

INTRODUCTION

1. This is an individual, class, and collective action brought to remedy widespread violations of the federal and state wage and hour laws by Defendants that have deprived Plaintiffs, along with other current and former “hourly employees”, including, but not limited to the positions of “in-shop”, “person-in-charge” and “delivery driver” employees (hereinafter “hourly employees”), along with other similarly situated individuals, of lawful wages to which they are entitled. Defendants’ nationwide policies, pattern and/or practices which require or have the practical effect of requiring hourly employees to work “off the clock” without getting paid for that time and overtime, and for failing to pay hourly employees minimum wages as a result of this off the clock work and for failing to pay them all wages due and owing in a timely manner, has caused Plaintiffs, the Collective, and the Class, significant monetary losses and is in direct violation of the federal and state wage laws under which Plaintiffs bring this action.

2. Defendants’ willful, knowing and/or reckless action of intentionally requiring or knowingly allowing hourly employees to work off-the-clock without paying them for that time and overtime, and therefore, denying them wages, minimum wages and overtime wages, is in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (the “FLSA”), the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.* (the “IMWL”), the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.* (the “IWPCA”) and the statutory laws of other States where Defendant operates and has stores, including, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island,

South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (hereinafter referred to as “other state wage laws”).

3. Under the FLSA, the IMWL, and other state wage laws, there is a general rule that employees must be compensated at a rate of one-and-a-half times their regular rate of pay for all hours worked in excess forty (40) hours a week. 29 U.S.C. §207; and 820 ILCS 105/4a. The FLSA, IMWL, and other state wage laws also require Defendants to pay hourly employees minimum wages. Despite these statutory requirements, Defendants have and continue to require tens of thousands of hourly employees to work without any regular compensation, minimum wages and overtime pay on a consistent basis.

4. For at least ten (10) years prior to the filing of this Complaint, Defendants have willfully committed widespread violations of the FLSA, IMWL, IWPCA, and/or other state wage laws by refusing and/or failing to pay hourly employees for all hours worked, including refusing to pay minimum wages, regular/straight time and overtime hours worked in excess of forty (40) hours per week at a rate of one-and-a-half times their regular rate, and requiring or knowingly allowing them to work off the clock, which drops their wages below federal and state minimum wages.

5. Defendants’ acts violate federal and state wage laws, affecting tens of thousands of its current and former hourly employees. Accordingly, Plaintiffs, on behalf of themselves, and all others similarly situated, bring this action seeking equitable and declaratory relief, as well as nominal, compensatory, liquidated and punitive damages at law and other incidental monetary and non-monetary remedies necessary to make the Plaintiffs and others similarly situated whole, as well as reasonable attorneys’ fees and costs.

6. Defendants operate over 1,900 Jimmy John's Gourmet Sandwich restaurants,

throughout the United States. Defendants' restaurants currently employ tens of thousands of hourly employees, who are being forced to work off the clock without compensation or overtime compensation and to whom minimum wages are not being paid by Defendants.

PARTIES

7. Representative Plaintiff, Emily Brunner, resides in Brookfield, Illinois and works at Jimmy John's in Downers Grove, Illinois. A written consent form for Plaintiff, Emily Brunner, is attached to this Complaint as *Exhibit A*.

8. Representative Plaintiff, Karolis Kubelskas, resides in Brookfield, Illinois and is a former Jimmy John's delivery driver who worked at the Hillside, Illinois location. A written consent form for Plaintiff, Karolis Kubelskas, is attached hereto as *Exhibit B*.

9. Defendant, JIMMY JOHN'S ENTERPRISES, INC., is a domestic corporation, incorporated in the State of Illinois, and authorized to do business in the State of Illinois. Defendant JJ serves customers nationwide, directly and through various franchisees, divisions, subsidiaries and affiliates, however constituted.

10. Defendant JJ is a privately owned fast food restaurant giant, specializing in the sale of sub sandwiches. JJ owns and franchises Jimmy John's fast food restaurants, while JJ exercises significant managerial control over all of the Jimmy John's restaurants nationwide, including creating, mandating and implementing the policies and practices that created the systematic wage theft alleged herein. Currently, there are more than 1,900 Jimmy John's fast food restaurants, operating in forty-three (43) states across the nation.

