

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

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Davaughn Clarke, Latoya Adams, and Branden Cook,	:	
	:	<u>COMPLAINT</u>
	:	
<i>Plaintiffs,</i>	:	<u>Jury Trial Demanded</u>
- against -	:	
	:	
Slutty Vegan, Inc. and Slutty Vegan ATL LLC,	:	
	:	
<i>Defendants.</i>	:	
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Plaintiffs Davaughn Clarke (“Clarke”), Latoya Adams (“Adams”), and Branden Cook (“Cook,” and together with Adams and Clarke, the “Plaintiffs”), upon personal knowledge as to themselves and upon information and belief as to other matters, hereby file this Complaint against defendants Slutty Vegan, Inc. and Slutty Vegan ATL LLC (“Defendant”) allege as follows:

NATURE OF THE ACTION

1. Plaintiffs state that pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 et. seq. (“FLSA”), that they are entitled to recover from Defendant:

- (1) unpaid wages, including overtime;
- (2) liquidated damages; and
- (3) attorneys’ fees and costs.

2. Plaintiffs further allege that, pursuant to the New York Labor Law (“NYLL”), the New York Code of Rules and Regulations (“NYCRR”), the New York Wage Theft Prevention Act, and New York common law, they are entitled to recover from Defendant:

- (1) unpaid bonuses;
- (2) statutory penalties;
- (3) liquidated damages; and

(4) attorneys' fees and costs.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA"), and 28 U.S.C. §§ 1331 and 1337 and 1343 and has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because the Defendant maintains a place of business in this district and the majority of the conduct making up the basis of the complaint took place in this district.

PARTIES

5. At all relevant times, Plaintiff Clarke is an adult individual, over 18 years old, residing in New York County and a citizen of New York.

6. At all relevant times, Plaintiff Adams is an adult individual, over 18 years old, residing in Bronx County, and a citizen of New York.

7. At all relevant times, Plaintiff Cook is an adult individual, over 18 years old and a citizen of New York.

8. Defendant Slutty Vegan ATL LLC is a foreign limited liability company. At some point in 2022, this defendant opened up a new entity, defendant Slutty Vegan, Inc. Both of these entities are a single integrated enterprise and/or a joint employer for purposes of the Fair Labor Standards Act and New York Labor Law. Upon information and belief, the new entity was opened to operate as either a parent company or for the purpose of running New York operations through. This separation never formally occurred and at all relevant times both entities were central controlled, and owned by the same individuals.

9. Defendants operate restaurants under the trade name "Slutty Vegan" at 690 Fulton

Street, Brooklyn, New York 11217 (“Brooklyn Location”) as well as six locations in Georgia and one in Alabama. According to its website, the Defendant has plans to open an additional restaurant in New York County and a seventh location in Georgia.

10. All the Restaurants are operated as a single enterprise, under the common control of the Defendant.

11. Specifically, the restaurants are engaged in related activities, share common ownership, and have a common business purpose: the Restaurants are advertised jointly as a common enterprise on Defendant’s website located at <https://sluttyveganatl.com/#findus>.

12. At all relevant times, the Defendants were and continue to be an “enterprise engaged in commerce” within the meaning of the FLSA.

13. At all relevant times, the work performed by Plaintiffs was essential to the business operated by Defendant.

STATEMENT OF FACTS

14. Plaintiffs were, at all relevant times, covered employees within the meaning of the FLSA and NYLL.

15. **Plaintiff Clarke** was hired by Defendants on or around May 23, 2022 to work as a Senior Assistant General Manager at the “Slutty Vegan” restaurant located at 690 Fulton Street, Brooklyn, New York 11217. Plaintiff Clarke worked for Defendants until on or around January 28, 2023.

16. Clarke was initially hired as a salaried employee earning \$75,000 per year as a Senior Assistant General Manager.

17. On September 7, 2022, Plaintiff Clarke was promoted to “Brooklyn General Manager” and his annual salary was increased to \$85,000 per year.

18. When Clarke was hired, Defendants promised to pay him a bonus of \$1,800 per

quarter, an amount that was later increased to \$7,000 per quarter after he was promoted from Senior Assistant General Manager to General Manager.

19. Defendants never paid Clarke any of his promised bonuses.

20. At all times relevant during Clarke's employment, Defendants required him to work more than 40 hours per week, usually between 50 and 60 hours per week.

21. Defendants mis-classified Plaintiff Clarke as an exempt employee. While he held managerial titles, Defendants required Plaintiff perform a number of non-exempt tasks including: cooking and preparing food, including grilling burgers, frying food in deep fryers, and assembling burgers and other items; serving food to customers at "expo" stations; and performing general cleaning tasks.

