UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HENDRICK VANGORDEN, on behalf of himself and others similarly situated,	:	
Plaintiff,	:	Case No. 24 Civ. 1248
- against -	:	
	:	CLASS ACTION COMPLAINT
HONEYBEE FOODS CORPORATION (USA) d/b/a JOLLIBEE,	:	
Defendant.	:	

Plaintiff Hendrick Vangorden ("Plaintiff"), on behalf of himself and all other similarly situated employees, brings this lawsuit against Defendant Honeybee Foods Corporation d/b/a Jollibee ("Defendant"), seeking damages for Defendant's violations of the New York Labor Law, Art. 6 §§ 190 *et seq.* ("NYLL") and New York City Fair Workweek Law, Title 20, Chapter 12 of the New York City Administrative Code ("Fair Workweek Law"). Plaintiff alleges as follows:

INTRODUCTION

1. Plaintiff was employed by Defendant as a "Manual Worker" as defined by NYLL § 190(4), having worked for Defendant in New York as a Crew Member. Defendant paid Plaintiff and other Manual Workers on a biweekly basis. As a result, Defendant violated the requirement that manual workers be paid on a weekly basis in accordance with NYLL § 191(1)(a).

2. Plaintiff brings the First Cause of Action as a class action and will seek certification under Federal Rule of Civil Procedure 23 ("Rule 23") for the following "191 Class":

> All current and former employees of Defendant working as Manual Workers throughout the State of New York during the time period from six years prior to the filing of the complaint until the date of judgment in this action ("191 Class Members").

3. As a New York City fast-food worker, Plaintiff and his coworkers were entitled to predictable schedules with advance notice, premium pay for working shifts that were altered at the last minute, sufficient time between shifts, and pathways to full-time employment. Defendant, therefore, violated Sections 20-1221, 20-1222, 20-1231, and 20-1241 of the Fair Workweek Law.

4. Plaintiff brings the Second, Third, Fourth, Fifth, and Sixth Cause of Action as a class action and will seek certification under Rule 23 for the following "FWW Class":

> All current and former employees of Defendant employed at a Jollibee restaurant in New York during the time period from two years prior to the filing of the complaint until the date of judgment in this action ("FWW Class Members").

5. At the earliest time practicable, Plaintiff seeks to certify this matter as a class action pursuant to Rule 23 and to notify the 191 Class Members and FWW Class Members (collectively, the "Class" or "Class Members") of this matter.

THE PARTIES

Plaintiff

6. Plaintiff Hendrick Vangorden is an adult individual and resident of Queens County, New York.

7. Plaintiff is domiciled in Queens County, New York.

8. Plaintiff worked for Defendant as a Crew Member from about April 2022 through August 2023.

9. Plaintiff was employed at Defendant's Jollibee restaurant in Woodside, New York.

10. Plaintiff was paid on an hourly basis.

11. As a Crew Member, Plaintiff worked behind the register and in the kitchen. Regardless of where in the store he was working, he spent at least 25% of his working time on physical labor. That is, when working in the kitchen, Plaintiff spent over 25% of his time preparing

food, cooking, and cleaning. When working the register, Plaintiff spent over 25% of his time bagging food, serving customers, sweeping, mopping, taking out the garbage, and cleaning up tables and countertops.

12. Plaintiff was paid on a biweekly basis.

13. Defendant did not pay Plaintiff within seven days after the end of the workweek as required by NYLL. For example, in the month May 2022, Defendant paid Plaintiff every 14 days.

14. Plaintiff was entitled to payment of his wages within seven calendar days after the end of the workweek, as per NYLL § 191(1)(a).

15. At all times relevant, Plaintiff was an "employee" within the meaning of the N.Y. Lab. Law §§ 190(2), 651(5).

16. At all times relevant, Plaintiff was a "manual worker" within the meaning of the NYLL.

17. At all times relevant, Plaintiff was an "employee" within the meaning of N.Y.C. Admin. Code §§ 20-1201.

18. At all times relevant, Plaintiff was a "fast food employee" within the meaning of N.Y.C. Admin. Code §§ 20-1201.

19. When Defendant hired Plaintiff in or around April 2022, Defendant failed to provide him with his regular schedule, in writing, in violation of Section 20-1221.

20. Defendant regularly failed to provide Plaintiff with a written work schedule at least 14 days before the first day of each schedule in violation of N.Y.C. Admin. Code §§ 20-1201 and 1221(b)-(c).

