

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MAURICIA CRUZ and KRISTINE YOUNG, on behalf of	:
themselves and all others similarly situated,	: Case No. 14 Civ. 3186
	:
Plaintiff,	: CLASS AND COLLECTIVE
- against -	: ACTION COMPLAINT
	:
BURGER BROTHERS RESTAURANT GROUP, INC.,	:
JEFF J. FROCCARO, an individual, and	:
JOHN FROCCARO, an individual,	:
	:
Defendants.	:
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Plaintiffs Mauricia Cruz and Kristine Young (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, by and through their attorneys Shulman Kessler LLP, complaining of the Defendants Burger Brothers Restaurant Group, Inc. (“Burger Brothers”), Jeff J. Froccaro and John Froccaro (collectively “Defendants”), allege as follows:

INTRODUCTION

1. This lawsuit seeks to recover unpaid overtime compensation for Plaintiffs and their similarly situated coworkers who have been employed by Defendants.
2. Defendants own and/or operate more than 40 Burger King franchise restaurants throughout New York State.
3. Throughout the relevant period, Plaintiffs were employed by Defendants as Assistant Store Managers at Burger King restaurants owned and operated by Defendants.
4. While employed by Defendants, Plaintiffs consistently worked over 40 hours per week without ever receiving premium overtime pay. Throughout the relevant period, it was Defendants’ policy and practice to deprive Plaintiffs of their earned overtime wages. In order to avoid paying Plaintiffs’ overtime premiums for the hours they worked in excess of 40 per

workweek, Defendants misclassified the Assistant Store Manager position as exempt from the overtime provisions of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL” or “N.Y. Lab. Law”).

5. Defendants require Assistant Store Managers at Burger King restaurants owned and/or operated by Defendants to work in excess of 40 hours per workweek.

6. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former Assistant Store Managers at Burger King restaurants that were/are owned and/or operated by Defendants who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.* and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiffs and others similarly situated of their lawfully earned wages. Plaintiffs seek permission to give notice of this action pursuant to 29 U.S.C. § 216(b) to all persons who are presently, or have at any time during the 3 years immediately preceding the filing of this action, worked for Burger King restaurants owned and/or operated by Defendants, as an Assistant Store Manager.

7. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former Assistant Store Managers at Burger King restaurants that were/are owned and/or operated by Defendants located in the State of New York pursuant to the Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law (“NYLL”) Article 6 §§ 190 *et seq.*, and Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

JURISDICTION & VENUE

8. Jurisdiction of the Court over this controversy is based upon 29 U.S.C. § 201, *et seq.*, 28 U.S.C. §§ 1331 and 1337 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

9. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

10. Defendants own and operate Burger King restaurants in the Bronx, Kings, Queens, Nassau and Suffolk Counties and maintain a principal place of business at 20 Soundview Marketplace, Port Washington, New York 11050.

11. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

THE PARTIES

12. Mauricia Cruz is a resident of the County of Suffolk, State of New York.

13. At all times relevant to the Complaint, Mauricia Cruz was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

14. At all times relevant, Mauricia Cruz was employed by Defendants as an Assistant Store Manager.

15. Kristine Young is a resident of the County of Queens, State of New York.

16. At all times relevant to the Complaint, Kristine Young was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

17. At all times relevant, Kristin Young was employed by Defendants as an Assistant Store Manager.

18. Plaintiffs have expressed their consent to make these claims against the Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

19. Upon information and belief, Defendant Burger Brothers was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

20. At all times hereinafter mentioned, Defendant Burger Brothers was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

21. At all times hereinafter mentioned, the activities of Defendant Burger Brothers constituted an “enterprise” within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

22. Upon information and belief, Defendants maintain control, oversight, and direction over their operations and employment practices.

23. At all times hereinafter mentioned, Defendants employed employees, including Plaintiffs herein, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

24. Defendants’ annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

25. At all relevant times, Defendants maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

26. Defendants apply the same employment policies, practices, and procedures to all Assistant Store Managers employed at the Burger King restaurants Defendants owned and/or operated in the State of New York, including policies, practices, and procedures with respect to payment of overtime compensation.

27. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro owns and/or operates Defendant Burger Brothers.

28. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is the President of Defendant Burger Brothers.

29. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is the Vice-President of Defendant Burger Brothers.

30. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is a shareholder of Defendant Burger Brothers.

31. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is a corporate officer of Defendant Burger Brothers.

32. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is the Chief Executive Officer of Defendant Burger Brothers.

33. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro is an agent of Defendant Burger Brothers.

34. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro has the authority over personnel decisions for Defendant Burger Brothers.

35. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro has the authority over payroll decisions for Defendant Burger Brothers.

36. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro supervises employees of the Defendant Burger Brothers.

37. Upon information and belief, and at all times hereinafter mentioned, Defendant Jeff J. Froccaro has the authority to hire and fire employees for Defendant Burger Brothers.

38. Defendant Jeff J. Froccaro has the power to make binding decisions for Defendant Burger Brothers.

39. Defendant Jeff J. Froccaro has the power to transfer the assets or liabilities of Defendant Burger Brothers.

40. Defendant Jeff J. Froccaro has the power to declare bankruptcy on behalf of Defendant Burger Brothers.

41. Defendant Jeff J. Froccaro has the power to enter into contracts on behalf of Defendant Burger Brothers.

42. At all times hereinafter mentioned, Defendant Jeff J. Froccaro was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

43. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro owns and/or operates Defendant Burger Brothers.

44. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is the President of Defendant Burger Brothers.

45. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is the Vice-President of Defendant Burger Brothers.

46. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is a shareholder of Defendant Burger Brothers.

47. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is a corporate officer of Defendant Burger Brothers.

48. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is the Chief Executive Officer of Defendant Burger Brothers.

49. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro is an agent of Defendant Burger Brothers.

50. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro has the authority over personnel decisions for Defendant Burger Brothers.

51. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro has the authority over payroll decisions for Defendant Burger Brothers.

52. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro supervises employees of the Defendant Burger Brothers.

53. Upon information and belief, and at all times hereinafter mentioned, Defendant John Froccaro has the authority to hire and fire employees for Defendant Burger Brothers.

54. Defendant John Froccaro has the power to make binding decisions for Defendant Burger Brothers.

55. Defendant John Froccaro has the power to transfer the assets or liabilities of Defendant Burger Brothers.

56. Defendant John Froccaro has the power to declare bankruptcy on behalf of Defendant Burger Brothers.

57. Defendant John J. Froccaro has the power to enter into contracts on behalf of Defendant Burger Brothers.

58. At all times hereinafter mentioned, Defendant John Froccaro was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

FLSA COLLECTIVE ACTION CLAIMS

59. Upon information and belief, there are approximately more than 100 current and former Assistant Store Managers that are similarly situated to Plaintiffs who were denied overtime compensation.

60. Plaintiffs bring the First Cause of Action, on behalf of themselves and all similarly situated persons who have worked for Defendants as Assistant Store Managers at Burger King restaurants owned and/or operated by Defendants, who elect to opt-in to this action.

61. Plaintiffs represent other Assistant Store Managers at Burger King restaurants owned and operated by Defendants, and are acting on behalf of the interests of those Assistant Store Managers, as well as their own interests in bringing this action.

62. Plaintiffs seek to proceed as a collective action with regard to the First Cause of Action, pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following class of persons:

All Assistant Store Managers who are currently or have been employed by Defendants at Burger King restaurants and/or operated by Defendants, and who worked greater than 40 hours per week (hereinafter referred to as the “FLSA Collective”), at any time during the 3 years prior to the filing of their respective consent forms (hereinafter referred to as the “FLSA Collective Action Period”).

63. Defendants were aware or should have been aware that the law required them to pay non-exempt employees, including Plaintiffs and the FLSA Collective, an overtime premium of 1 and ½ times their regular rate of pay for all work-hours Defendants suffered or permitted

them to work in excess of 40 per workweek. Upon information and belief, Defendants applied the same unlawful policies and practices to its Assistant Store Managers throughout all of the Burger King restaurants Defendants owned and/or operated in the State of New York.

64. The FLSA Collective is readily identifiable and locatable through use of the Defendants' records. The FLSA Collective should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by the Defendants.

