

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

-----X
OSCAR AVELAR, on behalf of himself and others similarly
situated,

Plaintiff,

-against-

BEN'S KOSHER DELICATESSEN & RESTAURANT INC.,
BEN'S RESTAURANT GROUP, INC. and COUNTRY GLEN
KOSHER RESTAURANT, INC.,

Defendants,
-----X

Case No.: 18-cv-1479

COMPLAINT

**COLLECTIVE
ACTION UNDER 29
U.S.C. § 216(b) and
RULE 23 CLASS
ACTION**

OSCAR AVELAR ("Plaintiff"), by and through his attorneys, FRANK & ASSOCIATES, P.C., brings this Complaint against Defendants BEN'S KOSHER DELICATESSEN & RESTAURANT INC., BEN'S RESTAURANT GROUP, INC. and COUNTRY GLEN KOSHER RESTAURANT, INC. (collectively, "Defendants"), and respectfully alleges as follows:

INTRODUCTION

1. Plaintiff alleges that Defendants violated the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. §§ 201, *et seq.*, and that he is entitled to recover from Defendants: (a) unpaid minimum wages, (b) liquidated damages, (c) pre-judgment and post-judgment interest and (d) attorneys' fees as a result of Defendants' failure to properly notify Plaintiff that they were taking a "tip credit" towards Plaintiff's wage.

2. Plaintiff also alleges that, pursuant to the New York Labor Law ("NYLL"), he is entitled to recover from Defendants: (a) unpaid minimum wages, (b) liquidated damages, (c) pre-judgment and post-judgment interest and (d) attorneys' fees and costs as a result of Defendants' failure to provide Plaintiff with notice pursuant to 12 NYCRR § 146-1.3 that they were taking a "tip credit" towards Plaintiff's wage.

3. Plaintiff additionally alleges that, pursuant to 12 NYCRR § 146-1.7, he is entitled to recover weekly uniform maintenance pay because Defendants required Plaintiff to purchase his own uniforms and failed to reimburse him for the cost.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over all federal law claims pursuant to 29 U.S.C. § 216(b), 28 U.S.C. § 1331 and supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to the claims herein occurred in Nassau County, New York.

PARTIES

6. Plaintiff Oscar Avelar is a resident of the State of New York who resides in the County of Nassau.

7. At all times relevant to the Complaint, Plaintiff Oscar Avelar was an “employee” within the meaning of 29 U.S.C. § 203(e) and NYLL § 190(2).

8. Upon information and belief, Defendant Ben’s Kosher Delicatessen & Restaurant Inc. was and still is a domestic business corporation incorporated under the laws of the State of New York with a primary place of business at 140 Wheatley Plaza, Greenvale, New York 11548.

9. At all times relevant to the Complaint, Defendant Ben’s Kosher Delicatessen & Restaurant Inc. was an “employer” within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

10. Upon information and belief, Defendant Ben’s Restaurant Group, Inc. was and still is a domestic business corporation incorporated under the laws of the State of New York with a primary place of business at 209 West 38th Street, New York, New York 10018.

11. At all times relevant to the Complaint, Defendant Ben's Restaurant Group, Inc. was an "employer" within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

12. Upon information and belief, Defendant Country Glen Restaurant, Inc. was and still is a domestic business corporation incorporated under the laws of the State of New York with a primary place of business at 500 North Broadway, Suite 249A, Jericho, New York 11753.

13. At all times relevant to the Complaint, Defendant Country Glen Restaurant Group, Inc. was an "employer" within the meaning of 29 U.S.C. § 203(d) and NYLL § 190(3).

14. Defendants own and operate seven (7) delicatessen and restaurants, six (6) of which are located in the State of New York.

15. At all times relevant to the Complaint, Defendants were and are "an enterprise engaged in interstate commerce" within the meaning of the FLSA.

16. At all times relevant to the Complaint, Defendants have and have had employees engaged in commerce or in the production of goods for commerce and handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

17. At all times relevant to the Complaint, Defendants have and have had annual gross volume of sales in excess of \$500,000.

FACTUAL ALLEGATIONS

18. From September 27, 2008 until November 19, 2017, Plaintiff worked for Defendants as a busboy at their deli and restaurant located at 59 Old Country Road, Carle Place, NY 11514.

