

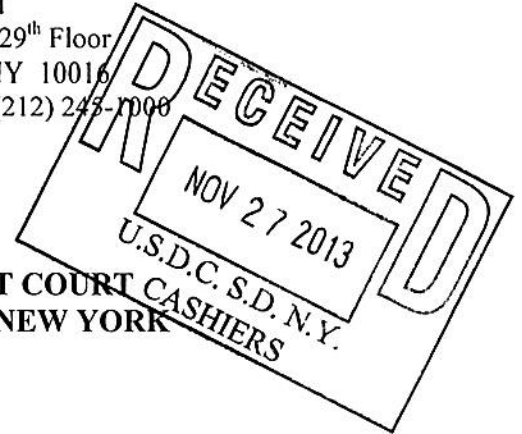
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13 CV 8487



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**MICHAEL BACCOLLO on behalf of himself and  
all others similarly situated,**

**Plaintiff,**

**-against-**

**MUY! Brands, LLC, and QUICK SERVICE  
MANAGEMENT, LLC,**

**Defendants.**

**CLASS ACTION  
COMPLAINT**

Plaintiff Michael Baccollo ("Plaintiff"), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover overtime compensation and spread-of-hours pay for Plaintiff and his similarly situated co-workers, Assistant General Managers and/or Assistant Managers (hereinafter "AGM"), who work or have worked for Defendants MUY! Brands, LLC and Quick Service Management, LLC, at all Taco Bell restaurants owned and operated by MUY! Brand Restaurants nationwide (collectively "Defendants").

2. MUY! Brands, LLC, ("MUY") is one of the top 10 franchisees for Yum! Brands Inc. MUY was founded in 2003 by President and CEO Jim Bodenstedt with the acquisition of 18 Taco Bell and Kentucky Fried Chicken ("KFC") restaurants in Texas. Since its initial formation,

MUY has grown into one of the largest private restaurant employers in the United States with over 9,000 employees.

3. MUY operates well-known fast-food or “quick service” franchises throughout the United States including KFC, Long John Silver’s, Pizza Hut, Taco Bell and A&W. Through MUY’s successful utilization of these famous brands, MUY has become the 14th largest private Franchise Restaurant Company in the United States.

4. From Defendants’ headquarters in San Antonio, Texas, Defendants manage and control their fast food empire. As part of this control, Defendants operate their Restaurant Support Center (“RSC”).

5. The RSC is vested with the power and responsibility for human resources, payroll, and other issues for all of Defendants’ restaurants.

6. In addition to the RSC, Defendants provide all of their fast food employees with a uniform handbook that contains Defendants’ employment policies. These policies include, but are not limited to, employee compensation, performance reviews, benefits, and performance standards.

7. Defendants’ employees freely transfer between its restaurants, and are sometimes shared between restaurants, without significant retraining.

8. At Defendants’ Taco Bell restaurants, AGMs spend the majority of their shifts at the counter taking customer orders, in the kitchen bagging and plating customer orders, preparing food for customers, operating the cash register, cleaning and/or assisting customers at the drive through window.

9. Regardless of the number of hours worked, AGMs do not receive overtime compensation.

10. Defendants classify all AGMs as “executives” and exempt from overtime pay.
11. AGMs’ primary duties are food preparation, customer service, and cleaning, and are similar to the duties performed by hourly non-exempt employees.
12. Defendants cannot demonstrate that AGMs were compensated on a salary basis as Plaintiff’s paystubs reveal that Plaintiff was paid by the day and/or per hour.
13. AGMs should be classified as non-exempt from the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), New York Labor Law (“NYLL”), Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and New Jersey Wage and Hour Law (“NJWHL”), N.J. Stat. Ann. § 34:11-56a *et seq.*
14. Upon information and belief, Defendants applied the same compensation and employment policies, practices, and procedures to all AGMs nationwide.
15. Plaintiff brings this action on behalf of himself and similarly situated current and former AGMs nationwide who elect to opt-in to this action pursuant to the FLSA, 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 Plaintiff and other similarly situated employees of their lawfully earned wages.
16. Plaintiff also brings this action on behalf of himself and all similarly situated current and former AGMs who work and/or worked in New York and New Jersey pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL and NJWHL.

## **THE PARTIES**

### **Plaintiff**

#### **Michael Baccollo**

17. Michael Baccollo (“Baccollo”) is a resident of Dumont, New Jersey.

18. From on or around November 18, 2012 to December 2012, Baccollo was employed as an AGM at Defendants' Taco Bell restaurant located at 1560 Route 46, Parsippany, New Jersey 07054.

