UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LARRY SWANSON, individually and behalf of all others similarly situated,	:	
Plaintiffs,	:	MEMORANDUM & ORDER
-against-	:	15-cv-5383 (ENV) (RLM)
MANHATTAN BEER DISTRIBUTORS, LLC, and SIMON BERGSON,	:	
Defendants.	:	

VITALIANO, D.J.

Larry Swanson brought this action, both individually and on behalf of a putative class of all others similarly situated, against his employer, Manhattan Beer Distributors, LLC, and its founder, president, and chief executive officer, Simon Bergson, alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and New York Labor Law ("NYLL"), N.Y. Lab. Law § 650 *et seq.* On July 10, 2018, the Court granted summary judgment in favor of defendants as to Swanson's federal and state overtime and spread-of-hours claims, leaving only state law claims for unlawful deductions from wages, and wage notice violations. The parties now cross-move for summary judgment as to those remaining claims. For the reasons that follow, plaintiff's motion for summary judgment is granted in part and denied in part, and defendants' cross-motion for summary judgment is granted in part and denied in part.

Background

Plaintiff commenced this action on September 18, 2015, which was followed by initial discovery as to plaintiff's FLSA and NYLL overtime and spread-of-hours claims. *See* Dkts. 20–21; Dec. 17, 2015 Electronic Order (Mann, M.J.). After the Court granted summary judgment in defendants' favor as to those claims, *see Swanson v. Manhattan Beer Distribs., LLC*, No. 15-cv-

5383 (ENV) (RLM), 2018 WL 4008012, at *3 (E.D.N.Y. July 10, 2018) ("*Swanson I*"), discovery commenced on the remaining state law claims. *See* July 30, 2018 Electronic Order (Mann, C.M.J). The parties' familiarity with the facts, as found in *Swanson I*, is presumed and will not be repeated needlessly, and only those facts relevant to the remaining claims, including those that have since come to light during discovery, are highlighted here.

Swanson has been employed by Manhattan Beer since 1998 as both a driver and as a helper. Pl.'s 56.1, Dkt. 122, ¶¶ 5–6 ; Defs.' 56.1, Dkt. 112, ¶¶ 3–4; *see also* Defs.' 56.1 Resp., Dkt. 124, ¶¶ 5–6. The terms of his employment were governed by, and subject to, collective bargaining agreements ("CBAs") entered into by Manhattan Beer and the Laundry Distribution and Food Services Joint Board, Workers United, SEIU, and its predecessors (the "union"), which has represented Swanson at all relevant times.[1] Pl.'s 56.1, ¶¶ 7–8; Defs.' 56.1, ¶¶ 10–12; *see also* Defs.' 56.1 Resp., ¶¶ 7–8; Pl.'s 56.1 Resp., Dkt. 116, ¶¶ 10–12. Swanson, as a driver, was responsible for collecting, from Manhattan Beer's customers, each case, empty barrel, glass or aluminum container, and bag of used aluminum containers or aluminum scrap, and returning them, along with undelivered or returned items, to the Manhattan Beer facilities. Defs.' 56.1, ¶ 22. According to the 2007 CBA, covering the period from April 15, 2007 through April 14, 2010, *see* Wittels Decl., Ex. M ("2007 CBA"), Dkt. 120-13, at 24, drivers earned commissions for both the delivery and the return of all such commissionable items, according to a detailed payment schedule. *Id.* at 9–11. For example, for the 12 months beginning April 15, 2007, drivers without helpers were to receive commissions of $0.28 and $1.20 for each case and barrel

[1] The statute of limitations under NYLL is six years. N.Y. Lab. Law §§ 198(3), 663(3); *see Cazares v. 2898 Bagel & Bakery Corp.*, No. 18-cv-5953 (AJN), 2020 WL 2832766, at *2 (S.D.N.Y. May 31, 2020). Swanson commenced this action on September 18, 2015, barring any NYLL claims arising from events occurring before September 18, 2009.

delivered, respectively. *Id.* at 9 ¶ 14.3; *see* Pl.'s 56.1, ¶ 9; Defs.' 56.1 Resp., ¶ 9. Upon the collection and return of empty cases and barrels to Manhattan Beer facilities, those drivers were to receive $0.12 and $0.14 per case and barrel, respectively. 2007 CBA, at 9 ¶ 14.3. The 2013 CBA, which covered the period from April 15, 2013 through April 14, 2016, *see* Wittels Decl., Ex. J ("2013 CBA"), Dkt. 120-10, at 22, provided essentially the same commission terms as the 2007 CBA, but the rates of commission varied yearly over the course of the covered period.[2] Pl.'s 56.1, ¶ 9; Defs.' 56.1, ¶ 9.

