

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

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GUI MING LI, HANG JIAN CHI, GUO PING LI,  
HAO MIN CHEN, GUI XIANG DONG, CHUEN  
MUI CHAN, GUI FANG CHEN, JIAN XIA  
CHEN, JIAN ZHONG CHEN, JUAN CHEN, SHU  
HUA CHEN, XIANG LAN CHEN, XIANG WEI  
CHEN, YUE LAN CHEN, CHUN FENG CHI,  
SIEW YOON CHUNG, ZHAO YU DONG, SUM  
KONG LAU, GUO RONG LI, JIAN DE LI, JIE LI,  
QUAN DI LI, SAI HANG LI, WEI LI, WEN  
ZHOU LI, HONG BIN LIN, LI YUN LIN, LIANG  
YUN LIN, WAN RONG LIN, XIN WEI LIN, JIAN  
HUA LIN, XUE HUA LIN, JING XING LIU, MEI  
JUAN MO, YI DI QIU, XIAO MEI WANG, ZHEN  
HUO WENG, XIU YING WENG, JI YOU, XIU  
YUE YU, LI XIAN ZHANG, SHU BAO ZHAO,  
YI JUAN ZHENG,

Plaintiffs,

vs.

2875 RESTAURANT INC. d/b/a/ OLLIE'S  
NOODLE SHOP & GRILLE, MAY KWAN SI,  
INC. d/b/a OLLIE'S NOODLE SHOP & GRILLE,  
1160 THIRD AVENUE FOOD SERVICE, INC.  
d/b/a OLLIE'S NOODLE SHOP & GRILLE, TSU  
Y. WANG, CHIH CHOU YU a/k/a TSU ZHOU  
YU, JIN LONG CHEN, JIN HUANG CHEN a/k/a  
JIN CHEN HUANG, RONG LIN ZHU, HANG  
CHENG CHEN,

Defendants.

No. \_\_\_\_\_

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**COMPLAINT**

Plaintiffs Gui Ming Li, Hang Jian Chi, Guo Ping Li, Hao Min Chen, Gui Xiang Dong, Chuen Mui Chan, Gui Fang Chen, Jian Xia Chen, Jian Xhong Chen, Juan Chen, Shu Hua Chen, Xiang Lan Chen, Xian Wei Chen, Yue Lan Chen, Chun Feng Chi, Siew Yoon Chung, Zhao Yu Dong, Sum Kong Lau, Gu Rong Li, Jian De Li, Jie Li, Quan Di Li, Sai Hang Li, Wei Li, Wen Zhou Li,

Hong Bin Lin, Li Yun Lin, Liang Yun Lin, Wan Rong Lin, Xin Wei Lin, Jian Hua Lin, Xue Huan Lin, Jing Xing Liu, Mei Juan Mo, Yi Di Qiu, Xiao Mei Wang, Zhen Huo Weng, Xiu Ying Weng, Ji You, Xiu Yue Yu, Li Xian Zhang, Shu Bao Zhao, Yi Juan Zheng (collectively, "Plaintiffs"), by their undersigned attorneys, bring this action to recover damages arising out of their employment at three Ollie's Noodle Shop and Grille restaurants located at 190 West 44th Street ("Ollie's 44th Street"), 1991 Broadway ("Ollie's 68th Street") and 2315 Broadway ("Ollie's 84th Street") in Manhattan.

1. Plaintiffs are current and former employees of defendants 2875 Restaurant Inc., May Kwan Si, Inc., Third Avenue Food Service, Inc., Tsu Y. Wang, Chih Chou Yu a/k/a Tsu Zhou Yu, Jin Long Chen, Rong Lin Zhu, and Jin Huang Chen a/k/a Jin Chen Huang (the "Defendants").

2. Throughout the course of their employment, Plaintiffs regularly worked more than sixty hours each week for wages that fell below the legal minimum wage and without receiving the overtime premiums required by law.

3. When the New York Department of Labor investigated Defendants' wage practices, Defendants instructed Plaintiffs to provide false information to the Department of Labor.

4. The Defendants later retaliated against Plaintiffs for complaining to the Department of Labor.

5. As stated herein, Plaintiffs state claims for Defendants' failure to pay the minimum wage, failure to pay overtime, failure to pay "spread of hours" compensation, failure to pay for the cost of purchasing and maintaining required uniforms, illegal deductions from wages, illegal retention of gratuities, unjust enrichment and retaliation.

## **JURISDICTION AND VENUE**

6. 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"), 29 U.S.C. § 216 and 28 U.S.C. § 1331.

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

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

## **PARTIES**

### ***Plaintiffs***

9. Plaintiff Gui Ming Li has been employed as a delivery person at Ollie's 84th Street from approximately October 1998 to the present.

