

2. As detailed below, Plaintiffs, who are former service employees of the famed Gramercy Tavern, located in the Flatiron District, were cheated out of tips and other wages through Defendants' ongoing unlawful scheme of distributing the hard-earned tips paid to Plaintiffs and other similarly situated service employees to managers and other tip-ineligible employees. Defendants did this in an attempt at "robbing Peter to pay Paul"; that is, to unlawfully augment the wages Defendants pay to tip-ineligible employees with the tips earned by Plaintiffs and other service staff through their hard work and dedicated service to customers, resulting in higher profits to Defendants.

3. Specifically, during their employment, Plaintiff Siddiky, who was employed as a busser, Plaintiff Maruf, who was also employed as a busser, and other similarly situated service employees were subjected to numerous violations of federal and state labor laws, including (i) minimum wage violations under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and the New York Labor Law ("NYLL"), § 650 *et seq.*, and (ii) illegal retention of employee gratuities and "charges purported to be gratuities" in violation of NYLL § 196-d.

4. Plaintiffs' claims under the FLSA are brought as a collective action, pursuant to 29 U.S.C. § 216(b), on behalf of themselves and on behalf of all other similarly-situated persons who were employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers, who were not paid the prevailing minimum wage for all hours worked during the full statute of limitations period (the "FLSA Collective Period"). Plaintiffs and all such other similarly-situated persons are jointly referred to herein as the "FLSA Collective."

5. Plaintiffs' claims under the NYLL are brought as a class action pursuant to Federal Rule of Civil Procedure Rule ("FRCP") 23 on behalf of themselves and on behalf of all other similarly-situated persons who were employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers who: (a) were not paid the prevailing minimum wage for all hours worked; and (b) had gratuities and/or "charges purported to be gratuities" unlawfully retained from their wages. Plaintiffs and all other such similarly-situated persons are jointly referred to herein as the "NYLL Class."

JURISDICTION AND VENUE

6. Pursuant to 28 U.S.C. §§ 1331 and 1343, the Court has subject matter jurisdiction over this action because this action involves federal questions regarding the deprivation of Plaintiffs' rights under the FLSA. Pursuant to 28 U.S.C. § 1367(a), the Court has supplemental jurisdiction over Plaintiffs' related claims under the NYLL.

7. Pursuant to 28 U.S.C. §1391(a), venue is proper in this district because a substantial part of the events or omissions giving rise to this action occurred in this district.

8. Plaintiffs' claims are properly consolidated as a single action because their claims involve the same Defendants, arise from the same nexus of facts and circumstances, and involve nearly identical issues of fact and law.

PARTIES

9. Defendant Union Square Hospitality Group, LLC ("Union Square") is a New York limited liability company, located at 24 Union Square East, New York, New York 10003. Upon information and belief, Union Square owns and operates Gramercy Tavern., a restaurant located at 42 East 20th Street, New York, New York, 10003. Union Square was an "employer"

within the meaning of all applicable statutes, and an enterprise engaged in commerce as defined by § 203(r) and (s) of the FLSA, with annual gross volume business done in an amount not less than \$500,000.

10. Defendant Gramercy Tavern Corp. (“Gramercy Tavern”) is a New York corporation, located at 42 East 20th Street, New York, New York 10003. At all relevant times, Gramercy Tavern was an “employer” within the meaning of all applicable statutes, and an enterprise engaged in commerce as defined by § 203(r) and (s) of the FLSA, with annual gross volume business done in an amount not less than \$500,000.

11. Defendant GT Operating Company LLC (“GT Operating”) is a New York limited liability company that is registered to accept service of process at 24-32 Union Square East, 6th Floor, New York, New York 10003. Plaintiff and the FLSA Collective and NYLL Class members were issued paychecks and paystubs issued by GT Operating. At all relevant times, GT Operating Company LLC was an “employer” within the meaning of all applicable statutes, and an enterprise engaged in commerce as defined by § 203(r) and (s) of the FLSA, with annual gross volume business done in an amount not less than \$500,000.

12. Union Square, Gramercy Tavern, and GT Operating all jointly employed Plaintiffs and the members of the FLSA Collective and NYLL Class.

13. At all relevant times, Defendants exercised control over the terms and conditions of Plaintiffs’ employment and those of similarly situated employees, including the power to (i) fire and hire, and (ii) determine rate and method of pay.

14. At all relevant times, the work performed by Plaintiffs and similarly situated employees was directly essential to the business operated by Defendants.