The carrot, however, was accompanied by a stick. Commissions based on returned commissionable items were calculated following a driver's return to a Manhattan Beer facility, during the course of his check-in process, when an inspector conducted inventory. Pl.'s 56.1, ¶ 27; Defs. 56.1 ¶¶ 17, 29–30; *see also* Defs.' 56.1 Resp., ¶27; Pl.'s 56.1 Resp., ¶ 17. If, upon inspection, a driver failed to return a commissionable item or remit payments collected, Manhattan Beer considered the failure to constitute a "shortage." Defs.' 56.1, ¶ 8; *see* Pl.'s 56.1 Resp. ¶ 8. Such shortage would be included in paperwork given to the driver by his supervisor, which the driver would take to the cashier for invoice preparation. Defs.' 56.1, ¶ 28. The driver then signed the invoice, acknowledging the shortage and his potential responsibility for paying for it. *Id.* ¶ 29. A diligence period would follow to determine whether the shortage could be resolved. *Id.* ¶ 30. The amount of the shortage, as calculated by Manhattan Beer, would appear in "settlement shortage sheets," a practice that continued at least through April 15, 2016. *See* Wittels Decl., Ex. E ("Suffern Facility Settlement Shortage Sheets"), Dkt. 120-5; *see also* Wittels Decl., Ex. B ("McCarthy Dep."), Dkt. 120-2, at 29:19–33:25, 106:22–107:6. Absent resolution,

[2] Although a CBA covering the period from April 15, 2010 through April 14, 2013 is referred to in the record, *see* Wittels Decl., Ex. A, Dkt. 120-1, at 1, no copy has been included in the parties' motion papers.

not only would the driver not receive a commission for the missing commissionable product or payment, but the shortage would also be included on the driver's paystub as a line item in a section for deductions, which would appear separately from both the sections for earnings and for tax deductions. *See* Pl.'s 56.1, ¶ 26; Wittels Decl., Ex. H (Swanson Paystubs, Nov. 2011–April 2012 ("Swanson Paystubs")), Dkt. 120-8; *see also* Wittels Decl. Ex. I (Perpetual History Report, Swanson Wages & Deductions, 2009–2018 (Oct. 3, 2018) ("Perpetual History Report")), Dkt. 120-9.

The amount of the shortage for each commissionable product was calculated by Manhattan Beer, which invariably exceeded the commission for their collection by at least an order of magnitude, if not multiple. *See* McCarthy Dep., 71:14–23; *see generally* Suffern Facility Settlement Shortage Sheets; Swanson Paystubs; Perpetual History Report. For example, according to the Suffern Facility Settlement Shortage Sheet for the week ending April 24, 2010, Swanson incurred shortage charge of $30.00 on April 21, 2010, for the failure to collect and return an empty barrel. *See* Dkt. 120-5, at 6 (depicting a "Shortage Description" of "21600/30.00bbl empty"); *see also* Dkt. 120-9, at 6. Yet commissions for the return of empty barrels never exceeded $0.14 throughout the relevant time period. *See* 2007 CBA, at 9–10; 2013 CBA, at 9. Indeed, according to Corporate Representative and Manhattan Beer Vice President of Operations Michael McCarthy, the shortage amount deducted from a driver's commission was not pegged to the commission amount for the product's return, but was, instead, based on the price charged to the retail customer. McCarthy Dep., at 71:14–76:12 (testifying that the calculated base shortage amount was derived from the "price to retailer," or "PTR"). In explaining the impetus for levying shortage charges, McCarthy explained that "the people that operate our equipment and deliver our products have our assets on the truck," and that "without

there being policies and/or procedures or understandings and union contracts, people would have full rein to not reconcile their day correctly. And my responsibility is to protect the company's assets." *Id.*, at 25:8–25.

Critically, although the CBAs provided for adjustments or exceptions to commissions, they did not contemplate any shortage deductions. *See* 2007 CBA, at 10–11 ¶¶ 14.4, 14.10, 14.12, 14.14; *see also* Pl's 56.1, ¶ 11; Defs.' 56.1 Resp., ¶ 11.

