

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

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 OSCAR SANDOVAL, JUAN ACA, ELMER :  
 BONILLA, EDVIN CHAVEZ, FELIX :  
 MALDONADO DIAZ, ENRIQUE FLORES, :  
 KERRY NOHOTH HERNANDEZ-RODRIGUEZ, :  
 PABLO LAINEZ, JOSE LUIS MALDONADO :  
 LOPEZ, MARTIN LOPEZ, KIHHEL :  
 NOUREDDINE, IGNACIO QUIJANO-AVILES, :  
 ANGEL QUITO, LEONARDO RAMON, FLAVIO :  
 SOTO, FILIBERTO VILLALBA, EDWIN :  
 ZEVALLOS, and FREDDY ZEVALLOS, on behalf :  
 of themselves and on behalf of other similarly- :  
 situated individuals, :  
 :  
 Plaintiffs, :  
 :  
 -against- :  
 :  
 PHILIPPE NORTH AMERICA RESTAURANTS, :  
 LLC, DAVE 60 NYC, INC., PHILIPPE NYC I :  
 LLC, PHILIPPE HAMPTONS, INC, PHILIPPE :  
 CHOW EAST HAMPTON LLC, PHILIPPE :  
 JERICHO LLC, PHILIPPE CHOW ATLANTA :  
 LLC, MERCHANTS HOSPITALITY, INC., :  
 PHILIPPE CHOW HOLDINGS LLC, PHILIPPE :  
 CHOW MGMT LLC, MORFOGEN MGMT. :  
 CORP., PHILIPPE EQUITIES LLC, PHILIPPE :  
 CHOW, and STRATIS MORFOGEN, :  
 :  
 Defendants. :  
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Civil Case No.

**COLLECTIVE AND CLASS  
ACTION COMPLAINT**

**Jury Trial Demanded**

Plaintiffs Oscar Sandoval, Juan Aca, Elmer Bonilla, Edvin Chavez, Felix Maldonado Diaz, Enrique Flores, Kerry Nohoth Hernandez-Rodriguez, Pablo Lainez, Jose Luis Maldonado Lopez, Martin Lopez, Kihel Nouredine, Ignacio Quijano-Aviles, Angel Quito, Leonardo Ramon, Flavio Soto, Filiberto Villalba, Edwin Zevallos, and Freddy Zevallos (together, “Plaintiffs”), on behalf of themselves and all other similarly-situated individuals, allege against Defendants Philippe North America Restaurants, LLC, Dave 60 NYC, Inc., Philippe NYC I

LLC, Philippe Hamptons, Inc., Philippe Chow East Hampton LLC, Philippe Jericho LLC, Philippe Chow Atlanta LLC, Merchants Hospitality, Inc., Philippe Chow Holdings LLC, Philippe Chow Mgmt LLC, Morfogen Mgmt. Corp., Philippe Equities LLC, Philippe Chow and Stratis Morfogen (together, “Defendants”), as follows:

**PRELIMINARY STATEMENT**

1. Celebrity chef Philippe Chow – a former chef at the once-esteemed restaurant Mr. Chow – is building a restaurant empire with his self-named Philippe Restaurant currently having locations in Manhattan and the Hamptons. But, the hardworking service employees who have been instrumental in this success continue to be paid below minimum wage and have their tips and gratuities stolen from them by management. This is hardly the first time Mr. Chow and his restaurant group has been accused of unlawful wage practices, as he and his companies have been sued no fewer than six times in the last ten years for stiffing the service staff on their wages, and the lesson apparently has still not been learned.<sup>1</sup>

2. Defendants’ refusal to pay lawful wages to their service employees is bolstered by the horrendous mistreatment the service staff suffers in all regards. In fact, since the last wage-and-hour class action brought against Defendants for wage violations, virtually every employee who participated in that action is no longer employed by Defendants, many having been either terminated or harassed to the point of quitting, all in retaliation for their involvement in the previous cases. Moreover, Defendants’ bussers and runners – who are paid at a reduced minimum wage for working in a “tipped” capacity – are required to perform numerous non-