15. Plaintiff Uzzol Siddiky is an adult resident of New York State who resides in Queens County, and was employed by Defendants as a busser from in or about July 2015 to November 2015. At all relevant times, Mr. Siddiky was an “employee” within the meaning of all applicable statutes. Plaintiff Siddiky will file a Consent to Participate as a Plaintiff in this action.

16. Plaintiff Kawsar A. Maruf is an adult resident of New York State who resides in Bronx County, and was employed by Defendants as a busser from in or about June 2010 to on or about December 31, 2012. At all relevant times, Mr. Maruf was an “employee” within the meaning of all applicable statutes. Plaintiff Maruf will file a Consent to Participate as a Plaintiff in this action.

FACTUAL ALLEGATIONS

Minimum Wage Violations

17. Federal and State law requires employers to pay employees a minimum wage. Defendants were arguably permitted under the FLSA and NYLL to pay certain tipped employees at a statutory hourly rate that is less than the standard hourly minimum wage rate a “tip credit” allowance. A tip credit is permitted provided that the “tips” or “gratuities” that such tipped employee is expected to receive, when added to the hourly wages, meet or exceed the standard hourly minimum wage. Further, the employer must make sure that service employees retain one hundred (100%) percent of all tips and gratuities received.

18. Here, Defendants were not entitled to avail themselves of the reduced minimum wage by applying the tip credit allowance for Plaintiffs, the FLSA Collective, and the NYLL Class, because, *inter alia*, Defendants retained a portion of the tips shared by employees, and/or required them to share and/or pool their tips with non-service employees such as Expeditors,

Polishers, Wine Managers, and other employees who did not regularly and customarily perform “tipped” duties.

19. Expeditors and Polishers did not perform any direct customer service, were not engaged in customarily tipped work, and did not have meaningful interaction with customers.

20. An Expeditor’s duties were performed in the kitchen, completely out of customers’ view.

21. A Polisher’s duties were to polish glassware out of the view of and without any interaction with customers.

22. In addition, Wine Managers and other employees with managerial authority also participated in the tip pool.

23. Wine Managers had the authority to fire employees. Wine Managers also had the authority to discipline employees, and control how employees performed their work. In fact, employees are required to check in with Wine Managers before they are able to go home after the conclusion of their shifts, so that Wine Managers can check to see that the work required of employees is complete.

24. As such, because tip-ineligible employees participated in the tip pool, Defendants were obligated to pay Plaintiffs, the FLSA Collective, and the NYLL Class the standard hourly minimum wage rate, and not any reduced minimum wage through application of a tip credit.

25. At all relevant times, Defendants knew that nonpayment of the minimum wage would economically injure Plaintiffs, the FLSA Collective, and the NYLL Class and violated Federal and State laws.

New York Labor Law § 196-d Violations

26. In addition to unlawfully distributing the tips and gratuities that Plaintiffs and the FLSA Collective and NYLL Class earned to non-tipped employees and managers, during Plaintiffs' employment, Defendants held private events at Gramercy Tavern for which Defendants' clients were required to pay an automatic/mandatory "service charge" or charge with a similar name of approximately 20% of the total bill (referred to herein as the "Service Charge").

27. Defendants led or knowingly allowed their customers to reasonably believe that the Service Charge was a gratuity by, *inter alia*, calling it a "service charge," representing to customers that the charge was a gratuity, and failing to tell customers that the charge was not a gratuity.

28. Defendants' private event customers did not ordinarily leave any additional gratuity for Plaintiffs and the NYLL Class members other than what is paid to Defendants pursuant to the Service Charge.

29. Throughout the relevant time period, Defendants had knowledge of NYLL §196-d and the legal requirement that service employees are entitled to the gratuities, and that it is unlawful for gratuities to be retained by the employer.

30. Nonetheless, Defendants unlawfully retained all or part of this Service Charge, which should have been distributed to Plaintiffs and the NYLL Class, in violation of NYLL § 196-d.

31. By not distributing the entirety of the Service Charge to Plaintiffs and the NYLL Class members, Defendants unlawfully demanded and retained the gratuities or charges

purported to be gratuities. Defendants did not allow Plaintiffs and the NYLL Class members to retain all of the gratuities and charges purported to be gratuities they had earned.

FLSA COLLECTIVE ACTION ALLEGATIONS

32. Plaintiffs bring their FLSA claims as a collective action pursuant to the FLSA on behalf of themselves and on behalf of all other similarly-situated persons who were employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers or other similar “tipped” positions during the FLSA Collective Period.