In April 2013, the Union renegotiated its collective bargaining agreement with Manhattan Beer. Like the 2007 CBA before it, the 2013 CBA included a comprehensive commission formula that, once again, contained no mention of shortage deductions. 2013 CBA, at 9–10. Days later, on April 19, 2013, the parties also signed a Memorandum of Understanding ("2013 MOU"), which affirmed that the CBA would be extended through April 14, 2016, but with modifications. *See* Kleberg Decl., Ex. B, Dkt. 109-2; *accord* Wittels Decl., Ex. A. It included the following provision:

> The Employer shall not deduct any moneys from employees without their permission. The Employer shall issue statements when moneys are owed by employees due to shortages of merchandise or cash or loss of equipment. Employees shall have a reasonable time from the time of notification to pay. Drivers shall be subject to discipline for unreasonable losses or failure to resolve losses satisfactorily to the Employer.

2013 MOU, at 6. At the bottom line, Manhattan Beer agreed to no longer deduct shortages from its employees' paychecks, instead requiring them to pay the shortage amount, not resolved or reconciled, as part of a separate transaction, which involved the signing of invoices for such shortages. *See generally* Wittels Decl., Ex. L ("Swanson Payment Invoices"), Dkt. 120-12. Although the 2013 MOU was incorporated into the 2013 CBA, this provision appeared as part of a package of proposals under the heading "UNDERSTANDINGS NOT INCORPORATED INTO COLLECTIVE BARGAINING AGREEMENT." 2013 MOU, at 6.

Dealing with the shortage phenomenon continued to be a work in progress. The union and Manhattan Beer, after further negotiations, agreed on May 9, 2016, that the 2013 CBA would be modified to add the following provision: "To the extent permitted by applicable law, the Employer may continue its current practice whereby each employee is responsible to repay the Employer for any cash shortage." Wittels Decl., Ex. N ("2016 Memorandum of Agreement"), Dkt. 120-14, at 7.

The agreements, nonetheless, had real-world consequences. In total, between September 18, 2009 through April 19, 2013, Swanson's commissions were deducted by $691.43, and for the period from April 20, 2013 through the date of the filing of the parties' motion papers, Swanson reimbursed Manhattan Beer $78.25 for shortages. Defs.' 56.1, ¶ 33. No deductions or reimbursements for shortages were made with respect to Swanson from 2015 through 2018, nor has Swanson ever incurred any deduction or made any payment for misplaced customer payments or other cash shortages. *Id.* ¶ 35.

Paperwork was generated memorializing much of Swanson's compensation relationship with his employer. From 2012 through 2014, defendants provided Swanson with annual NYLL § 195.1 wage notices, which he signed upon receipt. Pl.'s 56.1, ¶ 42; *see* Kleberg Decl., Exs. 3–5 ("Wage Notices"), Dkts. 109-3, 109-4 & 109-5. Defendants concede that the notices did not contain information about their deductions policy. *Id.* ¶ 43.

Legal Standard

A party moving for summary judgment is entitled to that judgment in the absence of a genuine dispute as to any material fact and upon a showing that the party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). It is the moving party's burden to demonstrate the absence of genuine dispute as to any material fact, *Jeffreys v. City of New York*, 426 F.3d 549,

553 (2d Cir. 2005), and the motion court must resolve all ambiguities and draw all permissible factual inferences in the light most favorable to the party opposing the motion. *See Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 83 (2d Cir. 2004). Material facts are those that "might affect the outcome of the suit under the governing law." *Royal Crown Day Care LLC v. Dep't of Health & Mental Hygiene of the City of New York*, 746 F.3d 538, 544 (2d Cir. 2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). Courts are not to try issues of fact at the summary judgment stage, but must instead merely "determine whether there *are* issues of fact to be tried." *Sutera v. Schering Corp.*, 73 F.3d 13, 16 (2d Cir. 1995) (quoting *Katz v. Goodyear Tire & Rubber Co.*, 737 F.2d 238, 244 (2d Cir. 1984)).

"If, as to the issue on which summary judgment is sought, there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party, summary judgment is improper." *Hetchkop v. Woodlawn at Grassmere, Inc.*, 116 F.3d 28, 33 (2d Cir. 1997). When the parties cross-move for summary judgment, "each party's motion must be examined on its own merits, and in each case all reasonable inferences must be drawn against the party whose motion is under consideration." *Lumbermens Mut. Cas. Co. v. RGIS Inventory Specialists, LLC*, 628 F.3d 46, 51 (2d Cir. 2010) (quoting *Morales v. Quintel Entm't, Inc.*, 249 F.3d 115, 121 (2d Cir. 2001)).

