

<b>Bautista v C&amp;L New Ocean Inc.</b>
2026 NY Slip Op 31777(U)
April 22, 2026
Supreme Court, New York County
Docket Number: Index No. 651081/2023
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JUDY H. KIM PART 04**

*Justice*

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MARIO BAUTISTA,

Plaintiff,

- v -

C&L NEW OCEAN INC., CHONG RI CHEN, DOE LIN,

Defendanst.

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INDEX NO. 651081/2023

MOTION DATE 06/12/2023

MOTION SEQ. NO. 001

**DECISION, ORDER, and  
JUDGMENT AFTER INQUEST**

This is an action to recover unpaid wages and statutory damages under the New York Labor Law (“NYLL”) and the Fair Labor Standards Act (“FLSA”). By decision and order dated April 2, 2024, the Court granted plaintiff’s motion, pursuant to CPLR 3215, to enter a default judgment against defendants C&L New Ocean Inc. (“New Ocean”), Chong Ri Chen, and Doe Lin on his complaint and set this matter down for inquest (NYSCEF Doc No. 17).

In his complaint, plaintiff asserts claims for: (1) unpaid wages pursuant to Labor Law §§198 and 12 NYCRR 142-2; (2) unpaid overtime wages pursuant to 12 NYCRR §§142-2.2 and 29 USC 201; (3) unpaid spread of hours premium pursuant to 12 NYCRR §142-2.4; (4) failure to provide the written notice required by Labor Law §195(1)(a); (5) failure to provide a wage statement required by Labor Law §195(3); and (6) tools of trade expenses under 12 NYCRR §§146-2.7 and 29 CFR 531.35 (NYSCEF Doc No. 1, complaint). Plaintiff also seeks liquidated damages and attorneys’ fees and costs pursuant to Labor Law §198(1-a) (*id.*).

## FINDINGS OF FACT

At the inquest, plaintiff testified and submitted his damages calculations into evidence (NYSCEF Doc No. 29) along with an invoice of his attorneys' fees and costs (NYSCEF Doc No. 30). The Court credits plaintiff's testimony.

Plaintiff testified that he worked for defendants from June 19, 2019 to January 25, 2023, primarily delivering food (NYSCEF Doc No. 28, inquest tr at 4-5). Defendant Chong Ri Chen owned the restaurant, hired plaintiff, set his rate of pay and hours, and had authority to hire and fire employees, while defendant Doe Lin collected the money from plaintiff's deliveries (*id.* at 8-9).

Plaintiff initially worked six days per week for \$450.00, which was increased to \$500.00 per week at the end of October 2022 (*id.* at 5-6, 14). Plaintiff worked from Tuesday through Sunday, generally from 11:30 a.m. to 10:00 p.m., though he often worked an additional thirty minutes to an hour to complete deliveries (*id.* at 9-10). This schedule continued from 2019 to March 2020, after which the restaurant closed until June or July 2020, as a result of the COVID-19 pandemic (*id.* at 11-12). Plaintiff then worked through 2022 (*id.* at 12). While plaintiff regularly worked more than forty hours per week, he never received overtime compensation (*id.* at 13-14). Defendants did not track his hours, did not provide a written notice in Spanish (plaintiff's native language) with his pay rate or schedule, and did not provide pay stubs (*id.* at 7).

Plaintiff used his own car to make deliveries and was not reimbursed for any related expenses, including maintenance costs (*id.* at 6). He also purchased an e-bike for deliveries for \$1,500.00, an extra battery for \$450.00, and spent approximately \$50 to \$100 per month on repairs to his brakes and tires and oil changes and was not reimbursed for these expenditures (*id.*).