10. Plaintiff Hang Jian Chi was employed as a delivery person at Ollie's 84th Street from approximately June 2004 to approximately March 2006.

11. Plaintiff Guo Ping Li was employed as a delivery person at Ollie's 84th Street from approximately April 1999 to approximately March 2005.

12. Plaintiff Hao Min Chen has been employed as a server at Ollie's 44th Street from approximately January 2000 to the present.

13. Plaintiff Gui Xiang Dong has been employed as a server at Ollie's 44th Street for periods of time from approximately September 2004 to the present.

14. Plaintiff Chuen Mui Chan has been employed as a busboy at Ollie's 44th Street from approximately February 2000 to the present.

15. Plaintiff Gui Fang Chen was employed as a server at Ollie's 84th Street from approximately March 2005 to approximately September 2006.

16. Plaintiff Jian Xia Chen was employed as a server at Ollie's 84th Street and Ollie's 44th Street for periods of time from approximately February 2004 to approximately October 2006.

17. Plaintiff Jian Zhong Chen has been employed as a server at Ollie's 44th Street from approximately November 2005 to the present.

18. Plaintiff Juan Chen was employed as a server at Ollie's 84th Street and Ollie's 44th Street for periods of time from approximately July 2002 to approximately October 2005.

19. Plaintiff Shu Hua Chen has been employed as a deliver person at Ollie's 84th Street from approximately October 2006 to the present.

20. Plaintiff Xiang Lan Chen was employed as a server at Ollie's 84th Street from approximately October 2003 to approximately June 2005.

21. Plaintiff Xiang Wei Chen has been employed as a delivery person at Ollie's 84th Street from approximately March 2006 to the present.

22. Plaintiff Yue Lan Chen was employed as a delivery packer at Ollie's 84th Street from approximately February 2004 to approximately June 2004.

23. Plaintiff Chun Feng Chi was employed as a server at Ollie's 68th Street, Ollie's 84th Street and Ollie's 44th Street for periods of time from approximately February 2002 to approximately October 2006.

24. Plaintiff Siew Yoon Chung has been employed as a server at Ollie's 44th Street from approximately January 2004 to the present.

25. Plaintiff Zhao Yu Dong has been employed as a delivery person at Ollie's 84th Street from approximately September 2004 to the present.

26. Plaintiff Sum Kong Lau has been employed as a delivery person at Ollie's 68th Street from approximately October 1999 to the present.

27. Plaintiff Guo Rong Li has been employed as a delivery person at Ollie's 84th Street from approximately June 2004 to the present.

28. Plaintiff Jian De Li has been employed as a server at Ollie's 84th Street and Ollie's 44th Street from approximately March 2003 to the present.

29. Plaintiff Jie Li has been employed as a delivery person at Ollie's 44th Street and Ollie's 84th Street from approximately January 2003 to the present.

30. Plaintiff Quan Di Li has been employed as a delivery person at Ollie's 84<sup>th</sup> Street from approximately December 1999 to the present.

31. Plaintiff Sai Hang Li was employed as a server at Ollie's 44<sup>th</sup> Street from approximately October 2005 to approximately November 2006.

32. Plaintiff Wei Li was employed as a delivery person at Ollie's 84th Street from approximately October 1998 to approximately May 2005.

33. Plaintiff Wen Zhou Li has been employed as a server at Ollie's 84th Street and Ollie's 44th Street from approximately August 2001 to the present.

34. Plaintiff Hong Bin Lin was employed as a delivery person at Ollie's 84th Street from approximately January 1999 to approximately November 2005.

35. Plaintiff Jian Hua Lin was employed as a busboy at Ollie's 44<sup>th</sup> Street from approximately September 2005 to approximately March 2007.

36. Plaintiff Li Yun Lin was employed as a server at Ollie's 84th Street from approximately September 2002 to approximately September 2004.

37. Plaintiff Liang Yun Lin has been employed as a server at Ollie's 44th Street, Ollie's 68th Street, Ollie's 84th Street and also Ollie's 116th Street restaurant from approximately February 2003 to approximately May 2006.

38. Plaintiff Wan Rong Lin has been employed as a server at Ollie's 84th Street from approximately March 2004 to the present.

39. Plaintiff Xin Wei Lin has been employed as a delivery person at Ollie's 84th Street from approximately September 2005 to the present.

40. Plaintiff Xue Hua Lin was employed as a server at Ollie's 44th Street and Ollie's 84th Street from approximately December 2001 to March 2007.

41. Plaintiff Jing Xiang Liu was employed as a delivery person at Ollie's 68th Street from approximately August 2001 to approximately January 2007.

42. Plaintiff Mei Juan Mo has been employed as a server at Ollie's 84th Street from approximately October 1998 to the present.

