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Attorneys for Named Plaintiff, proposed FLSA Collective Plaintiffs, and proposed Class

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

**THOMAS A. SMITH, on behalf of
himself and all others similarly situated,**

Plaintiff,

v.

**J & B RESTAURANT PARTNERS OF
NYDMA, LLC, J & B RESTAURANT
PARTNERS HOLDING COMPANY OF
LONG ISLAND, LLC, J & B
RESTAURANT PARTNERS OF LONG
ISLAND, LLC, J & B RESTAURANT
CORP., J & B RESTAURANT NY INC.,
J & B RESTAURANT PARTNERS
BEACH SHOP LLC, J & B
RESTAURANT PARTNERS FAMILY
DINING, LLC, J & B RESTAURANT
PARTNERS FAST FOOD, LLC, J & B
RESTAURANT PARTNERS OF
BRICKTOWN NJ, LLC, J & B
RESTAURANT PARTNERS OF
CENTEREACH, INC., J & B
RESTAURANT PARTNERS OF
COPIAGUE, LLC, J & B
RESTAURANT PARTNERS OF CT,
LLC, J & B RESTAURANT PARTNERS**

COMPLAINT

**FLSA COLLECTIVE ACTION AND
RULE 23 CLASS ACTION**

JURY TRIAL DEMANDED

OF EAST NORTHPORT, INC., J & B)
RESTAURANT PARTNERS OF)
FOREST AVENUE INC., J & B)
RESTAURANT PARTNERS OF)
HAMPTON BAYS, LLC, J & B)
RESTAURANT PARTNERS OF)
HICKSVILLE MALL, INC. J & B)
RESTAURANT PARTNERS OF)
HICKSVILLE, LLC, J & B)
RESTAURANT PARTNERS OF)
HYLAN BLVD. INC., J & B)
RESTAURANT PARTNERS OF LAKE)
GROVE, LLC, J & B RESTAURANT)
PARTNERS OF LONG ISLAND)
HOLDING CO., LLC, J & B)
RESTAURANT PARTNERS OF LONG)
ISLAND II, LLC, J & B RESTAURANT)
PARTNERS OF LONG ISLAND III,)
LLC, J & B RESTAURANT PARTNERS)
OF MASSAPEQUA PARK, LLC, J & B)
RESTAURANT PARTNERS OF)
MIDDLE ISLAND, LLC, J & B)
RESTAURANT PARTNERS OF)
NASSAU COLLEGE, LLC, J & B)
RESTAURANT PARTNERS OF NJ,)
LLC, J & B RESTAURANT PARTNERS)
OF NY, LLC, JOSEPH P. VITRANO,)
Individually and as President, and)
PERRY TUCCIARONE, Individually)
and as Director of Operations, GERRY)
SNEARLY, Individually and as Chief)
Financial Officer, GREG ALAGNA,)
Individually and as Senior Vice President)
of Operations, DAWN PETITE,)
Individually and as the Vice President of)
Operations)

Defendants.

Plaintiff, on behalf of himself and all other similarly situated employees, by his undersigned attorneys, allege upon personal knowledge as to himself and upon information, reasonable inference and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action against the named Defendants (“J & B”) pursuant to the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and supporting federal regulations at 29 C.F.R. §§ 541 *et seq.* and the New York Labor Law, Article 19, §§ 650 *et seq.* (“NYLL”), and supporting New York State Department of Labor regulations, N.J. Stat. § 34:11-56a4.

2. J & B, pursuant to a franchise agreement with Friendly’s Restaurants Inc. (“Friendly’s”), operates 102 Friendly’s restaurant establishments as a single integrated enterprise with headquarters located in Ronkonkoma, New York and Bohemia, New York, within the jurisdiction of this Court. J & B operates 41 Friendly’s restaurants in New York, 44 Friendly’s Restaurants in New Jersey and 17 Friendly’s Restaurants in Connecticut.

3. J & B, at all times material to this action, has regulated the employment of all persons employed by J & B, acted directly and indirectly in J & B’s interest in relation to said employees, and was thus an employer of said employees within the meaning of section 3(d) of the FLSA.