19. Plaintiff regularly worked from 11:00 AM to 5:00 PM on Tuesdays and Wednesdays, 11:00 AM to 9:00 PM on Thursdays, 12:00 PM to 10:00 PM on Fridays and 12:00 PM to 9:00 PM on Sundays, for a total of approximately forty-one (41) hours per week.

20. Throughout his employment with Defendants, Plaintiff was paid an hourly wage by Defendants and received an additional amount in tips.

21. From the start of his employment until approximately January 2016, Plaintiff was paid five dollars (\$5.00) per hour plus tips. From approximately January 2016 until the end of his employment on November 19, 2017, Plaintiff was paid seven dollars and fifty cents (\$7.50) per hour plus tips.

22. As Plaintiff received tips, Defendants paid Plaintiff an hourly rate below the minimum wage, effectively taking a “tip credit” towards the minimum wage. However, Defendants failed entirely to notify Plaintiff of the existence of the “tip credit” in the manner required under federal or state law.

23. Defendants did not provide Plaintiff with a statement with every payment of wages listing allowances claimed as part of a minimum wage. Nor did Defendants provide Plaintiff with written notice, in English and in his primary language of Spanish, of his regular hourly pay rate, overtime hourly pay rate, the amount of the tip credit to be taken from the basic minimum hourly rate and the regular payday in a form signed by Plaintiff.

24. Indeed, Defendants failed to inform Plaintiff in any manner, either orally or in writing, that they were taking a “tip credit” towards the minimum wage.

25. As a result of Defendants’ failure to follow the dictates of either federal or state law, Defendants paid Plaintiff at a rate substantially below the minimum wage throughout the course of his employment.

26. Plaintiff's subminimum wage was yet further impacted by Defendants' failure to provide weekly uniform maintenance pay required under state law.

27. Plaintiff was obligated, as part of his employment, to wear a uniform which included a white t-shirt with Defendants' logo imprinted upon it.

28. Plaintiff was required to purchase these t-shirts, at a rate of fifteen dollars (\$15) per shirt and Defendants did not reimburse him for the cost.

29. Defendants did not provide washing services for Plaintiff nor did Defendants pay for the weekly maintenance of these uniform shirts at the rate set by 12 NYCRR § 146-1.7.

COLLECTIVE ACTION CLAIMS

30. Plaintiff brings his FLSA claim as a collective action, pursuant to 29 U.S.C. § 216(b), on behalf of all similarly situated non-exempt persons who are or were employed by Defendants within three years from the filing of this Complaint ("FLSA Collective").

31. At all relevant times, Plaintiff, and other members of the FLSA Collective, have had substantially similar job requirements and pay provisions.

32. At all relevant times, Plaintiff and other members of the FLSA Collective, have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing to provide proper notice that they were taking a tip credit against the minimum wage.

33. The claims of Plaintiff stated herein are similar to those of the Defendants' other employees.

34. The FLSA Collective is readily identifiable and locatable through the use of Defendants' records. The FLSA Collective should be notified of and allowed to opt-in to this action pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice the FLSA

Collective, who have been unlawfully deprived of minimum wage in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld by Defendants.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings his NYLL claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated non-exempt employees of Defendants who were not given proper notice of a “tip credit” towards the minimum wage and therefore were not paid at least minimum wage as well as those employees who were not provided with weekly uniform maintenance pay and did not receive accurate wage statements.

36. Plaintiff is a member of the Class he seeks to represent.

37. Plaintiff reserves the right to amend the Class definition based on discovery.

Efficiency of Class Prosecution of Class Claims

38. Upon information and belief, there are many current and former employees who are similarly situated to Plaintiff, who have been underpaid in violation of the FLSA and NYLL. The named Plaintiff is a representative of those other workers and is acting on behalf of the Defendants’ current and former employees’ interests as well as his own interest in bringing this action.

39. Certification of this class is the most efficient and economical means of resolving questions of law and fact that are common to Plaintiff and members of the proposed class.

40. Plaintiff’s individual claims and their resolution will resolve the common questions of the proposed class.

41. A class action is superior to other available methods for the fair and efficient adjudication of this litigation, particularly in the context of a wage and hour litigation like the

present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. 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 the efforts and expense that numerous individual actions would engender. 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 savings of these costs. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices and procedures. Although the relative damages suffered by the individual Rule 23 Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. Additionally, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

Numerosity and Impracticability of Joinder

42. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

43. The Rule 23 Class Members are readily ascertainable. For the purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants.

