

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DMITRY GURVITS, on behalf of himself and all others : **Index No.:** _____
similarly situated, :
: **SUMMONS**
Plaintiff, : Date Filed: January 9, 2018
-against- :
: Plaintiff designates
BUTCHER’S BLOCK HOSPITALITY, LLC, and : New York County as
ANGELA MAR, : the Place of trial.
:
Defendants. :
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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the Class Action Complaint (“Complaint”) in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on Plaintiff’s attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of failure to appear or answer, judgment will be taken against you by default of the relief demanded in the Complaint.

Dated: New York, New York
January 9, 2018

Yours, etc.,



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*Attorneys for Plaintiff and
the Putative Class*

Service to All Defendants:

Butcher's Block Hospitality, LLC
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019
Attn.: Bruce F. Bronster, Esq.

Angela Mar
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DMITRY GURVITS, on behalf of himself and all others similarly situated,	:	Index No.: _____
	:	
Plaintiff,	:	
-against-	:	CLASS ACTION COMPLAINT
BUTCHER’S BLOCK HOSPITALITY, LLC, and ANGELA MAR,	:	
	:	
Defendants.	:	

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Plaintiff Dmitry Gurvits, on behalf of himself and on behalf of all others similarly situated, by his attorneys, Fitapelli & Schaffer, LLP, files this Class Action Complaint against Defendants Butcher’s Block Hospitality, LLC and Angela Mar, 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, misappropriated tips, and other damages for Plaintiff and his similarly situated co-workers – captains, bussers, bartenders, barbacks, and other similarly situated non-managerial employees (collectively, “Tipped Workers”) – who work or have worked at the Beatrice Inn located at 285 W 12th Street, New York, NY 10014.

2. Owned, operated, and controlled by Butcher’s Block Hospitality, LLC and Angela Mar (collectively. “Defendants”), the Beatrice Inn is a critically acclaimed high end “chop house” restaurant located in New York City.

3. During Plaintiff’s employment, Defendants applied a tip credit to Tipped Workers’ wages and paid Tipped Workers a reduced minimum wage rate. Defendants, however, did not

satisfy the requirements under the New York Labor Law (“NYLL”) by which they could take a tip credit towards the hourly rates paid to Tipped Workers.

4. Defendants misappropriated gratuities from Plaintiff and other Tipped Workers by requiring them to engage in a tip distribution scheme where tips were shared with employees that are not entitled to tips under the NYLL including, but not limited to, Bar Managers and Silverware Polishers.

5. Tipped Workers are required to perform side work at the start, during, and the end of every shift.

6. As a result, Tipped Workers spend more than 20% of their work time and/or in excess of two hours engaged in side work duties.

7. The duties that Defendants required Tipped Workers to perform are duties customarily assigned to “back-of-the-house” employees in other restaurants, who typically receive at least the full minimum wage rate.

8. The side work that Defendants require Tipped Workers to perform include, but is not limited to: (1) cleaning and breaking down the bar; (2) setting up tables; (3) ironing tablecloths; (4) cleaning votive holders by pouring hot water into them to melt the wax, running through the dish machine, and resting candles; (5) folding napkins; (6) stocking the bar with straws, napkins, liquor, juices, syrups, shakes, spoons, strainers, cleaning rag; (7) cutting lemons, limes, grapefruit and oranges; (8) picking and bunching herbs; (9) setting up bus bins and trash cans; and (10) attend meetings;

9. The side work that Defendants require of Tipped Workers is not specific to particular customers, tables, or sections, but is performed in mass quantities for the entire shift or for future shifts. Furthermore, Defendants require Tipped Workers to perform most side work

before the restaurant opened or after the restaurant closed and customers had left. As means of example, opening Tipped Workers are required to arrive at approximately 2:00 p.m. through 3 p.m. when the restaurant does not open until 5:30 p.m. Defendants also require Tipped Workers to remain at the restaurant after customers leave to perform closing side work.

10. Plaintiff brings this action on behalf of himself and all similarly situated current and former Tipped Workers pursuant to Civil Practice Law and Rule (“CPLR”) 901 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.