43. Plaintiff Yi Di Qiu was employed as a delivery person at Ollie's 84th Street from approximately September 2004 to approximately March 2006.

44. Plaintiff Xiao Mei Wang was employed as a server at Ollie's 68th Street and Ollie's 84th Street from approximately August 2002 to approximately December 2003.

45. Plaintiff Zhen Huo Weng was employed as a server at Ollie's 44th Street from approximately May 2005 to the present.

46. Plaintiff Xiu Ying Weng was employed as a server at Ollie's 68th Street from approximately September 2003 to approximately February 2007.

47. Plaintiff Ji You was employed as a server at Ollie's 84th Street from approximately January 2005 to approximately April 2006.

48. Plaintiff Xiu Yue Yu was employed as a delivery packer at Ollie's 68th Street and Ollie's 84th Street from approximately June 2000 to approximately October 2003.

49. Plaintiff Li Xian Zhang has been employed as a server at Ollie's 44<sup>th</sup> Street and Ollie's 84<sup>th</sup> Street from approximately September 2004 to the present.

50. Plaintiff Shu Bao Zhao has been employed as a delivery person at Ollie's 84th Street from approximately September 1998 to the present.

51. Plaintiff Yi Juan Zheng was employed as a delivery packer at Ollie's 68th Street from approximately October 2004 to approximately July 2006.

***Ollie's 84<sup>th</sup> Street Defendants***

52. Upon information and belief, defendant 2875 Restaurant Inc. is a corporation organized and existing under the laws of the State of New York.

53. Upon information and belief, defendant 2875 Restaurant Inc. has a principal executive office at 131-58 Maple Avenue, Flushing, New York, 11355.

54. At all times relevant to this action, 2875 Restaurant Inc. conducted business under the trade name "Ollie's Noodle Shop & Grille."

55. At all times relevant to this action, 2875 Restaurant Inc. owned and operated Ollie's 84th Street.

56. Upon information and belief, Tsu Y. Wang is the chairman or chief executive officer of 2875 Restaurant, Inc.

57. Upon information and belief, at all times relevant to this action, Defendant Tsu Y. Wang had the power to hire and fire Plaintiffs who worked for 2875 Restaurant Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

58. Upon information and belief, at all times relevant to this action, Defendant Chih Chou Yu had the power to hire and fire Plaintiffs who worked for 2875 Restaurant Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

59. At all times relevant to this action, 2875 Restaurant Inc. was an employer of the Plaintiffs who worked at Ollie's 84<sup>th</sup> Street.

60. At all times relevant to this action, Tsu Y. Wang was an employer of the Plaintiffs who worked at Ollie's 84<sup>th</sup> Street.

61. At all times relevant to this action, Chih Chou Yu was an employer of the Plaintiffs who worked at Ollie's 84<sup>th</sup> Street.

62. Upon information and belief, 2875 Restaurant Inc. has been, at all times relevant to the allegations in the complaint, an enterprise engaged in interstate commerce within the meaning of the Fair Labor Standards Act in that it (i) has 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; and (ii) has had an annual gross volume of sales of not less than \$500,000.

***Ollie's 44th Street Defendants***

63. Upon information and belief, defendant May Kwan Si, Inc. is a corporation organized and existing under the laws of the State of New York.

64. Upon information and belief, defendant May Kwan Si, Inc. has a principal executive office at 131-58 Maple Avenue, Flushing, New York, 11355.

65. At all times relevant to this action, May Kwan Si, Inc. conducted business under the trade name "Ollie's Noodle Shop & Grille."

66. At all times relevant to this action, May Kwan Si, Inc. owned and operated Ollie's 44<sup>th</sup> Street.

67. Upon information and belief, Tsu Y. Wang is the chairman or chief executive officer of May Kwan Si, Inc.

68. Upon information and belief, at all times relevant to this action, Defendant Tsu Y. Wang had the power to hire and fire Plaintiffs who worked for May Kwan Si, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

69. Upon information and belief, at all times relevant to this action, Defendant Rong Lin Zhu had the power to hire and fire Plaintiffs who worked for May Kwan Si, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

70. Upon information and belief, at all times relevant to this action, Defendant Hang Cheng Chen had the power to hire and fire Plaintiffs who worked for May Kwan Si, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

71. At all times relevant to this action, May Kwan Si, Inc. was an employer of the Plaintiffs who worked at Ollie's 44<sup>th</sup> Street.

72. At all times relevant to this action, Tsu Y. Wang was an employer of the Plaintiffs who worked at Ollie's 44<sup>th</sup> Street.

73. At all times relevant to this action, Rong Lin Zhu was an employer of the Plaintiffs who worked at Ollie's 44<sup>th</sup> Street.

