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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
VIANEY VENTURA, *Individually*
and on behalf of others similarly situated,

Plaintiff

v.

COMPLAINT
Index No.

**COLLECTIVE ACTION
UNDER 29 USC § 216(b)**

**JURY TRIAL
DEMANDED**

FRANCISCO HERREROS, AMADO HERREROS,
Individually and GAL FOOD CORP.
d/b/a TACOS AL SUADERO

Defendants.
-----X

1. Plaintiff Vianey Ventura (“Plaintiff”), individually and on behalf of others similarly situated, alleges as follows:

NATURE OF THE ACTION

2. This Action on behalf of Plaintiff, individually and on behalf of others similarly situated, seeks the recovery of unpaid wages and related damages for unpaid overtime hours worked, while employed by Tacos Al Suadero (“Tacos”), Francisco Herreros (“Francisco”), and Amado Herreros (“Amado”) and (collectively “Defendants”). Plaintiff seeks these damages under the

applicable provisions of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”).

PARTIES

3. Plaintiff Vianey Ventura, a resident of New York State, was employed as a cashier/food packer for Defendant Tacos at 39-04 103rd Street in Corona, NY from on or about January 14, 2017 through October 14, 2018. Plaintiff was employed by Defendants during the relevant limitations periods.
4. Plaintiff’s consent to sue form is attached as Exhibit “A.”
5. Defendant Tacos is a New York Corporation. Upon and information and belief Defendant Tacos is a restaurant with locations at 39-04 103rd Street, Corona, NY 11368, 37-57 90th Street, Jackson Heights, NY 11372, and 87 21 Roosevelt Ave., Jackson Heights, NY 11372.
6. Upon information and belief Tacos has an annual gross volume of sales in excess of \$500,000.00.
7. At all relevant times, Tacos has been and continues to be an “employer” engaged in “commerce” and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.
8. Upon information and belief, Defendants Francisco and Amado are the owners and operators of Tacos.
9. Upon information and belief, Defendants Francisco and Amado exercise control over Tacos’ day to day operations, including the ability to hire and fire employees and set employee schedules and employee rates of pay.

10. Defendants Francisco and Amado were employers of Plaintiff during the relevant time period.

FLSA COLLECTIVE ACTION ALLEGATIONS

11. Plaintiff brings the First and Third Claims for Relief as a collective action pursuant to FLSA Section 16 (b), 29 USC § 216(b), on behalf of all similarly situated workers employed by Defendants on or after the date that is three years before the filing of the Complaint in this case as defined herein (“FLSA Collective Plaintiffs”).
12. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subjected to Defendants’ decision, policy, plan and common policies, programs, practices, procedures, protocols, routines and rules willfully failing and refusing to pay them the lawful minimum wage and one and one half times their regular rate for work in excess of (40) hours per workweek. The claims of Plaintiff stated herein are essentially the same as those of the other FLSA Collective Plaintiffs.
13. The First and Third Claims for Relief is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 USC § 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from the Defendants. Notice can be provided

to the FLSA Collective Plaintiffs via first class mail to the last addresses known to Defendants.

JURISDICTION AND VENUE

14. This Court has original federal question jurisdiction under 28 U.S.C. § 1331, as 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 state law claims, as they are related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.
15. Venue is proper in this District, because Defendants conduct business in this District, and the acts and/or omissions giving rise to the claims herein allegedly took place in this District.

FACTUAL ALLEGATIONS

16. Defendants committed the following alleged acts knowingly, willfully and intentionally.
17. Defendants knew that the nonpayment of minimum wage and overtime pay to Plaintiff and the FLSA Collective Plaintiffs would economically injure Plaintiff and the FLSA Collective Plaintiffs and violated state and federal laws.
18. Throughout the course of her employment at Tacos, Plaintiff regularly worked five (5) days per week.

