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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**ROLDAN MONZON, on behalf of himself and all
others similarly situated,**

Plaintiff,

-against-

**103W77 PARTNERS, LLC, SMOKIN' JFRASER
INC., and JOHN FRASER,**

Defendants.



**CLASS ACTION
COMPLAINT**

Plaintiff Roldan Monzon ("Plaintiff"), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wages, overtime compensation, spread-of-hours pay, misappropriated gratuities, uniform-related expenses, and other wages for Plaintiff and his similarly situated co-workers – servers (captains, front servers), bartenders, runners, bussers (server assistants, back waiters), baristas, and all other "tipped workers" – who work or have worked at Dovetail, a restaurant located at 103 West 77th Street, New York, New York 10024.

2. Dovetail is owned, operated, and controlled by Defendants 103W77 Partners, LLC, Smokin' JFraser Inc., and John Fraser (collectively, "Defendants").

3. Since opening in December 2007, Dovetail has been critically acclaimed for its contemporary American cuisine. The restaurant was awarded 3 stars by the New York Times in 2008, received a coveted Michelin star in 2011, and has been reviewed in numerous print and online publications, including the New York Times, New York Magazine, New York Daily News, TimeOut New York, and Crain's New York Business.

4. Defendant John Fraser ("Fraser"), the Executive Chef and Proprietor of Dovetail, has also received a myriad of accolades. Fraser was listed as one of four American "young chefs to watch" by Esquire Magazine in 2006, and was the winner of the Star Chef's Rising Star Award in 2008. Before opening Dovetail, Fraser worked at several world-renowned restaurants, including French Laundry in Napa Valley, and Taillevent and Maison Blanche in Paris.

5. Throughout Plaintiff's employment, Defendants have applied a tip credit to tipped workers' wages and paid tipped workers a reduced minimum wage rate. Defendants, however, have not satisfied the requirements under the Fair Labor Standards Act ("FLSA") or the New York Labor Law ("NYLL") by which they could take a tip credit towards the basic minimum hourly rate paid to tipped workers.

6. In that regard, Defendants have: (a) failed to provide tipped workers with notification of the tipped minimum wage rate or tip credit provisions of the FLSA or NYLL, or of their intent to apply a tip credit to tipped workers' wages; (b) required tipped workers to share gratuities with employees in positions that are not entitled to tips under the FLSA or the NYLL; (c) failed to furnish tipped workers with accurate wage statements with each payment of wages; and (d) required tipped workers to spend over two hours per day, and in excess of twenty percent of their time at work, engaged in a non-tipped capacity.

7. Defendants have required tipped workers to participate in a mandatory tip pooling arrangement whereby gratuities are distributed to polishers, expeditors, and assistant managers, as evidenced by Dovetail's "Dining Room Tip Sheets." Polishers and expeditors have not been entitled to receive tips from Dovetail's tip pool because they have not interacted with or provided personal service to customers. Assistant managers, on the other hand, have not been eligible to receive tips at Dovetail because they have exercised meaningful authority and control over tipped workers.

8. Additionally, upon information and belief, Defendants have misappropriated gratuities from tipped workers by retaining portions of mandatory gratuities and/or service charges paid by customers hosting private banquets. This practice was held to be unlawful by the New York Court of Appeals in *Samiento v. World Yacht Inc.*, 10 N.Y.3d 70 (2008), and violates Section 146-2.19 of the 2011 New York Hospitality Industry Wage Order, which explicitly states that:

Adequate notification [of an administrative charge not purported to be a gratuity or tip] shall include a statement in the contract or agreement with the customer, and on any menu and bill listing prices, that the administrative charge is for administration of the banquet, special function, or package deal, is not purported to be a gratuity, and will not be distributed.