## CONCLUSIONS OF LAW

### *Evidentiary Standard of Proof*

“[A] defaulting defendant admits all traversable allegations in the complaint, including liability” (*Amusement Bus. Underwriters, a Div. of Bingham & Bingham, Inc. v Am. Intern. Group, Inc.*, 66 NY2d 878, 878 [1985]; *Cole-Hatchard v Eggers*, 132 AD3d 718, 718 [2d Dept 2015]). While defendants may appear at an inquest to present evidence, testify, and cross-examine witnesses on damages (*Minicozzi v Gerbino*, 301 AD2d 580, 581 [2d Dept 2003]; *Rudra v Friedman*, 123 AD3d 1104, 1104 [2d Dept 2014]), they did not do so here. Accordingly, to meet his burden of proof at the inquest, plaintiff needed only to submit sufficient evidence from which wage violations and damages could reasonably be inferred (*Pajarillaga v. Good Belly Hospitality Corp., BLKSQ, LLC*, No. 2021 NY Slip Op 32330(U), at \*3 [Sup Ct, NY County 2021], quoting *Reich v S. New England Telecom. Corp.*, 121 F3d 58, 66 [2d Cir 1997]). In this situation, the employee’s burden is “not high” (*id.* quoting *Kuebel v Black & Decker Inc.*, 643 F3d 352, 362 [2d Cir 2011]) and his estimate of hours worked, wages, and expenses are “presumed to be correct” (*id.* [internal citations and quotations omitted]).

### *Unpaid Wages Under FLSA & NYLL*

The FLSA establishes a federal minimum wage and maximum workweek (29 USC §218[a]). However, states remain free to impose higher minimum wages and more protective labor standards (*DeSilva v N. Shore-Long Is. Jewish Health Sys., Inc.*, 770 F Supp 2d 497, 517 [EDNY 2011]). New York has exercised that authority through Labor Law §652 and established higher minimum wage rates than those required under federal law (Labor Law §652[1]; 12 NYCRR 142-2.1[a]). For small employers in New York City, like defendants, the applicable minimum wage was \$13.50 per hour in 2019 and \$15.00 per hour beginning in 2020 (Labor Law §652[a][ii]).

Labor Law §190(1)(d) provides that an employee “shall be paid the wages earned in accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer.” Labor Law §190(2) provides that “[n]o employee shall be required as a condition of employment to accept wages at periods other than as provided in this section.” In addition, Labor Law §198(3) “expressly provides that employees are entitled to recover all unpaid wages” (*Pajarillaga v Good Belly Hospitality Corp., BLKSQ, LLC*, 2021 NY Slip Op 32330(U), at \*3 [Sup Ct, NY County 2021], quoting *Jemine v Dennis*, 901 F Supp 2d, 365, 375 [EDNY 2012]).

From June 19, 2019 through December 31, 2019, the minimum wage was \$13.50 per hour. At that rate, plaintiff should have been paid \$540.00 per week for the first forty hours he worked. As plaintiff was paid a flat weekly salary of \$450.00, he was underpaid by \$90.00 per week during this twenty-eight-week period, resulting in unpaid minimum wages of \$2,520.00.

From January 1, 2020 through October 31, 2022, the minimum wage was \$15.00 per hour. At that rate, plaintiff should have been paid \$600.00 per week for the first forty hours worked. As plaintiff continued to receive \$450.00 per week, he was underpaid by \$150.00 per week during the 131 weeks that he worked (which does not include the period in which the restaurant was closed due to the COVID-19 pandemic), resulting in unpaid minimum wages of \$19,650.00. For November 1, 2022 through January 25, 2023, the minimum wage remained at \$15.00 per hour. At that rate, plaintiff should have been paid \$600.00 per week for the first forty hours worked. As plaintiff was paid \$500.00 per week during this twelve-week period, he was underpaid by \$100.00 per week, resulting in unpaid minimum wages of \$1,200.00. Accordingly, plaintiff is entitled to \$23,370.00 in total unpaid minimum wages.