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<sup>1</sup> See Atlas, et al. v. Philippe Chow North America Restaurants LLC, et al., No. 12-cv-06967 (S.D.N.Y.); Gu, et al. v. Philippe Chow North America Restaurants LLC, et al., No. 13-cv-3221 (E.D.N.Y.); Pecci, et al v. Philippe Chow North America Restaurants LLC, et al., No. 13-cv-00815 (E.D.N.Y.), Miro et al v. Philippe Chow Boa, LLC, et al., No. 12-cv-60953 (S.D. Fla.); Barco v. Philippe Chow Fort Lauderdale, LLC, et al., No. 12-cv-21319 (S.D. Fla.); Kelly et al. v. Philippe Miami, LLC et al., No. 09-cv-20420 (S.D. Fla.).

tipped and completely menial and humiliating tasks such as killing rodents and bugs infesting the restaurants, hanging out of windows to clean the panes, climbing onto the roof to clean skylights, cleaning ice buildup in walk-in freezers three times a day for two years because management refused to fix a leak, and cleaning walls sprayed with blood from butchering animal carcasses.

3. Not only that, Defendants' belief that they can mistreat service employees has even resulted in acquiescence to repeated physical assaults. For instance, Plaintiff Oscar Sandoval was repeatedly attacked by one of Defendants' chefs several times for the most minor of purported infractions because he really "had it out" for Mr. Sandoval for being involved in the previous litigation. In or about August 2014, because Mr. Sandoval did not shut a door properly, the chef berated Mr. Sandoval and attempted to stab him with an oversized fork. Later, on or about November 20, 2014, because the chef had a hard time passing Mr. Sandoval in a tight space, he yelled at Mr. Sandoval and then threw several ceramic plates at him, causing lacerations to Mr. Sandoval's hands. More recently, on or about December 2, 2015, the same chef, apparently looking to pick a fight, attempted to smash an oversized metal spoon over Mr. Sandoval's head. Mr. Sandoval reported these incidents to management, but nothing was ever done to help Mr. Sandoval and Mr. Sandoval was eventually fired after many years of service.

4. Through this action, Plaintiffs seek to end Defendants' unlawful wage practices for once and for all and change the culture of mistreatment directed towards service employees at Defendants' restaurants.

### NATURE OF THE CLAIMS

5. Plaintiffs are current and former service employees of restaurants owned and operated by celebrity chef Philippe Chow in Manhattan, the Hamptons and Jericho, New York.<sup>2</sup> At all these locations, Plaintiffs have been victims for many years of unlawful wage and hour practices. During Plaintiffs' employment, Plaintiffs and other similarly-situated individuals were subjected to numerous violations of federal and state labor laws, including (i) failure to pay minimum wage in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and the New York Labor Law ("NYLL"), §§ 650 *et seq.*; (ii) illegal retention and distribution to tip ineligible employees of gratuities and "charges purported to be gratuities" in violation of NYLL § 196-d; (iii) failure to pay spread-of-hours compensation in violation of the NYLL and N.Y. Comp. Code R. & Regs. ("NYCRR") tit.12; (iv) failure to pay wages for all hours worked in violation of NYLL §§ 191, 193, *et seq.*; and (v) failure to pay overtime compensation in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, and NYLL, §§ 650 *et seq.*

6. Plaintiffs' claims under the FLSA are brought as a collective action, pursuant to 29 U.S.C. § 216(b), on behalf of all other similarly-situated persons who were employed by Defendants as "Servers," "Bussers," "Runners," "Bartenders," "Barbacks," or similar service "tipped" positions who were not paid the prevailing minimum wage for all hours worked during the full statutory limitations period (the "FLSA Collective Period"). Plaintiffs and all such other similarly-situated persons are jointly referred to herein as the "FLSA Collective."

7. Plaintiffs' claims under the NYLL are brought as a class action, pursuant to Rule 23 of the Federal Rule of Civil Procedure ("FRCP"), on behalf of all other similarly-situated

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<sup>2</sup> Upon information and belief, the Philippe Restaurant in Jericho closed in or around March 2012. Further, several other Philippe Restaurant locations around the United States, including locations in Miami, Florida, Boca Raton, Florida, and Fort Lauderdale, Florida have shut down in recent years.

persons who were employed by Defendants as “Servers,” “Bussers,” “Runners,” “Bartenders,” “Barbacks,” or similar service “tipped” positions who were subject to the NYLL and related state law claims asserted herein during the full statutory limitations period (the “New York Class Period”). Plaintiffs and all such other similarly-situated persons are jointly referred to herein as the “New York Class.”