21. Throughout his employment, at best, Defendant only provided Plaintiff his schedule a week in advance.

22. Defendant regularly changed Plaintiff's schedule at the last minute and failed to pay him schedule change premiums in violation of N.Y.C. Admin. Code § 20-1222(a); 6 R.C.N.Y. § 7-606(b).

23. On a weekly basis, Plaintiff stayed past the end of his scheduled shift by more than 15 minutes, and Defendant did not pay him a premium for that time.

24. Defendant required Plaintiff to work two shifts with fewer than 11 hours between the end of the first shift and the start of the second shift, in violation of Section 20-1231.

25. That is, Plaintiff worked a closing shift ending at or after 11:30 p.m. and then opening shift the next morning, starting at or around 7:30 a.m. These shifts are commonly referred to as "clopenings."

26. Defendant also failed to notify Plaintiff of the details of the available shifts, including whether the shifts were recurring and how to express interest in picking them up, before hiring new employees in violation of N.Y.C. Admin. Code § 20-1241.

27. Defendant paid Plaintiff about $15.50 an hour.

28. At all relevant times, Plaintiff worked under the direction and control of Defendant.

Defendant

29. Defendant Honeybee Foods Corporation (USA) is a Delaware corporation.

30. Defendant is headquartered in West Covina, California.

31. Defendant does business in New York.

32. Defendant owns and operates fast-food restaurants known as Jollibee.

33. At all relevant times, Defendant was and is an "employer" within the meaning of NYLL § 190(3).

34. At all relevant times, Defendant was an "employer" within the meaning of N.Y.C. Admin. Code §§ 20-1201.

35. At all relevant times, Defendant was a "fast food employer" within the meaning of N.Y.C. Admin. Code §§ 20-1201.

36. At all relevant times, Defendant maintained control, oversight and direction over Plaintiff and the Class Members, including timekeeping, payroll and other employment practices that applied to them.

37. Defendant applies the same employment policies, practices, and procedures to Plaintiff and all Class Members.

38. Jollibee is, generally, open to the public from 8:00 a.m. to 10:00 p.m., seven days a week.

39. Class Members work before the store opens to the public and Class Members work after the store closes. That is, Class Members working the opening shift start their shift at 7:30 a.m. and Class Members working the closing shift work to 11:30 p.m. or later.

40. Over the course of each workday, Defendant employs between approximately five and 10 non-exempt employees at each store.

41. Defendant has employed Class Members at Jollibees located in New York City.

42. Defendant opened its first Jollibee at 6220 Roosevelt Avenue, Woodside, NY 11377 ("Woodside Store"), in about 2009.

43. In 2018, Defendant then opened the Jollibee at 609 8th Ave., New York, NY 10018 ("Port Authority Store").

44. In about August 2022, Defendant opened the Jollibee located at 1500 Broadway Street, Times Sq, New York, NY 10036. ("Times Sq. Store").

45. In 2023, Defendant opened a Jollibee at 16102 Jamaica Avenue, Flushing, NY 11432 ("Flushing Store").

JURISDICTION AND VENUE

46. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and the Class Action Fairness Act.

47. Upon information and belief, there are Class Members who are citizens of states other than Defendant.

48. The amount in controversy for Plaintiff and the Class Members exceeds $5,000,000, exclusive of interest and costs.

49. Plaintiff seeks liquidated damages, under NYLL § 198, equal to 100% of the 191 Class's late-paid wages. Because Plaintiff and the 191 Class were paid on a biweekly basis, roughly one-half of their annual wages were paid late. Thus, the measure of damages in controversy is equal to, roughly, one-half of the 191 Class's wages paid by Defendant for the six years preceding the filing of this Complaint. The law also provides for attorneys' fees.