11. Defendant JJ's policies, including its management policies, human resources policies, and wage and hour policies, are determined by corporate headquarters and apply uniformly to all Jimmy John's restaurants, whether or not they are wholly-owned by JJ or subject

to a franchise agreement. These policies are disseminated through JJ's hierarchical chain of command. The policies and practices that have caused the failure to pay for all hours worked, minimum wages and overtime wages are corporate-set policies and practices created, implemented and mandated by Defendant JJ. All Jimmy John's stores are required to use the MACRO system which, among other things, records and reports hourly employees' hours, manages labor budgets and records and reports sales, duties, and other operational data. Defendant JJ manages and exercises significant managerial control over all Jimmy John's stores through the use of MACRO and other required corporate policies, practices and systems. Defendant JJ, requires all stores to send nightly reports to JJ. As such, Defendant JJ exercises significant control over the management of all Jimmy John's restaurants.

12. Defendant, JS FORT GROUP, INC. ("JS"), is a domestic corporation, incorporated in the State of Illinois, and authorized to do business in the State of Illinois. Defendant JS is a franchisee of JJ and a joint and/or single employer of Plaintiffs and all other similarly situated Class/Collective members with Defendant JJ.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §§ 1332 and 1367. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because the action involves a federal statute, 29 U.S.C. §216(b). Plaintiffs do not bring any claims pursuant to or under a collective bargaining agreement.

14. The Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

15. Upon information and belief, the amount in controversy in this matter exceeds the sum or value of five million dollars (\$5,000,000.00), exclusive of interest and costs.

16. Upon information and belief, at least one member of the Rule 23 Class and/or Collective is a citizen of a state different than that of Defendants.

17. Venue is proper in the Northern District of Illinois, Eastern Division, under 28 U.S.C. § 1391. Defendants do business in the Northern District of Illinois, Eastern Division, and Plaintiffs are residents of the Northern District of Illinois, Eastern Division. Defendants are subject to personal jurisdiction in the State of Illinois for the purpose of this lawsuit as both Defendants are domiciled in Illinois.

BACKGROUND FACTS

18. Plaintiff, Emily Brunner, has worked for Defendants at its Downers Grove, Illinois location (2321 Ogden Avenue), since November 2013. Plaintiff Brunner has held the “hourly employee” positions of *driver*, *in-shop* and *person in charge*. Plaintiff Brunner is currently employed as a salaried (albeit misclassified) 2nd Assistant Manager.

19. Plaintiff, Karolis Kubelskas, worked for Defendants at its Hillside, Illinois location, from August 20, 2012 through February 1, 2013, and again from September 15, 2013, through December 30, 2013. During both terms of employment, Plaintiff Kubelskas was employed with Defendants as an hourly paid delivery driver.

20. The primary function of Defendants’ restaurants is to sell sandwiches to customers, whether they eat at the restaurant, carry out the food, or have it delivered.

21. In all of Defendants’ fast food restaurant locations, the following job titles/classifications exist, pursuant to the management policies, mandates and directives of Defendant JJ: (1) driver; (2) in-shop; (3) person-in-charge; (4) 2nd Assistant Store Manager – 2nd

ASM; (5) Assistant Store Manager – 1st ASM; and (6) General Manager – GM. Positions 1-3 are hourly paid positions. Positions 4-6 are classified by Defendants as salaried/exempt positions.

22. Defendant JJ exercises significant managerial control over all Jimmy John's restaurants, both wholly-owned and franchise restaurants. Defendants have operating and management policies and procedures that apply uniformly to all restaurants nationwide. No matter the size of the restaurant or the location, every detail of how the restaurant is managed and run is uniformly fixed, mandated and controlled by Defendants through JJ's policies, directives and mandated procedures. Defendant JJ manages all Jimmy John's restaurants and makes routine on-site visits to all Jimmy John's restaurants, both wholly-owned and franchises, to make sure that all policies and procedures as set forth by, established by and mandated by Defendant JJ, are being implemented and followed.

