

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 14-1664

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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FILED
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TASHA BEARD, MARLON BELL,
KIMBERLY CASTILLO, CALEB
CHEELY, NORMA CRIOLLO, and
DERICK GODFREY, on behalf of
themselves and others similarly situated

MATSUMOTO, J.

ECF CASE

COMPLAINT - CLASS ACTION

Plaintiffs,

vs.

REYES, M.J.
JURY TRIAL DEMANDED

MCDONALD'S CORPORATION,
MCDONALD'S U.S.A., LLC,
MCDONALD'S RESTAURANTS OF
NEW YORK, INC.

Defendants.

Plaintiffs Tasha Beard, Marlon Bell, Kimberly Castillo, Caleb Cheely, Norma Criollo, and Derick Godfrey ("Plaintiffs") are employed as Crew Members in McDonald's fast food restaurants by Defendants McDonald's Corporation, McDonald's U.S.A., LLC, and McDonald's Restaurants of New York (collectively, "McDonald's" or "Defendants"). Plaintiffs bring this wage and hour action against McDonald's on behalf of themselves and other current and former employees who are similarly situated to redress past and ongoing violations of their rights under federal and state wage and hour laws, and allege as follows:

NATURE OF THE ACTION

I. Plaintiffs seek redress for McDonald's unlawful conduct in failing to pay them for all hours worked and for necessary business expenses, which resulted in violations of the minimum wage requirements of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, and the New York Labor Laws ("NYLL"), as well as violations of the uniform maintenance

pay requirements of the New York State Hospitality Industry Wage Order, 12 N.Y.C.R.R. § 146-1.7, and the New York State Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. § 137-1.8.

2. McDonald's is a multi-billion dollar business with annual gross revenues of over \$27 billion. On information and belief, it operates more than 33,000 restaurants globally, including approximately 34 corporate owned and operated restaurants in New York. This action concerns wage and hour violations at these corporate owned and operated restaurants in New York.

3. As McDonald's Crew Members, Plaintiffs' duties include taking and filling orders at the cash register and drive through windows, preparing and cooking food, restocking supplies, and cleaning the restaurant.

4. Despite the tremendous revenues and profits McDonald's generates, McDonald's has and continues to pay Plaintiffs and other Crew Members a nominal hourly rate only at or slightly above the minimum wage rate for those hours of work for which McDonald's pays. But McDonald's regularly cuts into those wages further by failing to pay Plaintiffs wages for the time they are required to spend to maintain McDonald's uniforms in accordance with company policies and by failing to pay Plaintiffs uniform maintenance pay or reimbursements for the costs they incur in maintaining their uniforms.

5. As a result of such unpaid working time and business expenses, Plaintiffs' wages have been reduced below the federal and New York state minimum wages, in violation of 29 U.S.C. § 206 and NYLL § 652.¹

¹ The federal minimum wage is currently \$7.25 per hour, and has been since July 24, 2009. The New York minimum wage was similarly set at \$7.25 per hour beginning July 24, 2009, and

6. Plaintiffs are thus entitled to recover their unpaid minimum wages, as well as liquidated damages, interest, and attorneys' fees and costs.

7. As a result of McDonald's failure to either maintain Plaintiffs' uniforms itself or to provide Plaintiffs weekly Uniform Maintenance Pay, McDonald's has also violated New York wage orders governing the restaurant industry.

8. Plaintiffs pursue this Uniform Maintenance Pay claim on a class basis, as representatives of similarly situated current or former McDonald's Crew Members employed in corporate owned and operated stores in New York who have all been unlawfully required to maintain their McDonald's uniforms but not paid the attendant Uniform Maintenance Pay required as of January 1, 2011 pursuant to the New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. § 146-1.7, and prior to that date pursuant to the New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. § 137-1.8.