19. Plaintiff worked Fridays through Sunday from 10:00 am until 8:00 pm; and Mondays and Tuesday from 8:00 pm until 8:00 am. Plaintiff regularly worked fifty-four (54) hours per week for Defendants.
20. Plaintiff was paid a daily rate of \$30.00 per day, in cash, regardless of her hours worked per week.
21. During the last four (4) months of her employment, Plaintiff was paid a daily rate of \$50.00 per day, in cash, regardless of her hours worked per week.
22. Plaintiff also received \$70.00-\$80.00 per day in tips, which were pooled with the waiters, food packers and cashier.
23. The FLSA and NYLL allow employers of “food service workers” to pay their tipped employees at a rate below the normal federal and state minimum wages by applying a tip credit towards certain eligible employees’ wages.
24. The FLSA and the NYLL provide that in order to be eligible for this tip credit, employers of tipped employees must inform food service workers about their intention to apply the tip credit towards the employees’ wages and also must allow employees to keep all of the tips that they receive.
25. Defendants are prohibited from applying the tip credit because they failed to provide Plaintiff and the FLSA Collective with notice of the tip credit as required by both the NYLL and FLSA.
26. Plaintiff was required to purchase seven (7) t-shirts with the restaurant logo, at \$25.00 per shirt, as well as her own apron.

27. Plaintiffs and the FLSA Collective Plaintiffs often worked in excess of forty (40) hours per workweek.
28. Defendants unlawfully failed to pay Plaintiff and the FLSA Collective Plaintiffs one and one-half times their regular rate of pay for hours worked in excess of forty (40) hours per workweek.
29. Defendants did not pay Plaintiff a spread of hours premium pursuant to New York state law when her workdays lasted ten (10) or more hours.
30. Defendants failed to provide Plaintiff with a written notice of her rate of pay and failed to keep proper payroll records as required under New York law.
31. Defendant Francisco hired, and terminated Plaintiff and issued her with his pay and set her schedule.
32. Defendant's liquor license lists Francisco Herreros as the principal.¹

FIRST CAUSE OF ACTION

Fair Labor Standards Act-Minimum Wage Violations Brought By Plaintiff on Behalf of Herself and the FLSA Collective Plaintiffs

33. Plaintiff, individually and on behalf of the FLSA Collective Plaintiffs, re-alleges and incorporates by reference all allegations in all preceding paragraphs.
34. The minimum wage provisions set forth in the FLSA, 29 USC §§ 201 *et seq.*, and the supporting federal regulations apply to Defendants and protects Plaintiff and the FLSA Collective Plaintiffs.
35. Defendants have willfully failed to pay Plaintiff and the FLSA Collective Plaintiffs the federal minimum wage for each hour worked.

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<https://www.tran.sla.ny.gov/servlet/ApplicationServlet?pageName=com.ibm.nysla.data.publicquery.PublicQuerySuccessfulResultsPage&validated=true&serialNumber=1306361&licenseType=EB>

36. As a result of Defendants' unlawful acts, Plaintiff and the FLSA Collective Plaintiffs have been deprived of minimum wage compensation and other wages in an amount to be determined at trial, and are entitled to the recovery of such amount, liquidated damages, attorneys' fees, costs and other compensation pursuant to the FLSA.

SECOND CAUSE OF ACTION
New York Labor Law-Minimum Wage Violations

37. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
38. The minimum wage provisions of the New York Labor Law and its supporting regulations apply to Defendants and protect Plaintiffs.
39. Defendants have willfully failed to pay Plaintiffs the New York State minimum wage for all hours worked.
40. Defendants' knowing or intentional failure to pay Plaintiffs minimum wage for all hours worked is a willful violation of the New York Labor Law Article 19 § 650, *et seq.* and its supporting regulations.
41. As a result of Defendants' unlawful acts, Plaintiffs have been deprived of minimum wage compensation and other wages in an amount to be determined at trial, and is entitled to the recovery of such amount, liquidated damages, attorneys' fees, pre-judgment and post-judgment interest, costs and other compensation pursuant to the New York Labor Laws.