Discussion

I. Shortage Deductions

NYLL § 193(1) prohibits any deduction from an employee's wages, which include commissions, N.Y. Lab. Law § 190(1), unless "such deductions are either 'made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency,' or 'expressly authorized in writing by the employee and are for the benefit of the employee.'"

Perez v. Westchester Foreign Autos, Inc., No. 11-cv-6091 (ER), 2013 WL 749497, at *10 (S.D.N.Y. Feb. 28, 2013) (quoting N.Y. Lab. Law § 193(1)(a)–(b)). An employee's authorization "may also be provided to the employer pursuant to the terms of a collective bargaining agreement." N.Y. Lab. Law § 193(1)(b). "The purpose of § 193 is to prohibit employers from making unauthorized deductions from wages '[to ensure] the risk of loss for such things as damaged, spoiled merchandise, or lost profits [is placed] on the employer rather than the employee.'" *Ireton-Hewitt v. Champion Home Builders Co.*, 501 F. Supp. 2d 341, 353 (N.D.N.Y. 2007) (quoting *Hudacs v. Frito-Lay*, 90 N.Y.2d 342, 344, 660 N.Y.S.2d 700, 683 N.E.2d 322 (1977)); *see Karic v. Major Auto. Cos.*, 992 F. Supp. 2d 196, 202 (E.D.N.Y. 2014).

If a deduction from a commission is not contemplated by § 193, its "legality . . . depends on when [the] commission was 'earned' and became a 'wage' that was subject to the restrictions of section 193." *Patcher v. Bernard Hodes Grp.*, 10 N.Y.3d 609, 617, 891 N.E.2d 279, 861 N.Y.S.2d 246 (2008). In that event, once a wage is "earned," it may not be subject to deductions. *Jankousky v. N. Fork Bancorp., Inc*, No. 08-cv-1858 (PAC), 2011 WL 1118602, at *3 (S.D.N.Y. Mar. 23, 2011). If no written agreement governs when a commission is earned, courts must turn to "the parties' express or implied agreement," or "the default common-law rule." *Patcher*, 10 N.Y.3d at 618.

A. Pre-2013 CBA Deductions

With respect to the pre-2013 CBA deductions, defendants argue that the commissions were not earned until the amount of shortages, if any, was deducted. They concede that the governing CBAs contain no mention of deductions for shortages, but, by defendants' reading of them, the CBAs also provide no guidance as to when a commission is "earned," in the absence of such verbiage. As a result, they urge the Court to consider the "longstanding shortage treatment practice in place between Manhattan Beer and the Union," demonstrating that, until the initiation

of this lawsuit, the shortage deductions went unchallenged. Defs.' Opp'n Mem., Dkt. 123, at 8. Such acquiescence, they argue, disposes of any notion that commissions were earned prior to the deductions. *Id.*; *see also* Defs.' Mem., Dkt. 111, at 9–14.

In their argument, defendants attempt to analogize to both *Patcher v. Bernard Hodes Group, Inc.*, 10 N.Y.3d at 617–18, and *Apple Mortgage Corp. v. Barenblatt*, 162 F. Supp. 3d 270 (S.D.N.Y. Feb. 16, 2016), in which the courts looked to the parties' course of conduct to determine when commissions were earned. *See* Defs.' Mem., at 12–13. In neither case, however, was there a controlling agreement to shine a guiding light.[3] *Apple Mortgage Corp.*, 162 F. Supp. 3d at 292–93. The distinction is fatal to defendants' argument. Plainly, an employer may not cite the parties' history and past dealings as evidence of when a commission is earned unless in the absence of a written agreement that explicitly governs the compensation arrangement. *See Karic*, 992 F. Supp. 2d at 202 (citing *Patcher*, 10 N.Y.3d at 618).

