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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**JESSICA VARNO, and DEREK TOUSSAINT, on
behalf of themselves and all others similarly situated,**

Plaintiffs,

-against-

**BUCKHEAD CORPORATION d/b/a Delmonico's
Italian Steakhouse; DELMONICO'S ITALIAN
STEAKHOUSE OF NEW YORK, INC.;
VALDOSTA CORPORATION d/b/a Delmonico's
Italian Steakhouse; MACON OPERATING
CORPORATION d/b/a Delmonico's Italian
Steakhouse; SARATOGA ASSETS, INC. d/b/a
Delmonico's Italian Steakhouse; and JOHN W.
WADE II, individually**

Defendants.

**CLASS ACTION
COMPLAINT**

Plaintiffs Jessica Varno and Derek Toussaint (together, "Plaintiffs"), individually and on behalf of all others similarly situated, upon personal knowledge, and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wages, overtime compensation, spread-of-hours pay, uniform-related expenses, unlawful deductions, and statutory penalties for Plaintiffs and any similarly situated co-workers – servers, bussers, bartenders, barbacks, and other tipped workers (collectively "Tipped Workers") who work or have worked at Delmonico's Italian Steakhouse located at 1553 Central Avenue, Albany, New York 12205 ("Albany Delmonico's");

125 White Spruce Boulevard, Rochester, New York 14623 (“Rochester Delmonico’s”); 147 North Genesee Street, Utica, New York 13502 (“Utica Delmonico’s”); 2950 Erie Blvd East Syracuse, New York 13224 (“Syracuse Delmonico’s”); and 3 Northside Drive, Clifton Park, New York 12065 (“Clifton Park Delmonico’s”) (collectively, the “Delmonico’s Restaurants”).

2. Owned and operated by Delmonico’s Italian Steakhouse of New York, Inc., Buckhead Corporation, Valdosta Corporation, Macon Operating Corporation, Saratoga Assets Inc., and John W. Wade II (collectively, “Defendants”), the Delmonico’s Restaurants have been profiled and reviewed in various publications, including being voted “Best Steak” by Capitol Region’s Living Magazine.

3. Despite operating the Delmonico’s Restaurants under five separate corporations, Defendants have been part of a single integrated enterprise that has jointly employed Tipped Workers at its restaurants throughout New York. The enterprise is centrally controlled and owned by John W. Wade II, who manages and oversees operations at all the Delmonico’s Restaurants. The Delmonico’s Restaurants are linked together through the website <http://www.delmonicositaliansteakhouse.com>, which provides links to all of the Delmonico’s Restaurants. The website also allows users to access the Delmonico’s Restaurant centralized New York menu, and provides background information on the restaurants.

4. In addition to having a centralized website, the Delmonico’s Restaurants also share a Facebook page listing all of their locations and guiding Facebook users to its centralized website.

5. All of the Delmonico’s Restaurants use the same employee manuals and company letterhead, and their policies and practices are not location dependent.

6. Tipped Workers at the Delmonico's Restaurants perform the same basic job duties, are subject to the same employment policies, practices and procedures, and are directed and/or permitted by Defendants to perform work at all locations without retraining.

7. At all times relevant, the Delmonico's Restaurants have paid Plaintiffs at a "tipped" minimum wage rate, a rate that falls below the full minimum wage.

8. The Delmonico's Restaurants, however, have not satisfied the strict requirements under the FLSA or the NYLL that would allow them to pay this reduced minimum wage (take a "tip credit").

9. Specifically, Defendants maintain a policy and practice whereby Tipped Workers are required to spend a substantial amount of time performing non-tip producing side work including, but not limited to, general cleaning of the restaurant, stocking and replenishing the bar and service areas, cutting produce, and making salads.

10. Tipped Workers are typically scheduled to work lunch or dinner shift at the Delmonico's Restaurants.

11. The Delmonico's Restaurants require Tipped Workers to perform side work at the start of their shift, during their shift, and at the end of their shift.