FEDERAL RULE OF CIVIL PROCEDURE RULE 23
CLASS ALLEGATIONS

65. Plaintiffs Mauricia Cruz and Kristine Young sue on their own behalf and as the class representatives (hereinafter referred to as the "New York Class Representatives") bring the Second Cause of Action on their own behalf and as a class action, on behalf of those similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b). The Fed. R. Civ. P. 23 Class (hereinafter "Rule 23 Class") is defined as:

All Assistant Store Managers who are currently or have been employed by the Defendants at Burger King restaurants owned and/or operated by Defendants and who worked greater than 40 hours per week (hereinafter referred to as the "New York Class"), at any time during the 6 years prior to the filing of their respective consent forms (hereinafter referred to as the "New York Class Period").

66. The persons in the New York Class are so numerous that joinder of all members is impracticable. Although, the precise number of such persons is unknown, and facts upon which the calculation of that number are presently within the sole control of the Defendants,

there are approximately more than 100 members of the New York Class during the New York Class Period.

67. There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

- a. Whether Defendants unlawfully failed to pay overtime compensation in violation of and within the meaning of the NYLL Article 6, §190 *et. seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. § 146;
- b. Whether the New York Class Representative and New York Class are non-exempt from entitlement to overtime compensation for hours worked under the pay requirement of the NYLL;
- c. Whether Defendants failed to keep accurate time records for all hours worked by the New York Class Representative and the New York Class;
- d. Whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law;
- e. The proper measure of damages sustained by the New York Class Representative and the New York Class; and
- f. Whether Defendants should be enjoined from such violations in the future.

68. The New York Class Representatives fairly and adequately protect the interests of the New York Class and have no interests antagonistic to the class. The Plaintiffs are represented by attorneys who are experienced and competent in both class litigation and employment litigation.

69. A class is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The damages sustained by individual class members are small,

compared to the expense and burden of individual prosecution of this litigation. Class action treatment will obviate unduly duplicative litigation and the possibility of inconsistent judgments.

70. Further, the New York Class Representatives and the New York Class have been equally affected by Defendants' failure to pay overtime wages. Moreover, members of the New York Class still employed by Defendants may be reluctant to raise individual claims for fear of retaliation.

71. Defendants have acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

72. Plaintiffs' claims are typical of those of the class. Plaintiffs Mauricia Cruz and Kristine Young and the other class members were subjected to Defendants' policies, practices, programs, procedures, protocols and plans alleged herein concerning the non-payment of overtime wages and the failure to keep adequate records. The job duties of Plaintiffs are typical of those of the class members.

73. The New York Class Representatives intends to send notice to all members of the New York Class to the extent required by Rule 23.

CLASSWIDE FACTUAL ALLEGATIONS

74. Plaintiffs and the members of the FLSA Collective and New York Class (collectively "Class Members") have been victims of Defendants' common policy and plan that has violated their rights under the FLSA and NYLL by denying them overtime compensation. At all times relevant, Defendants' unlawful policy and pattern or practice has been willful.

75. All of the work performed by Class Members was assigned by Defendants and/or Defendants were aware of all the work that Plaintiffs and the Class Members performed.

76. Upon information and belief, Defendants have a policy and pattern or practice to require Plaintiffs and Class Members to work in excess of 40 hours per workweek.

77. Defendants failed to pay Plaintiffs and Class Members 1 and ½ times their regular hourly rate for all hours worked over 40 in a workweek in violation of the FLSA and NYLL.

78. Upon information and belief, Defendants have a policy and pattern or practice to require all Assistant Store Managers, including Plaintiffs and the Class Members, to attend meetings at Defendants' Burger King restaurants. These meetings were attended by all of the Assistant Store Managers from Defendants' various Burger King locations throughout New York, and were in addition to Plaintiffs' and the Class Members' regularly scheduled hours.

79. Upon information and belief, Defendants did not compensate Plaintiffs and the Class Members for attending meetings in addition to their regularly scheduled hours.

80. Plaintiffs and the Class Members' primary duties were not managerial.

81. Plaintiffs and the Class Members' primary duties were non-exempt duties, including performing the same duties of the hourly-paid non-exempt employees, including preparing and cooking food in the kitchen, taking orders at the drive-through window and front counter, unloading delivery trucks, stocking supplies, cleaning, removing garbage, performing inventory counts, and counting the registers. Plaintiffs and Class Members spent the vast majority of their time performing these non-exempt duties.

