendants

15. Defendants have employed and/or jointly employed Plaintiff and similarly situated employees at all times relevant.
16. Each Defendant has had substantial control over Plaintiff's and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.
17. During all relevant times, Defendants have centrally controlled the labor relations of Red Rabbit.

Red Rabbit, LLC

18. Together with Powell, Defendant Red Rabbit has owned and/or operated Red Rabbit during the relevant period.
19. Red Rabbit is a domestic limited liability company organized and existing under the laws of New York.
20. According to the Entity Information provided by the New York State Department of State Division of Corporations ("NYSDOS"), the address where the Department of State will mail process to Red Rabbit is located at "1751 PARK AVENUE, NEW YORK, NEW YORK, 10035," the address of Red Rabbit's offices and processing facility.

21. Red Rabbit is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed and/or jointly employed Plaintiff and similarly situated employees.

22. At all relevant times, Red Rabbit has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

23. Red Rabbit has applied the same employment policies, practices, and procedures to all Non-Exempt Workers, including policies, practices, and procedures with respect to payment of overtime compensation and spread of hours pay.

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

Rhys Wayne Powell

25. Upon information and belief, Defendant Powell is a resident of the State of New York.

26. At all relevant times, Powell has been the primary owner and operator of Red Rabbit.

27. As of 2010, Powell owed an approximately 93% interest in Red Rabbit. *See* NYSCEF Doc. No. 67, Page 26, *Brummer v. Red Rabbit, LLC, et al.*, No. 652565/2012, N.Y. Sup. Ct. (N.Y. County May 5, 2014).

28. According to Red Rabbit's Press tab on their website, Powell is the President and Founder of Red Rabbit. *See* www.myredrabbit.com/press/.

29. According to a 2013 article in the New York Daily News, Powell is listed as the founder and owner of Red Rabbit. *See* Phyllis Furman, *Successful Harlem Startup Aims to Fix the Food System in America One School at a Time*, New York Daily News, July 15, 2013,

<http://www.nydailynews.com/new-york/successful-harlem-startup-aims-fix-food-system-america-school-time-article-1.1399021>.

30. According to Powell's personal LinkedIn profile, Powell identifies himself as the owner, founder, and president of Red Rabbit.

31. At all relevant times, Powell had power over personnel decisions at Red Rabbit, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

32. At all relevant times, Powell had power over payroll decisions at Red Rabbit, including the power to retain time and/or wage records.

33. At all relevant times, Powell was actively involved in managing the day to day operations of Red Rabbit and admitted to such day-to-day responsibilities in testimony for prior litigations. *See* NYSCEF Doc. No. 30, Page 50, *Brummer v. Red Rabbit, LLC, et al.*, No. 652565/2012, N.Y. Sup. Ct. (N.Y. County. Aug. 9, 2013).

34. At all relevant times, Powell had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

35. At all relevant times, Powell had the power to transfer the assets and/or liabilities of Red Rabbit.

36. At all relevant times, Powell had the power to declare bankruptcy on behalf of Red Rabbit.

37. At all relevant times, Powell had the power to enter into contracts on behalf of Red Rabbit.

38. At all relevant times, Powell had the power to close, shut down, and/or sell Red Rabbit.

39. Powell was a covered employer within the meaning of the FLSA and the NYLL, and

at all relevant times, employed and/or jointly employed Plaintiff and similarly situated employees.

JURISDICTION AND VENUE

40. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1337, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

41. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

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

43. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

44. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of himself and all similarly situated persons who have worked as Non-Exempt Workers at Red Rabbit, for a period of three years prior to the filing of this Class Action Complaint and the date of final judgment in this matter, who elect to opt-in to this action (the "FLSA Collective").

45. At all relevant times, Plaintiff and the FLSA Collective are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendants' decisions, policies, plans, and common programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay Plaintiff and the FLSA Collective the legally required premium overtime compensation for all hours worked beyond 40 per workweek. Plaintiff's claims stated herein are essentially the same as those of the FLSA Collective.

46. All of the work that Plaintiff and the FLSA Collective have performed has been

assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

47. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiff and the FLSA Collective, premium overtime wages for all hours worked in excess of 40 hours per workweek; and
- (b) willfully failing to record all of the time that its employees, including Plaintiff and the FLSA Collective, have worked for the benefit of Defendants.

48. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by failing to properly compensate Plaintiff and the FLSA Collective for the hours they have worked.

49. Defendants are aware or should have been aware that federal law required them to pay Non-Exempt Workers overtime premiums for all hours worked in excess of 40 per workweek.

50. Plaintiff and the FLSA Collective perform or performed the same primary duties.

51. Defendants' unlawful conduct has been widespread, repeated, and consistent.

52. There are many similarly situated current and former Non-Exempt Workers who have been denied overtime compensation 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. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

53. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

CLASS ACTION ALLEGATIONS

54. Plaintiff brings the Second, Third, Fourth, and Fifth Causes of Action, NYLL claims, under Rule 23, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as Non-Exempt Workers at Red Rabbit in New York, between June 7, 2010 and the date of final judgment in this matter (the “Rule 23 Class”).