9. As of January 1, 2011, New York has required that employers "shall pay" weekly prescribed amounts of Uniform Maintenance Pay to uniformed employees who are required to maintain their own uniforms "in addition to the employee's agreed rate of pay," regardless of the amount of such regular rate. 12 N.Y.C.R.R. § 146-1.7. Prior to that date, New York similarly required that employers "shall pay" weekly prescribed amounts of Uniform Maintenance Pay to employees "in addition to the minimum wage," such that an employee's minimum weekly pay must total at least to the minimum wage for all of their hours worked plus the additional amount prescribed by the Uniform Maintenance Pay provision. 12 N.Y.C.R.R. § 137-1.8.

was only recently raised to \$8.00 per hour on December 31, 2013. Prior to July 24, 2009, the New York minimum wage had been set at \$7.15 per hour since January 1, 2007.

10. Plaintiffs and Class Members are entitled to recover the unpaid uniform maintenance pay required under the applicable wage orders, as well as liquidated damages, interest, and attorneys' fees and costs.

11. Plaintiffs seek certification under Rule 23 of the Federal Rules of Civil Procedure to pursue Uniform Maintenance Pay claims on behalf of the following class of employees of McDonald's corporate restaurants in New York:

All individuals who were, are, or will be employed by McDonald's as Crew Members in the state of New York at any time during the period beginning January 1, 2011 through the date at which the right to opt out of this action expires or who were employed by McDonald's as Crew Members in the state of New York and were paid less than the amounts prescribed in 12 N.Y.C.R.R. § 137-1.8 plus the applicable minimum wage at any time during the period beginning six years prior to the commencement of this action through December 31, 2010.

JURISDICTION AND VENUE

12. The Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b). This Court has supplemental jurisdiction over Plaintiffs' New York Labor Law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Plaintiffs Beard, Bell, Castillo, and Cheely work at McDonald's restaurants located within the Eastern District of New York and their pay claims arose in the Eastern District of New York, as did the claims of some other members of the putative class. Further, McDonald's operates restaurants throughout New York and regularly conducts business within this judicial district.

PARTIES

14. Defendant McDONALD'S CORPORATION is a multi-national, multi-billion dollar Delaware corporation with its principle place of business at One McDonald's Plaza, Oak Brook, Illinois. At all relevant times, McDonald's Corporation has done business in New York

and other states and countries, principally operating fast-food restaurants and the providing franchising services. McDonald's operates more than 33,000 fast-food restaurants.

15. Defendant McDONALD'S USA, LLC is a Delaware limited liability company with its principle place of business at One McDonald's Plaza, Oak Brook, Illinois. McDonald's USA, LLC is a wholly-owned subsidiary of McDonald's Corporation that does business in New York and other states, principally operating and franchising fast-food restaurants and providing related services. McDonald's USA, LLC develops, operates, franchises, and services a system of restaurants that prepare, assemble, package, and sell a limited menu of foods under the "McDonald's System" in the U.S. McDonald's Corporation is the parent and predecessor of McDonald's USA, LLC.

16. On information and belief, Defendant McDONALD'S RESTAURANTS OF NEW YORK, INC. is a New York corporation and a wholly-owned regional subsidiary of McDonald's USA, LLC and/or of McDonald's Corporation, and principally operates fast-food restaurants in the State of New York though its corporate headquarters are located in Oak Brook, Illinois. As of December 31, 2012, McDonald's Restaurants of New York, Inc. owned and operated 34 McDonald's restaurants in New York with approximately 1700 restaurant employees. McDonald's Restaurants of New York continues to own and operate McDonald's restaurants in New York, and Defendants continue to conduct substantial business in New York.

17. At all relevant times, each Defendant has had annual gross operating revenues in excess of \$500,000.

18. At all relevant times, McDonald's was and is an employer within the meanings of 29 U.S.C. § 203(d) and NYLL § 190, within the hospitality industry within the meaning of 12 N.Y.C.R.R. § 146-3.1, and an enterprise within the meaning of 29 U.S.C. § 203(r)(1).

