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Collective Plaintiffs, and proposed Class*

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

-----x  
**RAKESH RAJU and BENSON D’SILVA,**  
on behalf of themselves and others similarly  
situated,

**Plaintiffs,**

v.

**BABU JI NYC INC., d/b/a BABU JI  
RESTAURANT, JESSI SINGH, and  
JENNIFER SINGH,**

**Defendants.**  
-----x

**INDEX NO.**

**COMPLAINT**

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

**DEMAND FOR JURY TRIAL**

Plaintiffs Rakesh Raju and Benson D’Silva (together “Plaintiffs”), on behalf of themselves and all others similarly situated, by their undersigned attorneys, allege, upon personal knowledge as to themselves and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. This is a collective action lawsuit under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 et seq., (“FLSA”) and is brought to remedy extensive wage and hour violations by Babu Ji NYC Inc., d/b/a Babu Ji Restaurant, Jessi Singh, and Jennifer Singh (“Babu Ji” or “Defendants”) that have deprived Plaintiffs and all other current and former individuals employed at Defendants’ restaurant Babu Ji.

2. Plaintiffs also bring this as a class action pursuant to Federal Rule Civil Procedure Rule 23 to remedy violations of the New York Labor Law, Article 19, §§ 650 *et. seq.* (“NYLL”), and the supporting New York State Department of Labor regulations, and to recover unpaid overtime and other wages to which they are entitled, on behalf of themselves and all similarly situated current and former tipped employees who work, or worked, for Defendants.

3. Plaintiffs, and the other individuals employed in tipped positions at Babu Ji, were systematically deprived of *all* tip income since Defendants engaged in a practice of pocketing all the tips customers left at the restaurant.

4. In addition, Plaintiffs, and the other individuals employed in tipped positions at Babu Ji, were not compensated for all of the time they worked for Defendants, including overtime.

5. Defendants have thus willfully engaged in a pattern, practice, and policy of unlawful conduct by stealing employees’ tips and by failing to properly record, credit, and compensate Plaintiffs, the other similarly situated employees, for all hours they worked.

6. Defendants’ pattern, practice and policy of stealing from their employees has violated their employees’ rights under the FLSA and New York law.

**JURISDICTION AND VENUE**

7. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”). This Court has supplemental jurisdiction over the New York state law claims, as they are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper in this District because Defendants conduct business in this District, and the acts and/or omissions giving rise to the claims herein alleged took place in this District.

#### **THE PARTIES**

9. Defendant Babu Ji NYC Inc. is a New York corporation that operates Babu Ji Restaurant (“Babu Ji,” or “the restaurant”), located at 175 Avenue B, New York, NY 10009.

10. Babu Ji is owned and operated by Defendants Jessi Singh and Jennifer Singh.

11. Defendants Jessi Singh and Jennifer Singh exercise sufficient control of Babu Ji’s day to day operations to be considered Plaintiffs’ employers under the FLSA and NYLL.

12. Defendants Jessi Singh and Jennifer Singh have the power to hire and fire the restaurant’s employees.

13. Defendants Jessi Singh and Jennifer Singh supervised and controlled employees’ work schedules and conditions of employment.

14. Defendants Jessi Singh and Jennifer Singh determined employees’ rate and method of payment.

15. To the extent that employment records are kept for employees, Defendants Jessi Singh and Jennifer Singh are involved in maintaining those records.

16. Plaintiff Raju has been employed as front of the house food service employee at Babu Ji from approximately May 25, 2015 to September 25, 2015 and then again from June 1, 2016 to the present.

17. Plaintiff D’Silva has been employed as front of the house food service employee at Babu Ji since approximately September 8, 2015.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

18. Plaintiffs bring the First and Second Claims for Relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all tipped food service employees employed by Babu Ji on or after the date that is three years before the filing of the Original Complaint in this case as defined herein (“FLSA Collective”).

19. At all relevant times, Plaintiffs 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 Babu Ji’s decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay them at the legally required minimum wage for all hours worked and retaining their tips. The claims of Plaintiffs stated herein are essentially the same as those of the other FLSA Collective Plaintiffs.

20. The First and Second Claims for Relief are 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 and addresses are readily available from the Babu Ji. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Babu Ji.

**RULE 23 CLASS ALLEGATIONS – NEW YORK**

21. Plaintiffs bring the state law Third, Fourth, Fifth, and Sixth Claims for Relief pursuant to the Federal Rules of Civil Procedure (“F.R.C.P.”) Rule 23, on behalf of all tipped food service employees employed by Babu Ji on or after the date that is six years before the filing of the Original Complaint in this case as defined herein (the “Class Period”).

22. All said persons, including Plaintiffs, are referred to herein as the “Class.” The Class members are readily ascertainable. The number and identity of the Class members are determinable from Babu Ji’s records. The hours assigned and worked, the positions held, and the rates of pay for each Class member are also determinable from Babu Ji’s records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Babu Ji. Notice can be provided by means permissible under said F.R.C.P. 23.