### **JURISDICTION AND VENUE**

8. 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 the related claims brought under the New York law.

9. 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.

10. Plaintiffs’ claims are properly consolidated as a single action because their claims and those of the FLSA Collective and New York Class arise from the same nexus of facts and circumstances, and involve nearly identical issues of fact and law.

### **PARTIES**

11. Defendant Philippe North America Restaurants, LLC is a New York corporation, with headquarters in New York. Upon information and belief, Philippe North America Restaurants LLC is a parent company that operates and controls the entities for the individual restaurants at which Plaintiffs worked, including those in Manhattan, the Hamptons and Jericho (together, the “Philippe Chow Restaurants”). At all relevant times, Philippe North America Restaurants 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. Defendant Dave 60 NYC, Inc. is a New York corporation with headquarters in New York. Upon information and belief, Dave 60 NYC, Inc. operates the Philippe Restaurant located in Manhattan at 33 East 60th Street. At all relevant times, Dave 60 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.

13. Defendant Philippe NYC I LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe NYC I LLC operates the Philippe Restaurant located in New York City, New York at 33 East 60th Street. At all relevant times, Philippe NYC I 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.

14. Defendant Philippe Hamptons Inc. is a New York corporation with headquarters in New York. Upon information and belief, Philippe Hamptons Inc. operates the Philippe Restaurant located in East Hampton, New York at 44 Three Mile Harbor Road. At all relevant times, Philippe Hamptons Inc. 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.

15. Defendant Philippe Chow East Hampton LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Chow East Hampton LLC operates the Philippe Restaurant located in East Hampton, New York at 44 Three Mile Harbor

Road. At all relevant times, Philippe Chow East Hampton 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.

16. Defendant Philippe Jericho LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Jericho LLC operated the Philippe Restaurant located in Jericho, New York at 399 Jericho Turnpike. At all relevant times, Philippe Jericho 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.

17. Defendant Philippe Chow Atlanta LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Chow Atlanta LLC operated the Philippe Restaurant located in Jericho, New York at 399 Jericho Turnpike. At all relevant times, Philippe Chow Atlanta 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.

18. Defendant Merchants Hospitality, Inc. is a New York corporation with headquarters in New York. Upon information and belief, Merchants Hospitality, Inc. operates the Philippe Chow Restaurants. At all relevant times, Merchants Hospitality, Inc. 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.

19. Defendant Philippe Chow Holdings LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Chow Holdings LLC operates the Philippe Chow Restaurants. At all relevant times, Philippe Chow Holdings 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.

20. Defendant Philippe Chow Mgmt LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Chow MGMT LLC operates the Philippe Chow Restaurants. At all relevant times, Philippe Chow MGMT 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.

21. Defendant Morfogen Mgmt. Corp. is a New York corporation with headquarters in New York. Upon information and belief, Morfogen Mgmt. Corp. operates the Philippe Chow Restaurants. At all relevant times, Morfogen Mgmt. Corp. 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.

22. Defendant Philippe Equities LLC is a New York corporation with headquarters in New York. Upon information and belief, Philippe Equities LLC operates the Philippe Chow Restaurants. At all relevant times, Philippe Equities 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.



23. Defendant Stratis Morfogen is the co-owner of the Philippe Chow Restaurants. At all times, Mr. Morfogen has exercised and continues to exercise control of the Philippe Chow Restaurants' day-to-day operations, including, but not limited to, how employees are paid and the conditions of their employment, to be considered Plaintiffs' employer under all applicable and operative laws.

24. Defendant Philippe Chow is the co-owner and executive chef of the Philippe Chow Restaurants. At all times, Mr. Chow has exercised and continues to exercise control of the Philippe Chow Restaurants' day-to-day operations, including, but not limited to, how employees are paid and the conditions of their employment, to be considered Plaintiffs' employer under all applicable and operative laws.

25. Plaintiff Oscar Sandoval is an adult resident of the State of New York, and was employed by Defendants from approximately June 2006 through December 2015 in the Philippe Restaurant in Manhattan. At all relevant times, Mr. Sandoval was an "employee" within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Sandoval will be filed with the Court.