The CBAs undisputedly delineate many permutations for the calculation of commissions, based both on products delivered and products returned. According to those provisions, either a product was returned, meriting a predetermined commission, or it wasn't, stripping the employee of his entitlement to that commission. Were that all, defendants' deduction policy would likely not be in question. But defendants went a step further, straying beyond their governing agreements. On top of withholding commissions for undelivered commissionable products, as contemplated by the CBAs, defendants also deducted an amount pegged to the full retail cost of

[3] The court in *Apple Mortgage Corp.* found a genuine dispute of fact as to the earning of commissions for one employee who had entered into a compensation agreement that, as here, provided for commissions without mention of deductions. Nevertheless, the court found that the agreement was entered into years into employment, and the court had already concluded that the employee had, until that time, acquiesced to the deductions. *See Apple Mortgage Corp.*, 162 F. Supp. 3d at 293–94.

those items, by separate line item, appearing not alongside commissions in the earnings section on Swanson's paystubs, but alongside other deductions listed after both earnings and tax deductions. *See* Swanson Paystubs, Nov. 2011–April 2012.

That neither CBA in the record explicitly defined when a commission was "earned," nor included additional language prohibiting further adjustments, is insufficient to create a genuine dispute of fact. In light of the unambiguous agreements, which did not contemplate the shortage deductions imposed on him, Swanson's failure, prior to this action, to challenge the deductions cannot stand in the way of a finding that such deductions violated state law. *See Karic*, 992 F. Supp. 2d at 202 ("Silent suffering of a contractual breach certainly does not excuse defendants' failure to live up to their contractual obligations."). Clearly, then, the pre-2013 CBA deductions were applied to Swanson's earned wages, placing them squarely within the category of impermissible loss-shifting that § 193 was designed to prohibit. About this there is no genuinely disputed issue of fact or law. As a consequence, having met his burden, Swanson is entitled to summary judgment as to the pre-2013 CBA shortage deductions.

B. Post-2013 CBA Shortage Payments

Defendants attempt to justify the treatment of shortages after April 19, 2013, by arguing that the shortage payments contemplated in the 2013 MOU were the product of collective bargaining, and that, therefore, they fall within the scope of § 193. They cite *Freeman v. River Manor Corp.*, No. 17-cv-05162 (RJD) (RER), 2019 WL 1177717, at *8 (E.D.N.Y. Mar. 13, 2019), *modified on other grounds on reconsideration*, 2019 WL 3578432 (E.D.N.Y. Aug. 5, 2019), and § 193(3)(a), to argue that a deduction need not be "for the benefit of the employee" if authorized by a collective bargaining agreement. Def.'s Reply, Dkt. 129, at 18.

Section 193, read as a cohesive whole, torpedoes defendants' argument, and *Freeman*

cannot keep it afloat.[4] Pursuant to § 193(1)(b):

> No employer shall make any deduction from the wages of an employee, except deductions which . . . are expressly authorized in writing by the employee and are for the benefit of the employee . . . . Notwithstanding the foregoing, employee authorization for deductions under this section may also be provided to the employer pursuant to the terms of a collective bargaining agreement.

N.Y. Lab. Law § 193(1)(b). Critically, § 193(1)(b) continues that "[s]uch authorized deductions shall be limited" to an enumerated list of 13 deductions, or "similar payments for the benefit of the employee." *Id*. As a result, post-2013 CBA shortage deductions would have undoubtedly run afoul of state law, as the clause as to CBA-authorized deductions cannot be extracted from the grip of the limiting clause that it immediately precedes without blatantly contravening the plain meaning of the text.

Seeking a workaround, defendants distinguish the post-2013 CBA shortage payments with the earlier deductions, arguing that such payments, unlike deductions, are permissible under § 193(3) if authorized by a collective bargaining agreement, even if they are not limited to the kind of deductions required by § 193(1)(b). *See* Defs.' Mem., at 14–15; N.Y. Lab. Law § 193(3)(a). Section 193(3)(a) prohibits an employer from "requir[ing] an employee to make any payment by separate transaction" unless such payments satisfy the conditions of § 193(1)(b). N.Y. Lab. Law § 193(3)(a). By amendment, effective 2012, § 193(3)(a) also permits such payments if "permitted or required under any provision of a *current* collective bargaining agreement." *Id.* (emphasis added); *see also* 2012 N.Y. Sess. Laws Ch. 451 (A. 10785)

[4] Contrary to defendants' reading of *Freeman*, that court merely held, pursuant to § 301 of the Labor Management Relations Act, that the particular claims for unlawful deductions must be dismissed because they required interpretation of the governing CBA. *See Freeman*, 2019 WL 1177717, at *8 (citing *Stolarik v. New York Times Co.*, 323 F. Supp. 3d 523, 543–44 (S.D.N.Y. 2018)). Having dismissed those claims, the court did not decide, in the alternative, whether the deductions, as authorized by the governing CBA, were of the kind contemplated by § 193.