4. The business activities of J & B, as described herein, are related and performed through unified operation or common control for a common business purpose and constitute an enterprise engaged in commerce within the meaning of section 3(r) of the FLSA.

5. At all times hereinafter mentioned, J & B has employed and is employing employees in and about their places of business in the activities of said enterprise engaged in commerce, including employees handling or selling goods or materials that have been moved in or produced for commerce. Defendant enterprise has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, the employees of J & B are employed in an enterprise engaged in commerce within the meaning of section 3(s)(1)(A) of the FLSA.

6. J & B in many workweeks willfully and repeatedly has violated, and is still violating, the provisions of sections 7 and 15(a)(2) of the FLSA by employing many of their assistant manager employees for workweeks longer than those prescribed in section 7 of the FLSA without compensating Assistant Managers for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed. Therefore, J & B is liable for unpaid overtime compensation and an equal amount in liquidated damages pursuant to section 16(c) of the FLSA, or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest on all unpaid overtime compensation due.

7. J & B employed Plaintiff and similarly situated employees without compensating them for work in excess of 40 hours per week, although such employees routinely worked at least 50 hours per week.

8. J & B designed the assistant manager position to be scheduled for fifty (50) hours of work per week.

9. J & B's uniform policy and consistent practice of requiring or permitting overtime work without compensation is a common policy that violates the FLSA and NYLL.

10. Plaintiff brings this action on behalf of himself and similarly situated current and former assistant managers 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 overtime provisions of the FLSA by J & B that have deprived Plaintiff and other similarly situated current and former assistant managers of their lawfully earned overtime wages.

11. Plaintiff also brings this action on behalf of himself and similarly situated current and former employees who work(ed) at any New York location pursuant to Fed. R. Civ. P. 23 to remedy violations of New York law.

JURISDICTION AND VENUE

12. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the FLSA. This Court has supplemental jurisdiction over the New York state law claims as they are so related to the claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

13. Plaintiff's claims involve interstate commerce and the enforcement of state and federal wage and hour standards and national labor policy.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because J & B's headquarters are located in this District, J & B does substantial business in this District and

because a substantial part of the employment giving rise to the claims alleged herein occurred within this District.

THE PARTIES

15. Defendant corporations and individuals (collectively “J & B”) are related entities organized as corporations in New York, New Jersey, and Connecticut. J & B is a franchise of Friendly’s Restaurants, Inc. (“Friendly’s”) which operates over five hundred casual dining restaurants in the United States. J & B owns and operates 41 Friendly’s restaurants in New York, 44 Friendly’s restaurants in New Jersey, and 17 Friendly’s restaurants in Connecticut.

16. J & B issued paychecks to Plaintiff, putative FLSA Collective members, and putative Class members, transferred Plaintiff and other employees from one Friendly’s restaurant location to another and is engaged in commerce with its annual gross volume of sales made or business done in excess of \$500,000. J & B operates the identified Friendly’s restaurant establishments in a similar manner to serve signature sandwiches, entrees and ice cream desserts to promote strong customer brand recognition and loyalty. J & B commonly owns and manages its Friendly’s restaurant establishments for a unified business purpose.

17. J & B is an integrated enterprise engaged in commerce with its headquarters located in Ronkonkoma, New York operating Friendly’s restaurants at the following locations:

New York: 552 Franklin Avenue, Franklin Square, NY 11010; 477 Tuckahoe Road, Yonkers, NY 10710; 230 Jericho Turnpike, Mineola, NY 11501; 945 Merrick Road, Baldwin, NY 11510; 1826 Hempstead Turnpike, East Meadow, NY 11554; 361 N. Central Street, Hartsdale, NY 10530; 1060 Stelton Road, Piscataway, NJ 08854; 2640 Merrick Road, Bellmore,