9. Further, Defendants have required tipped workers to spend a substantial amount of time performing non-tip producing "side work," including, but not limited to: ironing table cloths, vacuuming the dining room, cleaning windows, taking out the garbage, wiping down the kitchen, cleaning/scraping candlesticks, folding napkins, polishing serving trays and plates. These duties were generally performed before Dovetail opened for business or after it closed, when there were no customers in the restaurant. In fact, Defendants have consistently scheduled tipped workers to arrive at Dovetail approximately three hours before the restaurant opened for an "ironing" shift. As a result of this practice, tipped workers have often spent over two hours in a workday, and in excess of twenty percent of their time at work, engaged in a non-tipped capacity.

10. Throughout Plaintiff's employment, Defendants have maintained a policy and practice whereby tipped workers were not paid the appropriate overtime rate for all hours worked beyond 40 per workweek. In fact, Plaintiff's paystubs indicate that he was repeatedly paid either his regular hourly rate or the tip credit overtime rate for hours worked in excess of 40 per workweek.

11. Throughout Plaintiff's employment, Defendants have maintained a policy and practice whereby tipped workers were not paid spread-of-hours pay when the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

12. Throughout Plaintiff's employment, Defendants have required tipped workers to purchase and wear a uniform consisting of clothing that may not be worn by tipped workers as part of their ordinary wardrobe. Defendants have failed to reimburse tipped workers for the purchase of mandatory uniforms, launder and maintain mandatory uniforms for tipped workers, or pay tipped workers the required weekly amount for uniform maintenance in addition to the minimum wage.

13. Defendants apply the same employment policies, practices, and procedures to all tipped workers at Dovetail.

14. Plaintiff brings this action on behalf of himself and all similarly situated current and former tipped workers who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiff and other similarly situated employees of their lawfully earned wages.

15. Plaintiff also brings this action on behalf of himself and all similarly situated current and former tipped workers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

THE PARTIES

Plaintiff

Roldan Monzon

16. Plaintiff is an adult individual who is a resident of Brooklyn, New York.

17. Plaintiff has been employed by Defendants as a busser and runner at Dovetail from in or around August 2008 to present.

18. Plaintiff is a covered employee within the meaning of the FLSA and the NYLL.

19. A written consent form for Plaintiff is being filed with this Class Action Complaint.

Defendants

20. Defendants have jointly employed Plaintiff and similarly situated employees at all times relevant.

21. Each Defendant has had substantial control over Plaintiff's and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.

103W77 Partners, LLC

22. Together with the other Defendants, Defendant 103W77 Partners, LLC ("103W77") has owned and/or operated Dovetail during the relevant period.

23. 103W77 is a domestic limited liability company organized and existing under the laws of New York.

24. Upon information and belief, 103W77's principal executive office is located at 103 West 77th Street, New York, New York 10024, the address of Dovetail.

25. 103W77 is the corporate entity that appears on Plaintiff's paystubs for work performed at Dovetail.

26. 103W77 is the “Premises Name” that appears on the New York State Liquor Authority license for the premises doing business as “DOVETAIL,” located at “103 WEST 77TH STREET, NEW YORK, NEW YORK 10024-6909.”

27. 103W77 is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.

28. At all relevant times, 103W77 has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

29. 103W77 applies the same employment policies, practices, and procedures to all tipped restaurant workers at Dovetail, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, uniform-related expenses, and customer tips.

30. Upon information and belief, at all relevant times, 103W77’s annual gross volume of sales made or business done was not less than \$500,000.00.

Smokin’ JFraser Inc.

31. Together with the other Defendants, Smokin’ JFraser Inc. (“Smokin’ JFraser”) has owned and/or operated Dovetail during the relevant time period.

32. Smokin’ JFraser is a domestic business corporation organized and existing under the laws of New York.

33. According to the New York State Department of State – Division of Corporations, Smokin’ JFraser’s principal executive office is located at “103 W. 77TH STREET, NYC, NEW YORK, 10024,” the address of Dovetail.

34. According to the New York State Department of State – Division of Corporations, the Chief Executive Officer of Smokin' JFraser is "JOHN FRASER," the Executive Chef and Proprietor of Dovetail.