44. Unless the Court promptly issues such notice, persons similarly situated to Plaintiff, who have been unlawfully deprived of minimum wages in violation of the FLSA and NYLL and additionally deprived of uniform maintenance pay, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendants.

45. 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 those risks.

Common Questions of Law and Fact

46. The adjudication of Plaintiff's claims will directly result in the adjudication of numerous questions of law and fact common to the members of the proposed class.

47. These common issues include, but are not limited to: (a) whether Defendants provided proper notice of a "tip credit"; (b) whether Defendants unlawfully failed to pay minimum wage under the NYLL; (c) whether Defendants required Plaintiff and the Rule 23 Class to purchase their own uniforms for which they were not reimbursed; (d) whether Defendants failed to pay a weekly uniform maintenance fee; (e) whether Defendants failed to provide accurate wage statements, listing, *inter alia*, allowances claimed as part of the minimum wage; (f) the nature and extent of the Rule 23 Class-wide injury and the appropriate measure of damages for the class; and (g) whether Defendants' general practice of failing and/or refusing to pay Plaintiff and the Rule 23 Class proper compensation was done willfully or with reckless disregard of the federal and state wage and hour laws.

48. The policies, procedures, and practices implemented by Defendants were applied to all members of the proposed class.

49. The claims of Plaintiff are typical of the claims of the Rule 23 Class he seeks to represent. Plaintiffs' claims are typical of those claims which could be alleged by any member of

the Rule 23 Class, and the relief sought is typical of the relief which would be sought by each member of the proposed class in separate actions.

50. Plaintiff seeks the following relief for his individual claims and for the claims of the proposed class: (1) unpaid minimum wages for all hours worked, (2) weekly uniform maintenance pay, (3) an equal amount of liquidated damages and (4) statutory damages for Defendants' violations of NYLL § 195(3).

Adequacy of Representation

51. Plaintiff's interests are akin to those of the members of the proposed class.

52. Plaintiff is willing and able to represent the members of the proposed class and will fairly and adequately represent and protect the interest of the Rule 23 Class.

53. Plaintiff has retained counsel competent and experienced in complex class actions in labor and employment litigation for over fifty (50) years. Plaintiff's counsel can competently litigate the individual and class claims sufficiently to satisfy Rule 23(a)(4) of the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION **Failure to Pay Minimum Wage in Violation of the FLSA** **(On Behalf of Plaintiff and the FLSA Collective)**

54. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

55. Defendants knowingly and willfully paid Plaintiff and other similarly situated employees a subminimum wage in reliance on a "tip credit" towards the minimum wage.

56. Defendants knowingly and willfully failed to notify Plaintiff and other similarly situated employees that they were taking a "tip credit" towards the minimum wage, as required by 29 U.S.C. § 203(m).

57. By failing to provide said notice, Defendants willfully violated the FLSA, knowingly and intentionally failing to pay Plaintiff and other similarly situated employees at least the minimum wage prior to January 2016.

58. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

59. Due to Defendants' violations of the FLSA, Plaintiff and other similarly situated employees are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

SECOND CAUSE OF ACTION
Failure to Pay Minimum Wage in Violation of the NYLL
(On Behalf of Plaintiff and the Rule 23 Class)

60. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

61. Defendants knowingly and willfully paid Plaintiff and the Rule 23 Class a subminimum wage in reliance on a "tip credit" towards the minimum wage.

62. Prior to April 9, 2011, Defendants were required by 12 NYCRR § 137-2.2 to provide Plaintiff and the Rule 23 Class a statement with every payment of wages listing allowances claimed as part of the minimum wage in order to take a "tip credit."

63. Beginning on April 9, 2011, Defendants were required by 12 NYCRR § 146-1.3 to provide Plaintiff and the Rule 23 Class with written notice in the manner set forth in 12 NYCRR § 146-2.2 in order to take a "tip credit."

64. By failing to provide said notice under either 12 NYCRR § 137-2.2 or 12 NYCRR § 146-2.2, Defendants willfully violated the NYLL, knowingly and intentionally failing to pay Plaintiff and the Rule 23 Class at least the minimum wage.