NY 11710; 285-13A S. Broadway, Hicksville, NY 11801; 3287 Hempstead Turnpike, Levittown, NY 11756; 1187 Wantagh Avenue North, Wantagh, NY 11793; 150 Jericho Turnpike, Syosset, NY 11791; 555 Broadway, Massapequa, NY 11758; 15 North Airmont Road, Suffern, NY 10901; 4812 Sunrise Highway, Massapequa Park, NY 11762; 330 Fulton Street, Farmingdale, NY 11375; 960 Montauk Highway, Copiague, NY 11726; 292 Little East Neck Road, West Babylon, NY 11704; 1192 Deer Park Avenue, North Babylon, NY 11703; 445 East Main Street, Mount Kisco, NY 10549; 2151 Jericho Turnpike, Commack, NY 11725; 361 Larkfield Road, East Northport, NY 11731; 298 Montauk Avenue, Bay Shore, NY 11706; 1983 Commerce Street, Yorktown Heights, NY 10598; 50 Montauk Highway, East Islip, NY 11730; 220 Mount Pleasant Road, Smithtown, NY 11787; 201 Hallock Road, Stony Brook, NY 11790; 553 Hawkins Avenue, Lake Ronkonkoma, NY 11779; 2 Stoneleigh Avenue, Carmel, NY 10512; 210 Montauk Highway, Sayville, NY 11782; 31 Matthews Street, Goshen, NY 10924; 996 Middle Country Road, Selden, NY 11784; 522 East Main Street, Patchogue, NY 11772; 2220 Route 112, Coram, NY 11727; 364 Route 211, East Middletown, NY 10940; 275 Route 25A, Miller Place, NY 11764; 700-80 Route 101 Medford, NY 11763; 1053 Main Street, Fishkill, NY 12524; 848 Middle Country Road, Middle Island, NY 11953; 940 Montauk Highway, Shirley, NY 11967; 949 Old Country Road, Riverhead, NY 11901; 146 W. Montauk Highway, Hampton Bays, NY 11946; 1354 Ulster Avenue, Kingston, NY 12401

New Jersey: 1243 Broad Street, Bloomfield, NJ 07003; 240 Rte 46, East Elmwood Park, NJ 07407; 114 County Road, Tenafly, NJ 07670; 1463 Raritan Road, Clark NJ 07066; 441 Hillsdale Avenue, Hillsdale, NJ 07642; 195 Godwin Avenue, Midland Park, NJ 07432; 75 South

Street, New Providence, NJ 07974; 550 Middlesex Avenue, Metuchen, NJ 08840; 3201 State Hwy 35, Hazlet, NJ 07730; 1230 Highway 35, Middletown, NJ 07748; 192 Madison Avenue, Convent Station, NJ 07961; 575 Pompton Turnpike, Pompton Plains, NJ 07444; 435 Speedwell Avenue, Morris Plains, NJ 07950; 180 Ferry Road, Old Bridge, NJ 08857; 108 Morristown Road, Bernardsville, NJ 07924; 301 Mount Hope Avenue, Suite 1040, Rockaway, NJ 07866; 882 Route 22, Somerville, NJ 08876; 3710 Route 9 Raceway Mall, Freehold, NJ 07728; 349 County Line Road, Jackson, NJ 08527; 304 Mountain Avenue, Hackettstown, NJ 07840; 455 State Route 23, Sussex, NJ 07461; 9 Hampton House Road, Newton, NJ 07860; 1031 Washington Boulevard, Robbinsville, NJ 08691; 1210 Hooper Avenue, Toms River, NJ 08753; 981 Route 37 West, Toms River, NJ 08753; 1186 Route 22, East Phillipsburg, NJ 08865; 2102 Mt. Holly Road, Burlington, NJ 08016; 555 High Street, Mount Holly, NJ 08060; 3047 Route 38, Mount Laurel, NJ 08054; 505 Route 130, Cinnaminson, NJ 08077; Route 70 West, Marlton, NJ 08053; 1598 Nixon Road, Moorestown, NJ 08057; 2250 Route 70 West, Cherry Hill, NJ 08002; 670 Cuthbert Road, Westmont, NJ 08108; 890 Berlin Road, Voorhees, NJ 08043; 1337 Blackwood Clementon Road, Clementon, NJ 08021; 1220 Hurffville Road, Deptford, NJ 08096; 5700 Route 42, Turnersville, NJ 08012; 647 Cross Keys Road, Sicklerville, NJ 08081; 1098 Mantua Pike, Wenonah, NJ 08090; 1100 North Delsea Drive, Glassboro, NJ 08028; 1001 Tilton Road, Northfield, NJ 08225; 216 Cumberland Mall, Vineland, NJ 08360