35. Smokin' JFraser is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.

36. At all times relevant, Smokin' JFraser has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

37. Smokin' JFraser applies the same employment policies, practices, and procedures to all tipped restaurant workers at Dovetail, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, uniform-related expenses, and customer tips.

38. Upon information and belief, at all times relevant, Smokin' JFraser's annual gross volume of sales made or business done was not less than \$500,000.00.

John Fraser

39. Upon information and belief, Fraser is a resident of the State of New York.

40. According to the "About" section of Dovetail's website, <http://dovetailnyc.com/about-dovetail>, Fraser is the "Executive Chef/Proprietor" of Dovetail.

41. Fraser identifies himself as the chef and owner of Dovetail on his Facebook and Twitter profiles.

42. Fraser is identified by the New York State Liquor Authority as a "Principal" for the premises doing business as "DOVETAIL," located at "103 WEST 77TH STREET, NEW YORK, NEW YORK 10024-6909."

43. Fraser is identified by the New York State Department of State – Division of Corporations as the Chief Executive Officer of Smokin' JFraser.

44. At all relevant times, Fraser has had the power over personnel decisions at Dovetail, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

45. At all relevant times, Fraser has had power over payroll decisions at Dovetail, including the power to retain time and/or wage records.

46. At all relevant times, Fraser has been actively involved in managing the day to day operations of Dovetail.

47. At all relevant times, Fraser has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

48. At all relevant times, Fraser has had the power to transfer the assets and/or liabilities of Dovetail.

49. At all relevant times, Fraser has had the power to declare bankruptcy on behalf of Dovetail.

50. At all relevant times, Fraser has had the power to enter into contracts on behalf of Dovetail.

51. At all relevant times, Fraser has had the power to close, shut down, and/or sell Dovetail.

52. Fraser is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed and/or jointly employed Plaintiff and similarly situated employees.

JURISDICTION AND VENUE

53. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

54. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

55. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

56. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

57. Plaintiff brings the First and Second Causes of Action, FLSA claims, on behalf of himself and all similarly situated persons who work or have worked as tipped workers at Dovetail in New York, who elect to opt-in to this action (the "FLSA Collective").

58. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and the FLSA Collective.

59. Consistent with Defendants' policy and pattern or practice, Plaintiff and the FLSA Collective were not paid minimum wages for all hours worked or the appropriate premium overtime compensation for all hours worked beyond 40 per workweek.

60. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

61. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiff and the FLSA Collective, minimum wages for all hours worked and the appropriate premium overtime wages for all hours worked in excess of 40 hours in a workweek; and

- (b) willfully failing to record all of the time that its employees, including Plaintiff and the FLSA Collective, have worked for the benefit of Defendants.

62. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by unlawfully taking a tip credit against the minimum wage rate paid to Plaintiff and the FLSA Collective, and failing to properly compensate Plaintiff and the FLSA Collective for the overtime hours they work.

63. Defendants are aware or should have been aware that federal law required them to pay Plaintiff and the FLSA Collective minimum wage for all of the hours they worked.

64. Defendants are aware or should have been aware that federal law required them to pay Plaintiff and the FLSA Collective overtime premiums for hours worked in excess of 40 hours per week.

65. Plaintiff and the FLSA Collective perform or performed the same primary duties.

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

67. There are many similarly situated current and former tipped workers who have been denied minimum wage and overtime compensation in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

68. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

69. In recognition of the services Plaintiff has rendered and will continue to render to the FLSA Collective, Plaintiff will request payment of a service award upon resolution of this action.

CLASS ACTION ALLEGATIONS

70. Plaintiff brings the Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as tipped workers and similar employees at Dovetail in New York between August 23, 2007 and the date of final judgment in this matter (the "Rule 23 Class").