19. Plaintiffs are employees of McDonald's who work as Crew Members at McDonald's corporate owned and operated New York restaurants. Plaintiffs bring this action on their own behalf and as representatives of a proposed class of similarly situated employees.

20. Plaintiff TASHA BEARD is employed as a Crew Member at a McDonald's restaurant located at 88-05 Astoria Boulevard in East Elmhurst, Queens, New York.

21. Plaintiff MARLON BELL is employed as a Crew Member at a McDonald's restaurant located at 121 Merrick Road in Lynbrook, New York.

22. Plaintiff KIMBERLY CASTILLO is employed as a Crew Member at a McDonald's restaurant located at 88-05 Astoria Boulevard in East Elmhurst, Queens, New York.

23. Plaintiff CALEB CHEELY is employed as a Crew Member at a McDonald's restaurant located at 90-69 Sutphin Boulevard in Jamaica, Queens, New York.

24. Plaintiff NORMA CRIOLLO is employed as a Crew Member at a McDonald's restaurant located at 265 Route 59 in Nanuet, New York.

25. Plaintiff DERICK GODFREY is employed as a Crew Member at a McDonald's restaurant located at 246 Route 104 in Oswego, New York.

26. Plaintiffs are residents of New York.

27. Plaintiffs are employed by McDonald's within the meaning of 29 U.S.C. § 203(e)(g), Articles 6 and 19 of the NYLL, and all regulations promulgated thereunder.

FACTUAL ALLEGATIONS

A. McDonald's Operations and Timekeeping Practices

28. In each of its approximately 34 corporately owned restaurants in New York, McDonald's employs hourly, non-exempt Crew Members who perform a variety of duties, including taking and filling orders at the cash register and drive through windows, preparing and cooking food, restocking supplies, and cleaning the restaurant.

29. The key to McDonald's success, according to its own internal and publicly filed documents, is "branding"—developing and maintaining customer recognition of and trust in the McDonald's brand, so whether a customer is in a restaurant in his or her hometown, a neighboring state, or a foreign country far away, the customer will know what to expect from the McDonald's experience, including expectations of appearance and Crew Member interactions.

30. McDonald's maintains tight control over its restaurants, which all operate under the "McDonald's System." The McDonald's System is a detailed system of restaurant operations that includes, among other things, certain rights in trademarks, real estate, marketing, and operational information designed to promote uniformity of operations and to maximize profits.

31. McDonald's requires its restaurants to strictly adhere to the McDonald's System, including, by complying with all standards, business policies, practices and procedures prescribed by McDonald's; using formulas, methods and policies relating to operations, inventory, accounting, management, and advertising that are set forth in detailed manuals developed and provided by McDonald's; using corporate-supplied or approved equipment and food products; and using McDonald's computerized systems, including its Point of Service ("POS"), timekeeping, and payroll systems.

32. On information and belief, McDonald's has a policy and practice requiring that each of its restaurants operate in a manner so as to limit labor costs, including curtailing costs them to a defined percentage of sales.

33. Plaintiffs and other Crew Members are required to punch in at the beginning of their shifts and to punch out at the end of their shifts. They are also required to punch out at the beginning of any break and to punch back in at the end of any break.

34. McDonald's computer system records Plaintiffs' and other Crew Members' punch-in and punch-out times, and such records are used for generating payroll and tracking labor costs, among other purposes.

35. McDonald's does not provide Plaintiffs or other Crew Members any method to report time they work at home or otherwise outside of the restaurant, and does not compensate Plaintiffs or other Crew Members for such time.

36. McDonald's managers require, suffer, or permit Plaintiffs and other Crew Members to perform work outside of the time they are punched in on McDonald's computer system, including cleaning and maintaining McDonald's uniforms as required by McDonald's and performed for McDonald's benefit.