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

13. The Delmonico's Restaurants pay Tipped Workers for this work at or below the reduced tip credit minimum wage rate.

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

15. The side work that the Delmonico's Restaurants require Tipped Workers to perform includes, but is not limited to: (1) general cleaning of the restaurant; (2) restocking the bar with beer, wine, and liquor bottles; (3) washing and restocking glassware; (4) cutting produce; (5) making salads; (6) restocking ice; (7) preparing daily special menus; (8) cleaning, wiping, and prepping tables; (9) brewing large batches of tea and coffee; (10) emptying dirty dish bins; (11) washing trays; (12) cutting and preparing bread and butter baskets; (13) setting up and breaking down expo stations, and (14) refilling red pepper, salt, pepper, and sugar containers.

16. The side work described above is not specific to particular customers, tables, or sections, but is performed in mass quantities for the entire shift or for future shifts. Furthermore, opening side work is performed before the restaurant opens to customers.

17. Moreover, as these duties are not related to Plaintiffs' duties as Tipped Workers, Plaintiffs were engaged in a dual occupation for which they, and other Tipped Workers, are entitled to the full minimum wage.

18. Defendants' timekeeping system is capable of tracking multiple job codes for different work assignments. Despite this, Tipped Workers are not required to record the amount of time they spend performing side work.

19. Defendants also require Plaintiffs and other Tipped Workers to engage in a tip distribution scheme wherein they must share tips with employees in positions that are not entitled to receive tips, including, but not limited to, silverware rollers.

20. Plaintiffs bring this action on behalf of themselves 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.*, 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 Plaintiffs and other similarly situated employees of their lawfully earned wages.

21. Plaintiffs also bring this action on behalf of themselves 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

Plaintiffs

Jessica Varno

22. Jessica Varno (“Varno”) is an adult individual who is a resident of Albany County, New York.

23. Varno has been employed by Defendants as a bartender – a Tipped worker – at the Albany Delmonico’s from in or around July 2005 to the present.

24. Varno is a covered employee within the meaning of the FLSA and the NYLL.

25. A written consent form for Varno is being filed with this Class Action Complaint.

Derek Toussaint

26. Derek Toussaint (“Toussaint”) is an adult individual who is a resident of Albany County, New York.

27. Toussaint has been employed by Defendants as a busser and server – a Tipped Worker – at the Albany Delmonico’s from in or around November 2005 to the present. From 2005 to 2008, Toussaint worked as a busser. Beginning in or around 2008, Toussaint transferred to the position of server, and has been a server through the present.

28. Toussaint is a covered employee within the meaning of the FLSA and the NYLL.

29. A written consent form for Toussaint is being filed with this Class Action Complaint.

Defendants

30. Defendants have employed and/or jointly employed Plaintiffs and similarly situated employees at all times relevant.

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

32. Defendants are part of a single integrated enterprise that has jointly employed Plaintiffs and similarly situated employees at all times relevant.

33. During all relevant times, Defendants' operations have been interrelated and unified.

34. During all relevant times, the Delmonico's Restaurants have shared a common management, and have been centrally controlled and/or owned by Defendants.

35. During all relevant times, Defendants have centrally controlled the labor relations of the Delmonico's Restaurants.

36. During all relevant times, Defendants have allowed employees to transfer or be shared by and between the Delmonico's Restaurants without retraining.

Buckhead Corporation d/b/a Delmonico's Italian Steakhouse

37. Together with the other Defendants, Defendant Buckhead Corporation ("Buckhead") has owned and/or operated the Delmonico's Restaurants during the relevant period.

38. During the relevant period, Buckhead has done business as the Albany Delmonico's Italian Steakhouse located at 1553 Central Avenue, Albany, NY 12205.

39. Buckhead is a domestic for-profit corporation with a DOS Process address of 151 N. Genesee Street, Utica, New York, 13502. It lists John W. Wade as CEO at the same address.