50. Plaintiff seeks damages authorized by the Fair Workweek Law, including the following, on behalf of the FWW Class:

a. $10 of premium pay for each change to the work schedule, made on more than seven days but within 14 days, resulting in additional hours or shifts added or a schedule change without a change in the total hours worked.

b. $15 of premium pay for each change to the work schedule, made on less than seven days, resulting in additional hours or shifts added or a schedule change without a change in the total hours worked.

c. $20 of premium pay for each change to the work schedule, made less than 14 days' notice but more than seven days' notice, resulting in a cancelled regular shift or a shortened regularly scheduled shift.

d. $45 of premium pay for each change to the work schedule, made on more than 24 hours' notice but within seven days, resulting in a cancelled regular shift or a shortened regularly scheduled shift.

e. $75 of premium pay for each change to the work schedule, made within 24 hours, resulting in a cancelled regular shift or a shortened regularly scheduled shift.

f. $100 of premium pay for each instance in which an employee works two shifts with fewer than 11 hours between the end of the first shift and the beginning of the second shift when the first shift ends the previous calendar day or spans two calendar days.

g. $200 each week that the Defendant failed to provide to an employee in writing their regular schedule including the number of hours the employee can expect to work per week and expected days, times and location.

h. Compensatory damages and related make-whole relief.

i. Attorneys' fees.

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 Eastern 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, and the Defendant is subject to personal jurisdiction in this District.

53. That is, Defendant employed Plaintiff and members of the Class and failed to pay them in accordance with the NYLL and Fair Workweek Law within this district and within the jurisdiction and venue of this Court.

COMMON FACTUAL ALLEGATIONS

191 Class Allegations

54. Plaintiff and the Class Members are current or former Manual Workers. Their duties include but are not limited to numerous physical tasks such as stocking products, cleaning stores, unloading and moving boxes of products and supplies, cooking, and cleaning. Plaintiff and the Class Members spend more than 25% of their time performing manual labor such as these tasks.

55. From approximately February 2018 through about late-2022, Defendant violated the NYLL by failing to pay Plaintiff and Class Members on a weekly basis as required by NYLL.

56. Defendant applied its biweekly payment policy to the Class Members uniformly.

57. Plaintiff and the Class Members were uniformly deprived of the time value of their earned wages during periods in which payment was illegally delayed. Plaintiff and the Class Members lost the opportunity to grow such untimely-paid wages through investment. Plaintiff and the Class Members also lost the opportunity to use their earned wages which Defendant wrongfully withheld.

58. Defendant, however, benefited from the delayed payments. That is, among other things, Defendant reduced its administrative costs by paying less frequently than required and used the extra money Defendant was holding onto as it pleased (or, alternatively, did not use the money and earned interest on the unpaid wages) until payroll was cut.

59. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct has been widespread, repeated, and consistent as to the Class Members and throughout Defendant's operations in New York.

60. Defendant does not possess a good faith basis for deciding to pay and thereafter continuing to pay its employees' wages biweekly.

61. The State of New York has required employers to pay certain manual workers on a weekly basis since the 19th Century. *See* N.Y. Session Law 1890, Ch. 388 § 1; N.Y. Session Law 1897, Ch. 415 §§ 2, 10.

62. A reasonable employer inquiring into New York's wage payment rules would know that manual workers are to be paid each week given that, for example, the rules are listed on the Department of Labor's Frequently Asked Questions flyer regarding the Wage Theft Prevention Act (https://dol.ny.gov/system/files/documents/2021/03/wage-theft-prevention-act-frequently-asked-questions_0.pdf) and many legal, human resource, and employment blogs brought attention to this issue following the First Department's 2019 decision in *Vega v. CM & Assocs. Constr. Mgmt. LLC*, 175 A.D.3d 1144 (1st Dep't 2019).

63. Defendant did not apply to the New York State Department of Labor for authorization to pay any manual workers in New York state on a less frequent basis than weekly as permitted by Section 191 of the NYLL.

64. The New York State Department of Labor did not authorize Defendant to pay its employees on a less frequent basis than weekly, as permitted by Section 191 of the NYLL.

65. Upon information and belief, Defendant did not: (a) inquire into whether its biweekly payroll practice complies with the NYLL; (b) take requisite steps to ensure that Plaintiff and Class Members were paid as per the timely pay requirements of the NYLL; and (c) conduct

any study or audit of its compensation practices to ensure that Plaintiff and the Class Members were paid in compliance with the NYLL's timely payment requirements.

FWW Class Allegations

66. Defendant fails to provide each employee in writing their regular schedule including the number of hours the employee can expect to work per week and expected days, times and location.

67. Defendant regularly issues the FWW Class's schedules less than 14 days before the workweek began. Defendant fails to post the schedule in the workplace and/or personally provide it to each employee, either electronically or on paper. Defendant also fails to provide employees with the new versions of the schedule within 24 hours of making the change.

68. The FWW Class's schedules changes from week to week.

69. Plaintiff and members of the FWW Class worked additional hours beyond the schedule listed in the initial written work schedule provided to the FWW Class.