B. McDonald's Policies and Practices Pertaining to Uniforms Applied to Plaintiffs and Other Crew Members

37. McDonald's focus on branding and uniformity of operations is reflected in the careful consistency of physical appearance of McDonald's restaurants, food products, and uniformed employees. On information and belief, the distinctive McDonald's "Golden Arches" symbol marks both McDonald's restaurant properties and the uniform worn by personnel working at each restaurant.

38. Pursuant to company policy, McDonald's requires that all restaurant employees, including Plaintiffs and other Crew Members, wear a distinctive McDonald's uniform. The McDonald's uniform consists of a visor or hat with a particular design, style, colors and McDonald's logo; a shirt with corresponding design, style, colors and McDonald's logo; a pair of black pants of particular design and style; and a pair of black non-slip shoes of particular design and style (or, for personnel working outside, a pair of boots with a particular design, style

and color). McDonald's does not permit any variations in the details of the uniform that it requires all employees to wear.

39. That McDonald's deems its uniform, and the display to the public of its logo thereon, an integral and indispensable component of its branding is illustrated by its treatment of Plaintiff Godfrey. Godfrey was assigned to work a window servicing customers at the drive-thru at a McDonald's restaurant in Oswego. McDonald's directed Godfrey not to close the drive-thru window from which he takes customers' orders and accepts payments. Oswego is located thirty-five miles north of Syracuse on the shore of Lake Ontario. In the winter months, the temperature is often substantially below freezing, and the conditions are made ever harsher by the wind chill created by the winds coming off the lake. Because of these harsh weather conditions and the direction to keep the window open while working, Godfrey variously sought to wear a jacket, a hoodie or other items of clothing over his McDonald's shirt during the winter while working at the open drive-thru window. However, McDonald's was and is so concerned about displaying to the public the McDonald's logoed, uniform shirt that it forbade Godfrey from wearing any item of clothing over his uniform, even though the consequence was that Godfrey had to work at an open window in a mere shirt during harsh winter weather.

40. Although the black pants that are part of the McDonald's uniform do not contain a logo, McDonald's nonetheless requires Plaintiffs and other Crew Members to wear the particular pair of uniform pants provided by McDonald's rather than any black pants of the employee's choice. McDonald's does not permit the wearing of *any* pair of black pants because, on information and belief, it believes any pair other than the one it issues is insufficient to meet its branding objective. For example, Plaintiff Castillo ordinarily works in the plain view of McDonald's customers. On one occasion, however, she was made to work in the back of the

restaurant out of the sight of customers because she had worn her own pair of black pants, rather than the pair of black pants issued by McDonald's.

41. On information and belief, McDonald's has company policies applicable to all Crew Members at corporate owned and operated stores in New York, including Plaintiffs, requiring particular standards of uniform appearance, such that Crew Members are to wear a clean uniform to work every day. For example, Plaintiff Castillo has often been reprimanded by the managers, including the General Manager, for the restaurant in which she works for wearing, while on duty, a McDonald's shirt that was allegedly dirty. On information and belief, this policy is motivated both by McDonald's strategy on branding and controlling customer impressions, and by its interest in ensuring sanitary conditions throughout its food preparation and service operations.

42. McDonald's fast food uniforms are regularly dirtied during a Crew Member's shift in the course of food preparation and other work, including but not limited to: work with or near grills, fryers, and fried food, which often leave grease on uniforms; work cleaning bathrooms and other parts of the restaurant; and work breaking down of boxes and other packages and taking out garbage.

43. Although Plaintiffs and other Crew Members almost always work more than one day per week, McDonald's practice is to provide each Plaintiff and other Crew Member with only one full uniform at any point in time. Indeed, employee requests for replacements of uniform parts that are irredeemably worn out are usually ignored by McDonald's for weeks or months, if not entirely.

44. While McDonald's requires that Plaintiffs and other Crew Members wear a clean uniform every day, it does not clean, launder or provide any maintenance services for the

uniform. Rather, it requires each Crew Member regularly to clean or provide for the cleaning of the uniform issued to him or her.