40. Buckhead is the "Premises Name" that appears on the active New York State Liquor license for the premises doing business as "DEMONICO'S ITALIAN STEAKHOUSE" located at "1553 Central Avenue Albany, New York 12205," the same address as the Albany Delmonico's.

41. Buckhead is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

42. At all relevant times, Buckhead has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

43. Buckhead 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 compensation, spread-of-hours pay, tips, uniform-related expenses, and deductions.

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

Delmonico's Italian Steakhouse of New York, Inc.

45. Together with the other Defendants, Defendant Delmonico's Italian Steakhouse of New York, Inc. ("Delmonico's Italian Steakhouse of New York") has owned and/or operated the Delmonico's Restaurants during the relevant period.

46. Delmonico's Italian Steakhouse of New York is a domestic for-profit corporation with a DOS Process address of 151 N. Genesee Street, Utica, New York, 13502. It lists John W. Wade II as CEO at the same address.

47. Delmonico's Italian Steakhouse of New York is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

48. At all relevant times, Delmonico's Italian Steakhouse of New York has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

49. Delmonico's Italian Steakhouse of New York 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 compensation, spread-of-hours pay, tips, uniform-related expenses, and deductions.

50. Upon information and belief, at all relevant times Delmonico's Italian Steakhouse of New York's annual gross volume of sales made or business done was not less than \$500,000.00.

Valdosta Corporation d/b/a Delmonico's Italian Steakhouse

51. Together with the other Defendants, Defendant Valdosta Corporation ("Valdosta") has owned and/or operated the Syracuse and Utica Delmonico's Restaurants during the relevant period.

52. Valdosta is a domestic for-profit corporation with a DOS Process address of 151 N. Genesee Street Utica, New York, 13502. It lists John W. Wade II as CEO at the same address.

53. Valdosta is the "Premises Name" that appears on the active New York State Liquor license for the premises doing business as "DEMONICO'S ITALIAN STEAKHOUSE" located at "2950 Erie Blvd East, Syracuse, NY 13224" and "147 N. Genesee Street, Utica, New York 13502," the same address as the Syracuse and Utica Delmonico's.

54. Valdosta is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

55. At all relevant times, Valdosta has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

56. Valdosta 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 compensation, spread-of-hours pay, tips, uniform-related expenses, and deductions.

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

Macon Operating Corporation d/b/a Delmonico's Italian Steakhouse

58. Together with the other Defendants, Defendant Macon Operating Corporation ("Macon Operating") has owned and/or operated the Rochester Delmonico's during the relevant period.

59. Macon Operating is a domestic for-profit corporation with a DOS Process address of 151 N. Genesee Street Utica, New York, 13502. It lists John W. Wade II as CEO at the same address.

60. Macon Operating is the “Premises Name” that appears on the active New York State Liquor license for the premises doing business as “DEMONICO’S ITALIAN STEAKHOUSE” located at “125 White Spruce Blvd., Rochester, NY 14623,” the same address as the Rochester Delmonico’s.

61. Macon Operating is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

62. At all relevant times, Macon Operating has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

63. Macon Operating 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 compensation, spread-of-hours pay, tips, uniform-related expenses, and deductions.

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

Saratoga Assets Inc. d/b/a Delmonico’s Italian Steakhouse

65. Together with the other Defendants, Defendant Saratoga Assets Inc. (“Saratoga Assets”) has owned and/or operated the Clifton Park Delmonico’s during the relevant period.

66. Saratoga Assets is a domestic for-profit corporation with a DOS Process address of 151 N. Genesee Street Utica, New York, 13502. It lists John W. Wade II as CEO at the same address.

67. Saratoga Assets is the “Premises Name” that appears on the active New York State Liquor license for the premises doing business as “DEMONICO’S ITALIAN

STEAKHOUSE” located at “3 Northside Drive, Clifton Park, NY 12065,” the same address as the Clifton Park Delmonico’s.

