

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

KYRA EIGENBERGER and DANIELLE)
TUCK, on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

v.)

TOKYO STATESBORO GA, LLC and)
LING LIN,)

Defendants.)

Civil Action File No.:

C V 6 1 7 - 1 6 0

COMPLAINT

COME NOW Plaintiffs, Kyra Eigenberger (“Eigenberger”) and Danielle Tuck (Tuck”)(collectively referred to herein as “Plaintiffs”), by and through their undersigned counsel, and file this Complaint against Tokyo Statesboro Ga, LLC (d/b/a Tokyo Japanese Restaurant)(“TSG”), on behalf of themselves and all others similarly situated, pursuant to Section 216(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201, *et seq.*), as amended (hereinafter “FLSA” or “the Act”), and in support thereof would further state as follows:

I. Introduction

1. The instant action arises from Defendants’ violations of Plaintiffs’ rights under the FLSA, including, but not limited to, the collective action provision of the Act found at Section 216(b) to remedy violations of the overtime provisions of the

FLSA by Defendants which have deprived Plaintiffs, as well as others similarly situated to the named Plaintiffs, of their lawful regular and overtime wages.

2. Other current and former employees of Defendants are also entitled to receive regular and overtime compensation for the reasons alleged in this Complaint. The above-named Plaintiffs are permitted to maintain this action for and on behalf of themselves and other employees similarly situated. 29 U.S.C. § 216(b). Any similarly situated employee wishing to become a party plaintiff to this action must provide his or her consent in writing to become such a party and such consent must be filed with this Court. *Id.*

3. This action is brought to recover unpaid regular and overtime compensation owed to the Plaintiffs and all current and former employees of TSG who are similarly situated to the Plaintiffs pursuant to the FLSA. The Plaintiffs and the collective group of similarly situated employees are or have worked as waiters or waitresses for TSG.

4. For at least three years prior to the filing of this Complaint, Defendants have willfully committed widespread violations of the FLSA by failing to compensate non-exempt employees at proper regular and overtime rates.

5. Plaintiffs and all similarly situated employees who elect to participate in this action seek unpaid overtime compensation for work performed, an equal amount of liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

II. Jurisdiction and Venue

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).
7. Venue is proper in the Middle District of Georgia under 28 U.S.C. § 1391 (b)-(c) because a substantial portion of the acts complained of occurred within the State of Georgia and the jurisdiction of this Court and because Defendant TSG maintains its principal places of business within this District.

III. Parties

8. Plaintiff KYRA EIGENBERGER resides in Boone, North Carolina and is a citizen of the United States. Eigenberger was employed by Defendant TSG in Statesboro, Georgia (within this District) as a waitress.
9. Plaintiff DANIELLE TUCK resides in Statesboro, Georgia and is a citizen of the United States. Tuck was employed by Defendant TSG in Statesboro, Georgia (within this District) as a waitress.
10. Defendant TOKYO STATESBORO GA, LLC (d/b/a Tokyo Japanese Restaurant)("TSG") is a corporation based in Georgia which conducts business within this State and District and maintains its principal place of business at 100 Brampton Avenue, Suite A, Statesboro, Georgia 30458. TSG owns and operates a restaurant. TSG is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its designated agent Ling Lin at

100 Brampton Avenue, Suite A, Statesboro, Georgia 30458. TSG was and is an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d).

11. Defendant LING LIN is an individual conducting business within the State of Georgia. Lin is the owner and organizer of TSG. Lin maintains control, oversight and direction of the operations of TSG’s waiters and waitresses, including the employment practices and payment relating to those operations, and regularly conducts business within the jurisdiction of this Court. Lin is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served at her place of business located at 100 Brampton Avenue, Suite A, Statesboro, Georgia 30458. Lin was and is an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d).

12. Upon information and belief, at all times material to this action, Defendants were engaged in commerce as defined by Section 203(s)(1)(A) of the FLSA, had an annual gross volume of business which exceeded \$500,000, and were engaged in interstate commerce.

13. At all times during Plaintiffs’ employment with TSG, the named Plaintiffs and all members of the collective action were “employees” of Defendants as defined by Section 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States within ten years preceding the filing of this lawsuit.

These same individuals are further covered by Sections 206 and 207 of the FLSA for the period in which they were employed by Defendants.

14. The overtime provisions set forth in Section 207 of the FLSA apply to Defendants.

IV. FLSA Violations

15. During the period of time material to this action, Defendants employed Plaintiffs and other similarly-situated employees as waiters and waitresses. TSG employs at least 8-10 full-time waiters or waitresses in the Statesboro, Georgia area.

16. Plaintiffs and other similarly-situated employees were responsible for providing food to customers in Statesboro, Georgia.

17. Plaintiffs and other similarly-situated employees are not being, and have not been, properly compensated for time spent waiting for customers on behalf of TSG.

18. Improper deductions from Plaintiffs' paychecks were regularly taken by TSG. Specifically, Plaintiffs were (and other waiters and waitresses were and are) required to sign-over checks made out to her directly back to Ms. Lin on a regular basis.

19. Plaintiff Eigenberger previously inquired as to these deductions, but was not provided with a response.

20. Pursuant to the FLSA, tips are the sole property of the waiter or waitress who earned them. Upon information and belief, TSG took improper deductions from Plaintiffs' tips.