45. As a consequence of the foregoing circumstances, Plaintiffs and other McDonald's Crew Members must clean the uniform issued them by McDonald's, or at least the uniform shirt and pants, several times a week, and often after every shift. Such uniform cleanings often must and do occur separate from the cleaning of personal or family clothes, as Plaintiffs and other Crew Members must either perform additional hand cleanings or launderings to ensure their uniform is clean for every shift. For example, Plaintiff Castillo typically works four or five days per week, but was provided with only one full McDonald's uniform, which she is required to wear clean to every shift. As a result she washes her uniform at least three and often four times a week at home by hand, entirely apart from when she takes her personal clothes to a Laundromat, which she does approximately once a week. Similarly, Plaintiff Criollo typically works five days a week, but she was provided with only one full McDonald's uniform, which she is required to wear clean to every shift. As a consequence, she typically washes her uniform at least twice and often more times each week at home by hand, entirely apart from when she takes her personal clothes to the Laundromat, which she does once every three or four weeks.

46. McDonald's does not allow Plaintiffs or other Crew Members to launder or press their uniforms at work while clocked in.

47. Plaintiffs and other Crew Members therefore must routinely spend time off-the-clock and/or or money to clean and maintain their uniform consistent with the uniform and appearance standards McDonald's requires.

48. Nevertheless, McDonald's policy and practice is not to pay Plaintiffs and other Crew Members any uniform maintenance pay or reimbursement for the cost of maintaining uniforms, and it has failed and continues to fail to provide such pay.

49. Additionally, McDonald's policy and practice is not to compensate Plaintiffs and other Crew Members for time spent cleaning and pressing uniforms, and it has failed and continues to fail to provide such pay.

50. Plaintiffs and other Crew Members clean and wear the McDonald's uniform issued to them for McDonald's benefit and because McDonald's requires them to do so as a condition of employment.

C. Plaintiffs' Nominal Wages and Hours

(i) Plaintiff Beard

51. Plaintiff Beard has worked for McDonald's as a Crew Member since approximately October 29, 2011.

52. When Beard was initially hired, she was compensated on an hourly basis at a rate of \$7.25 per hour. Since April 20, 2013, Beard has been compensated at a rate of \$8.00 per hour.

53. Beard has and continues to work between 30 and 40 hours per week for McDonald's.

(ii) Plaintiff Bell

54. Plaintiff Bell has worked for McDonald's as a Crew Member since approximately January 2012.

55. From January 2012 to approximately June 2013, Bell was compensated on an hourly basis at a rate of \$7.25 per hour. From approximately June 2013 through December 2013, Bell was compensated at a rate of \$7.70 per hour. Since January 1, 2014, Bell has been compensated at a rate of \$8.00 per hour.

56. From January 2012 to approximately October 2013, Bell typically worked between 30 and 40 hours per week. Since then, Bell has typically worked approximately 16-17 hours per week.

(iii) Plaintiff Castillo

57. Plaintiff Castillo has worked for McDonald's as a Crew Member since approximately October 2013.

58. From October through December 2013, Castillo was compensated on an hourly basis at a rate of \$7.50 per hour. Since January 1, 2014, Castillo has been compensated at a rate of \$8.00 per hour.

59. In 2013, Castillo worked an average of approximately 36 hours per week. In 2014, Castillo worked approximately 27-30 hours per week.

(iv) Plaintiff Cheely

60. Plaintiff Cheely has worked for McDonald's as a Crew Member from approximately August 21, 2012 through April, 2013, when he was laid off due to the temporary closure of this restaurant for renovations, and again since January 2014 when the restaurant was reopened.

61. From August 2012 through April 2013, Plaintiff Cheely was compensated on an hourly basis at a rate of \$7.50 per hour. Since January 1, 2014, Cheely has been compensated at a rate of \$8.15 per hour.