Connecticut: 275 Boston Post Road, Darien, CT 06820; 4545 North Main Street, Bridgeport, CT 06606; 81 Newtown Road, Danbury, CT 06810; 1040 Boston Post Road, Milford, CT 06460; 519 Heritage Road, Southbury, CT 06488; 130 Rubber Avenue, Naugatuck,

CT 06770; 140 Universal Drive North, North Haven, CT 06473; 544 Reidville Drive, Waterbury, CT 06705; 408 Queen Street, Southington, CT 06489; 497 Farmington Avenue, Bristol, CT 06010; 230 New Britain Avenue, Plainville, CT 06062; 48 Berlin Road, Cromwell, CT 06416; 1835 Farmington Avenue, Unionville, CT 06085; 3420 Berlin Turnpike, Newington, CT 06111; 347 West Main Street, Avon, CT 06001; 1045 Silas Deane Highway, Wethersfield, CT 06109; 85 Seymour Street, Hartford, CT 06106.

18. Defendant Joseph P. Vitrano is the President and Chief Executive Officer of J & B in active control and management of J & B, and is an employer of Plaintiff and putative FLSA Collective members and putative Class members.

19. Defendant Gerry Snearly is the Chief Financial Officer of J& B, in active control and management of J & B, and is an employer of Plaintiff and putative FLSA Collective members and putative Class members.

20. Defendant Greg Alagna is the Senior Vice President of Operations of J& B, in active control and management of J & B, and is an employer of Plaintiff and putative FLSA Collective members and putative Class members.

21. Defendant Dawn Petite is the Vice President of Operations of J& B, in active control and management of J & B, and is an employer of Plaintiff and putative FLSA Collective members and putative Class members.

22. Defendant Perry Tucciarone is the Director of Operations of J & B, in active control and management of J & B, and is an employer of Plaintiff and putative FLSA Collective members and putative Class members.

23. Plaintiff Thomas A. Smith was employed by J & B as an assistant store manager from April 2011 through the end of October 2011.

FLSA COLLECTIVE ACTION ALLEGATIONS

24. Plaintiff brings the First Claim for Relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all J & B's employees who were employed as Assistant Managers in any New York, New Jersey or Connecticut Friendly's restaurant location on or after the date that is three years before the filing of the Complaint in this case as defined herein ("FLSA Collective").

25. 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 subject to J & B's decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay them at least one and one-half times their regular hourly rates of pay for work in excess of forty (40) hours per workweek. The claims of Plaintiff stated herein are essentially the same as those of all the other FLSA Collective Plaintiffs.

26. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names, addresses and other contract information are readily available from J & B's business and payroll records. Notice can be provided to the FLSA Collective Plaintiffs via email and first class mail to the last address known to J & B.

RULE 23 CLASS ALLEGATIONS – NEW YORK

27. Plaintiff brings the Second Claim for Relief pursuant to the Federal Rules of Civil Procedure (“F.R.C.P.”) Rule 23, on behalf of all J & B employees who were employed as Assistant Managers at any New York State Friendly’s restaurant location on or after the date that is six years before the filing of this Complaint (the “New York Class”).

28. The New York Class members are readily ascertainable. The number and identity of the Class members are specified by the J & B’s records. For purposes of notice and other purposes related to this action, Class members’ names and addresses are readily identifiable and notice can be provided by all means permissible under F.R.C.P. 23.

29. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of Assistant Managers is unknown, that number is presently within the sole control of J & B, and upon information, reasonable inference, and belief, there are more than one hundred (100) members in the New York Class.