68. Saratoga Assets is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, has employed Plaintiffs and similarly situated employees.

69. At all relevant times, Saratoga Assets has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

70. Saratoga Assets 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 compensation, spread-of-hours pay, tips, uniform-related expenses, and deductions.

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

John W. Wade II

72. Upon information and belief, John W. Wade II (“Wade”) is a resident of the State of New York.

73. At all relevant times, Wade has been an owner and operator of the Delmonico’s Restaurants.

74. Wade is the “Principal” listed on the active New York State Liquor licenses for all of the Delmonico Restaurants.

75. At all relevant times, Wade has had power over personnel decisions at the Delmonico’s Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

76. At all relevant times, Wade has had power over payroll decisions at the Delmonico's Restaurants, including the power to retain time and/or wage records.

77. At all relevant times, Wade has been actively involved in managing the day to day operations of the Delmonico's Restaurants.

78. At all relevant times, Wade has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

79. At all relevant times, Wade has had the power to transfer the assets and/or liabilities of the Delmonico's Restaurants.

80. At all relevant times, Wade has had the power to declare bankruptcy on behalf of the Delmonico's Restaurants.

81. At all relevant times, Wade has had the power to enter into contracts on behalf of the Delmonico's Restaurants.

82. At all relevant times, Wade has had the power to close, shut down, and/or sell the Delmonico's Restaurants.

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

JURISDICTION AND VENUE

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

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

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

87. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Defendants operate business within the district and all Defendants are residents of the State of New York.

COLLECTIVE ACTION ALLEGATIONS

88. Plaintiffs bring the First and Third Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who have worked as Tipped Workers at the Delmonico's Restaurants in New York, who elect to opt-in to this action (the "FLSA Collective").

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

90. Consistent with Defendants' policy and pattern or practice, Plaintiffs and the FLSA Collective have not been paid minimum wages for all hours worked and premium overtime compensation for all hours worked beyond 40 per workweek.

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

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

- a. willfully failing to pay its employees, including Plaintiffs and the FLSA Collective, minimum wages for all hours worked and premium overtime wages for all hours worked in excess of 40 hours per workweek; and
- b. willfully failing to record all of the time that its employees, including Plaintiffs and the FLSA Collective, have worked for the benefit of Defendants.

93. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by failing to properly compensate Plaintiffs and the FLSA Collective for the hours they have worked.

94. Defendants are aware or should have been aware that federal law required them to pay Tipped Workers minimum wages for all hours worked and overtime premiums for all hours worked in excess of 40 per workweek.

95. Plaintiffs and the FLSA Collective perform or performed the same primary duties.

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

97. 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).

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

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

CLASS ACTION ALLEGATIONS

100. Plaintiffs bring the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as Tipped Workers at the Delmonico's Restaurants in the State of New York between September 2, 2009 and the date of final judgment in this matter (the "Rule 23 Class").

101. 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.

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

103. 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.

104. 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 Plaintiffs and the Rule 23 Class minimum wages for all hours worked;
- (c) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 per workweek;
- (d) whether Defendants failed to provide Plaintiffs 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 Plaintiffs 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 Plaintiffs and the

Rule 23 Class, and which customers reasonably believed to be gratuities for Plaintiffs and the Rule 23 Class;

- (f) whether Defendants distributed or retained a portion of the tips and/or service charges paid by customers to workers who are not entitled to receive tips under the NYLL;
- (g) whether Defendants failed to pay Plaintiffs and the Rule 23 Class for uniform-related expenses;
- (h) whether Defendants made unlawful deductions from the wages of Plaintiffs and the Rule 23 Class, in violation of the NYLL;
- (i) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiffs and the Rule 23 Class, and other records required by the NYLL;
- (j) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper annual wage notices, as required by the NYLL;
- (k) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper statements with every payment of wages, as required by the NYLL;
- (l) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (m) the nature and extent of class-wide injury and the measure of damages for those injuries.