22. At all times relevant during Plaintiff Clarke's employment, Defendants never paid him the required overtime rate of time and one-half for each hour he worked in excess of 40 hours per week.

23. **Plaintiff Adams** was hired by Defendants to begin working on May 30, 2022 as an Assistant General Manager to work at Defendants' Brooklyn location. Plaintiff Adams worked for Defendants until the termination of her employment on or around January 28, 2023.

24. Adams was hired as a salaried employee earning \$75,000 per year as an Assistant General Manager.

25. When Adams was hired, Defendants promised to pay her a bonus of \$4,000 per quarter.

26. Defendants never paid Adams any of her promised bonuses.

27. At all times relevant during Adams' employment, Defendants required her to work more than 40 hours per week, usually between 45 and 50 hours per week.

28. Defendants mis-classified Plaintiff Adams as an exempt employee. While she had a

managerial title, Defendants required Plaintiff perform a number of non-exempt tasks including: jumping in to assist the line staff to cook and prepare food, including grilling burgers, frying food in deep fryers, and assembling burgers and other items; serving food to customers at “expo” stations; and performing general cleaning tasks.

29. Defendants instructed Adams that a manager had to work the “expo” station, the station where food was physically served to customers, at all times.

30. In order to keep up with Defendants' guidance on serving food to customers within certain time and performance windows, throughout her work shifts, Plaintiff Adams had to repeatedly step in to help cook, prepare, serve and otherwise expedite orders.

31. Plaintiff Adams estimates that while she did create schedules and supervise employees, Defendants required her to spend the vast majority of her shifts performing the same physical tasks as the employees she was supervising.

32. At all times relevant during Plaintiff Adams' employment, Defendants never paid her the required overtime rate of time and one-half for each hour she worked in excess of 40 hours per week.

33. **Plaintiff Cook** began working for Defendants in or around September 2022 as a Certified Trainer at their Brooklyn location until the termination of his employment on January 12, 2023.

34. Cook's job responsibilities as a certified trainer included instructing Defendants' employees at their Brooklyn restaurant on how to properly perform a range of job duties including food preparation, packaging food, serving food, and various customer service tasks.

35. Plaintiff Cook was paid at the regular rates of \$16.50 or \$17.50 per hour plus tips.

36. Cook worked for Defendants full time and regularly worked more than 40 hours per week.

37. Defendants repeatedly miscalculated Plaintiff Cook's pay, which resulted in the repeated and ongoing underpayment of the required overtime premium.

38. For example, for the pay statement dated January 13, 2023, according to Defendants' payroll records Plaintiff Cook worked 49.34 hours. The first 40 of these hours were paid at a regular rate of \$16.50 per hour, correctly totaling \$660 in gross regular wages.

39. Under the FLSA and NYLL, the remaining 9.34 hours should have been paid at the overtime rate of time and one-half. When based on the regular rate of \$16.50 per hour, Plaintiff Cook's overtime rate would be \$24.75 per hour. Therefore, Cook's 9.34 overtime hours should have totaled \$231.165 in overtime pay for this pay period.

40. However, Defendants lists Cook's overtime hours as just 7.34 hours, 2 hours less than the correct overtime hours total, for just \$181.67 in overtime pay.

41. Confusingly, Defendants categorized 2 hours as "SpreadofHours," which are paid at the minimum wage rate of \$15 per hour, not at the overtime rate of \$24.75.

42. It is unclear whether Plaintiff Cook did, in fact, work more than ten hours in a given workshift on two different days during the pay period covered by the January 13th pay record.

43. Regardless of whether Plaintiff Cook did work two shifts totaling 11 or more hours that week and Defendants decided to pay him a New York State spread of hours premium of one additional hour at the minimum wage rate for each shift where he was required to work more than ten hours, all 9.34 overtime hours are required to be paid at the overtime rate of time and one half, not at the minimum wage rate of \$15.

44. Two other pay records covering the week before and the week after January 13, 2023, contain similar underpayments with regards to failure to pay at the required overtime rate accompanied by an apparent mischaracterization of two of Cook's overtime hours under the "SpreadofHours" category at the minimum wage rate of \$15.00 hour.

45. Adding further confusion is the fact that Plaintiff Cook's regular hourly rate is listed as \$17.00 per hour on the January 6 and 20th pay records, but dips to \$16.50 for the pay record dated January 13, 2023.