30. Plaintiff’s claims are typical of those claims which could be alleged by any member of the New York Class, and the relief sought is typical of the relief which would be sought by each member of the Class in separate actions. All the New York Class members were subject to the same corporate policies and practices of J & B, as alleged herein, of willfully failing and refusing to properly pay them for all hours worked and at least one-and-one-half times their regular hourly rates of pay for work in excess of forty (40) hours per workweek. J & B’s corporate-wide policies and practices affected all New York Class members similarly, and J

& B benefited from the wage violations as to each Class member. Plaintiff and the New York Class members sustained similar losses of unpaid overtime wages and damages arising from the same unlawful policies, practices and procedures.

31. Plaintiff Thomas A. Smith is able to fairly and adequately protect the interests of the New York Class and has no interests antagonistic to the members of the putative Class. Plaintiff is represented by Joseph and Kirschenbaum, LLP, attorneys who are experienced and competent in employment and wage and hour and class action litigation and have many times previously represented plaintiffs in wage and hour class cases. Plaintiff's attorney D. Maimon Kirschenbaum has served as lead class counsel on numerous wage and hour cases in this District and Douglas Weiner is a former wage and hour prosecutor for the United States Department of Labor.

32. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against their corporate employers. Class action treatment will permit a large number of similarly situated Assistant Managers to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the unpaid overtime wages and damages suffered by each of the individual New York Class members are relatively small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Class members to redress the wrongs done to them. On

the other hand, the important public interest of establishing and maintaining a level playing field in commerce, and enforcing federal and state laws designed to protect fair labor standards will be well served by resolving this case as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the New York Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for J & B and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, Plaintiff's counsel will work with opposing Counsel and the Court to fashion methods to efficiently manage this case as a class action.

33. J & B has violated and is violating state and federal wage and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect employment or economic retaliation. Former employees are fearful of bringing claims because doing so can harm their current employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while limiting their risk being subject to unlawful retaliation.

34. There are questions of law and fact common to the New York Class which predominate over any questions affecting only individual class members, including:

- a. Whether J & B applied a common policy to employ New York Class members as salaried employees to avoid New York's laws mandating overtime payments;
- b. Whether J & B unlawfully required or permitted New York Class members to work in excess of forty (40) hours per workweek without compensation;
- c. Whether New York Class members are entitled to unpaid wages and damages; and
- d. Whether J & B is liable for liquidated damages, penalties and interest.

FACTUAL ALLEGATIONS

35. Plaintiff's consent to sue form is attached hereto as Exhibit 1.

36. J & B hired Plaintiff in April 2011, and provided him with its standardized training at the Copiague Friendly's restaurant for six weeks until he was transferred to the Friendly's restaurant establishment in Massapequa Park where he worked through the end of October 2011.

37. J & B told Plaintiff at his time of hire that he'd be paid a weekly "salary" for forty weekly hours, the same as all Assistant Managers.

38. J & B scheduled Plaintiff to work an average of fifty weekly hours.

39. On a daily basis Plaintiff spent his time cleaning and setting up tables, delivering food to customers, cooking, unloading supplies, shelving inventory, and cleaning.

40. J & B's Assistant Managers primarily perform manual work including bussing tables, running food, preparing ice cream desserts for customers, cooking on a short order grill, unloading delivery trucks, cleaning the restaurant, re-stocking supplies and cleaning parking lots.

41. Throughout the period of time covered by this lawsuit, J & B has used the same job description, employee handbook, operating and human resources policies and practices for its Assistant Managers in all of their Friendly's restaurants throughout New York, Connecticut and New Jersey.

42. Throughout the period of time covered by this lawsuit, J & B has employed, scheduled and compensated Plaintiff and all of their Assistant Managers pursuant to uniform policies, procedures, practices and standards.

43. Plaintiff and, upon information, reasonable inference and belief, FLSA Collective members and New York Class members, routinely worked in excess of 40 hours per week. Plaintiff and other Assistant Managers were often required to work through their lunch-breaks and regularly worked more than ten hours per day, five days per week. The precise number of weekly unpaid overtime hours Plaintiff and similarly situated Assistant Managers worked is ascertainable upon completion of discovery as J & B kept daily and weekly records of the number of hours that Assistant Managers worked.