82. Plaintiffs and the Class Members were closely supervised by their store managers and their district managers. Store managers were responsible for the overall performance of the stores and for coaching and developing employees.

83. Plaintiffs and the Class Members did not exercise a meaningful degree of independent discretion with respect to the exercise of their duties and were required to follow the

policies, practices, and procedures set by Defendants. Plaintiffs and the Class Members did not have any independent discretionary authority to deviate from these policies, practices, and procedures.

84. Plaintiffs and the Class Members did not have authority (a) to create or implement management policies, practices, and procedures for Defendants; (b) to commit Defendants in matters having significant financial impact; (c) to set employees' wages; (d) to determine how many labor hours could be allocated to their store; or (e) to hire, fire, or promote employees.

85. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and NYLL.

Defendants' policy and pattern or practice includes but is not limited to:

- a. Willfully misclassifying Plaintiffs and Class Members as exempt from the FLSA and NYLL;
- b. Willfully failing to record all of the time that its employees, including Plaintiffs and Class Members, have worked for the benefit of Defendants;
- c. Willfully failing to keep payroll records as required by the FLSA and NYLL; and,
- d. Willfully failing to pay its employees, including Plaintiffs and Class Members, overtime wages for hours that they worked in excess of 40 per workweek.

86. Defendants were or should have been aware that the FLSA and NYLL required Defendants to pay Assistant Store Managers premium overtime pay for hours worked in excess of 40 per week.

87. Defendants' failure to pay Plaintiffs and the Class Members overtime wages for their work in excess of 40 hours per week was willful, intentional, and in bad faith.

88. Defendants' unlawful conduct has been widespread, repeated, and consistent.

PLAINTIFFS' FACTUAL ALLEGATIONS

89. Mauricia Cruz was an employee of Defendants, working under their direct supervision.

90. Mauricia Cruz was employed by Defendants from in or about 2007 until on or about April 11, 2014 as an Assistant Store Manager at Burger King restaurants owned and/or operated by Defendants.

91. Mauricia Cruz was employed as an Assistant Store Manager by Defendants at the Burger King restaurant, located at 71 County Road 39, South Hampton, New York 11968, from before in or about May 2008 until in or about February 2012.

92. Mauricia Cruz was employed as an Assistant Store Manager by Defendants at the Burger King restaurant, located at 500 Waverly Avenue, Patchogue, New York 11772, from in or about February 2012 until in or about August 2013.

93. Mauricia Cruz was employed as an Assistant Store Manager by Defendants at the Burger King restaurant, located at 900 Old Country Road, Riverhead, New York 11901, from in or about August 2013 until on or about April 11, 2014.

94. At all times hereinafter mentioned, Mauricia Cruz was required to be paid overtime pay at the statutory rate of 1 and ½ her regular rate of pay after she had worked 40 hours in a workweek.

95. During most workweeks between May 2008 and April 2014, Mauricia Cruz worked more than 50 hours per week.

96. Defendants failed to compensate Mauricia Cruz for time worked in excess of 40 hours per week at a rate of at least 1 and ½ times her regular rate, throughout the entire term of her employment with Defendants.

97. Defendants failed to furnish Mauricia Cruz with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

98. Upon information and belief, Defendants did not keep accurate records of hours worked by Mauricia Cruz.

99. Kristine Young was an employee of Defendants, working under their direct supervision.

100. Kristine Young was employed by Defendants from on or about June 1, 2013 until on or about January 28, 2014 as an Assistant Store Manager at Burger King restaurants owned and/or operated by Defendants.

101. Kristine Young was employed by Defendants the Burger King restaurant located at 52 Jericho Turnpike, Jericho, New York 11753, from before in or about June 1, 2013 until in or about August 1, 2013.

102. Kristine Young was employed as an Assistant Store Manager by Defendants at the Burger King restaurant located at 92-02 Atlantic Avenue, Ozone Park, New York 11416, from in or about August 1, 2013 until in or about January 28, 2014.