*Unpaid Overtime Wage Under FLSA & NYLL*

“Both the FLSA and Labor Law require covered employers to pay their employees one and one-half times their regular rate of pay for all hours in excess of forty hours in a single workweek” (*Guan Ming Lin v Benihana Nat’L Corp.*, 755 F Supp 2d 504, 510 [SDNY 2010]; see 29 USC §207(a)(1); 12 NYCRR §142-2.2). Here, plaintiff worked more than forty hours per week but was not paid at the overtime rate for these hours. Accordingly, he is entitled to one and one-half times his regular rate for all hours beyond the forty-hour threshold.

Plaintiff established that he worked approximately 66.75 hours per week, resulting in 26.75 hours of overtime each week. For the period from June 19, 2019 through December 31, 2019, the applicable minimum wage was \$13.50 per hour and plaintiff is therefore entitled to \$20.25 per hour for the 26.75 hours of overtime he worked each during this twenty-eight-week period, totaling \$15,167.32. For the period from January 1, 2020 through January 25, 2023, the applicable minimum wage was \$15.00 per hour and plaintiff is therefore entitled to \$22.50 per hour for the 26.75 hours of overtime he worked each week of this 131-week-period, totaling 86,068.84. Accordingly, plaintiff is entitled to \$101,236.16 in total unpaid overtime wages.

*Unpaid “Spread of Hours” Premium*

“The NYLL spread-of-hours claim, for which there is no counterpart under the FLSA, provides that an employee is entitled to recover compensation for an extra hour of work at the minimum wage for each day that the employee works in excess of ten hours” (*Fermin v Las Delicias Peruanas Rest., Inc.*, 93 F Supp 3d 19, 45 [EDNY 2015] [internal quotations and citations omitted]); see 12 NYCRR 142-2.4). The workday includes all hours from the employee’s start to end time, including both working and non-working periods (*Tezoco v GE & LO Corp.*, 199 AD3d

541 [1st Dept 2021]; *Dias v PS Bros. Gourmet, Inc.*, 2017 NY Slip Op 31756[U], 9 [Sup Ct, NY County 2017]).

Plaintiff established that he worked over ten hours for five of his six work days each week. Accordingly, plaintiff is entitled to five hours of “spread of hours” premium per workweek (*see Dias v PS Bros. Gourmet, Inc.*, 2017 NY Slip Op 31756[U], 9 [Sup Ct, NY County 2017]). For the period from June 19, 2019 through December 31, 2019, the applicable minimum wage was \$13.50 per hour. Plaintiff is entitled to five extra hours of payment, or \$67.50, for each week of this twenty-eight-week period, totaling \$1,890.00. For the period from January 1, 2020 through January 25, 2023, the applicable minimum wage was \$15.00 per hour. Plaintiff is entitled to five extra hours of payment for each week, or \$75.00, per week for this 131-week-period (which does not include the weeks in which the restaurant was shut down for the COVID-19 pandemic), totaling \$10,725.00. In total, plaintiff is entitled to \$12,615.00 in total for unpaid spread of hours premium.

#### *Wage Notice*

Pursuant to Labor Law §195(1)(a), an employer must provide written notice in English and “in the language identified by each employee as the primary language of such employee” including the employee’s rate of pay and pay day, as well as the employer’s name, physical address, and mailing address if different from the physical address. Labor Law §198(1-b) provides that if an employee is not provided with such notice within ten business days of the first day of employment, the employee may recover damages of \$50.00 per workday, up to a maximum of \$5,000, together with costs and reasonable attorney’s fees. Plaintiff established that he worked for defendants for more than one hundred days without receiving the required notice in Spanish, his native language (NYSCEF Doc No. 28, inquest tr at 7). Accordingly, plaintiff is entitled to the maximum statutory recovery of \$5,000.00.