(McKinney). That the amendment provided a narrow exemption for payments by separate transaction, authorized only by then-governing CBAs, is consistent with the statute's prohibition of "wage deductions by indirect means where direct deduction would violate the statute," which has long guarded against employers' efforts to "subvert [§ 193(1)'s deduction] prohibition by forcing the employee to pay those same amounts in a separate transaction." *Hart v. Rick's Cabaret Int'l, Inc.*, 09-cv-3043 (PAE), 2013 WL 11272536, at *9 (S.D.N.Y. Nov. 18, 2013) (quoting *Angello v. Labor Ready, Inc.*, 7 N.Y.3d 579, 585, 825 N.Y.S.2d 674, 859 N.E.2d 480 (2006)). Because the 2013 CBA and MOU were not "current" upon the amendment's enactment, they cannot stand in for the conditions required by § 193(1)(b).[5]

Swanson, therefore, is entitled to summary judgment on this claim.

II. NYLL § 195(1)(a) Notice Requirements

There is no dispute that annual wage notices were sent to and signed by Swanson from 2012 through 2014,[6] and that, with the exception of the parties' disagreement as to the inclusion of defendants' shortage policies, they contained all statutorily required information. Swanson's contention, however, is that the wage statements were in violation of NYLL § 195(1) due to their

[5] In the absence of any good-faith argument advanced by defendants that the deduction payments met the definition of an enumerated, authorized payment under § 193(1)(b), or were otherwise for the benefit of the employees, the Court need not endeavor to discern the import of the parties' placement of the subject deduction-payment clause in the 2013 MOU under the heading "UNDERSTANDINGS NOT INCORPORATED INTO COLLECTIVE BARGAINING AGREEMENT."

[6] NYLL § 195 was amended, effective April 9, 2011(1)(a), to require employers to provide their employees, on or before February 1 each year, a notice containing wage rates and other information. N.Y. Lab. Law § 195, 2010 N.Y. Laws ch. 564 § 3 (effective Apr. 9, 2011) (amended by 2014 N.Y. Laws ch. 537 § 1). Section 195 was amended in 2014 to remove the requirement that annual notice be provided on February 1. *See Martinez v. Alimentos Saludables Corp.*, No. 16-cv-1997 (DLI) (CLP), 2017 WL 5033650, at *19 (E.D.N.Y. Sept. 22, 2017) (citing N.Y. Lab. Law § 195(1)(a), 2014 N.Y. Laws ch. 537 § 1 (effective Feb. 27, 2015)).

failure to disclose defendants' deduction policy, which reduced his effective earnings, rendering the wage notices inaccurate. *See* Pl.'s Mem., Dkt. 121, at 22–23.

"[T]he the furnishing of accurate information is the legislative objective" of NYLL § 195, *Pierre v. Hajar, Inc.*, No. 15-cv-02772 (ENV) (RLM), 2018 WL 2393158, at *6 (E.D.N.Y. Mar. 28, 2018), which creates a cause of action where an employer has provided a notice that inaccurately reflects an employee's wage calculation. *See Short v. Churchill Benefit Corp.*, No. 14-cv-4561 (MKB), 2016 WL 8711349, at *11 (E.D.N.Y. Apr. 8, 2016). Here, however, having held that the deductions applied to Swanson's commissions after they were earned, the Court cannot find that the deductions were, at the same time, components of Swanson's wage calculations subject to § 195.

Accordingly, Swanson has failed to show that the annual wage statements he received from Manhattan Beer in this period were inaccurate. Defendants are entitled to summary judgment as to Swanson's wage notice violation claim.

Conclusion

For the foregoing reasons, plaintiff's motion for summary judgment is granted as to his unlawful wage deduction claims, and denied as to his NYLL § 195(1)(a) wage notice violation claim, and defendants' motion is denied as to plaintiff's wage deduction claims, and granted as to his NYLL § 195(1)(a) claim.

The parties are respectfully referred to Magistrate Judge Roanne L. Mann for continued pretrial management of this case.

So Ordered.

Dated: Brooklyn, New York
October 7, 2020

/s/ Eric N. Vitaliano
ERIC N. VITALIANO
United States District Judge