44. J & B did not pay Plaintiff or any Assistant Managers one and one-half times their regular hourly rate of pay for any hours worked in excess of 40 per week. Rather, when Assistant Managers worked over 40 hours per week, they received compensation for only 40 hours. When they worked less than 40 hours per week, they were paid at hourly rate only for the hours worked, and their weekly pay was reduced pro rata deductions from their "regular weekly salary."

45. J & B knew it violated wage and hour laws, or recklessly disregarded its obligation to pay Plaintiff, FLSA Collective members, and New York Class members for all weekly hours worked over 40 at time and one-half their regular pay rate.

46. J & B willfully committed the foregoing acts against Plaintiffs, the FLSA Collective, and the New York Class members.

47. J & B did not provide Plaintiff or any of their New York employees with the annual notices required by New York Labor Law § 195(1), or weekly wage statements as required.

FIRST CAUSE OF ACTION
(FLSA Overtime Violations, 29 U.S.C. § 207
Brought by Plaintiff on Behalf of Himself
and the FLSA Collective)

48. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

49. At all times relevant to the present action, J & B was and continues to be an “employer” engaged in interstate commerce within the meaning of the FLSA and employed Plaintiff and each member of the FLSA Collective within the meaning of the FLSA.

50. At all relevant times, J & B operated under a uniform policy and practice of refusing to pay overtime compensation to Assistant Managers for the hours they worked in excess of 40 hours per week and demanding, encouraging, allowing, and knowingly permitting the FLSA Collective members to work overtime hours without compensation.

51. At all relevant times, J & B willfully, regularly and repeatedly failed to pay Plaintiff and the FLSA Collective members at the required overtime rate of one and one-half

times his regular hourly rate of pay for an average of ten overtime hours worked in excess of forty (40) hours per workweek.

52. Plaintiff, on behalf of himself and the FLSA Collective members, seek damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

SECOND CAUSE OF ACTION

(New York Overtime Violations, N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2)

53. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

54. At all relevant times, J & B operated under a policy and practice of refusing to pay overtime compensation to Plaintiff and the New York Class members for the hours they worked in excess of 40 hours per week and demanding, encouraging, allowing, suffering and/or knowingly permitting Plaintiff and the New York Class members to work overtime hours without pay.

55. At all relevant times, J & B willfully, regularly and repeatedly failed to pay Plaintiff and the New York Class members at the required overtime rate of one-and-one-half times their regular hourly rate of pay for an average of ten overtime hours per workweek.

56. Plaintiff, on behalf of himself and the New York Class members, seek damages in the amount of their respective unpaid wages, liquidated damages as provided for by the New York Labor Law, attorneys' fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF
(New York Notice Requirements, N.Y. Lab. L. §§ 195, 198)

57. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

58. At all relevant times, J & B operated under a policy and practice of refusing to not provide notice to any of their employees as required by N.Y. Lab. Law § 195.

59. As a result of Defendants' unlawful conduct, Plaintiff and New York Class is entitled to an award of damages pursuant to N.Y. Lab. Law § 198, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

WHEREFORE, Plaintiff prays for:

A. A Declaration that J & B has violated the FLSA and other applicable employment laws;

B. Designation of this action as a collective action on behalf of the FLSA Collective members (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

C. Designation of Plaintiff as Representative of the FLSA Collective members;

D. Designation of this action as a class action pursuant Fed. R. Civ. P. 23;

E. Designation of Plaintiff as Representative of the New York Class;

F. Designation of Plaintiff's Counsel as Class Counsel for the FLSA Collective members and for the New York Class.

G. An award of unpaid overtime compensation, and other damages according to proof, including FLSA and NYLL liquidated damages, to be paid by J & B;

H. Penalties available under applicable laws;

I. Costs of action incurred herein, including expert fees;

J. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. § 663, and other applicable statutes

K. Pre-judgment and post-judgment interest, as provided by law; and

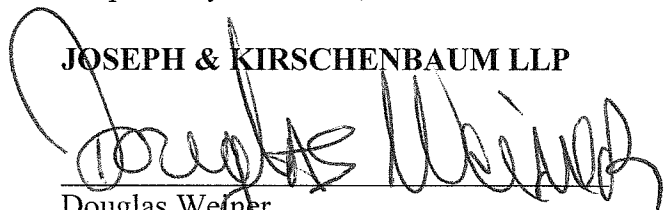
L. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

JURY TRIAL DEMAND

Plaintiff on behalf of himself and a representative of the FLSA Collective an Rule 23 Class demands a trial by jury on all causes of action and claims with respect to which he has a right to a jury trial.