### *Wage Statement*

Under Labor Law §195(3), an employer must provide each employee with a statement accompanying every wage payment recording: the dates of work covered, employee and employer names, employer address and phone number, rate or rates of pay and basis thereof, gross wages, deductions, and allowances. Labor Law §198(1-d) provides that if an employer fails to provide such statements, the employee may recover \$250.00 per workday for each violation, up to a maximum of \$5,000.00, together with costs and reasonable attorney's fees. Here, plaintiff established that he worked for defendants without receiving these statements for a period exceeding the statutory limit (NYSCEF Doc No. 28, inquest tr at 7). Accordingly, plaintiff is entitled to recover \$5,000.00 under §198(1-d) (*see Tezoco v GE & LO Corp.*, 199 AD3d 541 [1st Dept 2021]).

### *Tools of the Trade Expenses*

“An employer violates the FLSA if it requires an employee to purchase ‘tools of the trade which will be used in or are specifically required for the performance of the employer’s particular work’ and ‘the cost of such tools ... cuts into the minimum or overtime wages required to be paid to [the employee]’” (*Salinas v Starjem Rest. Corp.*, 123 F Supp 3d 442, 476 [SDNY 2015], quoting 29 CFR §531.35). “The same holds true under New York law” (*Salinas v Starjem Rest. Corp.*, 123 F Supp 3d 442, 476 [SDNY 2015]; 12 NYCRR §146-2.7[c] [“If an employee must spend money to carry out duties assigned by his or her employer, those expenses must not bring the employee’s wage below the required minimum wage”]). Vehicles such as bicycles, motorcycles, and mopeds are considered “tools of the trade” when employees are required to provide and use them in the course of their employment (*Guan Ming Lin v Benihana Nat’L Corp.*, 755 F Supp 2d 504, 511 [SDNY 2010], citing *Yu G. Ke v Saigon Grill, Inc.*, 595 F Supp 2d 240, 257-58 [SDNY 2008]).

Plaintiff has established that vehicular transportation, whether by bicycle, motorbike, or e-bike, was a necessary component of his job as a food deliveryman (*see Yu G. Ke v Saigon Grill, Inc.*, 595 F Supp 2d 240, 257-258 [SDNY 2008] [finding that bicycles and motorbikes plainly fit as “tools of trade” for delivery services]). In addition, plaintiff credibly testified that he purchased the e-bike for \$1,500.00, purchased a battery for \$450, paid for repairs costing \$3,206.25, and replaced the e-bike brakes costing \$1,068.50 (*see id.* at 258). Accordingly, plaintiff is entitled to recover \$6,224.75 from defendants as reimbursement for his tools of the trade expenses.

#### *Liquidated Damages*

Labor Law §198(1-a) provides that plaintiff shall recover liquidated damages equal to one hundred percent of the total wages found to be due under Labor Law §193 “unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law” (*Mestrovic v Serum Versus Venom, LLC*, 2015 NY Slip Op 32009[U] [Sup Ct, NY County 2015]). Having failed to appear at the inquest hearing, defendants made no such showing (*see id.* [granting liquidated damages for plaintiff as defendant Keystone Design failed to appear at inquest hearing and made no showing of good faith that its underpayment of wages was in compliance with the law]). Accordingly, plaintiff’s liquidated damages are calculated at one hundred percent of the unpaid wages, totaling \$137,221.16 (accounting for \$23,370.00 in unpaid minimum wages, \$101,236.16 in unpaid overtime wages, and \$12,615.00 in unpaid spread of hours premium).

#### *Prejudgment Interest*

“Since the failure to pay wages is a species of breach of contract, the plaintiff is also entitled to an award of statutory prejudgment interest on that claim pursuant to CPLR 5001(a) and (b)” (*Pajarillaga v Good Belly Hosp. Corp., BLKSQ, LLC*, 2021 NY Slip Op 32330[U], 6-7 [Sup Ct, NY County 2021]). As the damages arising from the defendants’ failure to pay wages were

incurred at various times between June 19, 2019 and January 25, 2023, the Court concludes that April 7, 2021 is a “reasonable intermediate date,” as contemplated in CPLR 5001(b), from which to compute interest on that award (*see Am. Infertility of New York, P.C. v Kushnir*, 239 AD3d 560, 561 [1st Dept 2025]).