105. The claims of Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent. Plaintiffs and all of the Rule 23 Class members work, or have worked, for Defendants as Tipped Workers at the Delmonico's Restaurants in New York. Plaintiffs 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 minimum wage, overtime compensation, and spread-of-hours pay, to retain all customer tips, to be reimbursed for uniform-related expenses, and to not have unlawful deductions taken from their wages. Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs 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.

106. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. Plaintiffs understand that as class representatives, they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiffs recognize that as class representatives, they must represent and consider the interests of the class just as they would represent and consider their own interests. Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the class. Plaintiffs recognize that any resolution of a class action must be in the best interest of the class. Plaintiffs understand that in order to provide adequate representation, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiffs have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiffs and the Rule 23 members.

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

108. 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 Plaintiffs lack 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.

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

PLAINTIFFS' FACTUAL ALLEGATIONS

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

Jessica Varno

111. Defendants did not pay Varno the proper minimum wages, overtime compensation, and spread-of-hours pay for all of the time that she was suffered or permitted to work each workweek.

112. Throughout the duration of her employment at the Delmonico's Restaurants, Varno received weekly paychecks from Defendants that did not properly record or compensate her for all of the hours that she worked.

113. During her employment, Varno generally worked the following scheduling hours, unless she worked additional hours from working additional shifts or she missed time for vacation, sick days, or holidays, or obtained extra shifts: Tuesdays and Thursdays from 2:30 p.m. to approximately 10:30-11:00 p.m.

114. Throughout her employment, Defendants paid Varno at the New York tipped minimum wage.

115. Defendants failed to notify Varno in writing of the tip credit provisions of the NYLL, or of their intent to apply a tip credit to her wages.

116. Defendants failed to notify Varno either verbally or in writing of the tip credit provisions of the FLSA, or of their intent to apply a tip credit to her wages.

117. As a result of the above two paragraphs, Defendants did not satisfy the requirements under the FLSA, and NYLL by which they could apply a tip credit to Varno's wages.

118. Defendants required Varno to spend more than 2 hours and/or 20% of her shift performing non-tipped work unrelated to her duties as a Tipped Worker. These duties included, but are not limited to: restocking the bar with beer, wine, and liquor bottles; cutting fruit; general cleaning of the bar area; cleaning and restocking glassware; and performing any other duties necessary to ready the bar area to receive customers.

119. As a result of the above, Defendants did not satisfy the requirements under the FLSA and NYLL by which they could apply a tip credit to Varno's wages. As such, Varno should have been paid the full minimum wage rate and not the reduced tipped minimum wage rate for all hours worked.

120. At all times relevant, Varno was entitled to receive the full statutory minimum wage rate for the first 40 hours of work each week.

121. Defendants suffered or permitted Varno to work over 40 hours per week during some weeks in her employment. During such workweeks, Defendants failed to compensate Varno at time and one-half the full statutory minimum wage rate for all hours worked over 40.

122. Based on information and belief, Defendants also suffered or permitted Varno to work over 10 hours per day during some points in her employment. Defendants did not pay Varno 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 her workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.

123. Defendants did not allow Varno to retain all the tips she earned.

124. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Varno earned.

125. Defendants imposed upon Varno a tip redistribution scheme to which she never agreed.

126. Defendants' mandatory tip pooling arrangement allocated a portion of Varno'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, silverware rollers.

127. As a bartender, Defendants required Varno to wear a uniform consisting of a tuxedo shirt with vest and skirt, and required Varno to bear the costs of cleaning and pressing the uniform. According to the Delmonico's Employee Manuel, Varno and other Tipped Workers were required to come to work with the company issued uniform "Clean [and] pressed." (emphasis in original). Defendants did not launder and/or maintain Varno's mandatory uniform, and failed to pay her the required weekly uniform-maintenance amount in addition to the required minimum wage.