19. From in or around December 2012 to May 16, 2013, Baccollo was employed as an AGM at Defendants' Taco Bell restaurant located at 131 Route 9 West, West Haverstraw, New York 10993.

20. As an AGM, Baccollo frequently performed the functions of non-exempt hourly employees. Defendants knew about this practice and encouraged this practice in order to reduce labor costs.

21. Baccollo frequently worked over 40 hours per week with a maximum of approximately 64.5 hours per week. In that regard, Baccollo was regularly scheduled to work at least 50 hours per week and often would pick up additional shifts or work beyond his scheduled shift.

22. Defendants did not pay Baccollo premium overtime pay when he worked over 40 hours in a workweek.

23. Defendants did not pay Baccollo spread-of-hours pay when the length of his workday was greater than 10 hours.

24. Baccollo is a covered employee within the meaning of the FLSA, NYLL, and NJWHL.

25. A written consent form for Baccollo is being filed as an attachment to this Class Action Complaint.

## **Defendants**

26. Defendants MUY and Quick Service Management, LLC jointly employed Plaintiff and similarly situated employees at all times relevant.

27. Each Defendant has had substantial control over Plaintiff's working conditions, and over the unlawful policies and practices alleged herein.

28. Defendants are part of a single integrated enterprise that jointly employed Plaintiff and similarly situated employees at all times relevant.

29. Defendants' operations are interrelated and unified.

30. During all relevant times, Defendants' Taco Bell restaurants shared a common management and was centrally controlled and/or owned by Defendants.

### **MUY! Brands, LLC**

31. MUY has owned and/or operated Taco Bell restaurants during the relevant period.

32. MUY is a foreign limited liability company organized and existing under the laws of Texas.

33. Upon information and belief, MUY's principal executive office is located at 17890 Blanco Rd., San Antonio, Texas 78232.

34. At all times relevant, MUY has been the corporate entity listed on Plaintiff's paychecks.

35. MUY is a covered employer within the meaning of the FLSA, NYLL, and NJWHL and, at all times relevant, employed Plaintiff and similarly situated employees.

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

37. MUY applies the same employment policies, practices, and procedures to all AGMs at Defendants' Taco Bell restaurants nationwide, including policies, practices, and procedures with respect to the payment of overtime compensation and spread-of-hours pay.

38. Upon information and belief, at all times relevant, MUY's annual gross volume of sales made or business done was not less than \$500,000.00.

**Quick Service Management, LLC**

39. Quick Service Management, LLC ("Quick Service") has owned and/or operated Taco Bell restaurants during the relevant period.

40. Quick Service is a foreign limited liability company organized and existing under the laws of New Jersey.

41. Upon information and belief, Quick Service's principal executive office is located at 1 Palmer Terr. #100, Carlstadt, New Jersey 07072.

42. Upon information and belief, Quick Service is a wholly owned subsidiary of MUY.

43. At all times relevant, Quick Service has been the corporate entity listed on Plaintiff's paychecks.

44. Quick Service is a covered employer within the meaning of the FLSA, NYLL, and NJWHL and, at all times relevant, employed Plaintiff and similarly situated employees.

45. At all times relevant, Quick Service maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

46. Quick Service applies the same employment policies, practices, and procedures to all AGMs at Defendants' Taco Bell restaurants nationwide, including policies, practices, and

procedures with respect to the payment of overtime compensation and spread-of-hours pay.

47. Upon information and belief, Quick Service was purchased by MUY in or around 2012.

48. Upon information and belief, at all times relevant, Quick Service's annual gross volume of sales made or business done was not less than \$500,000.00.

### **JURISDICTION AND VENUE**

49. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, diversity jurisdiction pursuant to 28 U.S.C. § 1332, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

50. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

51. The amount in controversy in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

52. At least one member of the proposed class is a citizen of a state different from that of at least one Defendant.

53. Plaintiff's claims involve matters of national or interstate interest.

54. Citizenship of the members of the proposed class is dispersed among a substantial number of states.

55. Upon information and belief, greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are not citizens of the same state.

56. Upon information and belief, Defendants reside in New Jersey and Texas.

57. Upon information and belief, Defendants are subject to personal jurisdiction in New York.

58. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

59. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

### **COLLECTIVE ACTION ALLEGATIONS**

60. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of himself and all similarly situated persons who have worked as AGMs at Defendants' Taco Bell restaurants nationwide, who elect to opt-in to this action (the "FLSA Collective").

61. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and other similarly situated AGMs.

62. Consistent with Defendants' policy and pattern or practice, Plaintiff and the members of the FLSA Collective were not paid premium overtime compensation when they worked beyond 40 hours in a workweek.

63. All of the work that Plaintiff and the members of the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

64. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the members of FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiff and the members of the FLSA Collective, premium overtime wages for hours that they worked in excess of 40 hours per workweek;



- (b) willfully misclassifying Plaintiff and the members of the FLSA Collective as exempt from the protections of the FLSA; and
- (c) willfully failing to record all of the time that its employees, including Plaintiff and the members of the FLSA Collective, have worked for the benefit of Defendants.

65. Defendants are aware or should have been aware that federal law required them to pay Plaintiff and the members of the FLSA Collective overtime premiums for hours worked in excess of 40 per workweek.

66. Plaintiff and the members of the FLSA Collective perform or performed the same primary duties.

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

68. There are many similarly situated current and former AGMs who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

69. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

70. Those similarly situated employees are known to Defendants, are readily identifiable and can be located through Defendants' records.

#### **NEW YORK CLASS ACTION ALLEGATIONS**

71. Plaintiff brings the Second, Third, and Fourth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as an Assistant General Manager and/or Assistant Manager and similar employees at Taco Bell restaurants owned and/or operated by MUY! Brands, LLC, in New York between November 27, 2007 and the date of final judgment in this matter (the "NY Rule 23 Class").

72. Excluded from the NY Rule 23 Class are Defendants, 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(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the NY Rule 23 Class.

73. The members of the NY Rule 23 Class are so numerous that joinder of all members is impracticable.

74. Upon information and belief, the size of the NY Rule 23 Class is at least 100 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

75. Defendants have acted or have refused to act on grounds generally applicable to the NY Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the NY Rule 23 Class as a whole.

76. Common questions of law and fact exist as to the NY Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL, Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- (b) whether Defendants failed to compensate Plaintiff and the NY Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (c) whether Defendants misclassified Plaintiff and the NY Rule 23 Class;
- (d) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the NY Rule 23 Class, and other records required by the NYLL;
- (e) whether Defendants failed to provide Plaintiff and the NY Rule 23 Class spread-of-hours pay when the length of their workday was greater than 10 hours;
- (f) whether Defendants failed to furnish Plaintiff and the NY Rule 23 Class with required wage notices and/or accurate statements of wages, hours worked, rates paid, and gross wages as required by the NYLL;

- (g) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (h) the nature and extent of class-wide injury and the measure of damages for those injuries.

77. The claims of Plaintiff are typical of the claims of the NY Rule 23 Class he seeks to represent.

78. Plaintiff and all of the NY Rule 23 Class members work, or have worked, for Defendants as AGMs.

79. Plaintiff and the NY Rule 23 Class members enjoy the same statutory rights under the NYLL, including to be paid for all hours worked, to be paid overtime wages and spread-of-hours pay. Plaintiff and the NY Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiff and the NY Rule 23 Class members have all been injured in that they have been under-compensated due to Defendants' common policies, practices, and patterns of conduct.

80. Plaintiff will fairly and adequately represent and protect the interests of the members of the NY Rule 23 Class. Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and

experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the NY Rule 23 Class members.

81. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the NY Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' violations of the NYLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual NY Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

82. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

#### **NEW JERSEY CLASS ACTION ALLEGATIONS**

83. Plaintiff brings the Fifth Cause of Action, a NJWHL claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as an Assistant General Manager and/or Assistant Manager and similar employees at Taco Bell restaurants owned and/or operated by MUY! Brands, LLC, in New Jersey between November 27, 2011 and the date of final judgment in this matter (the "NJ Rule 23 Class").

84. Excluded from the NJ Rule 23 Class are Defendants, 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(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the NJ Rule 23 Class.

85. The members of the NJ Rule 23 Class are so numerous that joinder of all members is impracticable.

86. Upon information and belief, the size of the NJ Rule 23 Class is at least 100 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

87. Defendants have acted or have refused to act on grounds generally applicable to the NJ Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the NJ Rule 23 Class as a whole.