23. Defendant JJ exercises significant control over the management of all locations by requiring all members of store management (from 2nd ASMs through GMs) to be trained by corporate, and "certified" by corporate at the corporate headquarters.

24. Every Jimmy John's location is required to have a member of store management perform the closing duties with several hourly employees.

25. Every Jimmy John's location has a list of closing duties that have to be performed before hourly employees can leave.

26. Hourly employees are clocked-out by the closing manager approximately twenty (20) minutes after the doors are locked, whether or not they are done with their closing duties.

27. Hourly employees are not allowed to clock themselves out when they are on closing duty.

28. The duties that hourly employees are required to complete at closing cannot realistically be performed in the twenty (20) minutes they are allotted to complete the tasks.

29. Defendants' policies of having management clock-out hourly employees assigned to closing, facilitates widespread abuse of the minimum wage and overtime laws.

30. Members of individual store management (2nd ASMs, 1st ASMs, and GMs) all receive bonuses based on a metric that is largely based on whether or not they met their "labor goals" and their "food costs."

31. Defendants do not provide adequate labor hours for stores to complete all of the required work within those labor budgets.

32. Members of store management get high pressure from Area Managers and corporate to meet the inadequate labor budgets.

33. Defendants' policies and practices of: (1) providing inadequate labor budgets; (2) requiring hourly employees assigned to closing to be clocked-out by management; and (2) incentivizing management to under report hours worked in order to get their bonuses, have intentionally and/or had the practical effect of creating widespread wage theft in the form of failing to pay minimum wages and overtime compensation.

34. Despite routinely being clocked-out approximately twenty (20) minutes after the doors lock, hourly employees assigned to closing typically work at least fifteen (15) minutes after being clocked-out. This off the clock time is not accounted for or compensated, denies them wages due and owing and/or drops hourly employees below the minimum wage and denies them overtime.

35. Defendants have an unwritten policy and practice of denying hourly employees payment for all hours worked, minimum wages and overtime compensation.

37. At all times material to this action, Defendants were and are an enterprise engaged in commerce as defined by § 203(s)(1) of the FLSA.

38. At all times relevant to this action, Defendants were the “employer” of Plaintiffs as defined by § 203(d) of the FLSA.

39. At all times material to this action, Plaintiffs were “employees” of Defendants as defined by § 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States within three (3) years preceding the filing of this lawsuit.

40. The provisions set forth in §§ 206 and 207, respectively, of the FLSA apply to Defendants and all similarly situated hourly employees who are or were covered by §§ 206 and 207 of the FLSA during their employment with Defendants.

41. On a regular and continuous basis, Plaintiffs and all similarly situated hourly employees are required to work without compensation, including regular time, minimum wage and overtime compensation.

42. Defendants have intentionally failed and/or refused to pay Plaintiffs and all other similarly situated current and former hourly employees, compensation, minimum wages and overtime pay according to the provisions of the FLSA and applicable state wage laws.

43. Defendants’ systems, policies, patterns or practices relating to its non-payment of both regular and overtime compensation to hourly employees have existed since at least 2004.

44. As a result of Defendants’ violations of the FLSA, Plaintiffs, as well as all other similarly situated employees, have suffered damages by failing to receive compensation, minimum wages and overtime pay in accordance with § 207 of the FLSA and applicable state wage laws.

45. Defendants have intentionally and repeatedly misrepresented the true time worked by their hourly employees, as well as their entitlement to both regular and overtime compensation

for the time that they worked off the clock in order to avoid suspicion and inquiry by employees regarding their entitlement to monies owed to them. Plaintiffs, as well as all similarly situated present and former employees, relied upon these misrepresentations by Defendants and were unable to determine their true wages under the FLSA by the exercise of reasonable diligence because of those misrepresentations.

46. As a result of the actions of Defendants in fraudulently concealing the true time worked by their employees under the FLSA, the applicable statute of limitations governing FLSA actions at 29 U.S.C. § 255(a) is tolled for as long as Defendants engaged or engage in the fraudulent and misleading conduct set forth above, which is a period of at least ten (10) years. Defendant is estopped from raising such statute of limitations as a bar.

