

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JUSTIN BEECHER and)	
PRISCILLA CAIN,)	
on behalf of themselves and)	
all those similarly situated,)	
)	
Plaintiffs,)	CIVIL ACTION NO.:
)	
v.)	
)	
STEAK N SHAKE)	<i>Collective Action -</i>
OPERATIONS, INC.,)	<i>pursuant to 29 U.S.C. § 216(b)</i>
)	
Defendant.)	

COMPLAINT

Nature of the Claim

PLAINTIFFS JUSTIN BEECHER and PRISCILLA CAIN (“PLAINTIFFS”), for themselves and on behalf of others similarly situated who consent to representation, assert claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) for unpaid minimum wages, unpaid overtime compensation, liquidated damages, reasonable expenses of litigation and attorneys fees, on the grounds set forth below.

Jurisdiction and Venue

1. This Court has subject-matter jurisdiction over PLAINTIFFS’ claims pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. Subject-matter jurisdiction is also conferred upon this

Court by 29 U.S.C. § 216(b) and by 28 U.S.C. § 1337 because this action arises under Acts of Congress regulating commerce.

2. Under 28 U.S.C. § 1391(b), venue is appropriate in this district because a substantial part of the events or omissions giving rise to the claims at issue occurred in this judicial district.

The Parties

3. At all relevant times DEFENDANT STEAK N SHAKE OPERATIONS, INC. ("DEFENDANT") was a corporation doing business in the Northern District of Georgia.

4. PLAINTIFFS are current employees of DEFENDANT and residents of Cobb County in the state of Georgia. During PLAINTIFFS' employment, they worked as hourly employees in DEFENDANT'S Woodstock Road store in Roswell, Georgia and in DEFENDANT'S Barrett Parkway store in Kennesaw, Georgia. Throughout PLAINTIFFS' employment, they were denied the proper minimum wage and overtime compensation required by federal law.

The Class

5. The term "Class Members" as used in this complaint refers to those additional persons represented by the Plaintiffs pursuant to the collective action provision of 29 U.S.C. § 216(b).

6. The Class is defined as:

For the period since November 28, 2008:

All hourly employees of any Steak N Shake location who worked at any time to whom Defendant failed to pay the minimum wage and overtime compensation required by federal law.

7. PLAINTIFFS bring this case as a collective action for all Class Members, as defined above in ¶ 6, pursuant to the collective-action provision of 29 U.S.C. § 216(b). PLAINTIFFS consent to participate in this collective action. Their consents are attached hereto as Exhibit 1 and are a part hereof for all purposes pursuant to Fed. R. Civ. P. 10(c). The consents of other similarly situated individuals to participate in this lawsuit may be filed with the Court from time to time as they opt-in to this litigation, pursuant to 29 U.S.C. § 216(b).

Factual Allegations

8. At all relevant times, DEFENDANT has operated restaurant locations throughout the United States, including Georgia, at which PLAINTIFFS and the Class Members were employed in a variety of hourly-paid positions.

9. At all relevant times, DEFENDANT was an “employer” within the meaning of 29 U.S.C. § 203(d).

10. At all relevant times, DEFENDANT was not exempt from the overtime obligations of an “employer” under the FLSA, 29 U.S.C. § 201 *et seq.*

11. At all relevant times, DEFENDANT employed PLAINTIFFS and the Class Members as employees and therefore DEFENDANT was an “employer” within the meaning of 29 U.S.C. § 203(d) and not exempt under the FLSA.

12. At all relevant times, DEFENDANT was an enterprise engaged in commerce within the meaning of 29 U.S.C. 203(s)(1), because DEFENDANT had employees engaged in commerce, and because DEFENDANT’S annual gross volume of sales made was more than \$500,000.

13. Throughout their employment, PLAINTIFFS and the Class Members were employees engaged in commerce and were employed by an enterprise engaged in commerce within the meaning of the FLSA and therefore are expressly covered by the protections of the 29 U.S.C. § 207(a).

14. PLAINTIFFS are current employees of DEFENDANT.

15. Throughout his employment, PLAINTIFF BEECHER worked at DEFENDANT’S restaurant location on Woodstock Road in Roswell, Georgia during which he performed *every hourly-paid position* including, but not limited to, operations supervisor, production trainer and server.

16. Throughout her employment, PLAINTIFF CAIN worked at DEFENDANT’S restaurant locations on Woodstock Road in Roswell, Georgia and on Barrett Parkway in Kennesaw, Georgia during which she performed hourly-paid positions as a server and service trainer.

17. Throughout their employment, PLAINTIFFS and the Class Members were paid an hourly wage.

18. Throughout their employment, PLAINTIFFS and the Class Members were classified as non-exempt employees for purposes of the FLSA.

19. Throughout their employment, PLAINTIFFS and the Class Members were non-exempt employees within the meaning of the FLSA.