74. Upon information and belief, May Kwan Si, Inc. has been, at all times relevant to the allegations in the complaint, an enterprise engaged in interstate commerce within the meaning of the Fair Labor Standards Act in that it (i) has 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; and (ii) has had an annual gross volume of sales of not less than \$500,000.

***Ollie's 68th Street Defendants***

75. Upon information and belief, defendant 1160 Third Avenue Food Service, Inc. is a corporation organized and existing under the laws of the State of New York.

76. Upon information and belief, defendant 1160 Third Avenue Food Service, Inc. has a principal executive office at 1991 Broadway, New York, New York, 10023.

77. At all times relevant to this action, 1160 Third Avenue Food Service, Inc. conducted business under the trade name "Ollie's Noodle Shop & Grille."

78. At all times relevant to this action, 1160 Third Avenue Food Service, Inc. owned and operated Ollie's 68<sup>th</sup> Street.

79. Upon information and belief, Tsu Y. Wang is the chairman or chief executive officer of 1160 Third Avenue Food Service, Inc.

80. Upon information and belief, at all times relevant to this action, Defendant Tsu Y. Wang had the power to hire and fire Plaintiffs who worked for 1160 Third Avenue Food Service, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

81. Upon information and belief, at all times relevant to this action, Defendant Jin Long Chen was a shareholder of 1160 Third Avenue Food Service, Inc.

82. Upon information and belief, Mr. Jin Long Chen had the power to hire and fire Plaintiffs who worked for 1160 Third Avenue Food Service, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs.

83. Upon information and belief, at all times relevant to this action, Defendant Jin Huang Chen was the general manager of 1160 Third Avenue Food Service, Inc. Upon information and belief, Mr. Jin Huang Chen had the power to hire and fire Plaintiffs who worked for 1160 Third Avenue Food Service, Inc., control their terms and conditions of employment, and determine the rate and method of any compensation provided to the Plaintiffs..

84. At all times relevant to this action, 1160 Third Avenue Food Service, Inc. was an employer of the Plaintiffs who worked at Ollie's 68<sup>th</sup> Street.

85. At all times relevant to this action, Tsu Y. Wang was an employer of the Plaintiffs who worked at Ollie's 68<sup>th</sup> Street.

86. At all times relevant to this action, Jin Long Chen was an employer of the Plaintiffs who worked Ollie's 68<sup>th</sup> Street.

87. At all times relevant to this action, Jin Huang Chen was an employer of the Plaintiffs who worked at the Ollie's 68<sup>th</sup> Street.

88. Upon information and belief, 1160 Third Avenue Food Service, Inc. has been, at all times relevant to the allegations in the complaint, an enterprise engaged in interstate commerce within the meaning of the Fair Labor Standards Act in that it (i) has 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; and (ii) has had an annual gross volume of sales of not less than \$500,000.

## FACTS

89. Defendants 2875 Restaurant Inc., May Kwan Si, Inc. and 1160 Third Avenue Food Service, Inc. (together “Corporate Defendants”), own and operate several restaurants in New York City doing business under the trade name of Ollie’s Noodle Shop & Grille.

90. Ollie’s 84<sup>th</sup> Street, Ollie’s 44<sup>th</sup> Street and Ollie’s 68<sup>th</sup> Street are collectively referred to as “Ollie’s Noodle Shop & Grilles.”

91. Ollie’s Noodle Shop & Grilles serve food to customers on the premises, provide take-out service and also provide delivery service.

92. Each Ollie’s Noodle Shop & Grille is a “restaurant” within the meaning of the New York Labor Law.

93. Plaintiffs have each been employed at one or more of the Ollie’s Noodle Shop & Grilles at issue in this action.

94. Some Plaintiffs have held the position of “server” while employed by the Defendants (the “Server Plaintiffs”). Servers at Ollie’s Noodle Shop & Grilles typically serve food to customers eating on the premises of Defendants’ restaurants.

95. Some Plaintiffs have held the position of “busboy” while employed by the Defendants (the “Busboy Plaintiffs”). Busboys at Ollie’s Noodle Shop & Grilles normally are responsible for tasks such as arranging dishware and silverware for customers who eat on the premises of Defendants’ restaurants and clearing used dishes off of tables.

96. Some Plaintiffs have held the position of “delivery packer” while employed by the Defendants (the “Delivery Packer Plaintiffs”). Delivery packers at Ollie’s Noodle Shop & Grilles normally pack containers of food into bags so that the food is ready for delivery to customers who order delivery service.

97. Some Plaintiffs have held the position of “delivery person” while employed by the Defendants (the “Delivery Plaintiffs”). Delivery persons at Ollie’s Noodle Shop & Grilles normally deliver orders of food from the restaurant premises to locations off of the premises, such as customers’ homes and places of business.