11. Plaintiff is a party to an “Employment Agreement” dated July 26, 2017, hereinafter the “Employment Agreement.”

12. The Employment Agreement contains an arbitration clause which unlawfully contains a “Class Action Waiver” prohibiting class wide resolution of Plaintiff’s Claims. Recently, the Supreme Court, Appellate Division for the First Judicial Department determined similar waivers to be invalid. *See Gold v. New York Life Ins. Co.*, 59 N.Y.S.3d 316 (N.Y. App. Div. 1st Dept. 2017). As a result of *Gold*, the class waiver in Plaintiff’s arbitration agreement is invalid and Plaintiff can lawfully bring his claims on a class wide basis in this forum.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this matter pursuant to NYLL, Article 6, §§ 190 *et seq.*

THE PARTIES

Plaintiff

Dmitry Gurvits

14. Dmitry Gurvits (“Gurvits”) is an adult individual who is a resident of Brooklyn, New York.

15. Gurvits was employed by Defendants as a bartender – a Tipped Worker – at the Beatrice Inn from on or around July 26, 2017 through November 26, 2017.

16. Gurvits is a covered employee within the meaning of the NYLL.

Defendants

17. Defendants have employed and/or jointly employed Plaintiff and similarly situated employees at all times relevant.

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

19. During all relevant times, Defendants have been Plaintiff’s and similarly situated employees’ employers within the meaning of the NYLL.

Butcher’s Block Hospitality, LLC

20. Together with the other Defendants, Defendant Butcher’s Block Hospitality, LLC (“Butcher Block”) has owned and/or operated the Beatrice Inn during the relevant period.

21. Butcher Block is a domestic business limited liability company organized and existing under the laws of New York.

22. Butcher Block is the “Premises Name” that appears on the active New York State Liquor License for the premises doing business as “Beatrice Inn,” with its address listed as 285 W 12th Street, New York, NY 10014.

23. Butcher Block is a covered employer within the meaning of the NYLL and, at all times relevant, has employed Plaintiff and similarly situated employees.

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

25. Butcher Block has applied the same employment policies, practices, and procedures to all Tipped Workers, including policies, practices, and procedures with respect to payment of minimum wage, overtime pay, and tip misappropriation.

Angela Mar

26. Upon information and belief, Angela Mar (“Mar”) is a resident of the State of New York.

27. At all relevant times, Mar has been an owner of the Beatrice Inn.

28. Mar is a “Principal” listed on the active New York State Liquor License for “Butcher’s Block Hospitality, LLC” the premises doing business as “Beatrice Inn,” with its address listed as “285 W 12th Street, New York, NY 10014.”

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

30. At all relevant times, Mar has had power over payroll decisions at the Beatrice Inn, including the power to retain time and/or wage records.

31. At all relevant times, Mar has been actively involved in managing the day to day operations of the Beatrice Inn.

32. At all relevant times, Mar has had the power to stop any illegal pay practices that

harmed Plaintiff and similarly situated employees.

33. At all relevant times, Mar has had the power to transfer the assets and/or liabilities of the Beatrice Inn.

34. At all relevant times, Mar has had the power to declare bankruptcy on behalf of the Beatrice Inn.

35. At all relevant times, Mar has had the power to enter into contracts on behalf of the Beatrice Inn.

36. At all relevant times, Mar has had the power to close, shut down, and/or sell the Beatrice Inn.

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

CLASS ACTION ALLEGATIONS

38. Plaintiff brings the First, Second, and Third Causes of Action pursuant to Article 9 of the CPLR on behalf of himself and a class of persons consisting of:

All current and former front of house employees who worked at the Beatrice Inn in New York in any non-managerial capacity, such as captains, bussers, barbacks and bartenders, between January 9 2012 through adjudication of this matter (hereinafter "the Class").

39. The members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the size of the 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.

40. Common questions of law and fact exist as to the 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 Class minimum wages for all of the hours they worked;
- (c) whether Defendants correctly compensated Plaintiff and the Class for hours worked in excess of 40 per workweek; and
- (d) whether Defendants misappropriated tips from Plaintiff and the Class by distributing tips paid by customers to tip-ineligible positions, such as Bar Directors and Silverware Polishers.

41. The claims of Plaintiff are typical of the claims of the Class he seeks to represent. Plaintiff and all of the Class members work, or have worked, for Defendants as Tipped Workers at Beatrice Inn. Plaintiff and the Class members enjoy the same statutory rights under the NYLL, including to be properly compensated for all hours worked. Plaintiff and the Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiff and the 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.

42. Plaintiff will fairly and adequately represent and protect the interests of the Class members. Plaintiff understands that as a class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as a 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 Class members.

43. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

PLAINTIFF’S FACTUAL ALLEGATIONS

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

Dmitry Gurvits

45. During his employment, Gurvits was generally scheduled to work 5 shifts per week, averaging approximately 40 to 60 hours per week, unless he missed time for vacation, sick days and/or holidays.

46. During his employment, Defendants applied a tip credit towards the minimum wage rate paid to Gurvits for work performed as a bartender.