46. At all times during Plaintiff Cook's employment, he was required to wear a uniform consisting of a red polo shirt with Defendants' logo, black slacks, black socks, and non-slip shoes.

47. Defendants only provided two shirts to Plaintiff Cook, despite the fact that he worked five days per week, more than 40 hours every week.

48. Defendants required Cook to wear his uniform to work every day.

49. Plaintiff Cook did in fact wear his uniform to work every day.

50. Defendants required Plaintiff to wear his uniform to work in a clean condition every day.

51. Cook did wear his uniform to work in a clean condition every day, which required him to do laundry a minimum of twice per week.

52. Defendants never washed or offered to wash Plaintiff Cook's uniform for him, and did not pay him the required uniform maintenance pay.

53. Because of Defendants' improper compensation policies, Plaintiffs were deprived of pay, in direct violation of the FLSA and NYLL

54. This pattern of conduct was continuous throughout Plaintiffs' employment.

55. Defendants' unlawful conduct has been widespread, repeated, and consistent.

56. By implementing the above policies affecting their employees, Defendants knowingly and willfully operated their business with a policy of not paying their employees in an amount sufficient to compensate Plaintiffs for all amounts due under the FLSA overtime laws (of time and one-half), the New York State overtime laws (of time and one-half) with

regards to all Plaintiffs and New York spread of hours pay and New York uniform maintenance pay in regards to Plaintiff Cooke.

57. Defendants did not furnish Plaintiffs with an accurate statement with every payment of wages, listing gross wages, deductions and net wages as required by New York Labor Law § 195.

58. Plaintiffs reserve the right to amend this complaint once the wage and hour records that are required to be kept under the FLSA and NYLL and information regarding Defendants' corporate and franchise ownership structure is produced by Defendants during discovery.

STATEMENT OF CLAIM

COUNT I: Violations of the FLSA *On Behalf of all Plaintiffs*

59. Plaintiffs reallege and re-aver each and every allegation and statement contained in paragraphs above of this Complaint as if fully set forth herein.

60. At all relevant times, upon information and belief, Defendants was and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a). Further, Plaintiffs are covered individuals within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

61. At all relevant times, Defendants employed Plaintiffs within the meaning of the FLSA.

62. Upon information and belief, at all relevant times, Defendants has had gross revenues in excess of \$500,000.

63. At all relevant times, Defendants had a policy and practice of refusing to pay Plaintiffs for all hours, including overtime.

64. At all relevant times, Defendants had a policy and practice of failing to pay the

statutory proper wage to Plaintiffs for their hours worked, including overtime.

65. At all relevant times, Defendants had a policy and practice of failing to pay Plaintiffs the full amount of wages due, including overtime under the FLSA.

66. Records, if any, concerning the number of hours worked by Plaintiffs and the actual compensation paid to Plaintiffs should be in the possession and custody of Defendants. Plaintiffs intend to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, will then seek leave from the Court to amend this Complaint to set forth the precise amount due.

67. Defendants failed to properly disclose or apprise Plaintiffs of their rights under the FLSA. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiffs are entitled to liquidated damages pursuant to the FLSA.

68. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiffs suffered damages in an amount not presently ascertainable of unpaid wages, including overtime, due to unpaid wages, plus an equal amount as liquidated damages.

69. Plaintiffs are entitled to an award of their reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

COUNT II: Violations of the New York Labor Law
Failure to Pay Required Overtime
On Behalf of All Plaintiffs

70. Plaintiffs reallege and re-aver each and every allegation and statement contained in paragraphs above of this Complaint as if fully set forth herein.

71. At all relevant times, Plaintiffs were employed by Defendants within the meaning of NYLL §§ 2 and 651.

72. At all relevant times, the Defendants had a policy and practice of refusing to pay Plaintiffs for all of their hours worked, including overtime.

73. Defendants willfully violated Plaintiffs' rights by failing to pay them proper wages in the lawful amount for hours worked.

74. At all relevant times, Defendants had a policy of failing to pay Plaintiffs the full amount of wages due, including overtime, under the NYLL.

75. Defendants knowingly and willfully operated their business with a policy of not providing all non-exempt employees proper wage notices at the time of hiring and annually thereafter, as required under the NYLL.

76. Due to Defendants' NYLL violations, Plaintiffs are entitled to recover from Defendants unpaid wages, including overtime, unpaid wages, including overtime, reasonable attorneys' fees, liquidated damages damages, statutory penalties and costs and disbursements of the action, pursuant to NYLL.