Defendant Failed To Pay Proper Overtime Compensation

20. Throughout their employment, PLAINTIFFS and the Class Members worked over forty (40) hours per week.

21. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S management was aware of the extra hours PLAINTIFFS and the Class Members worked each week in excess of 40 hours.

22. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT did not pay PLAINTIFFS and the Class Members overtime compensation for work performed in excess of 40 hours in a workweek.

23. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S management was aware of the extra hours PLAINTIFFS and the Class Members worked each week in excess of 40 hours for which they were not compensated.

24. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT created weekly reports (“weekly hours reports”) identifying employees by restaurant location: (a) who had already worked more than 40 hours that week; or (b) who had not yet worked more than 40 hours that week but who had remaining scheduled hours that, if worked, would result in those employees working more than 40 hours that week.

25. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT’S managers with responsibility over DEFENDANT’S restaurant locations, including division managers, district managers and general managers, received copies of these weekly hours reports.

26. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT’S managers discussed through e-mail communications the act of *eliminating overtime hours* for those hourly-paid employees who had worked more than 40 hours in a work week.

27. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT’S managers discussed through e-mail communications the act of *adjusting the hours* for those hourly-paid employees who had worked more than 40 hours in a work week.

28. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT’S managers were directed to *eliminate overtime*

hours for those hourly-paid employees who had worked more than 40 hours in a work week.

29. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers were directed to **adjust the hours** for those hourly-paid employees who had worked more than 40 hours in a work week.

30. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers, in fact, **eliminated overtime hours** for those hourly-paid employees who had worked more than 40 hours in a work week, which resulted in DEFENDANT not paying overtime to those employees as required by federal law.

31. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers, in fact, **adjusted the hours** for those hourly-paid employees who had worked more than 40 hours in a work week, which resulted in DEFENDANT not paying overtime to those employees as required by federal law.

32. Throughout the employment of PLAINTIFFS and the Class Members, in order to **adjust and thereby eliminate the hours** for those hourly-paid employees who had worked more than 40 hours in a work week, DEFENDANT'S managers made entries in DEFENDANT'S computer system, of which DEFENDANT was aware.

33. Throughout the employment of PLAINTIFFS and the Class Members, the adjustments made by DEFENDANT'S managers to hourly-paid employees' time records are reflected in a report created by DEFENDANT entitled "Audit Trail Report."

34. Throughout the employment of PLAINTIFFS and the Class Members, the Audit Trail Reports created by DEFENDANT reflect the "Old Clock In" time, the revised "New Clock In" time, the "Old Clock Out" time, the revised "New Clock Out" time, the date any information was modified, and the reason for the modification of information.

Defendant Failed to Pay The Proper Minimum Wage

35. Throughout their employment, PLAINTIFFS and the Class Members were paid less than the applicable minimum wage required under federal law.

36. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S management was aware that PLAINTIFFS and the Class Members were paid less than the applicable minimum wage required under federal law.

37. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT created a report identifying employees by restaurant location whose compensation included customer tips and who,

based on reported tips and hours worked in a week, earned less than the federally required minimum wage.

38. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers with responsibility over DEFENDANT'S restaurant locations, including division managers, district managers and general managers, received copies of these reports identifying those employees who, based on reported tips and hours worked in a week, earned less than the federally required minimum wage.

39. Throughout the employment of PLAINTIFFS and the Class Members, for those employees who, based on reported tips and hours worked in a week, earned less than the federally required minimum wage, DEFENDANT *ordinarily* would be required by federal law to pay such employees the difference between the federally required minimum wage and the regular hourly rate earned by such employees ("minimum wage differential").

40. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers *adjusted* the weekly tips purportedly earned by hourly-paid employees to *falsely reflect* a higher amount, in order to increase the regular hourly rate of such employees and eliminate any difference between the employees' regular hourly rate and the federally

required minimum wage, and ***thereby eliminate*** any obligation by DEFENDANT to pay a minimum wage differential.

41. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT'S managers ***adjusted*** the hours purportedly worked in a week by hourly-paid employees who relied on customer tips to ***falsely reflect*** a lower number of hours, in order to increase the regular hourly rate of such employees and eliminate any difference between the employees' regular hourly rate and the federally required minimum wage, and ***thereby eliminate*** any obligation by DEFENDANT to pay a minimum wage differential.

42. Throughout the employment of PLAINTIFFS and the Class Members, the adjustments made by DEFENDANT'S managers to the employees' time records for those hourly-paid employees whose compensation relied on customer tips, are reflected in a report created by DEFENDANT entitled "Audit Trail Report."

43. Throughout the employment of PLAINTIFFS and the Class Members, the Audit Trail Reports created by DEFENDANT reflect the "Old Clock In" time, the revised "New Clock In" time, the "Old Clock Out" time, the revised "New Clock Out" time, the "Old Tip" earned, the revised "New Tip" earned, the date any information was modified, and the reason for the modification of information.

Defendant Did Not Act in Good Faith

44. Throughout the employment of PLAINTIFFS and the Class Members, there is no evidence that the conduct of DEFENDANT that gave rise to this action was in good faith and based on reasonable grounds for believing that its conduct did not violate the FLSA.