26. Plaintiff Juan Aca is an adult resident of the State of New York, and was employed by Defendants from approximately 2008 through 2014. Mr. Aca worked at the Philippe Restaurant in Manhattan from approximately 2008 through 2014, and the Philippe Restaurant in East Hampton, New York during the summer weekends from approximately 2008 through 2014. At all relevant times, Mr. Aca was an "employee" within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Aca will be filed with the Court.

27. Plaintiff Elmer Bonilla is an adult resident of the State of New York, and was employed by Defendants from approximately 2007 through 2015. Mr. Bonilla worked at the Philippe Restaurants in Manhattan, East Hamptons, New York and Jericho, New York. At all relevant times, Mr. Bonilla was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Bonilla will be filed with the Court.

28. Plaintiff Edvin Chavez is an adult resident of the State of New York, and was employed by Defendants from approximately 2010 through 2014. Mr. Chavez worked at the Philippe Restaurant in Manhattan from approximately 2010 through 2011, the Philippe Restaurant in Jericho, New York from approximately 2011 through 2012, and then again at the Philippe Restaurant in Manhattan from approximately 2012 through 2014. At all relevant times, Mr. Chavez was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Chavez will be filed with the Court.

29. Plaintiff Felix Maldonado Diaz is an adult resident of the State of New York, and is currently employed by Defendants. Mr. Diaz began working at the Philippe Restaurant in Manhattan on or about November 15, 2005. At all relevant times, Mr. Diaz was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Diaz will be filed with the Court.

30. Plaintiff Enrique Flores is an adult resident of the State of New York, and was employed by Defendants from approximately 2006 through 2014 at the Philippe Restaurant in Manhattan. At all relevant times, Mr. Flores was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Flores will be filed with the Court.

31. Plaintiff Kerry Nohoth Hernandez-Rodriguez is an adult resident of the State of New York, and was employed by Defendants from approximately 2012 through 2013 at the Philippe Restaurant in Manhattan. At all relevant times, Mr. Hernandez was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Hernandez will be filed with the Court.

32. Plaintiff Pablo Lainez is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan in or about January 2009. For approximately eight months in 2009, Mr. Lainez worked at Philippe Restaurant in East Hampton, New York. From approximately 2011 through 2012, Mr. Lainez worked in at the Philippe Restaurant in Jericho, New York. At all other times, Mr. Lainez has worked at the Philippe Restaurant in Manhattan. At all relevant times, Mr. Lainez was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Lainez will be filed with the Court.

33. Plaintiff Jose Luis Maldonado Lopez is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan on or about January 8, 2008. Mr. Lopez worked at the Philippe Restaurant in Manhattan from approximately 2008 through the present, and the Philippe Restaurant in East Hampton, New York during the summer weekends from approximately 2009 through the present. At all relevant times, Mr. Lopez was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Lopez will be filed with the Court.

34. Plaintiff Martin Lopez is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan in

or about September 2014. At all relevant times, Mr. Lopez was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Lopez will be filed with the Court.

35. Plaintiff Kihel Nouredine is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan on or about June 8, 2007. Mr. Nouredine has worked at the Philippe Restaurants in Manhattan, East Hampton, New York and Jericho, New York. At all relevant times, Mr. Nouredine was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Nouredine will be filed with the Court.

36. Plaintiff Ignacio Quijano-Aviles is an adult resident of the State of New York, and was employed by Defendants at the Philippe Restaurant in Manhattan from approximately June 2010 through January 2012. Mr. Quijano-Aviles worked At all relevant times, Mr. Quijano-Aviles was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Quijano-Aviles will be filed with the Court.

37. Plaintiff Angel Quito is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan on or about June 2009. Mr. Quito worked at the Philippe Restaurant in Manhattan and East Hampton from approximately 2009 through 2011, briefly left his employment at the Philippe Restaurants and resumed his employment again at both the Manhattan and East Hampton, New York Philippe Restaurants on or about December 18, 2013 through the present. At all relevant times, Mr. Quito was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Quito will be filed with the Court.

38. Plaintiff Leonardo Ramon is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan on or about 2007. At all relevant times, Mr. Ramon was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Ramon will be filed with the Court.

39. Plaintiff Flavio Soto is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan on or about August 3, 2009. Mr. Soto has worked at the Philippe Restaurants in Manhattan and Jericho, New York. At all relevant times, Mr. Soto was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Soto will be filed with the Court.