88. Common questions of law and fact exist as to the NJ Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendants violated the NJWHL;
- (b) whether Defendants failed to compensate Plaintiff and the NJ Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (c) whether Defendants misclassified Plaintiff and members of the NJ Rule 23 Class;
- (d) whether Defendants failed to keep true and accurate time and pay records for all hours worked by the Plaintiff and the NJ Rule 23 Class, and other records required by the NJWHL;
- (e) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (f) the nature and extent of class-wide injury and the measure of damages for those injuries.

89. The claims of Plaintiff are typical of the claims of the NJ Rule 23 Class he seeks

to represent.

90. Plaintiff and all of the NJ Rule 23 Class members work, or have worked, for Defendants as AGMs.

91. Plaintiff and the NJ Rule 23 Class members enjoy the same statutory rights under the NJWHL, including to be paid for all hours worked and to be paid overtime wages. Plaintiff and the NJ Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NJWHL. Plaintiff and the NJ Rule 23 Class members have all been injured in that they have been under-compensated due to Defendants' common policies, practices, and patterns of conduct.

92. Plaintiff will fairly and adequately represent and protect the interests of the members of the NJ Rule 23 Class. Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the NJ Rule 23 Class members.

93. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the NJ Rule 23 Class have been damaged and are

entitled to recovery as a result of Defendants' violations of the NJWHL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual NJ Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

94. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

#### **COMMON FACTUAL ALLEGATIONS**

95. Throughout their employment with Defendants, Plaintiff and the members of the FLSA Collective, the NY Rule 23 Class, and the NJ Rule 23 Class (collectively "Class Members") consistently worked more than 40 hours per week.

96. Plaintiff's and the Class Members' duties were assigned to them by Defendants through their superiors.

97. Defendants were aware that Plaintiff and the Class Members worked more than 40 hours per workweek, yet Defendants failed to pay overtime compensation for hours worked over 40 in a workweek.

98. Defendants did not keep accurate records of hours worked by Plaintiff or the Class Members.

99. Plaintiff's and the Class Members' work hours are not recorded on paystubs.

100. Plaintiff's and the Class Members' primary duties were routine, non-exempt tasks including:

- a. greeting customers;
- b. serving customers,
- c. preparing food;
- d. plating and wrapping orders for customers;
- e. operating the drive through window;
- f. cleaning and general maintenance; and
- g. operating the cash register.

101. Plaintiff and the Class Members spent the majority of their time serving customers, preparing food, and performing the same or similar tasks to hourly non-exempt employees.

102. Plaintiff's and the Class Members' duties did not differ substantially from the duties of hourly non-exempt employees.

103. Plaintiff's and the Class Members' primary job duties as AGMs did not include:

- a. Hiring;
- b. Firing;
- c. Making recommendations for hiring, firing, or other employment decisions; or
- d. Scheduling.

104. Plaintiff's and the Class Members' primary duty was not directly related to Defendants or Defendants' customers' management or general business operations.

105. Plaintiff's and the Class Members' primary duty did not include the exercise of discretion or independent judgment regarding matters of significance.



106. In that regard, Plaintiff and the Class Members:
- a. was not involved in planning Defendants' long or short term business objectives;
  - b. could not formulate, affect, implement or interpret Defendants' management policies or operating practices;
  - c. did not carry out major assignments that affected Defendants' business operations;
  - d. did not have authority to commit Defendants in matters that have significant financial impact; and
  - e. could not waive or deviate from Defendants' established policies or procedures without prior approval.
107. Plaintiff's and the Class Members' primary duties were manual in nature.
108. The performance of manual labor duties occupied the majority of Plaintiff's and the Class Members' working hours.

**FIRST CAUSE OF ACTION**  
**Fair Labor Standards Act – Overtime Wages**  
**(Brought on behalf of Plaintiff and the FLSA Collective)**

109. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
110. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Complaint.
111. At all relevant times, Plaintiff and the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).
112. At all relevant times, Defendants employed Plaintiff and the FLSA Collective.
113. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

114. At all relevant times, Defendants have been an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

115. At all times relevant, Plaintiff and the FLSA Collective were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

116. Defendants have failed to pay Plaintiff and the FLSA Collective the overtime wages to which they are entitled under the FLSA.

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

118. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the FLSA Collective.

119. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

120. As a result of Defendants' willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

As a result of the unlawful acts of Defendants, Plaintiff and the FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**  
**New York Labor Law – Unpaid Overtime**  
**(Brought on behalf of Plaintiff and the NY Rule 23 Class)**

121. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

122. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff and the members of the NY Rule 23 Class.

