

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HEBER FIGUEROA, individually and on behalf of all others
similarly situated,

Plaintiff,

**COLLECTIVE ACTION
COMPLAINT**

-against-

K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE and
SHIN JUNG, as an individual,

JURY TRIAL
REQUESTED

Defendants.
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Plaintiff, **HEBER FIGUEROA**, individually and on behalf of all others similarly situated (hereinafter referred to as "Plaintiff") by his attorneys at Helen F. Dalton & Associates, P.C., alleges, upon personal knowledge as to himself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff, through undersigned counsel, bring this action against **K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE and SHIN JUNG, as an individual**, (collectively hereinafter, "Defendants") to recover damages for Defendants' egregious violations of state and federal wage and hour laws arising out of Plaintiff's employment with the Defendants located at 5111 Church Ave., Brooklyn, NY 11203.
2. As a result of the violations of Federal and New York State labor laws delineated below, Plaintiff seeks compensatory damages and liquidated damages in an amount exceeding \$100,000.00. Plaintiff also seeks interest, attorneys' fees, costs, and all other legal and equitable remedies this Court deems appropriate.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to the FLSA, 29 U.S.C. §216 and 28 U.S.C. §1331.

4. This Court has supplemental jurisdiction over Plaintiff's other state law claims pursuant to 28 U.S.C. §1367.
5. Venue is proper in the EASTERN District of New York pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.
6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201 & 2202.

THE PARTIES

7. Plaintiff HEBER FIGUEROA residing in Brooklyn, NY, 11226, was employed by K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE from in or around August 2016 until in or around December 2021.
8. Defendant, K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE is a New York domestic business corporation, organized under the laws of the State of New York with a principal executive office located at 5111 Church Ave., Brooklyn, NY, 11203.
9. Upon information and belief, Defendant SHIN JUNG is the owner of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE.
10. Upon information and belief, Defendant SHIN JUNG is an agent of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE.
11. Upon information and belief SHIN JUNG is responsible for overseeing the daily operations of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE.
12. Upon information and belief, SHIN JUNG has power and authority over all the final personnel decisions of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE.
13. Upon information and belief, SHIN JUNG has the power and authority over all final payroll decisions of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE, including the Plaintiff.
14. Upon information and belief, SHIN JUNG has the exclusive final power to hire the employees of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE, including the Plaintiff.
15. Upon information and belief, SHIN JUNG has exclusive final power over the firing and terminating of the employees of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE, including Plaintiff.

16. Upon information and belief, SHIN JUNG is responsible for determining, establishing, and paying the wages of all employees of K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE, including the Plaintiff, setting their work schedules, and maintaining all their employment records of the business.
17. Accordingly, at all relevant times hereto, Defendant SHIN JUNG was Plaintiff's employer within the meaning and the intent of the FLSA, and the NYLL.
18. At all times relevant to the allegations contained in the complaint, Corporate Defendants were, and are, enterprises engaged in interstate commerce within the meaning of the FLSA in that K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE (i) has purchased goods, tools, and supplies for its business through the streams and channels of interstate commerce, and has had employees engaged in interstate commerce, and/ or in the production of goods intended for commerce, and handle, sell and otherwise work with goods and material that have been moved in or produced for commerce by any person: and (ii) has had annual gross volume of sales of not less than \$500,000.00.

FACTUAL ALLEGATIONS

19. Plaintiff HEBER FIGUEROA was employed by K&S FARM BROOKLYN INC. d/b/a K&S FRUIT STORE, as a vegetable sorter, produce sorter, stocker and cashier while performing related miscellaneous duties for the Defendants, from in or around August 2016 until in or around December 2021.
20. Plaintiff HEBER FIGUEROA regularly worked five (5) days per week from in or around August 2016 until in or around December 2021.
21. Throughout Plaintiff HEBER FIGUEROA's employment with the Defendants, Plaintiff regularly worked a schedule of shifts consisting of: i) one (1) shift beginning at approximately 9:00 a.m. and ending at approximately 8:00 p.m.; ii) three (3) shifts beginning at approximately 8:00 a.m. and ending at approximately 6:00 p.m.; and iii) one (1) shift beginning at approximately 8:00 a.m. and ending at approximately 8:00 p.m.
22. Thus, Plaintiff was regularly required to work fifty-three (53) hours or more hours, from in or around August 2016 until in or around December 2021.

23. Plaintiff HEBER FIGUEROA was paid by Defendants at a rate of:
 - i. approximately \$700.00 per week from in or around August 2016 until in or around December 2017;
 - ii. approximately \$13.00 per hour from in or around January 2018 until in or around December 2018;
 - iii. approximately \$15.00 per hour from in or around January 2019 until in or around December 2021.
24. Although Plaintiff regularly worked fifty-three (53) hours or more hours, from in or around August 2016 until in or around December 2021, the Defendants did not pay Plaintiff at a wage rate of time and a half (1.5) for his hours regularly worked over forty (40) in a work week, a blatant violation of the overtime provisions contained in the FLSA and NYLL.
25. Additionally, Plaintiff HEBER FIGUEROA worked in excess of ten (10) or more hours per day approximately two (2) days a week from in or around August 2016 until in or around December 2021, however, Defendants did not pay Plaintiff an extra hour at the legally prescribed minimum wage for each day worked over ten (10) hours, a blatant violation of the spread of hours provisions contained in the NYLL.
26. Upon information and belief, Defendants willfully failed to post notices of the minimum wage and overtime wage requirements in a conspicuous place at the location of their employment as required by both the NYLL and the FLSA.
27. Upon information and belief, Defendants willfully failed to keep payroll records as required by both NYLL and the FLSA.
28. Additionally, Defendants willfully failed to provide Plaintiff with a written notice, in English, of his applicable regular rate of pay, regular pay day, and all such information as required by NYLL §195(1).
29. Upon information and belief, Defendants willfully failed to provide Plaintiff with any wage statements, upon each payment of his wages, as required by NYLL §195(3).
30. As a result of these violations of Federal and New York State labor laws, Plaintiff seeks compensatory damages and liquidated damages in an amount exceeding \$100,000.00. Plaintiff also seeks statutory interest, attorneys' fees, costs, and all other legal and equitable remedies this Court deems appropriate.

COLLECTIVE ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of themselves, and other employees similarly situated as authorized under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated are hereafter, the “Collective Class.”
32. Collective Class: All persons who are or have been employed by the Defendants as vegetable sorters, produce sorters, stockers, cashiers or any other similarly titled personnel with substantially similar job requirements and pay provisions, who were performing the same sort of functions for Defendants, other than the executive and management positions, who have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans including willfully failing and refusing to pay required overtime wages.
33. Upon information and belief, Defendants employed 10 to 15 employees or more during the relevant statutory period who Defendants subject(ed) to similar unlawful payment structures that violated applicable law.
34. Defendants suffered and permitted Plaintiff - and the Collective Class - to regularly work more than forty hours per week without appropriate overtime compensation.
35. Defendants’ unlawful conduct herein has been widespread, repeated, and consistent.
36. Defendants had knowledge that the Plaintiff and the Collective Class regularly performed work requiring overtime pay.
37. Defendants’ conduct as set forth in this Complaint, was willful and in bad faith - and has caused significant damages to Plaintiff, as well as the Collective Class.
38. Defendants are liable under the FLSA for failing to properly compensate Plaintiff, and the Collective Class, and as such, notice should be sent to the Collective Class. There are numerous similarly situated current and former employees of Defendants who have been denied overtime pay and proper minimum wage pay in violation of the FLSA and NYLL, who would benefit from the issuance of a 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 through Defendants’ records.

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