71. Excluded from the Rule 23 Class are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

72. The members of the Rule 23 Class are so numerous that joinder of all members is impracticable.

73. Upon information and belief, the size of the Rule 23 Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

74. Defendants have acted or have refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

75. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL Articles 6 and 19, and the supporting New York State Department of Labor Regulations;
- (b) whether Defendants failed to pay Plaintiff and the Rule 23 Class minimum wages for all of the hours they worked;
- (c) whether Defendants correctly compensated Plaintiff and the Rule 23 Class for hours worked in excess of 40 hours per workweek;
- (d) whether Defendants failed to provide Plaintiff and the Rule 23 Class with spread-of-hours pay when the length of their workday was greater than 10 hours;

- (e) whether Defendants misappropriated tips and/or service charges from Plaintiff and the Rule 23 Class by demanding, handling, pooling, counting, distributing, accepting, and/or retaining tips and/or service charges paid by customers that were intended for Plaintiff and the Rule 23 Class, and which customers reasonably believed to be gratuities for Plaintiff and the Rule 23 Class;
- (f) whether Defendants distributed or retained a portion of the tips paid by customers to workers who are not entitled to receive tips under the NYLL;
- (g) whether Defendants failed to reimburse Plaintiff and the Rule 23 Class for uniform-related expenses in violation of the NYLL;
- (h) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Rule 23 Class, and other records required by the NYLL;
- (i) whether Defendants failed to furnish Plaintiff and the Rule 23 Class with wage notices, as required by the NYLL;
- (j) whether Defendants failed to furnish Plaintiff and the Rule 23 Class with accurate statements of wages, hours worked, rates paid, gross wages and the claimed tip allowance, as required by the NYLL;
- (k) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (l) the nature and extent of class-wide injury and the measure of damages for those injuries.

76. The claims of Plaintiff are typical of the claims of the Rule 23 Class he seeks to represent. Plaintiff and all of the Rule 23 Class members work, or have worked, for Defendants as tipped workers at Dovetail in New York. Plaintiff and the Rule 23 Class members enjoy the same statutory rights under the NYLL, including to be properly compensated for all hours worked, to be paid spread-of-hours pay, to retain customer tips, and to be reimbursed for uniform-related expenses. Plaintiff and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiff and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

77. Plaintiff will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the Rule 23 members.

78. In recognition of the services Plaintiff has rendered and will continue to render to the Rule 23 Class, Plaintiff will request payment of a service award upon resolution of this action.

79. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' violations of the NYLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiff lacks the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

80. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

PLAINTIFF'S FACTUAL ALLEGATIONS

81. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

Roldan Monzon

82. Defendants have not paid Plaintiff the proper minimum wages, overtime wages, and spread-of-hours pay for all of the time that he was suffered or permitted to work each workweek.

83. Plaintiff has received weekly paychecks from Defendants that have not properly recorded, or compensated him for, all of the hours he has worked.

84. Defendants have applied a tip credit to Plaintiff's wages, rather than pay Plaintiff the full minimum wage rate.

85. Defendants have not provided Plaintiff with notification of the tipped minimum wage or tip credit provisions of the FLSA or NYLL, or of their intent to apply a tip credit to Plaintiff's wages.

86. Defendants have required Plaintiff to spend over two hours in a workday, and in excess of twenty percent of his time at work, engaged in a non-tipped capacity. In that regard, Plaintiff has consistently been required to perform a substantial amount of time performing non-tip producing "side work," which was generally performed before Dovetail opened for business or after it closed, when there were no customers in the restaurant. At all times, however, Defendants have applied a tip credit towards Plaintiff's hourly wages, rather than compensate Plaintiff at the full minimum wage rate.

87. Defendants have suffered or permitted Plaintiff to work over 40 hours per week as a busser and/or runner, up to a maximum of approximately 50 hours per week, during several workweeks per year throughout his employment. During such workweeks, Defendants have not compensated Plaintiff at time and one-half the full minimum wage rate for all of the overtime hours he has worked.