COUNT III: Breach of Contract
On Behalf of Plaintiffs Clarke and Adams

77. Plaintiffs reallege and re-aver each and every allegation and statement contained in paragraphs above of this Complaint as if fully set forth herein.

78. Plaintiffs Clarke and Adams were hired with the promise of earning thousands in quarterly bonus.

79. Defendants never paid Clake or Adams any bonus at all.

80. Defendants' conduct was a breach of its employment contact with Plaintiffs.

81. Plaintiffs are entitled to compensatory damages.

COUNT IV: New York Labor Law - Failure to Pay Uniform Maintenance Pay
On Behalf of All Plaintiffs

82. Plaintiffs reallege and re-aver each and every allegation and statement contained in paragraphs above of this Complaint as if fully set forth herein.

83. Defendants required Plaintiff to wear a uniform, but did not wash or offer to wash

their required uniforms.

84. Defendants never paid Plaintiff Cook uniform maintenance pay.

85. Plaintiff's uniforms were issued by Defendants for the express benefit of Defendants and it was a condition of his employment to wear them during each shift.

86. Plaintiff routinely spent time off-the-clock and money to clean and maintain his uniforms consistent with the uniform appearance standards Defendants requires.

87. Defendants never paid Plaintiff any uniform maintenance pay or reimbursement for the cost of maintaining uniforms nor did they provide them in sufficient number to cover all workshifts of in accordance with 12 N.Y.C.R.R. § 146-1.7.

88. Defendants' conduct is in violation of Article 19 of the New York Labor Law and its supporting regulations, including 12 N.Y.C.R.R. Part 146 the Minimum Wage Order.

89. Plaintiff Cook is entitled to compensatory and liquidated damages.

**COUNT V: New York Labor Law- Annual Wage Notice and Periodic Wage Statements
*On Behalf of All Plaintiffs***

90. Plaintiffs reallege and re-aver each and every allegation and statement contained in paragraphs above of this Complaint as if fully set forth herein

91. Defendants has willfully failed to supply Plaintiffs with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiffs as their primary language, containing Plaintiffs rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer;

plus such other information as the commissioner deems material and necessary.

92. Through their knowing or intentional failure to provide Plaintiffs with the wage notices required by the NYLL, Defendants willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

93. Defendants willfully failed to supply Plaintiffs with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

94. Through their knowing or intentional failure to provide Plaintiffs with the accurate wage statements required by the NYLL, Defendants willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

95. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiffs are entitled to statutory penalties of fifty dollars each day that Defendants failed to provide Plaintiffs with wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

96. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs are entitled to statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiff with accurate wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, §198(1-d).

Count VI
Pled In The Alternative

97. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

98. Based on Defendants' failure to pay Plaintiffs the appropriate bonus Defendants were unjustly enriched at the expense of Plaintiffs.

99. Equity and good conscience require that Defendants pay restitution to Plaintiffs.

100. Upon information and belief, when Defendants entered into the contract, they agreed to pay the quarterly bonuses.

101. Plaintiffs provided valuable services to Defendants and Defendants knowingly accepted such services under the promise that a bonus would be paid each quarter yet failed to pay Plaintiff the reasonable value of such promise and the commensurate services.

102. As a result of Defendants' failure to pay Plaintiffs, Plaintiffs are entitled to relief from Defendants under New York's common law of unjust enrichment.

103. As a result of Defendants' failure to pay Plaintiffs the reasonable value of the valuable services they rendered, Plaintiffs are entitled to relief from Defendants under New York's common law of quantum meruit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- i. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NYLL;
- ii. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

- iii. An award of unpaid wages, including overtime, due to time shaving, due under the FLSA and the NYLL;
- iv. An award of statutory penalties as a result of Defendants' failure to comply with NYLL wage notice and wage statement requirements;
- v. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay proper wages pursuant to 29 U.S.C. § 216;
- vi. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay proper wages pursuant to the NYLL;
- vii. An award of prejudgment and postjudgment interest, costs and expenses of this action together with reasonable attorneys' fees and expert fees and statutory penalties;
- viii. Such other and further relief as this Court determines to be just and proper.

JURY DEMAND

Pursuant to FRCP 38 the Plaintiffs demand trial by jury on all issues.

Dated: New York, New York
April 4, 2023

LAW OFFICE OF MOHAMMED GANGAT



Mohammed Gangat, Esq.
675 3rd Avenue, Suite 1810,
New York, NY 10017
(718) 669-0714
mgangat@gangatllc.com

Attorneys for Plaintiffs