45. Throughout the employment of PLAINTIFFS and the Class Members, DEFENDANT knowingly, intentionally and willfully violated the FLSA by failing to pay PLAINTIFFS and the Class Members the proper minimum wage and overtime compensation and other compensation to which they are entitled.

Collective-Action Allegations under 29 U.S.C. § 216(b)

46. The Plaintiffs seek to bring all claims arising under the Fair Labor Standards Act (“FLSA”) on behalf of themselves individually and all other similarly situated employees of the DEFENDANT who worked in any pay period falling within three chronological years immediately preceding the date on which this action was filed and continuing thereafter through the date on which final judgment is entered in this action and who timely file (or have already filed) a written consent to be a party to this action pursuant to 29 U.S.C. § 216(b).

47. The Plaintiffs seek unpaid minimum wages, overtime wages, and liquidated damages.

48. The Plaintiffs and the Class Members, as defined above in ¶ 6, are similarly situated. The Plaintiffs and the Class Members worked for DEFENDANT as non-exempt hourly workers performing similar job duties at DEFENDANT'S restaurant locations.

49. Plaintiffs and the Class Members were each paid wages less than those required by 29 U.S.C. § 206(a) throughout their employment.

50. Plaintiffs and the Class Members were not paid overtime compensation as required by 29 U.S.C. § 207 for any weekly pay period in which they were employed by DEFENDANT. DEFENDANT required their employees to work more than 40 hours during each week without compensating their employees at one and a half times the regular rate of pay.

CLAIMS AGAINST THE DEFENDANT

Count 1 – 29 U.S.C. § 206(a)
(Minimum Wages Due Under the FLSA)

51. PLAINTIFFS re-allege paragraphs 1-50 above and incorporate them by reference as if fully set forth herein.

52. By engaging in the above-described conduct, DEFENDANT violated the FLSA with respect to PLAINTIFFS and the Class Members in failing to pay them wages at least equal to the applicable minimum hourly wage, in violation of 29 U.S.C. § 206(a).

53. By engaging in the above-described conduct, DEFENDANT knowingly, intentionally and willfully violated the FLSA with respect to PLAINTIFFS and the Class Members.

54. Throughout the relevant period of this lawsuit, there is no evidence that DEFENDANT'S conduct that gave rise to this action was in good faith and based on reasonable grounds for believing that their conduct did not violate the FLSA.

55. As a direct and proximate result of the above-described conduct, PLAINTIFFS and the Class Members have lost wages.

56. Due to DEFENDANT'S FLSA violations, the Plaintiffs and Class Members are entitled to recover from DEFENDANT their unpaid minimum wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including interest, pursuant to 29 U.S.C. § 216(b), all in an amount to be determined at trial.

Count 2 - 29 U.S.C. § 207
(Overtime Compensation Due Under the FLSA)

57. PLAINTIFFS re-allege paragraphs 1-50 above and incorporate them by reference as if fully set forth herein.

58. By engaging in the above-described conduct, DEFENDANT violated the FLSA with respect to PLAINTIFFS and the Class Members in failing to pay them wages at a rate of 1.5 times their regular rate (or, at a

minimum, the applicable minimum wage), for hours worked in excess of forty hours per week, in violation of 29 U.S.C. § 207.

59. By engaging in the above-described conduct, DEFENDANT knowingly, intentionally and willfully violated the FLSA with respect to PLAINTIFFS and the Class Members.

60. Throughout the relevant period of this lawsuit, there is no evidence that DEFENDANT'S conduct that gave rise to this action was in good faith and based on reasonable grounds for believing that their conduct did not violate the FLSA.

61. As a direct and proximate result of the above-described conduct, PLAINTIFFS and the Class Members have lost wages.

62. Due to DEFENDANT'S FLSA violations, the Plaintiffs and Class Members are entitled to recover from DEFENDANT their unpaid overtime compensation and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including interest, pursuant to 29 U.S.C. § 216(b), all in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS respectfully pray that this Court do the following:

1. Issue a declaratory judgment that DEFENDANT has engaged in unlawful employment practices in violation of the FLSA with respect to PLAINTIFFS and the Class Members;
2. Require DEFENDANT to pay PLAINTIFFS and the Class Members for lost compensation including applicable minimum wages and overtime compensation calculated at one and one-half times the proper normal rate that PLAINTIFFS and the Class Members would have received but for DEFENDANT'S unlawful conduct;
3. Require DEFENDANT to pay PLAINTIFFS and the Class Members liquidated damages as provided for under the FLSA;
4. Award PLAINTIFFS and the Class Members their reasonable attorneys' fees and costs and expenses of suit arising from DEFENDANT'S violations under the FLSA;
5. Permit a trial by jury on all issues so triable; and
6. Provide such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand a jury trial on all claims for which they have a right to a jury.

s/ Alan H. Garber

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