128. Defendants instituted an unlawful deduction policy at its locations in which deductions from Varno's wage would be made in the event of non-payment by customers.

129. Defendants did not keep accurate records of wages and tips earned, or of hours worked by Varno.

130. Defendants failed to furnish Varno with proper annual wage notices, as required by the NYLL.

131. Defendants failed to furnish Varno with a proper statement with every payment of wages, as required by the NYLL.

Derek Toussaint

132. Defendants did not pay Toussaint the proper minimum wages, overtime compensation, and spread-of-hours pay for all of the time that he was suffered or permitted to work each workweek.

133. Throughout the duration of his employment at the Delmonico's Restaurants, Toussaint received weekly paychecks from Defendants that did not properly record or compensate him for all of the hours that he worked.

134. During his employment, Toussaint generally worked five shifts per week, usually between Monday and Saturdays, with the specific days changing week by week, unless he missed time for vacation, sick days, or holidays, or obtained extra shifts for that week. On average, he would work between 30-35 hours per week, and would occasionally work beyond 40 hours in a week depending on the week's specific schedule.

135. Throughout his employment, Defendants generally paid Toussaint at the New York tipped minimum wage rate for work performed as a busser and server.

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

137. Defendants failed to notify Toussaint either verbally or in writing of the tip credit provisions of the FLSA, or of their intent to apply a tip credit to his wages.

138. As a result of the above two paragraphs, Defendants did not satisfy the requirements under the FLSA, and NYLL by which they could apply a tip credit to Toussaint's wages.

139. Defendants required Toussaint to spend more than 2 hours and/or 20% of his shift performing non-tipped work unrelated to his duties as a Tipped Worker. These duties included, but are not limited to: making salads, restocking ice, preparing daily special menus, general cleaning of the restaurant, washing and restocking glassware, cleaning, wiping, and prepping tables, washing trays, cutting and preparing bread and butter for customers, setting up and breaking down expo stations, brewing large batches of coffee, emptying dirty dish bins, and refilling salt, pepper, red pepper, and sugar containers.

140. As a result of the above, Defendants did not satisfy the requirements under the FLSA, and NYLL by which they could apply a tip credit to Toussaint's wages. As such, Toussaint should have been paid the full minimum wage and not the reduced tipped minimum wage rate for all hours worked..

141. At all times relevant, Toussaint was entitled to receive the full statutory minimum wage rate for the first 40 hours of work each week.

142. Defendants suffered or permitted Toussaint to work over 40 hours per week during his employment. During such workweeks, Defendants failed to compensate Toussaint at time and one-half the full statutory minimum wage rate for all hours worked over 40.

143. Based on information and belief, Defendants suffered or permitted Toussaint to work over 10 hours per day during some points in his employment. Defendants did not pay Toussaint 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.

144. Defendants did not allow Toussaint to retain all the tips he earned.

145. Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Toussaint earned.

146. Defendants imposed upon Toussaint a tip redistribution scheme to which he never agreed.

147. Defendants' mandatory tip pooling arrangement allocated a portion of Toussaint'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, silverware rollers.

148. As a server, Defendants required Toussaint to wear a uniform consisting of a red and black mock turtleneck, and required Toussaint to bear the costs of cleaning and pressing the uniform. According to the Delmonico's Employee Manuel, Toussaint and other Tipped Workers were required to come to work with the company issued uniforms "Clean [and] pressed." (emphasis in original). Defendants did not launder and/or maintain Toussaint's mandatory uniform, and failed to pay him the required weekly uniform-maintenance amount in addition to the required minimum wage.

149. Defendants instituted an unlawful deduction policy at its locations in which deductions from Varno's wage would be made in the event of non-payment by customers.

150. Defendants did not keep accurate records of wages and tips earned, or of hours worked by Toussaint.

151. Defendants failed to furnish Toussaint with proper annual wage notices, as required by the NYLL.

152. Defendants failed to furnish Toussaint with a proper statement with every payment of wages, as required by the NYLL.