47. There are tens of thousands of similarly situated current and former hourly employees of Defendants who have been improperly compensated in violation of the FLSA and applicable state wage laws, and who would benefit from the issuance of Court-Supervised Notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' records.

48. Defendants have further engaged in a widespread pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiffs and all similarly situated hourly employees in accordance with § 207 of the FLSA and the applicable state wage laws.

49. As a result of Defendants' violations of the FLSA, Plaintiffs, as well as all other similarly situated employees, have suffered damages by failing to receive compensation in accordance with § 207 of the FLSA.

50. In addition to the amount of unpaid wages, minimum wages, overtime wages and

benefits owed to Plaintiffs and all similarly situated current and former hourly employees, they are also entitled to recover an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b) and prejudgment interest.

51. Defendants' actions in failing to compensate Plaintiffs, as well as all other similarly situated current and former hourly employees, in violation of the FLSA, are willful, intentional and with reckless disregard for federal and state law and for the rights of the Plaintiffs and the Collective/Class.

52. Defendants have not made a good faith effort to comply with the FLSA, rather have knowingly engaged in the conduct alleged herein in order to reduce its payroll/wage costs and increase its net revenues.

53. Plaintiffs, and all other similarly situated current and former hourly employees, are also entitled to an award of attorneys' fees pursuant to 29 U.S.C. § 216(b).

54. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this lawsuit for lost wages, overtime wages, back-pay, declaratory judgment, injunctive relief, liquidated damages, and compensatory and punitive damages is their only means of securing adequate relief.

55. Plaintiff Brunner is now suffering and will continue to suffer irreparable injury from Defendants' unlawful conduct as set forth herein unless enjoined by this Court.

56. All allegations and claims alleged herein should be read in the alternative, to the extent such an interpretation is necessitated by law and permitted under Federal Law, Illinois Law and other state laws.

57. All allegations pled herein are pled with personal knowledge as to those allegations to which Plaintiffs have such knowledge and based upon "information and belief" as to all other

allegations.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

A. THE IMWL AND OTHER STATE WAGE LAWS CLASS

58. Plaintiffs bring claims under IMWL, IWPCA and other state wage laws as an individual and as a class action pursuant to Federal Rules of Civil Procedure Rule 23. Under Rule 23 the Class is defined as:

“all current and former hourly employees that were not paid wages, minimum wages and overtime compensation at any time from ten (10) years prior to the filing of this complaint and until a judgment is entered in this case” (the “Class” and “Class Period,” respectively).

Excluded from the Class are Defendants’ legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Class period has had, a controlling interest in Defendants; the Judge to whom this case is assigned and any member of the Judge’s immediate family; and all persons who will submit timely and otherwise proper request for exclusion from the Class.

59. **Numerosity:** The persons in the Class identified above are geographically diverse and so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number are presently within the sole control of Defendants. Upon information and belief, Plaintiffs estimate that there are tens of thousands of putative Class members nationwide.

60. **Commonality:** There are numerous questions of law and fact common to the Class that predominate over any questions affecting only individual members. The questions of law and fact common to this Class predominate over any question solely affecting individual members of the Class, including, but are not limited to:

- a. Whether Defendants had a policy and practice of requiring hourly employees to work off the clock;
- b. Whether Defendants provided inadequate labor budgets to its restaurant locations;
- c. Whether Defendants incentivized management employees to under report hourly employee hours;
- d. Whether Defendants were aware of widespread failure to pay hourly employees wages, minimum wages and overtime pay;
- e. Whether Defendants employed Plaintiffs and members of the Class within the meaning of the IMWL and/or other similar state statutes;
- f. Whether Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs and members of the Class;
- g. Whether Plaintiffs and members of the Class were required or encouraged through fear of discipline and reprimand to work off the clock;
- h. Whether hourly employees were clocked-out by members of management at closing;
- i. Whether hourly employees had to continue working at closing after they were clocked-out without compensation;
- j. Whether Defendant engaged in a continuing policy, pattern or practice of requiring, or encouraging through discipline and reprimand, Plaintiffs and similarly situated hourly employees to work off the clock;
- k. Whether Defendants engaged in such a continuing policy, pattern or practice to allow Defendants to require hourly employees to perform work

in excess of forty (40) hours per week without compensating them at time-and-a-half for all hours worked beyond forty (40) hours;