98. Upon information and belief, at all times relevant to this action, Plaintiffs handled, sold, or otherwise worked on goods or materials that had been moved in or produced for interstate commerce.

*Plaintiffs’ Wages, Hours and Working Conditions*

99. The Plaintiffs regularly worked significant overtime hours while employed by the Defendants. Many or all of the Plaintiffs regularly worked approximately sixty or more hours per week while employed by the Defendants.

100. Many or all of the Plaintiffs regularly worked for the Defendants for six days per week during most or all of their employment.

101. Many or all of the Plaintiffs worked a “spread of hours” that exceeded ten hours per day one or more days per week.

102. The “spread of hours” is the number of hours from the time that an employee started working on a particular day until the time that he or she stopped working for the day.

103. All Plaintiffs normally worked a spread of hours of between approximately seven and fourteen hours per day.

104. Some of the Plaintiffs were permitted only de minimus breaks during the day.

105. Some of the Plaintiffs were limited to approximately two fifteen minute breaks per work day while working at Ollie’s Noodle Shop & Grilles.

106. At all times relevant to this action, the Defendants compensated many or all of the Plaintiffs by paying them a monthly salary at 15-day intervals.

107. The monthly salary that the Defendants paid to some of the Plaintiffs was as low as approximately \$350 per month.

108. Some of the Plaintiffs received their salary partly by check and partly in cash. Other Plaintiffs received their salary entirely in cash.

109. When Defendants paid the Plaintiffs by check, the information provided on the pay stub that accompanied the check was normally inaccurate.

110. In the box on the pay stub to indicate the number of hours worked, the pay stubs normally stated a lower number of hours than the real amount that the Plaintiffs actually worked.

111. For some or all of the Delivery Packer Plaintiffs, when they were paid by check, the pay stub indicated that they received tips even though they did not.

112. The Defendants did not notify the Plaintiffs of the minimum wage provisions of the Fair Labor Standards Act.

113. The Defendants did not notify the Plaintiffs of the Fair Labor Standards Act tip credit provisions.

114. The Defendants' did not notify the Plaintiffs of the Defendants' intention to claim a tip credit against their minimum wage obligations.

115. The Defendants were not legally entitled to claim a tip credit under the Fair Labor Standards Act in order to meet their minimum wage obligations to the Plaintiffs.

116. The monthly salary paid by the Defendants to all of the Plaintiffs who have been servers, busboys, and delivery persons was insufficient to satisfy the Defendants' obligations to pay the minimum wage required by the Fair Labor Standards Act. The salary effectively resulted

in an hourly wage that was below \$5.15 per hour. In fact, some of the Server Plaintiffs received hourly wages as low as approximately \$1.40 per hour.

117. The monthly salary paid by the Defendants to the Server Plaintiffs, Busboy Plaintiffs and Delivery Plaintiffs was insufficient to satisfy the Defendants' obligations to pay the minimum wage required by the New York Labor Law.

118. During some or all of their employment, the monthly salary paid by Defendants to the Delivery Packer Plaintiffs was insufficient to satisfy the Defendants' obligations to pay the minimum wage required by the New York Labor Law.

119. The Defendants did not pay any of the Plaintiffs the overtime compensation required by both the Fair Labor Standards Act and New York Labor Law.

120. The Defendants did not pay any of the Plaintiffs any additional compensation if that Plaintiff worked a spread of hours in a day that exceeded ten.

#### ***Deductions for Meals, Uniforms and Expenses***

121. The Defendants deducted money from some of the Plaintiffs' wages purportedly on the basis that the Defendants were furnishing meals to the Plaintiffs. The Defendants made these meal deductions notwithstanding the fact that the food served to the Plaintiffs was sometimes food that appeared to have been spoiled

122. The Defendants also made these meal deductions notwithstanding the fact that the Defendants regularly did not allow some of the Plaintiffs a reasonable meal period in which to eat the meals.

123. During their employment at Ollie's Noodle Shop & Grilles, Server Plaintiffs have been required to wear a shirt that is embroidered or imprinted with the restaurant's name, as well as black pants and black shoes.

124. During Plaintiffs' employment, Defendants required Busboy Plaintiffs to wear a uniform while working that consisted of a shirt embroidered or imprinted with the Defendants' trade name, black pants and black shoes.

125. The uniforms that Server Plaintiffs and Busboy Plaintiffs have been required to wear to work at Ollie's Noodle Shop & Grilles constitute uniforms within the meaning of the Fair Labor Standards Act and New York Labor Law.

126. The Defendants have not reimbursed some of the Server Plaintiffs and Busboy Plaintiffs for the cost of purchasing any of the uniforms.

127. The Defendants have not reimbursed any of the Server Plaintiffs or Busboy Plaintiffs for the cost of cleaning and maintaining any of the uniforms.