THIRD CAUSE OF ACTION
**Fair Labor Standards Act-Overtime Wages Brought By Plaintiff on Behalf of
Themselves and the FLSA Collective Plaintiffs**

42. Plaintiff, individually and on behalf of the FLSA Collective Plaintiffs, re-alleges and incorporates by reference all allegations in all preceding paragraphs.
43. The overtime wage provisions set forth in the FLSA, 29 USC §§ 201 *et seq.*, and the supporting federal regulations apply to Defendants and protect Plaintiff, and the FLSA Collective Plaintiffs.
44. Defendants have willfully failed to pay Plaintiff and the FLSA Collective Plaintiffs the overtime wages for hours worked in excess of forty (40) hours in a workweek.
45. As a result of Defendants' unlawful acts, Plaintiff and the FLSA Collective Plaintiffs have been deprived of overtime compensation and other wages in an amount to be determined at trial, and are entitled to the recovery of such amount, liquidated damages, attorneys' fees, costs and other compensation pursuant to the FLSA.

FOURTH CAUSE OF ACTION
New York Labor Law-Unpaid Overtime

46. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
47. The overtime wage provisions of Article 19 of the New York Labor Law and its supporting regulations apply to Defendants and protect Plaintiff.
48. Defendants have willfully failed to pay Plaintiff the overtime wages for hours he worked in excess of forty (40) hours in a workweek.
49. Defendants' knowing or intentional failure to pay Plaintiff overtime wages for hours worked in excess of forty (40) hours per week is a willful violation of

the New York Labor Law Article 19 § 650, *et seq.* and its supporting regulations.

50. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime compensation and other wages in an amount to be determined at trial, and is entitled to the recovery of such amount, liquidated damages, attorneys' fees, pre and post judgment interest, costs and other compensation

FIFTH CAUSE OF ACTION

New York Spread of Hours Provisions-NY Comp. Code R & Regs. Tit. 12 § 146-1.6

51. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
52. Plaintiff regularly had workdays that lasted more than ten (10) hours.
53. Defendants willfully and intentionally failed to compensate Plaintiff one hour's pay at the basic New York State minimum hourly wage rate when his workdays exceeded ten (10) hours, as required by New York law.
54. As a result of Defendants' willful and unlawful conduct, Plaintiff is entitled to an award of damages, including liquidated damages, in an amount to be determined at trial, pre and post judgment interest, costs and attorneys' fees, as provided by NYLL § 663.

SIXTH CAUSE OF ACTION

New York Labor Law-Record Keeping Violations

55. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

56. Defendants failed to make, keep and preserve accurate records with respect to Plaintiff, including hours worked each workday, and total hours worked each week, as required by the NYLL and its supporting regulations.
57. Defendants failed to provide Plaintiff with a written notice of rate of pay as required by NYLL § 195.
58. Defendants' failure to make, keep and preserve accurate records was willful.
59. As a result of Defendants' willful and unlawful conduct, Plaintiff is entitled to an award of damages, in an amount to be determined at trial, costs and attorneys' fees, as provided by NYLL § 198.

PRAYER FOR RELIEF

60. WHEREFORE, Plaintiff, individually and on behalf of the FLSA Collective Plaintiffs pray for relief as follows:
 - a. An award of damages, according to proof, including liquidated damages, to be paid by Defendants;
 - b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and New York law;
 - c. Designation of this action as a collective action pursuant to the FLSA on behalf of the FLSA Collective Plaintiffs and ordering the prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated member of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

- d. Designation of Plaintiff as representative plaintiff of the FLSA Collective Plaintiffs;
- e. Penalties available under applicable laws;
- f. Costs of the action incurred herein, including expert fees;
- g. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, New York Labor Law § 663 and all other applicable statutes;
- h. Pre-judgment and post-judgment interest, as provided by law; and
- i. Such other and further legal and equitable relief as this Court deems necessary, just and proper.


DEMAND FOR JURY TRIAL

Plaintiff on behalf of herself and the FLSA Collective Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right.

Dated: New York, New York
November 14, 2018

Respectfully submitted,

The Klein Law Group P.C.

By:  _____
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FLSA collective plaintiffs.*

CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of my claims in my name and on my behalf to contest the failure of Tacos and/or their respective owners, affiliated companies, subsidiaries, predecessors, successors, contractors, directors, officers, franchisees, and/or affiliates to pay minimum wage and overtime wages, as required under state and/or federal law, and for making illegal wage deductions and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorney's fees and costs and all other matter pertaining to this lawsuit.

Vianey Ventura 11-13-18
Signature Date

Vianey Ventura
Printed Name