- l. Whether Defendants controlled the managerial and operational functions of its stores through its Corporate, District and Area offices, managers and executives;
- m. Whether Defendants, by and through their Corporate, District and Area offices, executives and managers, required, designed, fostered, knew about, encouraged and ratified a work environment where store management had to misrepresent the true hours of hourly employees to meet the strict, unreasonable and unrealistic workload and allotted employee work hours for a given week;
- n. Whether Defendants intentionally, willfully and/or knowingly failed to pay Plaintiffs and Class members for all hours worked and continued to fail to pay them all straight time owed, minimum wages and one-and-a-half times the regular rate of pay for all work performed in excess of forty (40) hours per work week;
- o. Whether Defendants fraudulently concealed the true time worked by Plaintiffs and the Class;
- p. Whether the action of the Defendants, in fraudulently concealing the true time worked by Plaintiffs and the Class, tolls the applicable statute of limitations for as long as Defendants engaged or engages in the fraudulent and misleading conduct set forth above;
- q. Whether Defendants are estopped from raising such statute of limitations as

a bar;

- r. Whether Defendants' policy, pattern or practice of not paying Plaintiffs and Class members for all straight time, minimum wages and overtime due and owing was done willfully, intentionally and/or with reckless disregard; and
- s. Whether Defendants failed to pay hourly employees for all hours worked in compliance with the IMWL, IWPCA and the similar laws of the forty-three (43) states where Defendants operate its 1900 restaurants.

61. **Typicality:** The claims of the Plaintiffs are typical of the Class.

62. **Adequacy:** Plaintiffs will fairly and adequately represent the interests of the Class and have no interests that are antagonistic to that of the Class. Plaintiffs have retained counsel that are experienced in class actions, collective actions and specifically, in class/collective actions involving wage and hour litigation.

63. **Superiority:** A class action is superior to other available methods for their fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation, where individual employees/plaintiffs either lack the financial resources or cannot justify the commitment of the large financial resources necessary to vigorously prosecute separate lawsuits in Federal court and/or State court against large corporate defendants.

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

B. THE FLSA COLLECTIVE

65. Plaintiffs bring their FLSA claims, pursuant to Section 16(b) of the FLSA. 29 U.S.C. §216(b). Under Section 16(b) FLSA violation claims are brought and maintained as an

“opt-in” Collective Action. *Id.* Under Section 16(b), the FLSA Collective is defined as:

“all current and former hourly employees that were not paid wages and overtime compensation at any time from *at least* three (3) years prior to the filing of this complaint and until a judgment is entered in this case” (the “FLSA Collective” and “FLSA Collective Period,” respectively).

Excluded from the FLSA Collective are all hourly employees of Defendants who have not and/or do not opt-in and Defendants’ legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the FLSA Collective period has had, a controlling interest in Defendants and the Judge to whom this case is assigned and any member of the Judge’s immediate family.

66. Defendants have deliberately, willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as described above, by requiring and encouraging through discipline, reprimand and termination, Plaintiffs and other similarly situated hourly employees to work off the clock or otherwise not compensate Plaintiffs and other similarly situated hourly employees for all hours worked, minimum wages and overtime pay, thereby failing and refusing to properly pay Plaintiffs and other similarly situated employees their wages and overtime compensation in accordance with §§ 206 and 207 of the FLSA. Defendants knew or should have known that such was a violation of the FLSA. Because Defendants willfully violated the FLSA by requiring Plaintiffs and the Collective to work off the clock or otherwise not compensating Plaintiffs and the Collective for all hours and overtime hours worked, at least a three (3) year statute of limitations applies to such violations, pursuant to 29 U.S.C. § 255. That period may be expanded based on equitable tolling.

67. Plaintiffs and all other similarly situated employees are similarly situated in that they all are or were subject to Defendants’ common policy, pattern or practice of requiring or

encouraging through incentives, discipline, reprimand or termination, Plaintiffs and the Collective to work off the clock or otherwise not compensating Plaintiffs and the Collective for all hours, minimum wages and overtime worked.