33. At all relevant times, Plaintiffs and the other members of the FLSA Collective were similarly situated, had substantially similar job requirements, were paid in the same manner and under the same common policies, plans and practices, and were subject to Defendants’ practice of willfully failing and refusing to pay them at the legally required minimum wage for all hours worked, retaining tips for themselves, and allowing non-tipped employees and/or employees with meaningful managerial authority to share in their tips.

34. During the FLSA Collective Period, Defendants were fully aware of the duties performed by Plaintiffs and the FLSA Collective, and that those duties were not exempt from the minimum wage provisions of the FLSA.

35. As a result of Defendants’ conduct as alleged herein, Defendants violated 29 U.S.C. § 206 by not paying the FLSA Collective and Plaintiffs the prevailing minimum wage for all hours worked.

36. Defendants’ violations of the FLSA were willful, repeated, knowing, intentional and without a good faith basis, and significantly damaged Plaintiffs and the FLSA Collective.

37. As a result of Defendants' conduct, Defendants are liable to Plaintiffs and the FLSA Collective for the full amount of their unpaid minimum wage, plus an additional equal amount as liquidated damages, plus the attorneys' fees and costs incurred by Plaintiffs and the FLSA Collective.

38. While the exact number of the FLSA Collective is unknown to Plaintiffs at the present time, upon information and belief, there are at least one hundred (100) other similarly-situated persons who were employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers "or other similar "tipped" positions during the FLSA Collective Period.

39. Plaintiffs are currently unaware of the identities of the FLSA Collective. Accordingly, Defendants should be required to provide Plaintiffs with a list of all persons employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers or other similar "tipped" positions during the FLSA Collective Period, along with their last known addresses, telephone numbers and e-mail addresses, so Plaintiffs can give the FLSA Collective notice of this action and an opportunity to make an informed decision about whether to participate in it.

RULE 23 CLASS ACTION ALLEGATIONS

40. Plaintiffs bring their NYLL claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and on behalf of all other similarly-situated persons who were employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly

and customarily receive tips from patrons or customers or other similar “tipped” positions who were: (i) not paid the prevailing minimum wage for all hours worked; and (ii) unlawfully denied tips and gratuities.

41. The basic job duties of the NYLL Class were the same as or substantially similar to those of Plaintiffs, and the NYLL Class were paid in the same manner and under the same common policies, plans and practices as Plaintiffs.

42. The NYLL Class, like Plaintiffs, all have been subject to the same unlawful policies, plans and practices of Defendants, including not paying the prevailing minimum wage for all hours worked, and unlawfully retaining gratuities.

43. During the NYLL Class Period, Defendants were fully aware of the duties performed by Plaintiffs and the NYLL Class, and that those duties were not exempt from the minimum wage and other applicable provisions of the NYLL and/or its regulations.

44. As a result of Defendants’ conduct as alleged herein, Defendants violated the NYLL and/or its regulations. Defendants’ violations of the NYLL and/or its regulations were willful, repeated, knowing, intentional and without a good faith basis, and significantly damaged Plaintiffs and the NYLL Class.

45. As a result of Defendants’ conduct, Defendants are liable to Plaintiffs and the NYLL Class for the full amount of their unpaid minimum wages, and the tips or gratuities retained by Defendants and/or distributed to tip ineligible employees, plus an additional amount as liquidated damages, plus the attorneys’ fees and costs incurred by Plaintiffs and the NYLL Class.

46. Certification of the NYLL Class’ claims as a class action is the most efficient and economical means of resolving the questions of law and fact common to Plaintiffs’ claims and

the claims of the NYLL Class. Plaintiffs have standing to seek such relief because of the adverse effect that Defendants' unlawful compensation policies and practices have had on them individually and on members of the NYLL Class. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the NYLL Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the NYLL Class and Defendants.

47. Plaintiffs' claims raise questions of law and fact common to the NYLL Class.

Among these questions are:

- a. Whether Defendants employed Plaintiffs and the NYLL Class members within the meaning of the New York Labor Law;
- b. Whether Defendants paid Plaintiffs and the NYLL Class members the federal and state minimum wage for all hours worked during the NYLL Class Period;
- c. Whether Defendants' failure to pay the prevailing minimum wage to Plaintiffs and the NYLL Class constitutes a violation of NYLL § 650 *et seq.*;
- d. Whether Defendants illegally retained Plaintiffs' tips and distributed them to non-tipped employees, such as Expeditors, Polishers, Wine Managers and other individuals who were not working in customarily tipped positions and/or did not have meaningful contact with customers, or had meaningful managerial authority;
- e. Whether the automatic/mandatory service charge charged to Defendants' private event customers was a gratuity within the meaning of NYLL § 196-d;
- f. Whether Defendants illegally retained Plaintiffs' and the NYLL Class' gratuities or charges purported to be gratuities such as automatic/mandatory during private events;
- g. Whether Defendants' violations of the NYLL and/or its regulations were willful.