70. Plaintiff and members of the FWW Class, particularly when closing, had to work between 30 minutes to an hour after their scheduled shift to complete all of their job duties. When closing the store, for example, Plaintiff and the FWW Class had to clean the store and prepare it for the next day.

71. Plaintiff and members of the FWW Class were also asked to and did work after their scheduled shift, during the day shift, because the store was busy or short staffed.

72. Defendant did not get Plaintiff's written consent and the FWW Class Members' written consent when requiring them to work these additional hours.

73. Defendant did not pay the FWW Class, including Plaintiff, any sort of premium pay for these unscheduled working hours or changes in their schedule.

74. Defendant required FWW Class Members, including Plaintiff, to work clopenings (two shifts without 11-hours of rest in between), without any sort of premium pay for working such shifts.

75. Defendant fails to give current part-time employees the opportunity to work more shifts before hiring new employees. When Defendant has available shifts to assign, before hiring new employees it must notify current employees of the details of the available shifts, including whether the shifts are recurring and how to express interest in picking them up. When an employee picks up a recurring shift under this procedure, Defendant must add the shift to the employee's regular shift. Defendant does not comply with these requirements.

76. Defendant must maintain records that document its compliance with each of the above requirements of the Fair Workweek Law for three years.

CLASS ACTION ALLEGATIONS

77. Plaintiff brings this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of Plaintiff and the Class Members.

78. Excluded from the Class are 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 Judge's immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Class.

79. Class Members identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiff, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

80. Upon information and belief, the size of the Class is at least 200 workers.

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

82. This matter is properly maintainable as a class action under Rule 23(b)(3). There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members of the putative Class, including but not limited to:

a. whether Defendant was required to pay Plaintiff and the 191 Class Members on a weekly basis

b. whether Defendant failed to pay Plaintiff and the 191 Class Members on a weekly basis;

c. whether Defendant's failure to pay Plaintiff and the 191 Class Members on a weekly basis resulted from a reasonable, good-faith belief that its biweekly payroll practice complied with the NYLL;

d. whether Defendant failed to provide written regular schedules to Plaintiff and the FWW Class Members;

e. whether Defendant failed to give adequate notice of the schedule and scheduling changes to Plaintiff and the FWW Class Members;

f. whether Defendant required Plaintiff and the FWW Class Members to work clopenings;

g. whether Defendant provided current part-time employees the opportunity to work more shifts before hiring new employees; and

h. whether Defendant failed to pay FWW premium payments to Plaintiff and the FWW Class Members.

83. Plaintiff's claims are typical of the claims of the Class sought to be represented. Defendant acted and/or refused to act on grounds generally applicable to Plaintiff and Class Members, thereby making injunctive and/or declaratory relief with respect to the Class appropriate.

84. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff understands that, as the class representative, one assumes a fiduciary responsibility to the Class to represent its interests fairly and adequately. Plaintiff recognizes that as a class representative, one must represent and consider the interests of the Class just as one would represent and consider one's own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, one must not favor one's own interests over those of the Class. Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Class. Plaintiff understands that in order to provide adequate representation, one must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in one's possession, and testify, if required, in a deposition and in trial.

85. Plaintiff has retained the law firms of Kessler Matura P.C. and Werman Salas P.C., who are competent and experienced counsel in complex class action employment litigation.

86. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate Defendant. The members of the Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment 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 Rules of Civil Procedure 23(b)(3).

FIRST CAUSE OF ACTION
NYLL – Failure to Pay Timely Wages
(On Behalf of Plaintiff and the 191 Class Members)

88. Plaintiff incorporates by reference all preceding allegations.

89. The NYLL requires employers to pay timely wages to employees. NYLL § 191 and NYLL's regulations state that manual workers, which include the Plaintiff and the 191 Class Members, must be paid on a weekly basis.

90. NYLL § 191 and its regulations apply to Defendant and cover Plaintiff and the 191 Class Members.

91. Defendant did not pay Plaintiff and the 191 Class Members each week. Defendant paid Plaintiff and the 191 Class Members on a biweekly basis in violation of the NYLL.

92. Defendant paid Plaintiff and the 191 Class Members more than seven days after the end of the workweek in violation of the NYLL.

93. Plaintiff and the 191 Class Members suffered injuries due to Defendant's late wage payments including, but not limited to, the loss of the time value of money, inability to invest and/or earn interest on the untimely paid wages, and inability to use their untimely-paid wages to maintain sustenance.