103. At all times hereinafter mentioned, Kristine Young was required to be paid overtime pay at the statutory rate of 1 and ½ her regular rate of pay after she had worked 40 hours in a workweek.

104. During most workweeks between June 1, 2013 and January 28, 2014, Kristine Young worked more than 50 hours per week.

105. Defendants failed to compensate Kristine Young for time worked in excess of 40 hours per week at a rate of at least 1 and ½ times her regular rate, throughout the entire term of her employment with Defendants.

106. Defendants failed to furnish Kristine Young with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

107. Upon information and belief, Defendants did not keep accurate records of hours worked by Kristine Young.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE
FOR FAILURE TO PAY OVERTIME
AN FLSA VIOLATION

108. Plaintiffs, on behalf of themselves and the FLSA Collective, realleges and incorporates by reference all allegations in all preceding paragraphs.

109. Plaintiffs and the members of the FLSA Collective are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

110. Defendants employed Plaintiffs and the members of the FLSA Collective for workweeks longer than 40 hours and willfully failed to compensate the Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least 1 and ½ times her regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

111. Defendants failed to keep accurate records of time worked by Plaintiffs and the members of the FLSA Collective.

112. Defendants' violations of the FLSA, as described in this Collective Action Complaint, have been willful and intentional.

113. Defendants did not make a good faith effort to comply with the FLSA with respect to its compensation to Plaintiffs and the FLSA Collective.

114. Because Defendants' violations of the FLSA were willful, a 3 year statute of limitations applies, pursuant to 29 U.S.C. § 255.

115. Plaintiffs have expressed their consent to make these claims against the Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b).

116. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and the Defendants are indebted to her in the amount of the unpaid overtime compensation, together with interest, liquidated damages, attorneys' fees, and costs in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND THE NEW YORK CLASS
FOR FAILURE TO PAY OVERTIME
A NYLL VIOLATION

117. Plaintiffs, on behalf of themselves and the New York Class, realleges and incorporates by reference all allegations in all preceding paragraphs.

118. Defendants employed Plaintiffs and the members of the New York Class for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs and the members of the New York Class for the time worked in excess of 40 hours per week, at a rate of at least 1 and ½ times their regular hourly rate, in violation of the requirements of NYLL.

119. By the course of conduct set forth above, Defendants have violated N.Y. Lab. Law § 650, *et seq.*; 12 N.Y.C.R.R. Part 146.

120. Defendants failed to keep, make, preserve, maintain and furnish accurate records of time worked by Plaintiffs and the members of the New York Class.

121. Defendants have a policy and practice of refusing to pay overtime compensation to Plaintiffs and the members of the New York Class.

122. Defendants' failure to pay overtime compensation to Plaintiffs and the members of the New York Class was willful within the meaning of N.Y. Lab. Law § 663.

123. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the members of the New York Class Members have incurred damages thereby and the Defendants are indebted to them in the amount of the unpaid overtime compensation and such other legal and equitable relief due to Defendants' unlawful and willful conduct, as the Court deems just and proper.

124. Plaintiffs, on behalf of themselves and the members of the New York Class, seeks recovery of liquidated damages, attorneys' fees, interest, and costs to be paid by the Defendants as provided by the NYLL.

AS AND FOR THE THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND THE NEW YORK CLASS
FOR VIOLATION OF NOTICE AND RECORD-KEEPING REQUIREMENTS
A NYLL VIOLATION

125. Plaintiffs, on behalf of themselves and the New York Class, realleges and incorporates by reference all allegations in all preceding paragraphs

126. Defendants failed to supply Plaintiffs and the members of the New York Class notice as required by N.Y. Lab. Law § 195, in English or in the language identified by Plaintiffs and the members of the New York Class as their primary language, containing Plaintiffs' and the members of the New York Class' rate or rates of pay and basis thereof, whether paid by the hour,

shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with N.Y. Lab. Law § 191; 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; plus such other information as the commissioner deems material and necessary.