48. These common questions of law and fact arise from the same course of events, and each class member will make similar legal and factual arguments to prove liability.

49. Plaintiffs are members of the NYLL Class that they seek to represent. Plaintiffs' claims are typical of the claims of the NYLL Class. The relief Plaintiffs seek for the unlawful policies and practices complained of herein are also typical of the relief which is sought on behalf of the NYLL Class.

50. Plaintiffs' interests are co-extensive with those of the NYLL Class that they seek to represent in this case. Plaintiffs are willing and able to represent the NYLL Class fairly and to vigorously pursue their similar individual claims in this action. Plaintiffs have retained counsel who are qualified and experienced in labor and employment class action litigation, and who are able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity. The combined interests, experience and resources of Plaintiffs and their counsel to litigate the individual and NYLL Class claims at issue in this case satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

51. Defendants have acted or refused to act on grounds generally applicable to the NYLL Class, making final injunctive and declaratory relief appropriate with respect to the NYLL Class as a whole.

52. Injunctive and declaratory relief are the predominant relief sought in this case because they are the culmination of the proof of Defendants' individual and class-wide liability and the essential predicate for Plaintiffs' and the NYLL Class' entitlement to monetary and non-monetary remedies to be determined at a later stage of the proceedings.

53. The common issues of fact and law affecting Plaintiffs' claims and those of the NYLL Class members, including the common issues identified above, predominate over any issues affecting only individual claims.

54. A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' claims and the claims of the NYLL Class. There will be no difficulty in the management of this action as a class action.

55. The cost of proving Defendants' violations of the NYLL and the supporting New York State Department of Labor regulations makes it impracticable for Plaintiffs and the NYLL Class to pursue their claims individually. Maintenance of a class action promotes judicial economy by consolidating a large class of plaintiffs litigating identical claims. The claims of the NYLL Class interrelate such that the interests of the members will be fairly and adequately protected in their absence. Additionally, the questions of law and fact common to the NYLL Class arise from the same course of events and each class member makes similar legal and factual arguments to prove the Defendants' liability.

56. The NYLL Class is so numerous that joinder of all members is impracticable. While the exact number of the NYLL Class is unknown to Plaintiffs at the present time, upon information and belief, there are at least one hundred (100) similarly-situated persons who were/are employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers" or other similar "tipped" positions during the NYLL Class Period.

57. Plaintiffs are currently unaware of the identities of the NYLL Class. Accordingly, Defendants should be required to provide Plaintiffs with a list of all persons employed by Defendants as front of house service employees, including but not limited to service staff, bussers, runners, captains and any other service personnel who regularly and customarily receive tips from patrons or customers or other similar "tipped" positions during the NYLL Class

Period, along with their last known addresses, telephone numbers and e-mail addresses, so Plaintiffs can give the NYLL Class notice of this action and an opportunity to make an informed decision about whether to participate in it.

FIRST CLAIM FOR RELIEF
(FLSA Minimum Wage Violations)
(On Behalf of Plaintiffs and the FLSA Collective)

58. Plaintiffs, on behalf of themselves and the FLSA Collective, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

59. The FLSA requires covered employers, such as Defendants, to pay all non-exempt employees the prevailing minimum wage for all hours worked. Plaintiffs and the FLSA Collective were not exempt from the requirement that Defendants pay them the prevailing minimum wage under the FLSA.

60. During the FLSA Collective Period, Defendants did not pay Plaintiffs and the FLSA Collective the prevailing minimum wage for all hours worked for Defendants.

61. As a result of Defendants' failure to pay Plaintiffs and the FLSA Collective the prevailing minimum wage for all hours worked, Defendants violated the FLSA.

62. The foregoing conduct of Defendants constitutes willful violations of the FLSA.

63. Defendants' violations of the FLSA have significantly damaged Plaintiffs and the FLSA Collective and entitle them to recover the total amount of their unpaid minimum wages, an additional equal amount in liquidated damages, and attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
(NYLL Minimum Wage Violations)
(On Behalf of Plaintiffs and the NYLL Class)

64. Plaintiffs, on behalf of themselves and the NYLL Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

65. The NYLL requires covered employers, such as Defendants, to pay all non-exempt employees the prevailing minimum wage for all hours worked. Plaintiffs and the NYLL Class were not exempt from the requirement that Defendants pay them the prevailing minimum wage under the NYLL.