FIRST CAUSE OF ACTION

**Fair Labor Standards Act – Minimum Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)**

153. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

155. Plaintiffs have consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b).

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

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

158. At all times relevant, Defendants have been employers of Plaintiffs 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.*

159. 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 Plaintiffs and the members of the FLSA Collective.

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

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

162. 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 Plaintiffs and the FLSA Collective of the provisions of subsection 203(m) of the FLSA, they required tipped employees to spend more than 20% of their shifts performing non-tip producing side work, and have distributed a portion of their tips to workers who do not “customarily and regularly” receive tips.

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

164. 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.*

165. As a result of Defendants’ willful violations of the FLSA, Plaintiffs 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

New York Labor Law – Minimum Wages

(Brought on behalf of Plaintiffs and members of the Rule 23 Class)

166. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

168. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiffs 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.

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

170. 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 Plaintiffs and the members of the Rule 23 Class.

171. Defendants have failed to pay Plaintiffs 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.

172. Defendants were required to pay the New York Plaintiffs and the Rule 23 Class Members the full minimum wage at a rate of; (a) \$7.25 per hour for all hours worked from July 24, 2009 through the December 30, 2013; (b) \$8.00 per hour for all hours worked from December 31, 2013 to December 30, 2014; and (c) \$8.75 per hour for all hours worked from

December 31, 2014 to the present under the NYLL §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations.

173. Prior to January 1, 2011, Defendants failed to furnish with every payment of wages to Plaintiffs 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, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

174. Prior to January 1, 2011, Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and the members of the Rule 23 Class, as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs and the members of the Rule 23 Class were entitled to the full minimum wage rate rather than the reduced tipped minimum wage rate during this time period.

175. Since January 1, 2011, Defendants have failed to notify Plaintiffs and the members of the Rule 23 Class of the tip credit in writing as required by the NYLL and the supporting New York State Department of Labor Regulations. As a result, Plaintiffs 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 during this time period.

176. Defendants have required Plaintiffs and the members of the Rule 23 Class to perform non-tip producing side work for more than 20% of their shifts and/or 2 hours on a consistent basis in violation of the NYLL and the supporting New York State Department of Labor Regulations, specifically, 12 NYCRR Part 146-2.9. As a result, Plaintiffs 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 at all relevant times.

177. Defendants have required Plaintiffs and the members of the Rule 23 Class to share gratuities 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, Plaintiffs 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 at all relevant times.

178. Through their knowing or intentional failure to pay minimum hourly wages to Plaintiffs 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. Due to Defendants' willful violations of the NYLL, Plaintiffs 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.

THIRD CAUSE OF ACTION

**Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)**

179. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

180. 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 Plaintiffs and the members of the FLSA Collective.

181. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective overtime wages to which they have been entitled under the FLSA – at a rate of 1.5 times the full minimum hourly wage rate – for all hours worked in excess of 40 per workweek.

182. 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 Plaintiffs and the members of the FLSA Collective.

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

184. As a result of Defendants' violations of the FLSA, Plaintiffs and the members of the FLSA Collective have been deprived of 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. § 216(b).

FOURTH CAUSE OF ACTION

New York Labor Law – Overtime Wages

(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

185. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

187. Defendants have failed to pay Plaintiffs and the members of the Rule 23 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.

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

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

190. Due to Defendants' violations of the NYLL, Plaintiffs 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, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

New York Labor Law – Spread-of-Hours Pay

(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

191. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

192. Defendants have willfully failed to pay Plaintiffs 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 – has been greater than 10 hours.

193. Through their knowing or intentional failure to pay Plaintiffs 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.