21. Under federal and state law, waiters and waitresses at TSG were required to be paid no less than the required cash wage of \$2.13 per hour directly from TSG for every hour of regular time worked at TSG, regardless of the amount of tips earned. Instead, Plaintiffs' compensation was limited to tips received while working as waitresses for TSG.

22. Under federal and state law, waiters and waitresses at TSG were entitled to be paid no less than \$5.77 per hour directly from TSG (the overtime minimum wage, \$10.875, minus \$5.12, the maximum tip-deduction) for every hour worked at TSG over forty during any workweek.

23. TSG failed to properly calculate the minimum wage tip-deduction from the federal and state minimum wage for each regular and overtime hour paid to its waiters and waitresses.

24. Plaintiffs' position as waitresses fails to qualify for an exemption to overtime under the Fair Labor Standards Act.

25. During the statutory period, Plaintiffs and the similarly situated employees routinely worked as waiters or waitresses for Defendants in excess of forty (40) hours per week without overtime compensation.

26. These practices violate the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, specifically Section 207(a)(1). As a result of these unlawful practices, Plaintiffs and the similarly-situated employees suffered a loss of wages.

27. Upon information and belief, Plaintiff Eigenberger is entitled to no less than twenty-five thousand dollars (\$25,672.50) in unpaid regular and overtime compensation from Defendants.

28. Upon information and belief, Plaintiff Tuck is also entitled to no less than twenty-five thousand dollars (\$25,672.50) in unpaid regular and overtime compensation from Defendants.

29. Lin is listed as TSG's "organizer" and "manager" with the Georgia Secretary of State, with a business address of 100 Brampton Avenue, Suite A, Statesboro, Georgia 30458.

V. Scope of Defendants' Liability

30. There are numerous similarly situated current and former employees of TSG who have been improperly compensated in violation of the FLSA and who would benefit from the issuance of a Court-supervised Notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' records. Specifically, all current and former employees of Defendants

and all affiliated entities in Georgia and other states should be notified, who, at any time during the three years preceding the filing date of this Complaint, up through and including the date of this Court's issuance of a Court-supervised notice, were employed as waiters or waitresses by TSG.

VI. COUNT ONE-Violation of the Fair Labor Standards Act

31. Plaintiffs hereby repeat and incorporate by reference paragraphs 1-27 herein.

32. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

33. Defendants have willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to pay overtime compensation to current and former employees, including Plaintiffs and other similarly situated employees, in accordance with Section 207 of the FLSA.

34. As a result of Defendants' violations of the FLSA, Plaintiffs, as well as other similarly situated employees, have suffered damages by failing to receive overtime wages in accordance with Section 207 of the FLSA.

35. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and other similarly situated current and former employees.

36. As a result of the unlawful acts of Defendants, Plaintiffs and all current and former employees similarly situated have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation.

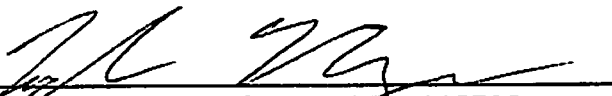
VII. Prayer For Relief

WHEREFORE, the named Plaintiffs, individually and on behalf of all other similarly situated persons, pursuant to Section 216(b) of the FLSA, pray for the following relief:

- A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this action, or that the Court issue such Notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of Court-supervised Notice, been employed by Defendants or any affiliated companies as waiters or waitresses within the United States. Such notice shall inform them that this civil action has been filed and of the nature of the action, and of their right to opt into this lawsuit if they were not properly paid by Defendants at any time during the preceding three years.
- B. That all Plaintiffs be awarded damages in the amount of their respective unpaid compensation, plus an equal amount of liquidated damages.

- C. That all Plaintiffs be awarded prejudgment interest;
- D. That all Plaintiffs be awarded reasonable attorneys' fees pursuant to the FLSA, as well as O.C.G.A. §§ 13-6-11 and 9-15-14 to the extent applicable;
- E. That all Plaintiffs be awarded the costs and expenses of this action; and
- F. That all Plaintiffs be awarded such other, further legal and equitable relief, including but not limited to, any injunctive and/or declaratory relief to which they may be entitled.¹

Respectfully submitted this 15th day of December, 2017.


Tyler B. Kaspers, Ga. Bar No. 445708
THE KASPERS FIRM, LLC
152 New Street, Suite 109B
Macon, GA 31201
404-994-3128
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Counsel for Plaintiffs

¹ Plaintiffs have attached hereto a Civil Action Cover Sheet as “Exhibit 1” and Summonses for the two defendants as “Exhibits 2 and 3.”

JS 44 (Rev. 06/17)

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

KYRA EIGENBERGER and DANIELLE TUCK

(b) County of Residence of First Listed Plaintiff WATAUGA (NC)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tyler B. Kaspers
The Kaspers Firm, LLC, 152 New Street, Suite 109B
Macon, GA 31201 (404) 944-3128

DEFENDANTS

TOKYO STATESBORO GA, LLC and LING LIN

County of Residence of First Listed Defendant BULLOCH (GA)
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

CV 617-160

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
The Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq.
 Brief description of cause:
Outstanding regular and overtime wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 51,345.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/15/17 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against Tokyo Japanese Restaurant Seeks to Recover 'Improper Deductions' from Servers' Checks](#)