68. Defendants are liable for improperly compensating Plaintiffs and members of the FLSA Collective under the FLSA, and as such notice should be sent to the FLSA Collective. There are tens of thousands of similarly situated current and former hourly employees of Defendants who have been required to work off the clock or otherwise not compensated for all hours, minimum wages and overtime worked in violation of the FLSA. These current, former and future employees would benefit from the issuance of a court supervised notice of the present lawsuit and the opportunity to join in the present lawsuit. The similarly situated employees are known to Defendants and are readily identifiable through Defendants' records.

CAUSES OF ACTION

COUNT ONE

(VIOLATIONS OF THE FAIR LABOR STANDARDS ACT 29 U.S.C. §201 *ET SEQ.* PLAINTIFFS, INDIVIDUALLY, AND ON BEHALF OF THE FLSA COLLECTIVE)

69. Plaintiffs, individually and on behalf of the Class, re-allege and incorporate by reference all the preceding paragraphs, as if fully set forth herein.

70. This claim is brought against Defendants for failure to pay minimum wages, wages for time worked and failure to pay overtime for time worked beyond forty (40) hours per week in violation of the FLSA § 207.

71. Defendants willfully and intentionally has refused to pay Plaintiffs and other similarly situated current and former hourly employees their compensation according to the provisions of the FLSA.

72. Defendants' systems, policies, patterns or practices relating to its non-payment of

minimum wages, wages and overtime compensation to hourly employees have existed for at least three (3) years through Defendants' business.

73. For at least three (3) years, Defendants have been aware of the requirements of the FLSA and its corresponding regulations and its own violations of the FLSA. Despite that knowledge, Defendants have failed to pay its employees minimum wages, for all the regular hours they work during a forty (40) hour work week as well as failing to pay its employees time-and-a-half for any hours worked beyond forty (40) hours per week.

74. Defendants' actions in failing to compensate Plaintiffs, as well as all other similarly situated current and former hourly employees, in violation of the FLSA, are willful and intentional.

75. Defendants have not made a good faith effort to comply with the FLSA.

76. By reason of Defendants' violations of the FLSA, Plaintiff Brunner is now suffering and will continue to suffer irreparable injury from Defendants' unlawful conduct as set forth herein unless enjoined by this Court.

77. By reason of Defendants' violations of the FLSA, Plaintiffs are entitled to respective unpaid compensation and benefits, plus an equal amount of liquidated damages pursuant to 29 U.S.C. § 216(b), and prejudgment interest.

COUNT TWO

(ILLINOIS MINIMUM WAGE LAW AND OTHER SIMILAR STATE WAGE LAWS)

78. Plaintiffs, individually and on behalf of the Class, re-allege and incorporate by reference all the preceding paragraphs, as if fully set forth herein.

79. At all material times set forth herein, Plaintiffs were "employees" within the definition of the IMWL, 820 ILCS 105/3(c).

80. At all material times set forth herein, Defendants were an "employer" within the

definition of the IMWL, 820 ILCS 105/3(c).

81. The IMWL requires hourly employees be paid for all time worked and all overtime, equal to one and a half times the employee's regular rate of pay, for all hours worked in excess of forty (40) per week.

82. The similar laws of other states where Defendants operate restaurants require payment of minimum wages, payment for all time worked and all overtime equal to one and a half times the employee's regular rate of pay, for all hours worked in excess of forty (40) per week.

83. During the Class Period, Plaintiffs and members of the Class were not paid minimum wages, were not paid for all time worked and all overtime worked, as alleged herein.

84. Defendants willfully, intentionally and/or knowingly required, ratified and encouraged through reprimand, discipline and termination, Plaintiffs and the Class not being paid minimum wages, being paid for all hours worked and overtime hours worked, as alleged herein.

85. Plaintiffs and members of the Class were regularly not compensated minimum wages, not compensated for all time worked and overtime hours worked in excess of forty (40) hours per week, in violation of the IMWL and other applicable state wage laws.

86. Defendants' failure to comply with the IMWL, and other applicable state wage laws, was intentional, reckless and/or willful.