66. During the NYLL Class Period, Defendants did not pay Plaintiffs and the NYLL Class the prevailing minimum wage for all hours worked for Defendants.

67. As a result of Defendants' failure to pay Plaintiffs and the NYLL Class the prevailing minimum wage for all hours, Defendants violated the NYLL.

68. The foregoing conduct of Defendants constitutes willful violations of the NYLL.

69. Defendants' violations of the NYLL have significantly damaged Plaintiffs and the NYLL Class and entitle them to recover the total amount of their unpaid minimum wage, an additional amount in liquidated damages, and attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
(NYLL Violations for Illegal Deductions from Gratuities)
(On Behalf of Plaintiffs and the NYLL Class)

70. Plaintiffs, on behalf of themselves and the NYLL Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

71. Plaintiffs and the NYLL Class members were employed by Defendants within the meaning of NYLL §§ 2 and 651.

72. N.Y. Lab. Law § 196-d bars an employer from retaining "any part of a gratuity or of any charge purported to be gratuity[.]"

73. During the NYLL Period, Defendants unlawfully demanded and retained gratuities and "charges purported to be gratuities" from Plaintiffs and the NYLL Class, particularly during private events, in violation of NYLL § 196-d.

74. Due to Defendants' NYLL violations, Plaintiffs and the NYLL Class members are entitled to recover from Defendants the amount of retained gratuities, liquidated damages, attorneys' fees and costs, and interest.

FOURTH CLAIM FOR RELIEF
(NYLL Violations for Illegal Distribution of Gratuities)
(On Behalf of Plaintiffs and the NYLL Class)

75. Plaintiffs, on behalf of themselves and the NYLL Class, reallege and incorporate by reference all preceding paragraphs as if they were set forth again herein.

76. Plaintiffs and the NYLL Class members were employed by Defendants within the meaning of NYLL §§ 2 and 651.

77. N.Y. Lab. Law § 196-d bars an employer from retaining "any part of a gratuity or of any charge purported to be gratuity[.]"

78. During the NYLL Period, Defendants unlawfully retained gratuities and "charges purported to be gratuities" from Plaintiffs and the NYLL Class and distributed them to tip-ineligible employees, in violation of NYLL § 196-d.

79. Due to Defendants' NYLL violations, Plaintiffs and the NYLL Class members are entitled to recover from Defendants the amount of retained gratuities, liquidated damages, attorneys' fees and costs, and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, the FLSA Collective and the NYLL Class, respectfully requests that this Court:

A. Declare that the practices complained of herein are unlawful under applicable federal and state law;

B. Declare this action to be maintainable as a collective action pursuant to 29 U.S.C. §216, and direct Defendants to provide Plaintiffs with a list of all members of the FLSA Collective, including all last known addresses, telephone numbers and e-mail addresses of each such person, so Plaintiffs can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;

C. Determine the damages sustained by Plaintiffs and the FLSA Collective as a result of Defendants' violations of the FLSA, and award those damages against Defendants and in favor of Plaintiffs and the FLSA Collective, plus such pre-judgment and post-judgment interest as may be allowed by law;

D. Award Plaintiffs and the FLSA Collective an additional equal amount as liquidated damages because Defendants' violations were willful and/or without a good faith basis;

E. Declare this action to be maintainable as a class action pursuant to Fed. R. Civ. P. 23, and direct Defendants to provide Plaintiffs with a list of all members of the NYLL Class, including all last known addresses, telephone numbers and e-mail addresses of each such person, so Plaintiffs can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;

F. Designate Plaintiffs as representatives of their class, and their counsel of record as class counsel;

G. Determine the damages sustained by Plaintiffs and the NYLL Class as a result of Defendants' violations of the NYLL and/or its regulations, and award those damages against Defendants and in favor of the Plaintiffs and the NYLL Class, plus such pre-judgment and post-judgment interest as may be allowed by law;

H. Award Plaintiffs and the NYLL Class an additional amount as liquidated damages pursuant to the NYLL because Defendants' violations were willful and/or without a good faith basis;

I. Award Plaintiffs, the FLSA Collective and the NYLL Class their reasonable attorneys' fees and costs and disbursements in this action including, but not limited to, any accountants' or experts' fees; and

J. Grant Plaintiffs, the FLSA Collective and the NYLL Class such other and further relief that the Court deems just and proper.


DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and on behalf of all other similarly-situated persons, hereby demand a trial by jury on all issues of fact and damages.

Dated: December 11, 2015
New York, New York

Respectfully submitted,

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