128. During the course of a shift or workday, delivery persons regularly accumulated money received from customers that was to pay for the food purchased from Ollie's Noodle Shop & Grilles ("Customer Payments"). When a delivery person was robbed during working hours, one or more defendants required the delivery person to pay one or more defendants some or all of the Customer Payments that had been stolen.

129. Some delivery persons made deliveries on a motorized bike or scooter while working for the Defendants. The motorized bikes and scooters were tools that were specifically required for the performance of those delivery persons' work. Ollie's Noodle Shop & Grilles did not reimburse those delivery persons for the costs associated with making deliveries by motorized bike or scooter, including but not limited to the costs of gas, purchase and maintenance of the scooter, and traffic or parking tickets.

130. At each of the three Ollie's Noodle Shop & Grilles, at all relevant times, the servers and busboys pooled their tips. The Defendants do not allow the servers and busboys to

keep all of the tips that they received while at work for the Defendants. The Defendants have required that, each day, the servers and busboys take money from each of the tip pools and give it to the custodians who clean the restaurants overnight. The custodians do not serve customers and are not tipped employees within the meaning of the Fair Labor Standards Act or New York Labor Law.

### ***Retaliation***

131. Some Plaintiffs filed a complaint with the New York State Department of Labor regarding the underpayment of wages at Ollie's 84th Street.

132. Upon information and belief, the New York State Department of Labor (the "DOL") has opened an investigation into the labor practices of Ollie's Noodle Shop & Grilles (the "DOL Investigation").

133. During the course of the DOL Investigation, Defendants instructed some Plaintiffs to provide false information to DOL investigators about the number of hours they worked each week.

134. At Ollie's Noodle Shop & Grilles, Defendants required some Plaintiffs to sign papers that purported to document the hours they worked and/or tips they received but that were blank or inaccurate.

135. After Plaintiffs filed a complaint with the DOL and it began the DOL Investigation, Defendants retaliated against them by reducing the number of hours they could work, thereby depriving them of the opportunity to earn wages and tips.

### ***Failure to Post the Notices Required By Law***

136. During the time that Plaintiffs were employed by Defendants, Defendants did not maintain in the workplace, a display containing notices of employee rights to receive the

minimum wage and overtime at a rate of one and one-half their regular rate, as required under both the Fair Labor Standards Act and New York Labor Law.

137. During the time that Plaintiffs were employed by Defendants, Defendants did not maintain in the workplace a display containing a copy of New York Labor Law §§ 193, 196-d and any accompanying regulations as required by the New York Labor Law.

138. All of the violations of the federal and state law cited above were willful within the meaning of the Fair Labor Standards Act and New York Labor Law.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Claim For Minimum Wages Under The Fair Labor Standards Act (Server, Busboy and Delivery Plaintiffs)**

139. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

140. Plaintiffs have consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b). The consents are attached hereto as Exhibit A.

141. At all times relevant to this action, Defendants were Plaintiffs' employers within the meaning of 29 U.S.C. § 203(d).

142. At all times relevant to this action, Defendants were employers engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 206(a) and 207(a).

143. Defendants willfully failed to compensate the Server Plaintiffs the applicable minimum hourly wage, in violation of 29 U.S.C. § 206(a).

144. Defendants willfully failed to compensate the Busboy Plaintiffs the applicable minimum hourly wage, in violation of 29 U.S.C. § 206(a).

145. Defendants willfully failed to compensate the Delivery Plaintiffs the applicable minimum hourly wage, in violation of 29 U.S.C. § 206(a).

146. Defendants also willfully required some Delivery Plaintiffs to provide motor scooters or motorized bikes that were required for those delivery persons' work. The cost of providing these tools further reduced these delivery persons' wages below the minimum hourly wage in violation of 29 U.S.C. § 206(a), and applicable regulations, specifically 29 C.F.R. § 531.35.

147. Defendants' violations of the FLSA, as described in this Complaint, have been willful and intentional. Defendants have failed to make a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs.

148. Due to Defendants' FLSA violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, 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, pursuant to the FLSA, specifically 29 U.S.C. § 216(b), all in an amount to be determined at trial.

## **COUNT II**

### **Claim For Minimum Wages Under New York Labor Law (Server, Busboy, Delivery and Delivery Packer Plaintiffs)**

149. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs Plaintiffs as if fully set forth herein.

150. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

151. At all times relevant to this action, Defendants were employers within the meaning of New York Labor Law §§ 2(6), 190(3) and 651(6).

152. Defendants willfully failed to record, credit, or compensate Server Plaintiffs the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law § 652 and applicable regulations.

153. Defendants willfully failed to record, credit, or compensate Busboy Plaintiffs the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law § 652 and applicable regulations.