87. Based on the foregoing, Plaintiffs and members of the Class are entitled to recover all unpaid wages and overtime compensation, prejudgment interest, punitive damages, attorneys' fees and costs pursuant to §12(a) of the IMWL. 820 ILCS 105/12, any and all other damages allowable under the other applicable state wage laws.

COUNT THREE

**(ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND OTHER SIMILAR
STATE WAGE LAWS)**

88. Plaintiffs, individually and on behalf of the Class, re-allege and incorporate by reference all the preceding paragraphs, as if fully set forth herein.

89. At all material times set forth herein, Plaintiffs were “employees” within the definition of the IWPCA, 820 ILCS 115/2.

90. At all material times set forth herein, Defendants were an “employer” within the definition of the IWPCA, 820 ILCS 115/13.

91. The IWPCA, and other similar state wage laws, require an employer, such as Defendants, to compensate employees at minimum wages, for all hours worked, as well as overtime for work performed in excess of forty (40) hours per week.

92. Defendants failed to keep accurate records of time worked by Plaintiffs and members of the Class.

93. Defendants did not make a good faith effort to comply with the IWPCA, and other applicable state wage laws, in respect to compensating Plaintiffs and members of the Class.

94. Defendants intentionally and willfully failed and/or refused to pay Plaintiffs and members of the Class for all the work performed by them, as well as overtime for work performed in excess of forty (40) hours per week, as alleged herein.

95. Defendants’ failure to comply with the IWPCA, and other applicable state wage laws, was intentional, reckless and/or willful.

96. Based on the foregoing, Plaintiffs and members of the Class are entitled to recover all unpaid wages and overtime compensation and attorneys’ fees and costs pursuant the IWPCA, 820 ILCS 115/1 *et seq.* and other applicable state wage laws.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated hourly employees, respectfully request the following relief:

- a. Minimum wages, unpaid wages and overtime compensation under the FLSA, IMWL and IWPCA;
- b. An additional and equal amount as liquidated and/or punitive damages under the FLSA and IMWL;
- c. An order directing Defendants to supply the last known names and home addresses of all similarly situated hourly employees during the Class period (which encompasses the Collective period) to representative Plaintiffs' counsels so that Plaintiffs may be allowed to send out notice of the Class Action and FLSA Collective Action, or that the Court issue such notice, to all persons who are presently, or have, at any time during the past ten years immediately preceding the filing of this suit, been employed by Defendant as an hourly employee. Such notice should inform them that this civil action has been filed, the nature of the action, and their right to join this lawsuit if they believe they were denied wages;
- d. Pre-judgment and post-judgment interest, as provided by law;
- e. Attorneys' fees and costs under the FLSA and IMWL;
- f. Appropriate equitable and injunctive relief including an order directing Defendants to discontinue its practice of denying hourly employees minimum wages, wages and overtime pay; and
- g. Such other relief as in law or equity may pertain.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable.

Dated: August 8, 2014

Respectfully submitted,

FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC

/s/Robert M. Foote

Robert M. Foote, Esq.

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VERIFICATION

I, EMILY BRUNNER, being first duly sworn on oath hereby state that I am the Plaintiff in this action, that I have read the forgoing Complaint, and that the allegations contained herein are true and accurate to the best of my knowledge and belief.

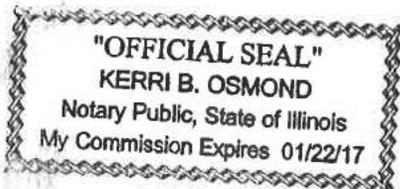
Respectfully submitted.

EMILY BRUNNER

A handwritten signature in cursive script, appearing to read "Emily Brunner", written over a horizontal line.

Subscribed and sworn to before me
this 8th day of August, 2014.

Kerri B. Osmond
NOTARY PUBLIC



VERIFICATION

I, KAROLIS KUBELSKAS, being first duly sworn on oath hereby state that I am the Plaintiff in this action, that I have read the forgoing Complaint, and that the allegations contained herein are true and accurate to the best of my knowledge and belief.

Respectfully submitted.

KAROLIS KUBELSKAS



Subscribed and sworn to before me
this 8th day of August, 2014.

Kerri B. Osmond
NOTARY PUBLIC