194. Due to Defendants' violations of the NYLL, Plaintiffs 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 Plaintiffs and the members of the Rule 23 Class)**

195. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

196. At all times relevant, Plaintiffs 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.

197. At all times relevant, each Defendant has been an employer of Plaintiffs and the members of the Rule 23 Class within the meaning of the NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

198. 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 Plaintiffs and the members of the Rule 23 Class.

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

200. Through their knowing or intentional demand for, acceptance of, and/or retention of gratuities and/or service charges received by Plaintiffs and the member so the Rule 23 Class,

Defendants have willfully violated the NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor regulations.

201. Due to Defendants' willful violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants the value of all 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 Plaintiffs and the members of the Rule 23 Class)

202. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

204. Defendants have required Plaintiffs and the members of the Rule 23 Class to bear the costs of cleaning and pressing their required uniforms, and have not reimbursed Plaintiffs and the members of the Rule 23 Class for the cost of cleaning and pressing their required uniforms.

205. Defendants have failed to launder and/or maintain the required uniforms for Plaintiffs and the members of the Rule 23 Class, and have failed to pay them the required weekly amount in addition to the required minimum wage.

206. Through their knowing or intentional failure to pay and/or reimburse Plaintiffs and the members of the Rule 23 Class for the cost and maintenance of required uniforms, Defendants

have willfully violated the NYLL, and the supporting New York State Department of Labor Regulations.

207. Due to Defendants' willful violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants the costs of 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 – Unlawful Deductions From Wages
(Brought on behalf of Plaintiffs and the Rule 23 Class)**

208. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

209. Defendants made unlawful deductions from the wages of Plaintiffs and the Rule 23 Class Members. These deductions included, but were not limited to, customer walkouts.

210. The deductions made from the wages of Plaintiffs and the Rule 23 Class Members were not authorized or required by law.

211. The deductions made from the wages of Plaintiffs and the Rule 23 Class Members were not expressly authorized in writing by Plaintiffs and the Rule 23 Class Members, and were not for the benefit of Plaintiffs and the Rule 23 Class Members.

212. Through their knowing or intentional efforts to permit unauthorized deductions from the wages of Plaintiffs and the Rule 23 Class Members, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

213. Due to Defendants' willful violations of the NYLL, Plaintiffs and NY Rule 23 Class Members are entitled to recover from Defendants the amounts of any unlawful deductions,

liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

NINTH CAUSE OF ACTION

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

214. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

215. Defendants have willfully failed to furnish Plaintiffs with annual wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; 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.

216. Through their knowing or intentional failure to provide Plaintiffs with the annual 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.

217. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiffs are entitled to statutory penalties of fifty dollars for each day that Defendants failed to provide Plaintiffs with proper annual wage notices, or a total of five thousand dollars each, reasonable

attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

TENTH CAUSE OF ACTION

**New York Labor Law – Failure to Provide Proper Wage Statements
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

218. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

219. Defendants have willfully failed to furnish Plaintiffs and the members of the Rule 23 Class with statements with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

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

221. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs and the members of the Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

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

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all Tipped Workers who are presently working at, or who have worked 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, at the Delmonico's Restaurants in New York. 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 compensation, 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 Plaintiffs as representatives of the Rule 23 Class and counsel of record as Class Counsel;

E. Payment of a service award to Plaintiffs, in recognition of the services they have 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 compensation, spread-of-hours pay, misappropriated tips, 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 day that Defendants failed to provide Plaintiffs with proper annual wage notices, or a total of five thousand hundred dollars each, as provided for by NYLL, Article 6 § 198;

I. Statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the Rule 23 Class with proper wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

J. Prejudgment and post-judgment interest;

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

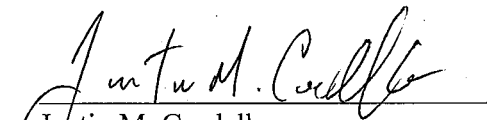
L. Reasonable attorneys' fees and costs of the action; and

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

* * *

Dated: Rochester, New York
September 2, 2015

Respectfully submitted,



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