94. Due to Defendant's violations of the NYLL, Plaintiff and the 191 Class Members are entitled to damages from Defendant due to such underpayments caused by Defendant's violations of NYLL's timely pay laws for the entire NYLL class period. Such damages include, but are not limited to, liquidated damages, pre- and post-judgment interest, and attorneys' fees and costs. NYLL § 198.

SECOND CAUSE OF ACTION
FWW - Failure to Provide Written Regular Schedule
(Brought on behalf of Plaintiff and the FWW Class Members)

95. Plaintiff incorporates by reference all preceding allegations.

96. Defendant is required to provide each new employee with a written regular schedule no later than when a new employee receives their first work schedule. N.Y.C. Admin. Code § 20-1221(a).

97. Defendant is also required to maintain records of the regular schedules that it provides to employees. N.Y.C. Admin. Code § 20-1206(a); 6 R.C.N.Y. § 7-609(a)(2)(i). A failure to maintain, retain, or produce a required record that is relevant to a material fact creates a rebuttable presumption that such fact is true. N.Y.C. Admin. Code § 20-1206(b).

98. Defendant committed a violation of Section 20-1221(a) of the Fair Workweek Law each time week it failed to provide a written, good-faith estimate to a FWW Class Member.

99. As a result of Defendant's violations of Section 20-1221(a) of the Fair Workweek Law, Plaintiff and the FWW Class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) $200 each week it failed to provide a regular schedule to an employee; (3) unpaid schedule change premiums, ranging from $10 to $75 for each violation; (4) compensatory damages and any other relief required to make the employee whole; and (5) reasonable attorney's fees.

THIRD CAUSE OF ACTION
FWW - Failure to Provide Advance Notice of Work Schedules
(On behalf of Plaintiff and the FWW Class Members)

100. Plaintiff incorporates by reference all preceding allegations.

101. Defendant is required to provide employees with written notice of their work schedules at least 14 days before the first day of each schedule. N.Y.C. Admin. Code § 20-1221(b).

102. Defendant is required to maintain records of each written schedule provided to each employee. N.Y.C. Admin. Code § 20-1206(a); 6 R.C.N.Y. § 7-609(a)(1)(iii). A failure to maintain, retain, or produce a required record that is relevant to a material fact creates a rebuttable presumption that such fact is true. N.Y.C. Admin. Code § 20-1206(b).

103. Defendant violated Section 20-1221(b) of the Fair Workweek Law each week it failed to provide each employee with that employee's written work schedule 14 days in advance.

104. As a result of Defendant's violations of Section 20-1221(b) of the Fair Workweek Law, Plaintiff and the FWW Class Members have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid schedule change premiums, ranging from $10 to $75 for each violation; (3) compensatory damages and any other relief required to make the employee whole; and (4) reasonable attorney's fees.

FOURTH CAUSE OF ACTION
FWW - Failure to Provide Schedule Change Premiums
(On behalf of Plaintiff and the FWW Class Members)

105. Plaintiff incorporates by reference all preceding allegations.

106. Defendant is required to provide employees with premium pay for changes it makes to employees' work schedules any time after the 14-day statutory schedule provision date. N.Y.C. Admin. Code § 20-1222(a).

107. Defendant is required to maintain records that show each written work schedule provided to each employee, each employee's actual hours worked, and the amounts of premium pay provided to employees whose work schedules are changed by Defendant with less than 14 days' notice. N.Y.C. Admin. Code § 20-1206(a); 6 R.C.N.Y. §§ 7-609(a)(1) and 609(a)(2)(ii). A failure to maintain, retain, or produce a required record that is relevant to a material fact creates a rebuttable presumption that such fact is true. N.Y.C. Admin. Code § 20-1206(b).

108. Defendant violated Section 20-1222(a) of the Fair Workweek Law each time it failed to pay required schedule change premiums to fast food employees whose work schedules it changed with less than 14 days' notice.

109. As a result of Defendant's violations of Section 20-1222(a) of the Fair Workweek Law, Plaintiff and the Fair Workweek Class have been deprived of a predictable schedule and are entitled to: (1) an order directing compliance; (2) unpaid schedule change premiums, ranging from $10 to $75 for each violation; (3) compensatory damages and any other relief required to make the employee whole; and (4) reasonable attorney's fees.