55. Excluded from the Rule 23 Class are Defendants, Defendants’ 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 Defendants; 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 Rule 23 Class.

56. The members of the Rule 23 Class (“Rule 23 Class Members”) are readily ascertainable. The number and identity of the Rule 23 Class Members are determinable from the Defendants’ records. The hours assigned and worked, the positions held, and the rates of pay for each Rule 23 Class Member are also determinable from Defendants’ records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

57. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

58. There are more than 50 Rule 23 Class Members.

59. Plaintiff’s claims are typical of those claims which could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

60. All the Rule 23 Class Members were subject to the same corporate practices of

Defendants, as alleged herein, of failing to provide overtime compensation, failing to provide spread of hours pay, failing to provide proper wage and hour notices, and failing to provide accurate wage statements.

61. Plaintiff and the Rule 23 Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

62. Plaintiff and the Rule 23 Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

63. Plaintiff and other Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

64. Plaintiff is able to fairly and adequately protect the interests of the Rule 23 Class Members and has no interests antagonistic to the Rule 23 Class Members.

65. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

66. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23

Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class Members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

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

68. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiff and the Rule 23 Class Members, individually, and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL Articles 6 and 19, and the supporting New York State Department of Labor Regulations;
- (b) whether Defendants employed Plaintiff and the Rule 23 Class Members within the meaning of the NYLL;
- (c) whether Defendants correctly compensated Plaintiff and the Rule 23 Class Members for hours worked in excess of 40 per workweek;
- (d) whether Defendants failed to provide Plaintiff and the Rule 23 Class Members with

spread of hours pay when the length of their workday was greater than 10 hours;

- (e) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Rule 23 Class Members, and other records required by the NYLL;
- (f) whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with proper wage notices, as required by the NYLL;
- (g) whether Defendants failed to furnish Plaintiff and the Rule 23 Class Members with an accurate statement of wages listing the rates paid, gross wages, and the claimed tip allowance, as required by the NYLL; and
- (h) whether Defendants' policy of failing to pay Non-Exempt Workers was instituted willfully or with reckless disregard of the law; and the nature and extent of class-wide injury and the measure of damages for those injuries.

PLAINTIFF'S FACTUAL ALLEGATIONS

69. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

Nestor Torres

70. Defendants have not paid Torres the proper overtime compensation and spread of hours pay for all the hours that he has suffered or been permitted to work each workweek.

71. Throughout the duration of his employment, Defendants have not kept accurate records of wages earned, or of the hours worked by Torres. As such, Torres was not compensated for all of the hours he suffered or was permitted to work.

72. Throughout the duration of his employment, Torres received bi-weekly paychecks from Defendants that did not properly record or compensate him for all the hours that he worked.

73. Throughout Torres' employment, the timekeeping and compensation policies at Red Rabbit remained similar or the same.

74. During his employment, unless he missed time for vacation, sick days, and/or holidays, Torres generally worked six days a week, Monday through Saturday, from 7:00 a.m. to 8:00 p.m., for an average of approximately 78 hours per workweek.

75. Defendants have consistently suffered or permitted Torres to work over 40 hours per week as a Non-Exempt Worker at Red Rabbit. During such workweeks, Defendants have not compensated Torres at time and one-half his regular hourly rate for all of the overtime hours he has worked but rather paid Torres his regular hourly rate for his overtime hours.

76. Defendants have been required to pay Torres at time and one-half his regular hourly rate for all hours worked beyond 40 per workweek.

77. Defendants have consistently suffered or permitted Torres to work over 10 hours per day as a Non-Exempt Worker at Red Rabbit. Defendants did not pay Torres one additional hour of pay at the full statutory minimum wage rate for all of the times that the length of the interval between the beginning and end of his workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

78. Defendants have failed to furnish Torres with proper wage notices, as required by the NYLL.

79. Defendants have failed to furnish Torres with an accurate statement of wages with every payment of wages, as required by the NYLL.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiff and the FLSA Collective)

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

81. At all times relevant, Plaintiff and the FLSA Collective have been employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*, and/or they have been engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

82. At all times relevant, Plaintiff and the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 201 *et seq.*

83. At all times relevant, Defendants have been employers of Plaintiff and the FLSA Collective, engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

84. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the FLSA Collective.

85. Defendants have failed to pay Plaintiff and the FLSA Collective overtime compensation at a rate of time and one-half their regular hourly wage rate for all hours worked in excess of 40 per workweek.

86. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the FLSA

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

87. As a result of Defendants' violations of the FLSA, Plaintiff and the FLSA Collective have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

New York Labor Law – Overtime Wages

(Brought on behalf of Plaintiff and the Rule 23 Class Members)

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

89. At all times relevant, Plaintiff and the Rule 23 Class Members have been employees of Defendants, and Defendants have been employers of Plaintiff and the Rule 23 Class Members within the meaning of the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

90. At all times relevant, Plaintiff and the Rule 23 Class Members have been covered by the NYLL.

91. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants and protect Plaintiff and the Rule 23 Class Members.