23. 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 such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Babu Ji, upon information and belief, there are more than forty (40) members of the Class.

24. Plaintiffs’ claims are typical of those claims which could be alleged by any member of the 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 Class members were subject to the same corporate practices of Babu Ji, as alleged herein, of failing to pay all minimum wage and overtime, retaining Class members’ tips, and failing to provide Class members with required wage notices. Babu Ji’s corporate-wide policies and practices affected all Class members similarly, and Babu Ji benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiff and other Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

25. Plaintiffs are able to fairly and adequately protect the interests of the Class and have no interests antagonistic to the Class. Plaintiffs are represented by attorneys who are

experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

26. 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 Babu Ji. Class action treatment will permit a large number of similarly situated persons 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 losses, injuries and damages suffered by each of the individual Class members are 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, important public interests will be served by addressing the matter 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 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 Babu Ji 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, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

27. Upon information and belief, Babu Ji and other employers throughout the state violate the New York Labor Law. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their 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 eliminating or reducing these risks.

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

a) Whether Babu Ji employed Plaintiffs and the Class members within the meaning of the New York law.

b) At what common rate, or rates subject to common methods of calculation, were and are Babu Ji required to pay Plaintiffs and the Class members for their work.

c) Whether Babu Ji paid Plaintiffs and the Class members the appropriate minimum wage for all hours worked.

d) Whether Babu Ji paid Plaintiffs and the Class members the appropriate overtime wage for all overtime hours worked.

e) Whether Babu Ji gave Plaintiffs and the Class members the wage statements required by New York Labor Law § 195 and the New York Hospitality Wage Order.

f) Whether Babu Ji illegally withheld gratuities from Plaintiffs and the Class members.

FACTS

29. Plaintiffs' Consent to Sue forms are attached hereto as Exhibit A.

30. Defendants committed the following alleged acts knowingly, intentionally, and willfully.

31. From the beginning of their employment until approximately December 6, 2015, Plaintiffs and putative collective/class members worked six days a week totaling approximately 42 to 60 hours per week.

32. During this time period, Plaintiffs shifts started at 3 or 4 p.m. and usually lasted until 1 to 2 a.m.

33. During that time, Plaintiffs were compensated a flat rate of \$600 per week, regardless of the amount of hours they worked.

34. Plaintiffs and putative collective/class members were not compensated at one and a half times their hourly pay rate for hours they worked over 40 per week.

35. In addition, during that time Plaintiffs and putative class members received no portion of tips customer's paid by using their credit cards.

36. Rather, Defendants illegally retained the tips customers left for Plaintiffs *in their entirety*.

37. In addition, Defendant Jessi Singh routinely pocketed the cash tips customers left for Plaintiffs.

38. Beginning in or around December 7, 2015 and up to the present, Plaintiffs and putative collective/class members have been compensated at the tip-credit minimum wage for each hour worked.



39. However, Defendants were not entitled to reduce the minimum wage by applying the tip credit allowances that are available in cases under 29 U.S.C. § 203(m) and 12 New York Codes Rules and Regulations (“N.Y.C.R.R.”) § 142-2.2 because Defendants did not provide appropriate notice of the tip credit.

40. Upon information and belief, Defendants never informed Plaintiffs of the dollar amount of the minimum wage.

41. Upon information and belief, Defendants never informed Plaintiffs that they would be paid at a rate below the minimum wage because Defendants intended to claim a tip credit.

42. Upon information and belief, Defendants never informed Plaintiffs of the dollar amount of the tip credit Defendants intended to claim.

43. Upon information and belief, Defendants never informed Plaintiffs that their wages plus tips must equal at least the minimum wage or that the Defendants would make up any difference.

44. Upon information and belief, Defendants did not provide Plaintiffs with a statement with every payment of wages listing Plaintiffs’ hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

45. Upon information and belief, Defendants do not have in their possession, custody and/or control any records showing allowances, such as the tip credit, they claimed as part of the minimum wage.

46. Defendants knew that nonpayment of minimum wage and overtime, and retaining Plaintiffs’ tips would economically injure Plaintiffs and violate federal and state laws.

47. Defendants did not provide Plaintiffs with the appropriate notices under New York Labor Law § 195. For example, Plaintiffs did not receive annual wage forms that stated the wages which they would be paid.

48. Specifically, Defendants did not provide Plaintiffs with a written notice, in Plaintiffs' primary language(s), that outlined their regular hourly pay rate, overtime hourly pay rate, the amount of the tip credit that was taken from the basic minimum hourly rate and Plaintiffs' regular payday.

49. Upon information and belief, Defendants do not have in their possession, custody and/or control any written acknowledgements indicating that Plaintiffs received written notices in compliance with section 146-2.2 of the N.Y.C.R.R.

50. Upon information and belief, Defendants did not preserve copies of any annual wage notices.

51. Upon information and belief, Defendants did not preserve copies of any signed and dated written acknowledgements of receipt of any notices they provided to Plaintiffs.

52. Defendants committed the foregoing acts against Plaintiffs and the FLSA Collective Plaintiffs.

**FIRST CLAIM FOR RELIEF**

**FLSA Minimum Wage Claims, 29 U.S.C. § 201, *et seq.*,  
Brought by Plaintiffs on Behalf of Themselves and the FLSA Collective Plaintiffs**

53. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

54. At all relevant times, Defendants have been, and continue to be, "employers" engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, Babu Ji has employed, "employee[s]," including Plaintiff and each of the FLSA Collective Plaintiffs.

55. From approximately December 2015 until the present, Babu Ji knowingly failed to pay Plaintiffs the federal minimum wage for each hour worked.

56. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid compensation, liquidated (double) damages as provided by the FLSA for minimum wage violations, attorneys' fees and costs, pre- and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF**  
**FLSA Overtime Violations, 29 U.S.C. § 207**  
**Brought by Plaintiffs on Behalf of Themselves and the FLSA Collective Plaintiffs**

57. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

58. At all relevant times, Defendants have been, and continue to be, an "employer" engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed, "employee[s]," including Plaintiffs and each of the FLSA Collective Plaintiffs.

59. Plaintiffs and the other FLSA Collective Plaintiffs worked in excess of forty (40) hours per workweek.

60. From the start of Plaintiffs employment until approximately December 2015, Defendants operated under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the Class members at one-and-one-half times the minimum wage for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA even though the FLSA Collective Plaintiffs have been and are entitled to overtime.

61. Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs, 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, 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 State Minimum Wage Act, New York Labor Law § 650 *et seq.*  
Brought by Plaintiffs on Behalf of Themselves and the Class**

62. Plaintiffs, on behalf of themselves and members of the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

63. From approximately December 2015 until the present, Babu Ji knowingly paid the Plaintiffs and members of the Class less than the New York minimum wage as set forth in N.Y. Lab. Law § 652 and supporting regulations of the New York State Department of Labor.

64. Babu Ji did not pay Plaintiffs and members of the Class minimum wage for all hours worked.

65. Babu Ji's failure to pay Plaintiffs and members of the Class the minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

66. As a result of Babu Ji's willful and unlawful conduct, Plaintiffs and members of the Class are entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

**FOURTH CLAIM FOR RELIEF**

**New York Overtime Violations  
New York Minimum Wage Act, N.Y. Stat. § 650 *et seq.*,  
N.Y. Comp. Codes R. & Regs. Tit. 12, §§ 137-1.3 (2010), 146-1.4 (2011)  
Brought by Plaintiffs on Behalf of Themselves and the Class**

67. Plaintiffs, on behalf of themselves and members of the Class, reallege and incorporate, by reference all preceding paragraphs as if they were set forth again herein.

68. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

69. From the start of Plaintiffs employment until approximately December 2015, Defendants willfully, regularly and repeatedly failed to pay Plaintiffs and the Class members at the required overtime rate of one-and-one-half times the minimum wage for hours worked in excess of forty (40) hours per workweek.

70. As a result of Defendants' willful and unlawful conduct, Plaintiffs and members of the Class are entitled to an award of damages, including liquidated damages, in an amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

**FIFTH CLAIM FOR RELIEF**  
**New York Notice Requirements, N.Y. Lab. L. §§ 195, 198**  
**Brought by Plaintiffs on Behalf of Themselves and the Class**

71. Plaintiffs, on behalf of themselves and the members of the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

72. Babu Ji did not provide Plaintiffs and the members of the Class with the notices/wage statements required by N.Y. Lab. Law §§ 195(1) and 195(3).

73. As a result of Defendants' unlawful conduct, Plaintiffs and members of the Class are 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, and costs and attorneys' fees, as provided by N.Y. Lab. Law § 198.

**SIXTH CLAIM FOR RELIEF**

**Illegal Deductions from Gratuities, N.Y. Lab. L. § 196-d  
Brought by Plaintiffs on Behalf of Themselves and the Class**

74. Plaintiffs, on behalf of themselves and the members of the Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

75. For certain periods of time during the Class Period, Defendants illegally retained *all* gratuities paid by their customers and did not distribute any of them to the employees to whom the customers expected the tips to go.

76. Plaintiffs, on behalf of themselves and members of the Class, seek damages in the amount of their respective withheld gratuities, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the FLSA Collective Plaintiffs and members of the Class, pray for relief as follows:

- A. An award of damages, according to proof, including back pay, front pay, punitive damages, and liquidated damages, to be paid by Defendants;
- B. Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs 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 Plaintiffs as Representatives of the FLSA Collective Plaintiffs;

- D. Designation of this action as a class action pursuant to F.R.C.P. 23.
- E. Designation of Plaintiffs as Representatives of the Class.
- F. An award of damages, according to proof, including liquidated damages, to be paid by Defendants;
- G. Penalties available under applicable laws;
- H. Costs of action incurred herein, including expert fees;
- I. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. § 663, and other applicable statutes;
- J. Pre-judgment and post-judgment interest, as provided by law; and
- K. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: New York, New York  
September 29, 2016

Respectfully submitted,

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

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.