FIFTH CAUSE OF ACTION
FWW - Failure to Obtain Written Consent and Provide Premium Pay for Clopenings (On behalf of Plaintiff and the FWW Class Members)

110. Plaintiff incorporates by reference all preceding allegations.

111. Defendant is prohibited from requiring fast food employees to work clopenings, unless the employee provides written consent, and Defendant provides $100 in premium pay, to work the clopening. N.Y.C. Admin. Code § 20-1231.

112. For required clopenings, Defendant is required to maintain records showing that it obtained written consent from the employee, and records of premium pay that it provided to the employee. N.Y.C. Admin. Code § 20-1206(a); 6 R.C.N.Y. §§ 7-609(a)(1)(ii) and 609 (a)(2)(ii).

113. A failure to maintain, retain, or produce a required record that is relevant to a material fact creates a rebuttable presumption that such fact is true. N.Y.C. Admin. Code § 20-1206(b).

114. Defendant committed a violation of Section 20-1231 of the Fair Workweek Law each time it failed to obtain written consent from an employee who worked a clopening.

115. Defendant committed a violation of Section 20-1231 of the Fair Workweek Law each time it failed to pay $100 in premium pay to an employee who worked a clopening.

116. As a result of Defendant's violations of Section 20-1231 of the Fair Workweek Law, Plaintiff and the FWW Class are entitled to: (1) an order directing compliance; (2) unpaid premiums of $100 for each violation; (3) compensatory damages and any other relief required to make the employee whole; and (4) reasonable attorney's fees.

SIXTH CAUSE OF ACTION
FWW - Failure to Offer Newly Available Shifts to Existing Employees
(Brought on behalf of Plaintiff and the FWW Class Members)

117. Plaintiff incorporates by reference all preceding allegations.

118. Defendant is required to notify its current employees about newly available shifts and offer them those shifts before hiring any new employees. N.Y.C. Admin. Code § 20-1241.

119. Defendant is required to maintain records that document its compliance with the Fair Workweek Law for three years. N.Y.C. Admin. Code § 20-1206(a). A failure to maintain, retain, or produce a required record that is relevant to a material fact creates a rebuttable presumption that such fact is true. N.Y.C. Admin. Code § 20-1206(b).

120. Defendant committed a unique violation of Section 20-1241 of the Fair Workweek Law each time it failed to offer a current employee the shifts it subsequently offered to a new hire in the same location.

121. As a result of Defendant's violations of Section 20-1241 of the Fair Workweek Law, Plaintiff and the FWW Class are entitled to: (1) an order directing compliance; (2) compensatory damages and any other relief required to make the employee whole; and (3) reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons, prays for the following relief:

A. Damages, including liquidated damages, for Defendant's violations of the NYLL;

B. Unpaid Fair Workweek Law premiums;

C. Compensatory damages and any other relief required to make the FWW Class whole;

D. Pre-judgment interest and post-judgment interest as provided by law;

E. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;

F. A reasonable incentive award for Plaintiff to compensate him for the time and effort he has spent protecting the interests of other Class Members, and the risks he has undertaken.

G. Certification of this case as a class action pursuant to Rule 23;

H. Designation of Plaintiff as representative of the Class, and counsel of record as Class Counsel;

I. Attorneys' fees and costs of the action; and

J. Such other monetary, injunctive, equitable, and other relief as this Court shall deem just and proper and as available under the law.

Dated: Melville, New York
February 16, 2024

Respectfully submitted,

/s/ Troy L. Kessler

Troy L. Kessler
Garrett Kaske
Tana Forrester
KESSLER MATURA P.C.
534 Broadhollow Road, Suite 275
Melville, NY 11747
Phone: (631) 499-9100
Fax: (631) 499-9120
tkessler@kesslermatura.com

gkaske@kesslermatura.com
tforrester@kesslermatura.com

Sally J. Abrahamson
WERMAN SALAS P.C.
335 18th Pl NE
Washington, D.C. 20002
Phone No.: (202) 830-2016
Fax No.: (312) 419-1025
sabrahamson@flsalaw.com

Douglas M. Werman*
WERMAN SALAS P.C.
77 W. Washington Street, Suite 1402
Chicago, Illinois 60602
Phone No.: (312) 419-1008
Fax No.: (312) 419-1025
dwerman@flsalaw.com
**pro hac vice* application forthcoming

Attorneys for Plaintiff and the Putative Class