154. Defendants willfully failed to record, credit, or compensate Delivery Plaintiffs the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law § 652 and applicable regulations.

155. Defendants willfully failed to record, credit, or compensate some Delivery Packer Plaintiffs the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law § 652 and applicable regulations.

156. Defendants also willfully required some delivery persons to pay expenses incurred while carrying out duties assigned by the Defendants, in violation of 12 N.Y.C.C.R.R. § 137-2.5. The expenses paid by these delivery persons further reduced the hourly wages that they were paid.

157. Due to Defendants' violations of New York Labor Law, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid minimum wages and an amount equal to one quarter of their unpaid minimum wages in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

### **COUNT III**

#### **Claim For Overtime Wages Under the Fair Labor Standards Act (Server, Busboy, Delivery and Delivery Packer Plaintiffs)**

158. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

159. Plaintiffs have consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b). The consents are attached hereto as Exhibit A.

160. At all times relevant to this action, Plaintiffs were engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

161. At all times relevant to this action, Defendants were employers engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

162. Defendants willfully failed to pay Plaintiffs overtime wages for hours worked in excess of forty per week at a wage rate of 1.5 times their regular rate of pay or, at a minimum, the minimum wage to which Plaintiffs were entitled under 29 U.S.C. § 206(a), in violation of 29 U.S.C. § 207(a)(1).

163. Defendants' violations of the FLSA as described in this Complaint have been willful and intentional. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs.

164. Due to Defendants' FLSA violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, pursuant to the FLSA, specifically 29 U.S.C. § 216(b), all in an amount to be determined at trial.

#### **COUNT IV**

##### **Claim For Overtime Wages Under New York Labor Law (Server, Busboy, Delivery and Delivery Packer Plaintiffs)**

165. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

166. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

167. Defendants willfully failed to pay Plaintiffs overtime wages for hours worked in excess of forty per week at a wage rate of 1.5 times their regular rate of pay or, at a minimum, the minimum wage to which Plaintiffs were entitled to receive under New York Labor Law § 652, in violation of 12 N.Y.C.C.R.R. § 137-1.3.

168. Due to Defendants' violations of New York Labor Law, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages and an amount equal to one quarter of their unpaid overtime wages in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

#### **COUNT V**

##### **Claim For Unauthorized Deductions Under New York Labor Law (Server, Busboy, Delivery and Delivery Packer Plaintiffs)**

169. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

170. Defendants willfully made unauthorized deductions from Plaintiffs' wages in violation of the New York Minimum Wage Act, specifically New York Labor Law § 193 and 12 N.Y.C.C.R.R. § 137-2.5.

171. These improper deductions included deductions for Customer Payments stolen from Delivery Plaintiffs in the course of their work and expenses incurred by Delivery Plaintiffs in the course of their duties, in violation of N.Y. Labor Law § 193 and 12 N.Y.C.C.R.R. § 137-3.8.

172. These improper deductions also included deductions for meals that were not eaten, and were taken by the Defendants in violation of N.Y. Labor Law § 193 and 12 N.Y.C.C.R.R. § 137-3.8.

173. Due to Defendants' violations of New York Labor Law, Plaintiffs are entitled to recover from Defendants, jointly and severally, all unauthorized deductions, liquidated damages as well as reasonable attorneys' fees and costs of the action, including interest, all in an amount to be determined at trial.

#### **COUNT VI**

##### **Claim For Spread of Hours Payments Under New York Law (Server, Busboy, Delivery and Delivery Packer Plaintiffs)**

174. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

175. Under New York law, an employee is entitled to an extra hour's wages for any day when the employee's "spread of hours" exceeds 10 hours. 12 N.Y.C.C.R.R. § 137-1.7. "Spread of hours" is defined as the "the interval between the beginning and end of the workday." 12 N.Y.C.C.R.R. § 137-3.11.

176. Defendants regularly required each Plaintiff to work in excess of 10 hours a day during the term of each Plaintiff's employment. Defendants had full knowledge that they were requiring Plaintiffs to work above and beyond 10 hours a day.

177. Defendants did not provide the required additional compensation for any days during which the Plaintiffs' spread of hours exceeded 10 hours.

178. Accordingly, Plaintiffs are entitled to recover from Defendants, jointly and severally, all spread of hours payments in the form of one hour of additional pay at the minimum wage rate for each day in which a Plaintiff had a spread of hours in excess of 10 hours, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

### **COUNT VII**

#### **Claim For Uniform Purchase and Maintenance (Server and Busboy Plaintiffs)**

179. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

180. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

181. During Plaintiffs' employment, Defendants required servers to wear a uniform while working that consisted of a shirt embroidered or imprinted with the Defendants' trade name, black pants and black shoes.