47. Defendants failed to notify Gurvits in writing of the tip credit provisions of the NYLL, or of their intent to apply a tip credit to his wages.

48. Defendants unlawfully redistributed part of Gurvits’ tips to employees who are in positions that are not entitled to tips under the NYLL, including, but not limited to, Bar Directors and Silverware Polishers.

49. With respect to Bar Directors, at the Beatrice Inn Bar Directors exert meaningful

authority over tipped employees which would prohibit their ability to receive tips. *See, Barenboim v. Starbucks Corp.*, 21 N.Y.3d 460, 473, (2013) (“...an employee granted meaningful authority or control over subordinates can no longer be considered similar to waiters and busboys within the meaning of section 196–d and, consequently, is not eligible to participate in a tip pool.”).

50. Specifically, Bar Directors (1) discipline tipped employees; (2) direct tipped employees; (3) make recommendations related to hiring and firing of tipped employees; (4) assist in running pre-shift meetings; and (5) have the ability to cut a tipped employees’ hours.

51. Defendants required Gurvits to perform non-tipped side work for more than 2 hours and/or 20% of his worktime.

52. As a result of the above, Defendants did not satisfy the requirements under the NYLL by which they could apply a tip credit to the hourly rates paid to Gurvits, and Defendants failed to compensate Gurvits at the proper minimum wage rate.

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

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

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

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

56. Pursuant to the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, Defendants have been required to pay Plaintiff and the Class the full minimum wage at a rate of: (a) \$7.25 per hour for all hours worked from August 22, 2010 through December 30, 2013; (b) \$8.00 per hour for all hours worked from December 31, 2013 through December 30, 2014; (c) \$8.75 per hour for all hours worked from December 31, 2014 through December 30, 2015; (d) \$9.00 per hour for all hours worked from December 31, 2015 through December 30, 2016, and (e) \$11.00 per hour for all hours worked from December 31, 2016 through the present.

57. Defendants have failed to notify Plaintiff and the Class of the tip credit in writing as required by the NYLL and the supporting New York State Department of Labor Regulations.

58. Defendants required Plaintiff and the Class to perform more than 2 hours and/or 20% of their work time performing non-tip producing side work.

59. Due to Defendants' violations of the NYLL, Plaintiff and the Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

SECOND CAUSE OF ACTION
New York Labor Law – Overtime Wage
(Brought on behalf of Plaintiff and the Class)

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

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

62. Defendants have failed to pay Plaintiff and the Class overtime wages to which they have been entitled under the NYLL and the supporting New York State Department of

Labor Regulations – at a rate of 1.5 times the full minimum hourly wage rate – for all hours worked in excess of 40 per workweek.

63. Through their failure to pay Plaintiff and the Class overtime wages for hours worked in excess of 40 hours per week, Defendants have violated the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

64. Due to Defendants' violations of the NYLL, Plaintiff and the Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
New York Labor Law – Tip Misappropriation
(Brought on behalf of Plaintiff and the Class)

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

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

67. Defendants unlawfully required Plaintiff and the Class to share the gratuities they received with employees other than tipped employees, in violation of NYLL, Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

68. Due to Defendants' violations of the NYLL, Plaintiff and the Class are entitled to recover from Defendants their the value of the misappropriated gratuities as provided for by the NYLL, liquidated damages, reasonable attorneys' fees, costs, and pre-judgement and post-judgement interest.

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. An order certifying the case as a class action pursuant to CPLR §§ 901 and 902 for the class of employees described herein, certifying Plaintiff as the class representative, and designating Plaintiff's counsel as Class counsel;

B. Unpaid minimum wages, overtime compensation, misappropriated tips, and liquidated damages permitted by law pursuant to the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations;

C. Pre-judgment and post judgment interest, as provided by law;

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

E. Any and all other relief as this Court deems appropriate.

Dated: New York, New York
January 9, 2018

Respectfully submitted,



Brian S. Schaffer

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*Attorneys for Plaintiff and
the Putative Class*

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, BRIAN S. SCHAFFER, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am a member of Fitapelli & Schaffer, LLP, the attorneys for Plaintiff Dmitry Gurvits. I have read the annexed CLASS ACTION COMPLAINT, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Interviews and/or discussions with Plaintiff. Plaintiffs and papers and/or documents in the file.

The reason I make this Verification instead of Plaintiff is because a Plaintiff resides outside of the County from where Fitapelli & Schaffer, LLP, maintains its office of the practice of law.

Dated: New York, New York
January 9, 2018



BRIAN S. SCHAFFER