#### *Attorneys’ Fees*

“In any action instituted upon a wage claim by an employee or the commissioner in which the employee prevails, the court may allow such employee in addition to ordinary costs, a reasonable sum, not exceeding fifty dollars for expenses which may be taxed as costs” (Labor Law § 198[1]). “This fee-shifting statute is analogous to its federal counterpart under the FLSA” (*Orser v Wholesale Fuel Distributors-CT, LLC*, 65 Misc 3d 449, 452 [Sup Ct, Greene County 2018], *affd* 173 AD3d 1519 [3d Dept 2019], citing *Allende v Unitech Design, Inc.*, 783 F Supp 2d 509, 511 [SDNY 2011]).

“In determining a fee award, the typical starting point is the so-called lodestar amount, that is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate” (*id.* [internal citations and quotations omitted]). “In determining the number of hours reasonably expended for purposes of calculating the lodestar, the [trial] court should exclude excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims” (*id.* at 453 [internal citations and quotations omitted]). “In assessing the reasonableness of the hours spent by counsel, the issue is not whether hindsight vindicates an attorney's time expenditures, but whether, at the time the work was performed, a reasonable attorney would have engaged in the same time expenditures” (*id.* at 456 [internal citations and quotations omitted]). “Time spent by attorneys on administrative tasks cannot be recovered, vague billing entries may prompt a reduced fee award and a reduction may be warranted where the hours

billed are disproportionate to the quantity or quality of the attorneys' work" (*id.* at 456-457 [internal citations and quotations omitted]).

Applying these principles here, the Court concludes that the hourly rate of counsel—\$325.00 per hour and \$175.00 per hour, respectively—is reasonable, and that the hours expended are reasonable except for the forty entries, accounting for over four hours and \$915.00 in attorneys' fees, for repeatedly checking this case's docket on NYSCEF. Accordingly, this Court reduces amount of attorneys' fees awarded by \$915.00, from \$20,271.69 to \$19,356.69 (*see JK Two LLC v Garber*, 171 AD3d 496, 496 [1st Dept 2019] [defendant failed to establish that court improvidently exercised discretion in reducing attorney's fees requested to eliminate work that was duplicative or unnecessarily performed by attorney rather than secretary or paralegal]) and grants a judgment in this latter amount.

#### *Costs & Disbursements*

As a prevailing plaintiff under the FLSA and NYLL, plaintiff is entitled to recover the costs incurred in connection with this action (*Jemine v Dennis*, 901 F Supp 2d 365, 394 [EDNY 2012]; 29 USC §216[b]; NYLL §663[1]).

In light of the foregoing, it is

**ORDERED** that plaintiff, Mario Bautista, is awarded a judgment against the defendants C&L New Ocean Inc., Chong Ri Chen, and Doe Lin, jointly and severally:

- (a) in the sum of \$23,370.00 for unpaid minimum wages, with prejudgment interest at the statutory rate from April 7, 2021,
- (b) in the sum of \$101,236.16 for unpaid overtime wages, with prejudgment interest at the statutory rate from April 7, 2021,

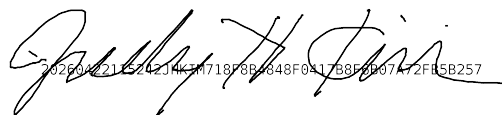
- (c) in the sum of \$12,615.00 for unpaid spread of hours premium, with statutory interest from April 7, 2021,
- (d) in the sum of \$5,000 for failure to provide a wage notice,
- (e) in the sum of \$5,000 for failure to provide a wage statement,
- (f) in the sum of \$6,224.75 for failure to reimburse for expenses relating to tools of trade,
- (i) in the sum of \$137,221.16 for liquidated damages,
- (g) in the sum of \$19,356.69 in attorneys' fees, plus
- (h) costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that plaintiff shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry on plaintiff and the Clerk of the Court; and it is further

**ORDERED** that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

**ORDERED** that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.



4/22/2026  
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE