

Todd Krakower, (TJK 4568)
GLASS KRAKOWER LLP
20 Broadway, Suite 1
Valhalla, New York 10595
(914) 831-1386
(845) 510-2219 (fax)

*Attorney for Named Plaintiff
and the FLSA Collective Plaintiffs*
**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
2010 Mar - 2 P M
'10 CIV 01708
JUDGE STEIN

CHRISTOPHER JUROWSKI, on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

HUNTER KRONER LTD. d/b/a TERRAPIN
RESTAURANT, JOSH KRONER, and TODD
DUTT,

Defendants.

COMPLAINT

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

JURY TRIAL DEMANDED

CV ()

1. Plaintiff CHRISTOPHER JUROWSKI, individually and on behalf of all other persons similarly situated, through his attorneys GLASS KRAKOWER LLP, complain of Defendants HUNTER KRONER LTD. d/b/a TERRAPIN RESTAURANT, JOSH KRONER, and TODD DUTT, (collectively "Defendants"), as follows:

NATURE OF THE ACTION

2. Plaintiff alleges on behalf of himself and all other similarly situated current and former employees of the Defendants who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. Sections 216(b), that they are: (i) entitled to unpaid wages from Defendants for hours worked as well as overtime hours worked for which they did not

receive overtime premium pay as required by law, and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C, Sections 201 *et seq.*

3. Plaintiff further complains and seeks compensation for work performed and for overtime work performed for which he did not receive regular and overtime premium pay and bonuses and commissions as required by and as due under Articles 6 and 19 of the New York State Labor Law and their supporting New York State Department of Labor regulations.

JURISDICTION AND VENUE

4. 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.*

5. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a)

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

7. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) 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.

PARTIES

Plaintiffs

8. Plaintiff CHRISTOPHER JUROWSKI is a resident of the County of Dutchess, State of New York.

9. Plaintiff was employed by Defendants from approximately May 1, 2009 to January 31, 2010 as a server and waiter. Plaintiff's consent to sue is attached to the back of this complaint.

10. Plaintiff was involved in interstate commerce in his work for the Defendants.

11. Plaintiff was employed as a waiter working out of the Defendants' restaurant located at 6426 Montgomery Street, Rhinebeck, New York, 12572-1359.

Defendants

12. Defendant HUNTER KRONER LTD. is a New York Domestic Business Corporation having a principal executive office at 6426 Montgomery Street, Rhinebeck, New York, 12572-1359. Defendant HUNTER KRONER LTD. operates Terrapin Restaurant located at 6426 Montgomery Street, Rhinebeck, New York, 12572-1359.

13. At all times relevant to this Complaint, Defendant JOSH KRONER was the owner of HUNTER KRONER LTD. and exercised sufficient control of Plaintiff's day-to-day operations to be considered Plaintiff's employer under the Fair Labor Standards Act and New York State labor law.

14. At all times relevant to this Complaint, Defendant TODD DUTT is the general manager of HUNTER KRONER LTD. and exercised sufficient control of Plaintiff's day-to-day operations to be considered Plaintiff's employer under the Fair Labor Standards Act and New York State labor law.

15. All Defendants are hereinafter referred to as "Defendants."

16. Defendants are an enterprise engaged in commerce for purposes of the Fair Labor Standards Act.

17. All actions and omissions described in this complaint were made by Defendants directly and/or through their supervisory employees and agents.

18. Defendants routinely conduct business within the Southern District of New York.

FLSA COLLECTIVE ACTION ALLEGATIONS

19. Plaintiff brings the First and Second Claims for Relief as a collective action pursuant to Section 16(b) of the FLSA 29 U.S.C. § 216(b), on behalf of all non-exempt persons employed by Defendants in any New York location in any tipped position on or after the date that is three (3) years before the filing of the Complaint in this case as defined herein to the entry of judgment in this case (the "Collective Action Period") including employees who did not receive adequate compensation for time worked, including but not limited to overtime pay from Defendants, and/or were subject to unlawful tip sharing and only recently became aware of their right to such compensation and overtime pay ("FLSA Collective Plaintiffs").

20. 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 Defendants' decision, policy, plan and common policies, programs, protocols, routines, and rules willfully failing and refusing to pay them at the legally required minimum wage for all hours worked and one-and-one-half times this rate for work in excess of forty (40) hours per workweek, and allowing non-tipped employees to share in their tips. The claims of the Plaintiff named herein are essentially the same as those of the other FLSA Collective Plaintiffs.

21. The First and Second Claims for Relief are properly brought under and maintained as an opt-in collective action pursuant to Section 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 Defendants. Notice can be provided to the FLSA Collective Plaintiffs via United States Postal Service First Class Mail sent to the last addresses known to Defendants.

22. Common questions of law and fact are involved, including questions posed by Plaintiff's allegations that Defendants failed to pay compensation in violation of Section 7 of the FLSA, 29 U.S.C. 201, *et seq.* to present and former hourly non-exempt employees of Defendants, who earned, but did not receive, overtime pay and other compensation from Defendants.

23. Claims of the named Plaintiff are typical of the claims of the class because all class members and the named Plaintiff were affected by Defendants' conduct at all times relevant to this Complaint.

24. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

25. The named Plaintiff is similarly situated to the class members in terms of job responsibilities, duties, and employment dates as they are all tipped employees who provided services to the customers of Defendants and who were denied compensation for all the time that they worked and time and one-half overtime wages by Defendants and were additionally subjected to unlawful tip sharing.

RULE 23 CLASS ALLEGATIONS—NEW YORK

26. Plaintiff brings the Fourth, Fifth, Sixth, and Seventh Claims for Relief pursuant to the Federal Rules of Civil Procedure ("FRCP") Rule 23, on behalf of all non-exempt persons employed at any New York location in any tipped position on or after the date that is six (6) years before the filing of the Complaint in this case as defined herein to the entry of judgment in this case (the "Class Period") including employees who did not receive adequate compensation for time worked, including but not limited to overtime pay from Defendants, and/or were subject

to unlawful tip sharing and only recently became aware of their right to such compensation and overtime pay (the "Class").

27. All said persons, including Plaintiff, are referred to herein as the "Class." The Class members are readily ascertainable. The number and identity of the Class members are determinable from the records of Defendants. The hours assigned and worked, the positions held, and the rates of pay for each Class member are also determinable from Defendant's records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under FRCP 23.

28. 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 Defendants, upon information and belief there are more than twenty-five (25) members of the Class.

29. Plaintiff's 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 of the Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wage and overtime compensation, and illegal retention of tips. Defendants' corporate-wide policies and practices affected all Class members similarly, and Defendants 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.

30. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiff is 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.

31. 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 corporate defendants. 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 Defendants 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.

32. Upon information and belief, Defendants and other employers throughout the state violate 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. Class actions provide 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.

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

- a) Whether Defendants employed Plaintiff and the Class members within the meaning of New York law.
- b) Whether Defendants paid Plaintiff and the Class members minimum wage for all hours worked.
- c) What are and were the policies, practices, practices, programs, procedures, protocols and plans of Defendants regarding the types of work and labor for which Defendants did not pay Class members at all.
- d) At what common rate, or rates subject to common methods of calculation, was and is Defendants required to pay the Class members for their work.
- e) Whether Defendants illegally retained portions of Plaintiff's tips and the Class members' tips.
- f) Whether Defendants properly compensated Plaintiffs and Class members for overtime.

- g) Whether Plaintiffs and members of the Class were forced to share their tips with parties who are not entitled to their tips.
- h) Whether Defendants took unlawful deductions from Plaintiffs paychecks.
- i) Whether Defendants illegally deducted portions of Plaintiff's and Class Members' compensation when a customer paid by credit card.
- j) Whether Defendants compensated Plaintiff's New York spread hour premiums for days during which Plaintiff's shifts lasted longer than ten (10) hours.
- k) Whether Defendants illegally required Plaintiff and Class Members to arrive at work to clean Defendants' restaurant and its appurtenances without pay.
- l) Whether Defendants illegally retaliated against Plaintiff and Class Members who complained about Defendants' unlawful employment practices.

FACTS

34. Plaintiff's consent to sue form is attached hereto as Exhibit A.

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

36. Defendants knew that nonpayment of minimum wage, nonpayment of overtime, and improperly forcing Plaintiff, the FSLA Collective Plaintiffs, and members of the Class to share their tips with Defendants' agents would economically injure Plaintiff, the FSLA Collective Plaintiffs, and members of the Class and violated federal and state laws.

37. Defendants unlawfully paid the Plaintiff, the FSLA Collective Plaintiffs, and members of the Class an hourly rate below the federal and state minimum wage.

38. Defendants were not entitled to reduce the minimum wage by applying the tip credit allowance under 29 U.S.C. § 203(m) and 12 N.Y.C.R.R. § 137-1.5 because Defendants

required the Plaintiff, the FLSA Collective Plaintiffs, and members of the Class to share their tips with non-service employees, including kitchen staff and managers.

39. Defendants illegally retained substantial portions of Plaintiff's nightly tips by requiring Plaintiff to give substantial portions of his nightly tips to non-service employees, such as kitchen staff and managers.

40. Defendants' employee manual specifically provided for managers to receive a portion of Plaintiff's tips.

41. Defendants operated an unlawful tip pool.

42. Defendants often shaved time and did not pay Plaintiff any wage for all hours worked, including overtime.

43. On some occasions, when a customer would walk out of the restaurant without paying the bill, Defendants illegally deducted an amount equal to that customer's bill from the waiter's or server's compensation. Plaintiff was subject to this practice.

44. Defendants deducted portions of a waiter's or server's compensation when a customer paid with a credit card. Plaintiff was subject to this practice.

45. Defendants hosted events for which they charged the event host a mandatory gratuity. Plaintiff and other waiters and servers were not given these gratuities in their entirety.

46. Defendants did not pay Plaintiff the New York State spread of hours premium for days during which Defendants committed the foregoing acts against Plaintiff, the FLSA Collective Plaintiffs, and members of the Class.

47. Defendants required Plaintiff, the FLSA Collective Plaintiffs, and members of the Class to come in on specified days to clean the restaurant and its appurtenances without pay.

48. Defendants required Plaintiff, the FLSA Collective Plaintiffs, and members of the Class to attend off-site training without pay.

49. Defendants required Plaintiff, the FLSA Collective Plaintiffs, and members of the Class to work without on the following dates upon the threat of termination. Upon information and belief these required unpaid work days occurred on or about May 18, 2009, May 19, 2009, July 15, 2009, September 8, 2009, and January 31, 2010.

50. Defendants disseminated a memorandum advising Plaintiff, the FLSA Collective Plaintiffs, and members of the Class that if they were absent on unpaid workdays they would “suffer penalties, including . . . Disciplinary write-up, Shifts taken from you, [and] Termination.”

51. When Plaintiff complained about Defendants’ unlawful employment practices he was immediately summarily terminated from his employment with Defendants.

52. Plaintiff’s termination was undertaken willfully and maliciously and was done in order to discourage Plaintiff from making similar complaints.

FIRST CLAIM FOR RELIEF
(FLSA Claims, 29 U.S.C. §§ 201 *et seq.*,
Brought by Plaintiff on Behalf of himself
and the FLSA Collective Plaintiffs)

53. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, realleges and incorporates 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 the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed, “Employee[s],” including Plaintiff and each of the FLSA Collective Plaintiffs.

55. Throughout the statute of limitations period covered by these claims, Defendants knowingly failed to pay Plaintiffs the federal minimum wage for each hour worked.

56. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, seeks damages in the amount of his and their unpaid compensation, liquidated (double) damages as provided by the FLSA for minimum wage violations, attorneys' fees and costs, 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. §§ 201 *et seq.*,
Brought by Plaintiff on Behalf of himself
and the FLSA Collective Plaintiffs)

57. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

58. Throughout the statute of limitations period covered by these claims, Plaintiff and the other FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek. The FLSA Collective Plaintiffs continue to regularly work in excess of forty (40) hours per workweek.

59. At all relevant times, Defendants had and 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 Plaintiff and the FLSA Collective Plaintiffs at one-and-one-half 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 Plaintiff and the FLSA Collective Plaintiffs have been and are entitled to overtime.

60. At all relevant times, Defendants willfully, regularly, and repeatedly failed to pay Plaintiff and the FLSA Collective Plaintiffs at the required overtime rates, one-and-one half times the federal minimum wage for hours worked in excess of forty (40) hours per workweek.

61. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, seeks damages in the amount of his and their 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.

**THIRD CAUSE OF ACTION
(RETALIATION UNDER FLSA, 29 U.S.C. section 215(a)(3)
Brought by Plaintiff individually)**

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

63. In the months preceding Plaintiff's termination on January 31, 2010, Plaintiff began raising complaints concerning his failure to be properly compensated, including issues concerning Defendants' failure to pay the minimum wage, failure to pay overtime, and withholding of gratuities.

64. In response to Plaintiff's complaints Defendants immediately and summarily terminated Plaintiff's employment with Defendants.

65. Following and as a direct result of Plaintiff's aforementioned complaints, Plaintiff has been retaliated against by Defendants, culminating his termination from employment on January 31, 2010.

66. Defendants' termination of Plaintiff's employment and other retaliatory acts following his complaints for violations of the FLSA are in direct violation of Plaintiff's rights under 29 U.S.C. section 215(a)(3).

67. Plaintiff engaged in the protected activity of complaining to his employer regarding issues of overtime and other owed compensation on behalf of himself and others, and a causal link exists between the protected activity and adverse employment action as Defendants knew of Plaintiff's activities and complaints, and Defendants' termination of his employment and other retaliatory acts were a direct result of such complaints.

68. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered irreparable injuries and damages.

69. Plaintiff seeks relief as provided by 29 U.S.C. Section 216(b), including, without limitation, front-pay, backpay for lost wages, loss of other benefits, and any and all such legal or equitable relief as may be appropriate to effectuate for purposes of section 215(a)(3), including but not limited to compensatory damages for mental anguish and emotional distress and other injuries incurred as a result of the retaliation.

70. As Defendants' retaliatory actions including but not limited to the suspension of plaintiff were willful, malicious, and/or with conscious disregard of plaintiff's statutorily protected rights, Plaintiff is entitled to an award of punitive damages.

71. Plaintiff also request damages for such additional relief as justice may require, together with costs, attorney fees, pre-judgment interest, post-judgment interest, and other appropriate relief as the Court may grant in this action.

FOURTH CLAIM FOR RELIEF

**(New York State Minimum Wage Act, New York Labor Law §§ 650 *et seq.*,
Brought by Plaintiff on Behalf of himself and the Class)**

72. Plaintiff, on behalf of himself and members of the Class, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

73. Defendants knowingly paid Plaintiff and members of the Class less than the wage required by the New York State Minimum Wage Act, New York Labor Law § 652 and supporting regulations of the New York State Department of Labor.

74. Defendants did not pay Plaintiff and members of the Class for all hours worked.

75. Defendants' failure to pay Plaintiff and members of the Class the minimum wage was willful within the meaning of New York Labor Law § 663.

76. As a result of Defendants' willful and unlawful conduct, Plaintiffs and members of the Class are entitled to an award of damages in an amount to be determined at trial and attorney's fees, as provided by New York Labor Law § 663.

77. Plaintiff does not seek liquidated damages for this claim.

FIFTH CLAIM FOR RELIEF
(New York State Minimum Wage Act, New York Labor Law §§ 650 et seq.,
Brought by Plaintiff on Behalf of himself and the Class)

78. Plaintiff, on behalf of himself and members of the Class, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

79. 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.

80. Throughout the Class Period, Defendants willfully, regularly, and repeatedly failed to pay Plaintiffs and the Class at the required overtime rates, one-and-one-half the minimum wage for hours worked in excess of forty (40) hours per workweek.

81. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees, pursuant to New York Labor Law § 663.

82. Plaintiff does not seek liquidated damages for this claim.

SIXTH CLAIM FOR RELIEF
(Illegal Pay Deductions and Deductions from Gratuities,
New York Labor Law §§ 196-d,
Brought by Plaintiff on Behalf of himself and the Class)

83. Plaintiff, on behalf of himself and members of the Class, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

84. Defendants unlawfully retained portions of Plaintiff's and the Class members' tips.

85. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees.

86. Plaintiff does not seek liquidated damages for this claim.

**SEVENTH CLAIM FOR RELIEF
(Illegal Pay Deductions,
New York Labor Law §§ 196-d,
Brought by Plaintiff on Behalf of himself and the Class)**

87. Plaintiff, on behalf of himself and members of the Class, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

88. Defendants made illegal deductions from Plaintiff's and the Class members' pay for walk-outs, credit card payments, and breakage.

89. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and the Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, and attorneys' fees.

90. Plaintiff does not seek liquidated damages for this claim.

91. Defendants did not pay Plaintiff's New York State spread of hours premium for days during which Defendants committed the forgoing acts against Plaintiff, the FLSA Collective Plaintiffs, and members of the Class.

JURY DEMAND

92. Plaintiff hereby demands a trial by Jury.

PRAYER FOR RELIEF

[REDACTED]

[REDACTED]

[REDACTED]