65. Due to Defendants' violations of the NYLL and its supporting regulations, Plaintiff and the Rule 23 Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
Failure to Pay Uniform Maintenance Pay in Violation of the NYLL
(On Behalf of Plaintiff and the Rule 23 Class)

66. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

67. Defendants knowingly and willfully required Plaintiff and the Rule 23 Class to purchase their own uniforms without reimbursing them for the cost.

68. As Defendants failed to provide Plaintiff and the Rule 23 Class with the required uniforms or reimburse them for the cost of those uniforms, Defendants were required by 12 NYCRR 146-1.7 to pay a weekly uniform maintenance fee to Plaintiff and the Rule 23 Class, but did not do so.

69. Due to Defendants' violations of the NYLL and its supporting regulations, Plaintiff and the Rule 23 Class are entitled to recover from Defendants the mandated weekly uniform maintenance allowance, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION

**Failure to Provide Accurate Wage Statements in Violation of NYLL § 195(3)
(On Behalf of Plaintiff and the Rule 23 Class)**

70. Plaintiff hereby repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

71. Defendants failed to provide Plaintiff and the Rule 23 Class with an accurate statement of, *inter alia*, allowances claimed as part of the minimum wage in violation of NYLL § 195(3).

72. Defendants' violations of the NYLL and its supporting regulations entitled Plaintiff and the Rule 23 Class to recover damages of \$250 per work day, up to a maximum of \$5,000, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

A. Unpaid minimum wages, and an additional equal amount as liquidated damages, plus interest at the statutory compounded rate of 9% per annum pursuant to New York Labor Law;

B. Unpaid uniform maintenance pay, and an additional equal amount as liquidated damages, plus interest at the statutory compounded rate of 9% per annum pursuant to New York Labor Law;

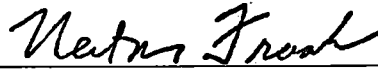
C. An award of civil penalties as a result of Defendants' violations of the New York Labor Law's notice provisions pursuant to NYLL § 198(1-d);

D. Issuance of a declaratory judgment that the practices complained of in this complaint are unlawful under the Fair Labor Standards Act and the New York Labor Law;

- E. All reasonable attorneys' fees and costs incurred in prosecuting these claims; and
- F. Such other relief as this Court deems just and proper.

Dated: March 9, 2018
Farmingdale, New York

FRANK & ASSOCIATES, P.C.



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Attorneys for Plaintiff

JS 44 (Rev. 11/27/17)

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
 Oscar Avelar, on behalf of himself and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Frank & Associates, P.C.
 500 Bi-County Blvd., Ste. 465, Farmingdale, NY 11735
 (631) 756-0400

DEFENDANTS
 Ben's Kosher Delicatessen & Restaurant Inc., Ben's Restaurant Group, Inc. and Country Glen Kosher Restaurant, Inc.

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

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

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 Veteran'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	<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	<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
<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	CIVIL RIGHTS <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	PRISONER PETITIONS 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	<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	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <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))	
			LABOR <input 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	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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):
29 U.S.C. Section 201, et seq.
 Brief description of cause:
Violations of FLSA and NYLL

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

DATE 03/09/2018 SIGNATURE OF ATTORNEY OF RECORD Walter Frank

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

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, Neil M. Frank, Esq., counsel for Plaintiffs, 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:

N/A

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? Yes 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 No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: N/A

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? Yes No **NOT APPLICABLE**

(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: Neil M. Frank

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Oscar Avelar, on behalf of himself and others
similarly situated

Plaintiff(s)

v.

Ben's Kosher Delicatessen & Restaurant Inc., Ben's
Restaurant Group, Inc. and Country Glen Kosher
Restaurant, Inc.

Defendant(s)

Civil Action No. 18-cv-1479

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BEN'S KOSHER DELICATESSEN & RESTAURANT INC.
C/O New York Secretary of State
One Commerce Plaza
99 Washington Ave
Albany, New York 12231-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Frank & Associates, P.C.
500 Bi-County Boulevard, Suite 465
Farmingdale, New York 11735

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 18-cv-1479

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 18-cv-1479

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
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I personally served the summons on the individual at *(place)* _____
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Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ben's Restaurant Group and Two Others Accused of Failing to Pay Employees the Minimum Wage](#)