92. Defendants have failed to pay Plaintiff and the Rule 23 Class Members the overtime wages to which they have been entitled to under the NYLL and the supporting New York State Department of Labor Regulations.

93. Defendants have failed to pay Plaintiff and the Rule 23 Class Members overtime at a rate of time and one-half their regular hourly rate for all hours worked in excess of 40 per workweek.

94. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the Rule 23 Class Members.

95. Through their knowing or intentional failure to pay Plaintiff and the Rule 23 Class Members overtime wages for hours worked in excess of 40 hours per week, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

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

THIRD CAUSE OF ACTION

New York Labor Law – Spread of Hours Pay (Brought on behalf of Plaintiff and the Rule 23 Class Members)

97. Plaintiff, on behalf of himself and the Rule 23 Class Members, realleges and incorporates by reference all allegations in all preceding paragraphs.

98. Defendants have willfully failed to pay Plaintiff and the Rule 23 Class Members 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 – has been greater than 10 hours.

99. Through their knowing or intentional failure to pay Plaintiff and the Rule 23 Class Members spread of hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

100. Due to Defendants' violations of the NYLL, Plaintiff and the Rule 23 Class Members 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.

FOURTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Proper Wage Notices (Brought on behalf of Plaintiff and the Rule 23 Class Members)

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

102. Defendants have willfully failed to supply Plaintiff and the Rule 23 Class Members with proper wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiff and the Rule 23 Class Members as their primary language, containing Plaintiff's and the Rule 23 Class Members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

103. Through their knowing or intentional failure to provide Plaintiff and the Rule 23 Class Members with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

104. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of fifty dollars each work day that Defendants failed to provide Plaintiff and the Rule 23 Class Members with proper wage notices,

or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

FIFTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Accurate Wage Statements (Brought on behalf of Plaintiff and the Rule 23 Class Members)

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

106. Defendants have willfully failed to furnish Plaintiff and the Rule 23 Class Members with a statement with every payment of wages as required by NYLL, Article 6, § 195(3), containing 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; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

107. Through their knowing or intentional failure to provide Plaintiff and the Rule 23 Class Members with the accurate wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

108. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiff and the Rule 23 Class Members are entitled to statutory penalties of two hundred fifty dollars for each work day that Defendants failed to provide Plaintiff and the Rule 23 Class Members with accurate wage statements, or a total of five thousand dollars, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

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

A. Designation of this action as a collective action on behalf of the FLSA Collective (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

B. Designation of Plaintiff as Representative of the FLSA Collective Action;

C. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §§ 201 *et seq.*;

D. Unpaid overtime compensation and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

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

F. Designation of Plaintiff as a representative of the Rule 23 Class and counsel of record as Class Counsel;

G. Unpaid overtime compensation, spread of hours pay, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

H. Statutory penalties of fifty dollars for each work day that Defendants failed to provide Plaintiff and the Rule 23 Class Members with proper wage notices, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

I. Statutory penalties of two hundred fifty dollars for each work day that Defendants

failed to provide Plaintiff with accurate wage statements, or a total of five thousand dollars, as provided for by NYLL, Article 6 § 198;

- J. Prejudgment and post-judgment interest;
- 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
June 7, 2016

Respectfully submitted,

/s/Joseph A. Fitapelli
Joseph A. Fitapelli

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*Attorneys for Plaintiff and
the Putative Class*

FORMULARIO DE CONSENTIMIENTO DE UNIÓN

1. Doy mi consentimiento para ser parte demandante en una demanda contra RED RABBIT LLC y / o entidades e individuos relacionados con el fin de obtener reparación por violaciones de la Fair Labor Standards Act, (*Ley de las Normas Laborales Justas*) de conformidad con 29 USC § 216(b).

2. Al firmar y devolver este formulario de consentimiento, yo designo Fitapelli & Schaffer, LLP ("La Firma") para representarme y hacer decisiones en mi defensa acerca del caso y cualquier acuerdo extrajudicial. Entiendo que costos razonables hechos en mi defensa serán deducido de cualquier acuerdo extrajudicial o juicio será prorrateado entre todos los otros demandantes. Entiendo que la firma petitionara con la Corte para conseguir los costos de abogado de cualquier acuerdo extrajudicial o juicio en la suma que será el mayor de lo siguiente: (1) la suma "lodestar", que es calculada por multiplicar una tarifa por hora razonable por los números de horas dedicado a la demanda, o (2) 1/3 del total bruto del acuerdo judicial o juicio. Estoy de acuerdo de ser vinculado a cualquier proceso legal de este asunto por la Corte, sea favorable o desfavorable.



Firma (Signature)



Nombre legal completo (Imprenta) (Full Legal Name (Print))