88. Defendants have not paid Plaintiff one additional hour of pay at the basic minimum hourly rate for all of the times that the length of the interval between the beginning and end of his workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

89. Defendants have not allowed Plaintiff to retain all of the tips he has earned.

90. Defendants have unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Plaintiff has earned.

91. Defendants have imposed upon Plaintiff a tip redistribution scheme to which he has never agreed.

92. Defendants have unlawfully redistributed part of Plaintiff's tips to employees who are in positions that are not entitled to tips under the FLSA and/or the NYLL, including, but not limited to, polishers, expeditors, and assistant managers.

93. Upon information and belief, Defendants have unlawfully retained mandatory gratuities and/or service charges received by customers hosting private banquets, which customers were led to believe would be paid as gratuities to Plaintiff and were intended for Plaintiff.

94. Defendants have required Plaintiff to purchase and wear a required uniform consisting of black dress pants, black shoes, a white shirt, a tie, and a black vest, clothing that: (a) may not be worn as part of Plaintiff's ordinary wardrobe; (b) is not made of "wash and wear" materials; (c) cannot be routinely washed and dried with other personal garments; and

(d) requires ironing, dry cleaning, daily washing, and/or other special treatment. Defendants have not laundered and/or maintained Plaintiff's mandatory uniforms, paid Plaintiff the required weekly amount for uniform maintenance in addition to the required minimum wage, or reimbursed Plaintiff for uniform-related expenses.

95. Defendants have not kept accurate records of wages or tips earned, or of hours worked by Plaintiff.

96. Defendants have failed to furnish Plaintiff with annual wage notices.

97. Defendants have failed to furnish Plaintiff with accurate statements of wages, hours worked, rates paid, gross wages and the claimed tip allowance.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Minimum Wages
(Brought on behalf of Plaintiff and the FLSA Collective)

98. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

99. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.

100. Plaintiff has consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

101. At all times relevant, Plaintiff and the members of the FLSA Collective were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*, and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

102. At all times relevant, Plaintiff and the members of the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 201 *et seq.*

103. At all times relevant, Defendants have been employers of Plaintiff and the members of the FLSA Collective, engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 201 *et seq.*

104. The minimum wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the members of the FLSA Collective.

105. Defendants have failed to pay Plaintiff and the members of the FLSA Collective the minimum wages to which they are entitled under the FLSA.

106. Defendants have been required to pay directly to Plaintiff and the members of the FLSA Collective the full federal minimum wage rate for all hours worked.

107. Defendants have not been eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants have failed to inform Plaintiff and the FLSA Collective of the provisions of subsection 203(m) of the FLSA, and have distributed a portion of their tips to workers who do not “customarily and regularly” receive tips.

108. Defendants have required Plaintiff and the members of the FLSA Collective to perform a substantial amount of non-tipped “side work,” in excess of twenty percent of their time at work. During these periods, Defendants have compensated Plaintiff and the members of the FLSA Collective at the tipped minimum wage rate rather than the full hourly minimum wage rate, as required by 29 U.S.C. §§ 201 *et seq.*

109. Defendants’ unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the members of the FLSA Collective.

110. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

111. As a result of Defendants' willful violations of the FLSA, Plaintiff and the members of the FLSA Collective have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiff and the FLSA Collective)

112. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

113. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the members of the FLSA Collective.

114. Defendants have failed to pay Plaintiff and the members of the FLSA Collective the premium overtime wages to which they are entitled under the FLSA for all hours worked beyond 40 per workweek.

115. Defendants have failed to pay Plaintiff and the members of the FLSA Collective the appropriate overtime wages for all of the hours they worked in excess of 40 hours in a workweek.

116. Defendants have failed to pay Plaintiff and the members of the FLSA Collective overtime at a rate of time and one-half the full minimum wage rate for all hours worked in excess of 40 per workweek.

117. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the members of the FLSA Collective.

118. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

119. As a result of Defendants' willful violations of the FLSA, Plaintiff and the members of the FLSA Collective have suffered damages by being denied overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

THIRD CAUSE OF ACTION
New York Labor Law – Minimum Wages
(Brought on behalf of Plaintiff and the members of the Rule 23 Class)

120. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

121. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

122. At all times relevant, Plaintiff and the members of the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiff and the members of the Rule 23 Class within the meaning of the NYLL §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

123. At all times relevant, Plaintiff and the members of the Rule 23 Class have been covered by the NYLL.

124. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.

125. Defendants have failed to pay Plaintiff and the members of the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

126. Defendants have been required to pay Plaintiff and the members of the Rule 23 Class the full minimum wage at a rate of (a) \$7.15 per hour for all hours worked from August 23, 2007 to July 23, 2009; and (b) \$7.25 per hour for all hours worked from July 24, 2009 to the present, under the NYLL §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations.

127. Defendants have failed to furnish with every payment of wages to Plaintiff and the members of the Rule 23 Class a statement listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, in violation of the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

128. Defendants have failed to notify Plaintiff and the members of the Rule 23 Class of the tip credit as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

129. Defendants have required Plaintiff and the members of the Rule 23 Class to share tips with workers who are not eligible to receive tips under the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiff and the members of the Rule 23 Class have been entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate.

130. Defendants have required Plaintiff and the members of the Rule 23 Class to spend over two hours per workday, or in excess of twenty percent of their shifts, performing non-tipped “side work.” During these periods, Defendants have compensated Plaintiff and the members of the Rule 23 Class at the tipped minimum wage rate rather than the full hourly minimum wage rate, as required by the NYLL and the supporting New York State Department of Labor Regulations.

131. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiff and the members of the Rule 23 Class, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

132. Due to Defendants’ willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys’ fees, costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
New York Labor Law – Unpaid Overtime
(Brought on behalf of Plaintiff and the members of the Rule 23 Class)

133. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

134. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.

135. Defendants have failed to pay Plaintiff and the members of the Rule 23 Class the premium overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations for all hours worked beyond 40 per workweek.

136. Defendants have failed to pay Plaintiff and the members of the Rule 23 Class overtime at a rate of time and one-half the full minimum wage rate for all hours worked in excess of 40 per workweek.

137. Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the members of the Rule 23 Class.

138. Through their knowing or intentional failure to pay Plaintiff and the members of the Rule 23 Class overtime wages for hours worked in excess of 40 hours per workweek, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

139. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

New York Labor Law – Spread-of-Hours Pay (Brought on behalf of Plaintiff and the members of the Rule 23 Class)

140. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

141. Defendants have failed to pay Plaintiff and the members of the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

142. Through their knowing or intentional failure to pay Plaintiff and the members of the Rule 23 Class spread-of-hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

143. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SIXTH CAUSE OF ACTION

New York Labor Law –Tip Misappropriation (Brought on behalf of Plaintiff and the members of the Rule 23 Class)

144. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

145. At all times relevant, Plaintiff and the members of the Rule 23 Class have been employees within the meaning of NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

146. At all times relevant, each Defendant has been an employer within the meaning of the NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

147. The wage payment provisions of Article 6 of the NYLL, and the supporting New York State Department of Labor Regulations, apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.

148. Defendants have unlawfully demanded or accepted, directly or indirectly, part of the gratuities and/or service charges received by Plaintiff and the members of the Rule 23 Class in violation of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations.

149. Defendants have unlawfully retained part of the gratuities and/or service charges earned by Plaintiff and the members of the Rule 23 Class in violation of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations.

150. Defendants have required Plaintiff and the members of the Rule 23 Class to share part of the gratuities and/or service charges they received with employees other than waiters, servers, bussers, or similar employees, in violation of NYLL, Article 6 § 196-d, and the supporting New York State Department of Labor Regulations.

151. Through their knowing or intentional demand for, acceptance of, and/or retention of gratuities and/or service charges received by Plaintiff and the members of the Rule 23 Class, Defendants have willfully violated the NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.

152. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants the value of the misappropriated gratuities and/or service charges, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SEVENTH CAUSE OF ACTION
New York Labor Law – Uniform Violations
(Brought on behalf of Plaintiff and the members of the Rule 23 Class)

153. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

154. Defendants have required Plaintiff and the members of the Rule 23 Class to purchase and wear a uniform consisting of clothing that is not ordinary basic street clothing selected by Plaintiff and the members of the Rule 23 Class, and that may not be worn as part of Plaintiff's and the members of the Rule 23 Class' ordinary wardrobe.

155. Defendants have failed to launder and/or maintain mandatory uniforms for Plaintiff and the members of the Rule 23 Class, and have failed to pay Plaintiff and the members of the Rule 23 Class the required weekly amount for uniform maintenance in addition to the required minimum wage.

156. Through their knowing or intentional failure to pay and/or reimburse Plaintiff and the members of the Rule 23 Class for mandatory uniform-related expenses, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

157. Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants the costs of purchasing and maintaining their uniforms, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

EIGHTH CAUSE OF ACTION

New York Labor Law – Failure to Provide Wage Notices (Brought on behalf of Plaintiff and the members of the Rule 23 Class)

158. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

159. Defendants have willfully failed to supply Plaintiff and the members of the Rule 23 Class with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiff and the members of the Rule 23 Class as their primary language, containing Plaintiff's and the members of the Rule 23 Class' 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.

160. Through their knowing or intentional failure to provide Plaintiff and the members of the Rule 23 Class with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

161. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiff and the members of the Rule 23 Class are entitled to statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiff and the members of the Rule 23 Class with wage notices, or a total of twenty-five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all tipped workers who are presently working, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at Dovetail. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid minimum wages, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff as representative of the Rule 23 Class and counsel of record as Class Counsel;

E. Payment of a service award to Plaintiff, in recognition of the services he has rendered and will continue to render to the FLSA Collective and Rule 23 Class;

F. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL, Article 6, §§ 190 *et seq.*, NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations;

G. Unpaid minimum wages, overtime pay, spread-of-hours pay, misappropriated gratuities and/or service charges, uniform-related expenses, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

H. Statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiff and the members of the Rule 23 Class with wage notices, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;

I. Prejudgment and post-judgment interest;

J. An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;

K. Reasonable attorneys' fees and costs of the action; and

L. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
August 23, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian S. Schaffer", written over a horizontal line.

Brian S. Schaffer

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*Attorneys for Plaintiff and
the Putative Class*

FORMULARIO DE CONSENTIMIENTO DE UNIÓN

1. Doy mi consentimiento para ser parte demandante en una demanda contra Dovetail y / o entidades e individuos relacionados con el fin de obtener reparación por violaciones de la Fair Labor Standards Act, (*Ley de las Normas Laborales Justas*) de conformidad con 29 USC § 216 (b).

2. Al firmar y devolver este formulario de consentimiento, yo designo Fitapelli & Schaffer, LLP ("La Firma") para representarme y hacer decisiones en mi defensa acerca del caso y cualquier acuerdo extrajudicial. Entiendo que costos razonables hechos en mi defensa serán deducido de cualquier acuerdo extrajudicial o juicio será prorrateado entre todos los otros demandantes. Entiendo que la firma peticionara con la Corte para conseguir los costos de abogado de cualquier acuerdo extrajudicial o juicio en la suma que será el mayor de lo siguiente: (1) la suma "lodestar", que es calculada por multiplicar una tarifa por hora razonable por los números de horas dedicado a la demanda, o (2) 1/3 del total bruto del acuerdo judicial o juicio. Estoy de acuerdo de ser vinculado a cualquier proceso legal de este asunto por la Corte, sea favorable o desfavorable.



Firma (Signature)



Nombre legal completo (Imprenta) (Full Legal Name (Print))

