

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

**ANGEL MOLINA VELASQUEZ and MARIA  
ACOSTA,**

**Plaintiffs,**

**- against -**

**LEOTOM, INC. D/B/A LA VILLETTA II,**

**Defendant.**

**Case No. 25 Civ. 2279**

**COMPLAINT**

Plaintiffs Angel Molina Velasquez and Maria Acosta, by and through their attorneys Kessler Matura P.C., complaining of Defendant LEOTOM, Inc. d/b/a La Villetta II, allege as follows:

**INTRODUCTION**

1. This lawsuit seeks to recover unpaid overtime wages, non-overtime wages, and other compensation owed to Plaintiffs for their work while employed at Defendant's Italian restaurant, La Villetta II, in Ronkonkoma, New York.

2. Throughout their employment, Plaintiffs regularly worked more than forty hours per week.

3. Defendant failed to pay Plaintiffs proper overtime compensation at one and one-half times their regular rate of pay for all hours worked in excess of forty per workweek, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206, 207, and the New York Labor Law ("NYLL"), Articles 6 and 19.

4. Plaintiff Velasquez regularly worked shifts, with a spread of over 10 hours—i.e., the end of the employee’s shift is greater than 10 hours from its start—without receiving an additional hour of pay at the minimum wage (“spread-of-hours”).

5. As a result of not paying Plaintiffs overtime pay, and not providing Plaintiff Velasquez, spread-of-hours pay, Defendant violated the FLSA and NYLL.

### **JURISDICTION & VENUE**

6. Jurisdiction of the Court over this controversy is based upon, 29 U.S.C. § 201, *et seq.*, 28 U.S.C. 1331 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

7. This action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391(b)(2), because events giving rise to this action occurred in Suffolk County.

8. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367(a) because these claims are so related to the FLSA claims that they form part of the same case or controversy.

### **THE PARTIES**

#### ***Plaintiff Velasquez***

9. Plaintiff was employed as a cook by Defendant from 2017 through April 11, 2024.

10. At all times relevant to this Complaint, Plaintiff was an “employee” within the meaning of the FLSA and NYLL.

#### ***Plaintiff Acosta***

11. Plaintiff was employed as a dishwasher by Defendant from November 2021 through October 1, 2024.

12. At all times relevant to this Complaint, Plaintiff was an “employee” within the meaning of FLSA and NYLL.

***Defendant LEOTOM, Inc. d/b/a La Villetta II***

13. Defendant is a domestic business corporation.

14. Defendant is authorized to do business pursuant to the laws of the State of New York.

15. Defendant's principal place of business is located at 3505 Veterans Memorial Highway, Ronkonkoma, NY 11779.

16. At all times hereinafter mentioned, Defendant was and still is an "employer" within the meaning of the FLSA and NYLL.

17. At all times hereinafter mentioned, Defendant was and still is a "restaurant" within the meaning of the NYLL.

18. Defendant maintained control, oversight, and direction over Plaintiffs, including timekeeping, payroll and other employment practices that applied to them.

**COMMON FACTUAL ALLEGATIONS**

***Overtime***

19. Plaintiffs have been victims of Defendant's common policy and plan that has violated their rights under the FLSA and NYLL by requiring Plaintiffs to work over 40-hours a week without overtime pay.

20. Despite regularly working more than forty hours per week, Defendant failed to pay Plaintiffs proper overtime compensation at one and one-half times their regular rate of pay for all hours worked in excess of forty per workweek.

21. Defendants implemented and maintained a payment scheme designed to evade overtime requirements by paying employees partially by check and partially in cash.

***Inaccurate Wage Statements***

22. Defendant failed to provide Plaintiffs with proper wage statements as required by NYLL § 195(3). The wage statements provided did not accurately reflect: (a) the total hours worked; (b) the proper overtime rate of pay; and (c) the split payment of wages between check and cash.

23. Defendant was or should have been aware that the NYLL requires employers to provide accurate wage statements and maintain accurate time records.

24. Defendant's failure to report Plaintiffs' actual hours worked and basis of pay facilitated its unlawful overtime policy.