123. Defendants have failed to pay Plaintiff and the members of the NY Rule 23 Class the premium overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations for all hours worked beyond 40 per workweek.

124. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the members of the NY Rule 23 Class.

125. Through their knowing or intentional failure to pay Plaintiff and the members of the NY Rule 23 Class overtime wages for hours worked in excess of 40 hours per workweek, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

126. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**THIRD CAUSE OF ACTION**  
**New York Labor Law – Spread-of-Hours Pay**  
**(Brought on behalf of Plaintiff and the NY Rule 23 Class)**

127. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

128. Defendants failed to pay Plaintiff and the members of the NY Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

129. Through their knowing or intentional failure to pay Plaintiff and the members of the NY Rule 23 Class spread-of-hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

130. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the NY Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

#### **FOURTH CAUSE OF ACTION**

##### **New York Labor Law – Failure to Provide Annual Wage Notices (Brought on behalf of Plaintiff and the members of the NY Rule 23 Class)**

131. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

132. Defendants have willfully failed to supply Plaintiff and the members of the NY Rule 23 Class with notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiff as his primary language, containing Plaintiff's 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 NYLL, Article 6, § 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.

133. Through its knowing or intentional failure to provide Plaintiff and the members of the NY Rule 23 Class with the annual wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

134. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiff and the members of the NY Rule 23 Class are entitled to statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiff with accurate wage statements, or a total of twenty-five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

**FIFTH CAUSE OF ACTION**  
**New Jersey Wage and Hour Law – Unpaid Overtime**  
**(Brought on behalf of Plaintiff and the members of the NJ Rule 23 Class)**

135. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

136. Defendants have engaged in a widespread pattern, policy, or practice of violating the NJWHL, as detailed in this Class and Collective Action Complaint.

137. At all times relevant Plaintiff and the members of the NJ Rule 23 Class have been employees and Defendants have been employers within the meaning of the NJWHL. Plaintiff and the members of the NJ Rule 23 Class are covered by the NJWHL.

138. Defendants employed Plaintiff and the NJ Rule 23 Class members as an employer and/or a joint employer.

139. Defendants failed to pay Plaintiff and the members of the NJ Rule 23 Class wages to which they are entitled under the NJWHL. Defendants failed to pay Plaintiff for all hours worked. Defendants failed to pay Plaintiff and the members of the NJ Rule 23 Class for overtime at a wage rate of one and one-half times their regular rate of pay. Defendants failed to pay Plaintiff and the NJ Rule 23 Class overtime at a rate of one and one-half times the basic minimum hourly rate.

140. Defendants failed to keep, make, preserve, maintain, and furnish accurate record of time worked by Plaintiff and the NJ Rule 23 Class members.

141. Defendants' violations of the NJWHL, as described in this Class and Collective Action Complaint, have been willful and intentional.

142. Due to Defendants' violations of the NJWHL, Plaintiff and the members of the NJ Rule 23 Class are entitled to recover from Defendants their unpaid wages (including overtime wages) and reasonable attorneys' fees and costs of the action.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all AGMs who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at Taco Bell restaurants owned and/or operated by MUY! Brands, LLC. 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. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- D. Designation of Plaintiff as representative of the NY Rule 23 Class and NJ Rule 23 Class and counsel of record as Class Counsel;
- E. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the appropriate state law.
- F. Unpaid overtime pay, liquidated damages, and penalties as permitted by law pursuant to the state law claims;
- G. Unpaid spread-of-hours pay and liquidated damages permitted by law pursuant to the NYLL;
- H. Statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiff and the members of the NY Rule 23 Class with a wage notice, or a total of twenty-five hundred dollars, as provided for by NYLL, Article 6 § 198;
- I. Prejudgment and post-judgment interest;
- J. An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the appropriate state laws;
- K. Reasonable attorneys' fees and costs of the action;
- L. Reasonable service awards for Plaintiffs to compensate for the time and effort expended on behalf of the Class Members and for the risks Plaintiffs undertook in filing this lawsuit; and
- M. Such other relief as this Court shall deem just and proper.

Dated: New York, New York  
November 27, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian S. Schaffer', written over a horizontal line.

Brian S. Schaffer

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*Attorneys for Plaintiff and  
the Putative Class*



FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against MUY Brands LLC and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216 (b).

2. By signing and returning this consent form, I hereby designate Fitapelli & Schaffer, LLP, ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

  
Signature

Michael Anthony Baccollo  
Full Legal Name (Print)