182. During Plaintiffs' employment, Defendants required busboys to wear a uniform while working that consisted of a shirt embroidered or imprinted with the Defendants' trade name, black pants and black shoes.

183. Defendants required some Server Plaintiffs to purchase their uniforms at their own expense in violation of New York Labor Law, including but not limited to 12 N.Y.C.R.R. § 137-3.13.

184. Defendants required Busboy Plaintiffs to purchase their uniforms at their own expense in violation of New York Labor Law, including but not limited to 12 N.Y.C.R.R. § 137-3.13.

185. Defendants required all servers and busboys to clean and maintain their uniforms at their own expense in violation of New York Labor Law, including but not limited to 12 N.Y.C.R.R. § 137-3.13.

186. Defendants' failure to reimburse servers and busboys for the costs of purchasing, cleaning, and maintaining the uniforms was willful within the meaning of New York Labor Law § 663.

187. Due to Defendants' New York Labor Law violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, the cost of uniform purchase together with the required uniform maintenance reimbursement, liquidated damages, pre-judgment interest, and reasonable attorneys' fees and costs of the action.

### **COUNT VIII**

#### **Claim For Illegal Retention of Gratuities Under New York Labor Law**

##### **(Server and Busboy Plaintiffs)**

188. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

189. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

190. During their employment, servers and busboys pooled tips that had been received from customers. Defendants required that some of the tips from these tip pools be given to custodians, notwithstanding that the custodians did not directly serve dining customers.

191. Defendants' requirement that money from the tip pools be used for this purpose violates New York Labor Law § 196-d.

192. Due to Defendants' New York Labor Law violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, the amount of the retained gratuities, liquidated damages, pre-judgment interest, and reasonable attorneys' fees and costs of the action.

### **COUNT IX**

#### **Claim For Unjust Enrichment (Delivery Plaintiffs)**

193. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

194. Defendants have been enriched by the value of some Delivery Plaintiffs' purchase and maintenance of motorbikes used to deliver food to restaurant customers.

195. Defendants have been enriched by the value of some Delivery Plaintiffs' payment of expenses incurred in the course of their required duties for Defendants.

196. The enrichment was at Plaintiffs' expense because Plaintiffs had to pay for these items and expenses that were required by Defendants and for Defendants' benefit.

197. The circumstances were such that equity and good conscience requires Defendants to pay these Plaintiffs for all the costs they incurred in the purchase and maintenance of the motorbikes used for restaurant purposes and the expenses they incurred in the course of completing their required duties for Defendants.

### **COUNT X**

#### **Claim For Illegal Retaliation Under New York Law**

198. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

199. Plaintiffs complained to the New York Department of Labor about the wage and hour practices at Ollie's 84<sup>th</sup> Street. Because of those complaints, Defendants retaliated against the Plaintiffs by reducing the number of hours they could work, thereby depriving of them the opportunity to earn wages and tips. Plaintiffs have suffered economic damages due to the decrease in hours that they are permitted to work.

200. By retaliating against the Plaintiffs for their complaints about violations of New York Labor Law, the Defendants have violated New York Labor Law § 215.

201. Due to Defendants' illegal retaliation, Plaintiffs are entitled to damages, equitable relief, interest, and reasonable attorneys' fees and costs.

#### **PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully request that judgment be granted:

- (1) Declaring Defendants' conduct complained of herein to be in violation of Plaintiffs' rights under the FLSA, New York Minimum Wage Act, and New York Labor Law and its regulations;
- (2) Awarding Plaintiffs unpaid minimum wages due under the FLSA, the New York Minimum Wage Act, the New York Labor Law and its regulations;
- (3) Awarding Plaintiffs unpaid overtime wages due under the FLSA and the New York Labor Law and its regulations;
- (4) Awarding Plaintiffs compensation for all unauthorized deductions due under New York Labor Law § 193;
- (5) Awarding Plaintiffs additional pay for all spread of hours violations;

(6) Awarding Plaintiffs damages for gratuities that were wrongfully retained by the Defendants;

(7) Awarding Plaintiffs liquidated damages;

(8) Awarding Plaintiffs pre-judgment and post-judgment interest;


(9) Awarding Plaintiffs the costs of this action, together with reasonable attorneys' fees;

(10) Enjoining the Defendants from any further retaliation against Plaintiffs for the Plaintiffs' complaints about Defendants' wage and hour practices, including but not limited to the Plaintiffs' participation in this lawsuit; and

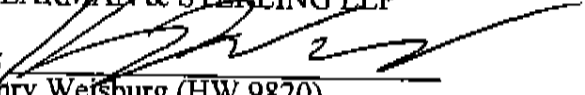
Awarding such other and further relief as this Court deems necessary and proper

Dated: New York, New York  
March 29, 2007

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