127. Defendants failed to supply Plaintiff and the members of the New York Class with an accurate statement of wages as required by N.Y. Lab. Law § 195, containing 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; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

128. Due to Defendants' violations of N.Y. Lab. Law § 195, Plaintiff and the New York Class Members are entitled to damages of fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the New York Class with a wage notice, or a total of twenty-five hundred dollars, and damages of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the New York Class with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, seeks the following relief:

- A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this class action, or that the Court issue such notice, to all persons who are presently, or have at any time during the 6 years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, were employed by Defendants as Assistant Store Managers at Burger King restaurants owned and/or operated by Defendants. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;
- B. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;
- C. Unpaid overtime pay and liquidated damages permitted by law pursuant to the NYLL;
- D. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- E. Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class Counsel;
- F. Pre-judgment interest and post-judgment interest as provided by law;
- G. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing its unlawful practices;
- H. Attorneys' fees and costs of the action;

I. Damages of fifty dollars for Plaintiffs and the New York Class for each workweek that Defendants failed to provide Plaintiffs with a wage notice, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198;

J. Damages of one hundred dollars for Plaintiffs and the New York Class for each workweek that Defendants failed to provide Plaintiffs with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198;

K. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;

L. An injunction requiring Defendants to cease the unlawful activity described herein pursuant to N.Y. Lab. Law § 190 *et seq.*;

M. Such other injunctive and equitable relief as this Court shall deem just and proper;

N. Appropriate monetary relief for lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d); and

O. Liquidated damages relating to lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d).

Dated: Melville, New York
May 21, 2014

Your, etc.,

SHULMAN KESSLER LLP

By: /s/ Troy L. Kessler
Troy L. Kessler
Marijana F. Matura
Ilan Weiser

*Attorneys for Plaintiffs and the Putative
FLSA Collective Action and Class Action*
510 Broadhollow Road, Suite 110
Melville, New York 11747
(631) 499-9100

EXHIBIT A

CONSENT FORM

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer, Burger Brothers Restaurant Group, to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Burger Brothers Restaurant Group.
2. During the past 3 years, there were occasions when I worked more than 40 hours in a week for Burger Brothers Restaurant Group. and I did not receive proper overtime compensation for those hours.
3. I authorize Shulman Kessler LLP to represent me in this case.

Date: 5/20/2014



Kristine M. Young
Signature
Print Name

CONSENT FORM

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer Burger Brothers Restaurant Group, Inc. d/b/a Burger King, to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Burger Brothers Restaurant Group, Inc. d/b/a Burger King.
2. During the past three (3) years, there were occasions when I worked more than forty (40) hours in a week for Burger Brothers Restaurant Group, Inc. d/b/a Burger King, and I did not receive proper overtime compensation for those hours.
3. I authorize Shulman Kessler LLP to represent me in this case.

Date: _____

Signature

Print Name

FORMA DE CONSENTIMIENTO

1. Consiento para afirmar reclamaciones contra violaciones del Acto de Estándares de Trabajo Justo, 29 Congreso de los Estados Unidos § 201, *et seq.*, contra mi empleador actual/anterior Burger Brothers Restaurant Group, Inc. d/b/a Burger King, para asegurar cual quiera ayuda que podrá concederse, incluyendo pago de horas extras, daños y perjuicios, honorarios de abogados, gastos y cualquier otra reparación que surja de mi empleo con Burger Brothers Restaurant Group, Inc. d/b/a Burger King
2. Durante los últimos tres (3) años, había ocasiones en que he trabajado más de cuarenta (40) horas a la semana para Burger Brothers Restaurant Group, Inc. d/b/a Burger King, y no recibí compensación adecuada por aquellas horas.
3. Consiento a Shulman Kessler LLP para representarme en este pleito.

Fecha: 5/20/14

Firma

Mauricia O. Cruz
Nombre en Letra

**None of the Below Information Will be Filed With the Court
(Ninguna de la Información Abajo Va a Ser Aplicada con La Corte)**

Name (Nombre): _____

Street Address (Dirección): _____

City, State, Zip Code (Ciudad, Estado, Código Postal): _____

Telephone Number (Número de Teléfono): _____ E-mail: _____

Mail or Fax to: SHULMAN KESSLER LLP, 510 Broadhollow Road, Ste. 110, Melville, NY 11747
Telephone: (631) 499-9100 Fax: (631) 499-9120
E-mail to: tk@shulmankessler.com or mm@shulmankessler.com