62. In 2012 and 2013, Plaintiff Cheely typically worked between 25 and 30 hours per week, though he sometimes worked over 30 hours per week. Since being rehired in January 2014, Cheely has typically worked fewer than 20 hours per week.

(v) Plaintiff Criollo

63. Plaintiff Criollo has worked for McDonald's as a Crew Member since approximately October 2011.

64. When Plaintiff Criollo began working at McDonald's in October 2011, she was compensated on an hourly basis at a rate of \$7.25 per hour. On information and belief, approximately every six months thereafter her rate was raised by \$0.10 to \$0.15 per hour. On January 1, 2014, Criollo's rate was raised to \$8.43 per hour, but a week or two later McDonald's reduced her rate to \$8.20 per hour.

65. Until approximately three to four months ago, Criollo worked approximately 37.5 hours per week. Since that time, McDonald's has reduced her scheduled work to approximately 22.5 to 30 hours per week.

(vi) Plaintiff Godfrey

66. Plaintiff Godfrey has worked for McDonald's as a Crew Member since approximately August 2013.

67. From October through December 2013, Godfrey was compensated on an hourly basis at a rate of \$7.50 per hour. Since January 1, 2014, Godfrey has been compensated at a rate of \$8.00 per hour.

68. Since an initial few weeks in which he worked fewer than 20 hours, Godfrey has typically worked between 30 and 40 hours per week.

CLASS ACTION ALLEGATIONS

69. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring their claim for relief to redress and remedy McDonald's violations of the Uniform Maintenance Pay provisions of the New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. § 146-1.7 and the New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. § 137-1.8, on behalf of themselves and a class of similarly situated Crew Members who work in McDonald's

New York restaurants. Plaintiffs' Uniform Maintenance Pay claim is well-suited for adjudication on a class basis for the following reasons:

70. Numerosity: The proposed class is so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. While the exact number of class members is unknown to Plaintiffs at this time, upon information and belief, the class comprises over a thousand persons. Further, the proposed class of Crew Members is easily ascertainable from Defendant's employment and payroll records.

71. Commonality: Plaintiffs' Uniform Maintenance Pay claim under the present New York Hospitality Industry Wage Order and the former New York Minimum Wage Order for the Restaurant Industry presents questions of law and fact common to the class including but not limited to:

- a. whether McDonald's required putative class members to wear a clean McDonald's uniform while on duty;
- b. whether McDonald's cleaned or provided laundering services for the uniforms it required putative class members to wear while on duty;
- c. whether putative class members were effectively required by McDonald's to clean their respective uniforms or cause them to be cleaned;
- d. whether McDonald's paid putative class members any amounts to reimburse them for their time expended and/or costs incurred in the cleaning and maintaining their McDonald's uniforms;
- e. whether McDonald's paid putative class members Uniform Maintenance Pay in the amounts set forth currently in 12 N.Y.C.R.R. § 146-1.7 and formerly in 12 N.Y.C.R.R. § 137-1.8; and

- f. whether McDonald's uniform maintenance policies and practices at its New York corporate owned and operated stores violated the Uniform Maintenance Pay provision in current 12 N.Y.C.R.R. § 146-1.7 and former 12 N.Y.C.R.R. § 137-1.8.

On information and belief, Crew Members at McDonald's corporate owned and operated restaurants in New York are all subject to a common set of McDonald's policies and practices with respect to uniform provision, uniform maintenance, and employee dress code and appearance standards. Indeed, the restaurants at which putative class members work are all under common ownership and control, and are operated under the "McDonald's System," a common, strictly regimented set of operating procedures. The Uniform Maintenance Pay claims of putative class members thus not only present common questions of fact and law, but are susceptible to common answers apt to drive resolution of all of class members' claims.