Dated: New York, New York
July 24, 2013

Respectfully submitted,



JOSEPH & KIRSCHENBAUM LLP

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*Attorneys for Plaintiff, proposed FLSA
Collective members, and proposed Class
members*

Exhibit 1

CONSENT TO SUE UNDER
FEDERAL FAIR LABOR STANDARDS ACT

I was formerly employed by **J & B RESTAURANT PARTNERS OF LONG ISLAND, LLC, AND RELATED INDIVIDUALS AND ENTITIES**. I am the named plaintiff in this case and I consent to be a plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Professional Services Agreement I signed.

Thomas Ames Smith
Full Legal Name (Print)

Tom A Smith
Signature

7-19-13
Date

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Thomas A. Smith, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Nassau
(c) Attorneys (Firm Name, Address, and Telephone Number)
Douglas Weiner, Joseph & Kirschenbaum LLP, 233 Broadway, 5th Floor, New York, NY 10279 (212) 688-5640

DEFENDANTS
See attached Rider A
County of Residence of First Listed Defendant Suffolk
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
F.L.S.A. and New York Labor Law
Brief description of cause:
Plaintiff was not properly compensated under the F.L.S.A.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/24/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Douglas Weiner

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Douglas Weiner, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
 - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Douglas Weiner

RIDER A

J & B RESTAURANT PARTNERS OF NYDMA, LLC, J & B RESTAURANT PARTNERS HOLDING COMPANY OF LONG ISLAND, LLC, J & B RESTAURANT PARTNERS OF LONG ISLAND, LLC, J & B RESTAURANT CORP., J & B RESTAURANT NY INC., J & B RESTAURANT PARTNERS BEACH SHOP LLC, J & B RESTAURANT PARTNERS FAMILY DINING, LLC, J & B RESTAURANT PARTNERS FAST FOOD, LLC, J & B RESTAURANT PARTNERS OF BRICKTOWN NJ, LLC, J & B RESTAURANT PARTNERS OF CENTEREACH, INC., J & B RESTAURANT PARTNERS OF COPIAGUE, LLC, J & B RESTAURANT PARTNERS OF CT, LLC, J & B RESTAURANT PARTNERS OF EAST NORTHPORT, INC., J & B RESTAURANT PARTNERS OF FOREST AVENUE INC., J & B RESTAURANT PARTNERS OF HAMPTON BAYS, LLC, J & B RESTAURANT PARTNERS OF HICKSVILLE MALL, INC. J & B RESTAURANT PARTNERS OF HICKSVILLE, LLC, J & B RESTAURANT PARTNERS OF HYLAN BLVD. INC., J & B RESTAURANT PARTNERS OF LAKE GROVE, LLC, J & B RESTAURANT PARTNERS OF LONG ISLAND HOLDING CO., LLC, J & B RESTAURANT PARTNERS OF LONG ISLAND II, LLC, J & B RESTAURANT PARTNERS OF LONG ISLAND III, LLC, J & B RESTAURANT PARTNERS OF MASSAPEQUA PARK, LLC, J & B RESTAURANT PARTNERS OF MIDDLE ISLAND, LLC, J & B RESTAURANT PARTNERS OF NASSAU COLLEGE, LLC, J & B RESTAURANT PARTNERS OF NJ, LLC, J & B RESTAURANT PARTNERS OF NY, LLC, JOSEPH P. VITRANO, Individually and as President, and PERRY TUCCIARONE, Individually and as Director of Operations, GERRY SNEARLY, Individually and as Chief Financial Officer, GREG ALAGNA, Individually and as Senior Vice President of Operations, DAWN PETITE, Individually and as the Vice President of Operations,

Defendants.