25. That is, Defendant failed to provide Plaintiffs with the information necessary to determine whether their weekly hours ever exceeded 40 in a single workweek, entitling them to overtime.

26. As a result, Defendant did not furnish Plaintiffs with an accurate statement of, *inter alia*, hours worked and basis of pay as required by NYLL.

27. This hindered Plaintiffs ability to challenge the unlawful wage payment at the time of the payment.

***Defendant's Actions Were Willful and Done Without Reasonable Good Faith***

28. Upon information and belief, a reasonable employer inquiring into this issue would have determined that Plaintiffs were entitled to overtime pay under the FLSA and NYLL overtime requirements, and NYLL spread-of-hours requirement.

29. Defendant's unlawful conduct was intentional, willful, and in bad faith, and has caused significant damages to Plaintiffs.

**INDIVIDUAL FACTUAL ALLEGATIONS**

***Plaintiff Velasquez***

30. Defendant employed Plaintiff Velasquez as a cook from approximately 2017 until April 11, 2024.

31. At all relevant times, during most workweeks, Plaintiff Velasquez worked more than 40 hours per week.

32. For example, during the workweek of April 1, 2024 to April 7, 2024, Plaintiff Velasquez worked 44 hours.

33. Plaintiff regularly worked five days a week. Throughout 2024, Velasquez worked: Monday from 11:00 AM to 10:00 PM, Thursday through Saturday from 11:00 AM to 10:00 PM, and Sunday from 1:00 PM to 9:00 PM.

34. Defendant regularly paid Plaintiff Velasquez a weekly wage of \$950. For example, for the workweek of April 1, 2024 to April 7, 2024, Defendant paid Velasquez \$500 by check and \$450 in cash.

35. At all times relevant, Plaintiff Velasquez was entitled to receive overtime pay for all hours worked over 40.

36. Defendant failed to compensate Plaintiff Velasquez for time worked in excess of 40 hours per week at a rate of at least one and one-half times his regular rate, throughout the entire term of his employment with Defendant.

37. At all times relevant, Plaintiff Velasquez was entitled to receive spread-of-hours pay for all shifts lasting 10 or more hours.

38. Despite working shifts with a spread-of-hours exceeding 10 hours, Defendant failed to pay Plaintiff Velasquez an additional hour of pay at the minimum wage when he worked such a shift.

39. Defendant failed to pay Plaintiff Velasquez spread-of-hours pay when his workday spanned more than ten hours.

40. Defendant failed to supply Plaintiff Velasquez with an accurate statement of wages containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; the overtime rate or rates of pay; the number of hours worked, including overtime hours and the split payment of wages between check and cash.

***Plaintiff Acosta***

41. Defendant employed Plaintiff Acosta dishwasher from approximately November 2021 until October 1, 2024.

42. At all relevant times, during most workweeks, Plaintiff Acosta worked more than 40 hours per week.

43. For example, during the workweek from September 2, 2024 to September 8, 2024, Plaintiff Acosta worked 49 hours.

44. Plaintiff Acosta regularly worked six days a week. Throughout 2024, Plaintiff Acosta worked: Monday through Saturday from 11:30 AM to 9:00 PM.

45. Defendant regularly paid Plaintiff Acosta a weekly wage of \$810. For example, for the workweek of September 2, 2024 to September 8, 2024, Defendant paid Plaintiff Acosta \$410 by check and \$400 in cash.

46. At all times relevant, Plaintiff Acosta was entitled to receive overtime pay for all hours worked over 40.

47. Defendant failed to compensate Plaintiff Acosta for time worked in excess of 40 hours per week at a rate of at least one and one-half times her regular rate, throughout the entire term of her employment with Defendant.

48. Defendant failed to supply Plaintiff Acosta with an accurate statement of wages containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; the overtime rate or rates of pay; the number of hours worked, including overtime hours and the split payment of wages between check and cash.