72. Typicality: The claims of Plaintiffs herein are typical of those claims that could be alleged by any member of the class, and the relief sought is typical of the relief which would be sought by each member of the class in separate actions. On information and belief, all putative class Members were and are subject to a common set of McDonald's policies and practices with respect to uniform provision, uniform maintenance, and employee dress code and appearance standards that also apply to Plaintiffs, and, like Plaintiffs, were subject to McDonald's practice of failing to pay Uniform Maintenance Pay required under New York law. Defendant compensation and uniform policies and practices affected Plaintiffs and all class members similarly, and Plaintiffs and members of the proposed class sustained similar losses and damages arising from the same unlawful policies and practices.

73. Adequacy of Representation: Plaintiffs are able to fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Plaintiffs and members of the proposed class. Counsel for Plaintiffs have the requisite resources and ability to prosecute this case as a class action, and are experienced employment attorneys who have successfully litigated other wage and hour actions, class actions, and wage and hour class actions in particular.

74. Predominance and Superiority: The common questions identified above regarding McDonald's uniform maintenance policies predominate over any individual issues, and given that the Uniform Maintenance Pay provision spells out specific weekly payment amounts, in addition to the minimum or agreed upon hourly rate, based on hours worked each week, even damages are readily susceptible to common proof. This is because the hours compensated each week are recorded in Defendant's payroll records, as are the hourly rate each employee was compensated at, and the presence or absence of any additional payments for uniform maintenance.

75. A class action is superior to other available means for the fair and efficient adjudication of this controversy, as it 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 effort and expense that numerous individual actions engender. Moreover, because the losses suffered by each of the individual class members are individually small relative to the costs and time commitment of litigation, requiring class members to pursue their claims individually would make it extremely difficult or impossible for the individual class members to redress their injury and obtain the backpay they are owed.

76. Important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantial, and significantly more than if the claims are treated as a class action. Prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of 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. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of Plaintiffs and members of the proposed class.

FIRST CAUSE OF ACTION

**(12 N.Y.C.R.R. § 146-1.7 and 12 N.Y.C.R.R. § 137-1.8: Failure to Pay Uniform
Maintenance Pay)
(Brought on Behalf of Plaintiffs and Rule 23 Class Members)**

77. Plaintiffs incorporate by reference the allegations asserted above.

78. The wage provisions of Article 19 of the New York Labor Law and its supporting regulations, including the current New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. Part 146 and former New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. Part 137, apply to McDonald's and establish payment floors to protect Plaintiffs and all Class Members.

79. McDonald's has and continues to furnish Plaintiffs and Class Members with an insufficient number of uniforms while requiring Plaintiffs and Class Members to maintain the uniforms at their own expense, in violation of the uniform maintenance pay provision of the

current New York Hospitality Industry Wage Order, 12 N.Y.C.R.R. § 146-1.7 and former New York Minimum Wage Order for the Restaurant Industry, 12 N.Y.C.R.R. § 137-1.8.

80. McDonald's failure to pay Plaintiffs and Class Members uniform maintenance pay required pursuant to 12 N.Y.C.R.R. § 146-1.7 and 12 N.Y.C.R.R. § 137-1.8, notwithstanding McDonald's clear failure to satisfy any exceptions to the requirement to provide such pay under the regulation, was and is not in good faith within the meaning of New York Labor Law § 663.

81. Plaintiffs and Class Members are therefore entitled to recover from McDonald's their unpaid uniform maintenance pay, together with liquidated damages, interest, and reasonable attorneys' fees and costs of the action.

