

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CLAY CALLE JARA,	:	
	:	
Plaintiff,	:	No. 18-CV-2871 (OTW)
	:	
-against-	:	<b><u>ORDER</u></b>
	:	
MANNA 2ND AVE LLC, et al.,	:	
	:	
Defendants.	:	
	:	
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**ONA T. WANG, United States Magistrate Judge:**

Pursuant to the instructions given at the August 16, 2021 pretrial conference, it is hereby **ORDERED**:

- By close of business on **August 19, 2021**, the parties shall **each** submit a letter detailing their position whether the good faith defense to an award of liquidated damages under the Fair Labor Standards Act and New York Labor Laws is a question of fact for the jury to determine in this case. Counsel shall limit their letters to three single-spaced pages and support their positions with applicable caselaw.<sup>1</sup> If the parties consent to the Court deciding the issue of good faith, the parties may instead file a joint letter.
- By **August 20, 2021**, the parties shall file a joint letter **(1)** identifying and setting forth their respective positions regarding any remaining disputes related to the

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<sup>1</sup> See, e.g., *Leevson v. Aqualife USA Inc*, 770 F. App'x 577, 583 (2d Cir. 2019) (summary order); *Hernandez v. Schloss*, No. 1:12-CV-04339 (ALC), 2020 WL 1228644, \*1-4 (S.D.N.Y. Mar. 13, 2020); *Aguilar v. Ham N Eggery Deli Inc.*, No. 15-CV-2781 (KAM) (SMG), 2019 WL 4247228, at \*8-10 (E.D.N.Y. Sept. 5, 2019); *Cabrera v. Dream Team Tavern Corp.*, No. 12-CV-6323, 2016 WL 6208245 (ADS) (AKT), at \*3 (E.D.N.Y. Apr. 29, 2016); 26 A.L.R. Fed 607 (1976).

proposed jury instructions and **(2)** addressing whether any of the following proposed jury instructions remain necessary in light of the parties' stipulation to overtime damages, spread of hours damages, and damages for violations of the New York Annual Wage Notice Law and New York Wage Statement Law, if the jury determines that Plaintiff was not an exempt executive (ECF 150-1 at 6-7):

- a) Instruction 85-10 Failure To Keep Records;
- b) Instruction 85-33 Willfulness;
- c) Instruction 77-3 Compensatory Damages;
- d) Plaintiff's Claim – Overtime;
- e) Instruction 85-10 Failure To Keep Records;
- f) Plaintiff's Claim – Spread of Hours;
- g) Willfulness Under State Law;
- h) New York Labor Law — Violation Of Wage Notice Provision; and
- i) New York Labor Law — Violation Of Wage Statement Provision.

**The parties' silence on this issue may be treated as a waiver of any objection to the elimination of any such instructions.**

- The Court will hold a telephonic Pretrial Conference on **Wednesday, September 8, 2021 at 1:30 p.m.** The Dial in information is (866) 390-1828, access code 1582687.
- Any additional trial counsel for Plaintiff **must** file a Notice of Appearance by **September 10, 2021.**

**SO ORDERED.**

Dated: August 17, 2021  
New York, New York

*s/ Ona T. Wang*  
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**Ona T. Wang**  
United States Magistrate Judge