**FIRST CAUSE OF ACTION**  
**FLSA - Failure to Pay Overtime Compensation**  
**(On Behalf of Plaintiffs)**

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

50. Plaintiffs are employees entitled to be paid overtime compensation for all overtime hours worked.

51. Defendant employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for all time worked in excess of 40 hours per week, at a rate of at least 1½ times their regular hourly rate, in violation of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

52. Throughout their employment with Defendant, Plaintiffs regularly worked more than forty hours per week.

53. Defendant failed to make a good faith effort to comply with the FLSA with respect to its compensation to Plaintiffs.

54. Because Defendant's violations of the FLSA were willful, a 3-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

55. As a consequence of the willful underpayment of wages, Plaintiffs incurred damages, and Defendant is indebted to them for unpaid overtime compensation, together with interest, liquidated damages, attorneys' fees, and costs in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**NYLL — Unpaid Overtime Wages**  
**(Brought on Behalf of Plaintiffs)**

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

57. Defendant employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for all time worked in excess of 40 hours per week, at a rate of at least 1½ times their regular hourly rate, in violation of NYLL.

58. By the course of conduct set forth above, Defendant violated NYLL.

59. Defendant failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs.

60. Defendant's failure to pay overtime compensation was willful within the meaning of the NYLL.

61. As a result, Plaintiffs incurred damages, and Defendant is indebted for unpaid overtime compensation, liquidated damages, attorneys' fees, costs, and other legal/equitable relief deemed just by the Court.

62. Plaintiff seeks recovery of liquidated damages, attorneys' fees, and costs to be paid by Defendant as provided by the NYLL.

**THIRD CAUSE OF ACTION**  
**New York Labor Law — Spread-of-hours Pay**  
**(Brought on Behalf of Plaintiff Velasquez)**

63. Plaintiff Velasquez realleges and incorporate all allegations in all preceding paragraphs.

64. Plaintiff Velasquez worked shifts in which the spread-of-hours exceeded 10 hours.

65. Throughout the six years prior to filing this Complaint, there were times Plaintiff Velasquez was entitled to an additional hour of pay at the basic minimum hourly rate.

66. Defendant failed to pay Plaintiff Velasquez one additional hour of pay at the basic minimum wage rate for each day the spread-of-hours exceeded 10 hours.

67. Defendant lacked a good faith basis to believe its failure to pay Plaintiff Velasquez an additional hour of pay for each day where the spread-of-hours exceeded 10 complied with the NYLL.

68. As a result, Defendant owes Plaintiff Velasquez unpaid spread-of-hours pay, liquidated damages, interest, attorneys' fees, and costs.

**FOURTH CAUSE OF ACTION**  
**New York Labor Law — Failure to Provide Accurate Wage Statements**  
**(Brought on Behalf of Plaintiffs)**

69. Plaintiffs reallege and incorporate all allegations in all preceding paragraphs.

70. Defendants failed to supply Plaintiffs with an accurate statement of wages as required by N.Y. Lab. Law § 195, containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; the overtime rate or rates of pay; the number of hours worked, including overtime hours and the split payment of wages between check and cash.

71. Due to Defendant's violations of the NYLL, for each workweek that Defendant failed to provide a proper wage statement, Plaintiffs are each entitled to damages of \$250 per workday, or a total of \$5,000 each, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs seeks the following relief:

- A. Unpaid wages that were unlawfully not paid pursuant to the FLSA, NYLL and the supporting Hospitality Wage Order;
- B. Liquidated damages;
- C. Pre-judgment interest and post-judgment interest as provided by law;
- D. Appropriate equitable and injunctive relief to remedy violations;
- E. Attorneys' fees and costs of the action;
- F. A declaratory judgment that the practices complained of are unlawful;
- G. Such other relief as this Court deems just and proper.

Dated: Melville, New York  
April 24, 2025

Respectfully submitted,

By: /s/ Troy L. Kessler  
Troy L. Kessler

**KESSLER MATURA P.C.**  
Troy L. Kessler  
Jocelyn Small  
534 Broadhollow Road, Suite 275  
Melville, New York 11747  
(631) 499-9100  
tkessler@kesslermatura.com  
jsmall@kesslermatura.com

*Attorneys for Plaintiffs*