SECOND CAUSE OF ACTION
(Fair Labor Standards Act § 206: Failure to Pay Minimum Wages Due)
(Brought on Behalf of Plaintiffs)

82. Plaintiffs incorporate by reference the allegations asserted above.

83. McDonald's has willfully and intentionally violated the minimum wage provisions of the FLSA by paying Plaintiffs for their paid, on-the-clock time at or near the federal minimum wage, but requiring or permitting them to work additional, unpaid hours off-the-clock, and thereby failing and refusing to pay them for all hours worked at the minimum hourly wage compensation required pursuant to the FLSA, 20 U.S.C. § 206. This unpaid, off-the-clock work includes frequent, required cleaning and maintenance of uniforms, separate and apart from Plaintiffs' cleaning of their personal clothes, as required by McDonald's and for McDonald's benefit. McDonald's knows or should know that Plaintiffs frequently performed uniform maintenance work off-the-clock and were not compensated for time spent on such work.

84. McDonald's has further willfully and intentionally violated the minimum wage provisions of the FLSA by paying Plaintiffs an hourly rate at or near the \$7.25 federal minimum

wage, but requiring Plaintiffs to pay for costs of uniform maintenance required by McDonald's policies and practices, thereby reducing Plaintiffs effective pay below the minimum wage.

85. Plaintiffs are not subject to any of the exemptions from minimum wage requirements set forth in the FLSA or administrative regulations.

86. McDonald's has not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs.

87. McDonald's willfully violated the minimum wage provision of the FLSA by requiring or permitting Plaintiffs to work off-the-clock, and a 3-year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255.

88. As a result of McDonald's unlawful acts, Plaintiffs have been deprived of minimum wage compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus liquidated damages, as well as interest, attorneys' fees, costs, and other compensation pursuant to § 216(b) of the FLSA.

THIRD CAUSE OF ACTION
(New York Labor Law § 652: Failure to Pay Minimum Wages Due)
(Brought on Behalf of Plaintiffs)

89. Plaintiffs incorporate by reference the allegations asserted above.

90. McDonald's has willfully and intentionally violated the minimum wage provisions of the NYLL by paying Plaintiffs for their paid, on-the-clock time, at or near the New York State minimum wage, but requiring or permitting Plaintiffs to work additional, unpaid hours off-the-clock, and thereby failing and refusing to pay them for all hours worked and at the minimum hourly wage required pursuant to New York Labor Law Article 19, § 652 and 12 N.Y.C.R.R. § 146-1.2. This unpaid, off-the-clock work includes frequent, required cleaning and maintenance of uniforms, separate and apart from Plaintiffs' cleaning of their personal clothing,

as required by McDonald's and for McDonald's benefit. McDonald's knows or should know that Plaintiffs frequently performed uniform maintenance work off-the-clock and were not compensated for time spent on such work.

91. Plaintiffs are not subject to any of the exemptions from minimum wage requirements set forth in the NYLL or regulations.

92. McDonald's has not made a good faith effort to comply with the NYLL with respect to its compensation of Plaintiffs.

93. By failing to pay Plaintiffs minimum wages for hours worked in excess of 40 hours per week, it has willfully violated the New York Labor Law Article 19, § 652, and the supporting New York State Department of Labor Regulations, including but not limited to the regulations in 12 N.Y.C.R.R. Part 146.

94. As a result of McDonald's unlawful acts, Plaintiffs have been deprived of wages to which they are entitled under NYLL § 650 *et seq.*, in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, as well as interest, attorneys' fees and costs, and other compensation pursuant to NYLL § 663.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Honorable Court:

95. Certify this action as a class action pursuant to Rule 23;

96. Designate Plaintiffs named herein as representatives of the class;

97. Appoint the undersigned counsel as Class Counsel;

98. Award Plaintiffs and Class Members damages for unpaid wage payments, liquidated damages, and statutory interest as provided by the FLSA, 29 U.S.C. § 216(b), and NYLL § 663;

99. Award Plaintiffs and Class Members attorneys' fees and costs as provided by the FLSA, 29 U.S.C. § 216(b) and NYLL § 663;

100. Enter a declaratory judgment that the practices complained of in this Complaint are unlawful and violate the FLSA and NYLL;

101. Award Plaintiffs and Class Members any further legal and equitable relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

March 13, 2014

Respectfully submitted,


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