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UNITED STATES DISTRICT
EASTERN DISTRICT OF NEW YORK

KEITH NOBLE,

Plaintiff,

-against-

THE CHEESECAKE FACTORY INCORPORATED,

Defendant.

No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Keith Noble, as and for his Complaint against Defendant The Cheesecake Factory Incorporated, alleges as follows:

JURISDICTION AND VENUE

1. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”). This Court has supplemental jurisdiction over the New York Labor Law (“NYLL”) claims under 28 U.S.C. § 1367 because they are so related to the claims in this action within original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiff resides in this District, Defendant resides and/or conducts business in this District, and the acts and/or omissions giving rise to the claims herein took place in this District.

THE PARTIES

3. Defendant The Cheesecake Factory Incorporated (“Cheesecake Factory” or the “Company”) is a Delaware corporation with its principal place of business at 26901 Malibu Hills Road, Calabasas Hills, California 91301. Cheesecake Factory is a well-known national restaurant chain that owns and operates at least a dozen restaurants in New York State, including the Cheesecake Factory restaurant located at Lake Grove, New York, where Plaintiff was formerly employed. Cheesecake Factory has an annual gross volume of sales in excess of \$500,000 and is engaged in interstate commerce. At all relevant times, Cheesecake Factory was a covered “employer” within the meaning of the FLSA and NYLL.

4. Plaintiff Keith Noble is an adult male individual who resides in the State of New York, Suffolk County. Mr. Noble was employed by Cheesecake Factory from approximately 2007 through 2021.

DEFENDANT’S WAGE AND HOUR VIOLATIONS

5. Keith Noble was a long-time, loyal, highly-performing employee of Cheesecake Factory. He started with the Company more than 15 years ago, and for the last 9 years of his employment was employed as a so-called “Kitchen Manager” in North Carolina and New York State.

6. Mr. Noble was employed by Cheesecake Factory as a “Kitchen Manager” in North Carolina from approximately 2012 to April 2021, and as a “Kitchen Manager” in New York State from approximately April 2021 through December 2021.

7. Throughout his tenure as a “Kitchen Manager” at Cheesecake Factory, Mr. Noble was classified as “exempt” and paid a set salary, which was the same regardless of the number of hours he worked.

8. Despite Cheesecake Factory’s denomination of Mr. Noble as a “manager,” he was required to spend a significant portion of his working hours performing non-exempt staff level work in the kitchen, including, *inter alia*, preparing food, cleaning, running orders, and similar manual tasks. Mr. Noble spent the majority of each shift performing these non-exempt tasks, and only a small minority of the time performed duties that could properly be classified as managerial in nature. Overall, his primary duty was kitchen work, not management.

9. Throughout his employment at Cheesecake Factory, Mr. Noble worked long hours and was extremely productive for the Company. As a so-called “Kitchen Manager,” he typically worked 10-hour scheduled shifts, five days a week, and also performed work before and after his scheduled hours. On average, and based on Mr. Noble’s best recollection, he worked 50-60 hours per week, which equates to 10-20 hours of overtime per week (or 15 hours of overtime per week on average).

10. There were many specific weeks during the limitations period(s) applicable to this action when Mr. Noble worked in excess of 40 hours, and he was not paid overtime in any of those weeks.

11. Despite the fact that the vast majority of Mr. Noble's time was spent performing non-exempt tasks as his primary duty, Cheesecake Factory erroneously classified him as an "exempt" executive employee under the FLSA and NYLL, and did not pay him any overtime for the extensive hours he worked in excess of 40 per week.

12. Because Mr. Noble did not fall within any applicable overtime exemption, Cheesecake Factory unlawfully failed to pay him overtime for all hours he worked in excess of 40 per week during the applicable limitations period(s).

13. Under the FLSA, in cases of misclassification where the employee was paid a set salary, the overtime rate is determined by dividing the employee's weekly salary by the total number of hours he actually worked that week. That number constitutes the employee's "regular rate" per hour, and the overtime rate is 1.5 times the regular rate. The "time-and-a-half" overtime rate is then multiplied by the number of overtime hours the employee worked that week, *i.e.*, the number of hours in excess of 40.

14. Under the NYLL, in cases of misclassification where the employee was paid a set salary, the overtime rate for hospitality industry employees is determined by dividing the employee's weekly salary by 40 hours. See N.Y.C.R.R. § 146-3.5 (Hospitality Industry Wage Order). That number constitutes the employee's "regular rate" per hour, and overtime is 1.5 times the regular rate.

15. Here, at all relevant times, Mr. Noble was paid an annual salary of approximately \$60,000.00, and his weekly wage equated to approximately \$1,154.00.

16. Applying the above methods of calculation, and estimating that Mr. Noble worked an average of 15 hours of overtime per week each week during the applicable limitations periods, Cheesecake Factory owes Mr. Noble unpaid overtime in an amount to

be determined at trial but believed to exceed \$70,000.00, not including liquidated damages, costs, and attorneys' fees.

17. In addition to unpaid overtime, Cheesecake Factory's misclassification of Mr. Noble resulted in other violations of the NYLL that entitle him to additional damages.

18. Employers in New York are legally required to provide every employee, at the start of employment and upon any change in rate or method of compensation, with an accurate written notice of the employee's "rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; 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," and, for all employees who are not exempt from overtime compensation, "the regular hourly rate and overtime rate of pay." *See* NYLL § 195; 12 N.Y.C.R.R. § 146-2.2. The mandatory penalty for failing to provide proper wage notices is \$50.00 per day up to a maximum of \$5,000.00. *See* NYLL § 198(1-b).

19. In addition, New York employers are required to provide every employee with an accurate wage statement each time they receive their wages. The wage statement must contain "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; deductions; allowances, if any, claimed as part of the minimum wage; and

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