40. Plaintiff Filiberto Villalba is an adult resident of the State of New York, and was employed by Defendants from approximately 2006 through 2016. Mr. Villalba worked at the Philippe Restaurant in Manhattan from approximately 2006 through 2016. Mr. Villalba worked at the Philippe Restaurant in Jericho, New York from approximately 2010 through 2011, and the Philippe Restaurant in East Hampton, New York for approximately seven months in 2012. At all relevant times, Mr. Villalba was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Villalba will be filed with the Court.

41. Plaintiff Edwin Zevallos is an adult resident of the State of New York, and is currently employed by Defendants and began working at the Philippe Restaurant in Manhattan in or about November 2008. At all relevant times, Mr. Zevallos was an “employee” within the

meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Zevallos will be filed with the Court.

42. Plaintiff Freddy Zevallos is an adult resident of the State of New York, and was employed by Defendants at the Philippe Restaurant in Manhattan from approximately November 2008 through June 2015. At all relevant times, Mr. Zevallos was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Mr. Zevallos will be filed with the Court.

### **FACTUAL ALLEGATIONS**

#### **FLSA and New York Minimum Wage Violations**

43. By law, Defendants are only permitted to pay Plaintiffs, the FLSA Collective, and the New York Class at a statutory hourly rate that is less than the standard hourly minimum wage rate if the “tips” or “gratuities” that such tipped employee receives, when added to the hourly wages, meet or exceed the standard hourly minimum wage, and so long as all tips received by the employees are retained by the customarily tipped employees, and no portion of the tips are retained by Defendants or given to employees in non-tipped positions.

44. However, Defendants required Plaintiffs, the FLSA Collective and the New York Class to share and/or pool their tips with managers, non-tipped employees, employees who did not perform “tipped” duties and/or employees who did not have any meaningful interaction with customers.

45. Specifically, Defendants required Plaintiffs, the FLSA Collective and the New York Class to share and/or pool their tips with managers (who were improperly titled as “Captains”), expeditors, employees whose primary job is to transport food set for deliver/pickup

from the kitchen to the hostess stand, and other employees who did not perform “tipped” duties and/or employees who did not have any meaningful interaction with customers.

46. As such, Defendants were not entitled to avail themselves of the tip credit allowance and pay Plaintiffs, the FLSA Collective and the New York Class at the reduced minimum wage. However, at relevant times, Defendants paid Plaintiffs, the FLSA Collective and the New York Class at the reduced minimum wage.

47. Moreover, Defendants required Plaintiffs and the members of the FLSA Collective and New York Class to perform a substantial volume of functions that were unrelated to service of customers or tipped functions, including but not limited to taking out garbage, mopping up water in the kitchen and/or basement, polishing silverware and/or plates, cleaning and/or dusting bottles, sweeping the kitchen and/or basement, removing ice collections that formed due to leaks in the freezer, washing windows, washing the glass roof, killing bugs and rodents, stocking, wiping down walls, transporting deliveries from the kitchen to the hostess and delivering takeout orders to customers’ homes (without receiving related tips).

48. These unlawful minimum wage practices took place at all the Philippe Chow Restaurants, including the locations in Manhattan, the Hamptons and Jericho.

**New York Labor Law § 196-d Violations**

49. During Plaintiffs’ employment at Defendants’ restaurants in New York and at relevant times during the New York Class Period, Defendants unlawfully retained tips and distributed tips to tip ineligible employees that were owed to Plaintiffs and other members of the New York Class, in violation of NYLL § 196-d.

50. For instance, during Plaintiffs’ employment, Defendants held private events for which Defendants’ customers were required to pay an automatic/mandatory “service charge” (or

charge with a similar name), comprising a percentage of the total bill (for sake of ease referred to herein as the “Service Charge.”).

51. Upon information and belief, Defendants led or knowingly allowed their customers to reasonably believe that the Service Charges 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. However, Defendants did not remit all the Service Charges collected from private events to Plaintiffs and members of the New York Class.

52. Throughout the relevant time period, Defendants had knowledge of NYLL § 196-d and the legal requirement that service employees are entitled to their gratuities, and that it is unlawful for gratuities to be retained by the employer. Nonetheless, Defendants unlawfully retained all or part these Service Charges and other gratuities collected from private events, which should have been distributed to Plaintiffs and the New York Class.

53. In addition to the private event Service Charges, tips provided by customers during standard a la carte service were also retained by, *inter alia*, managers and expeditors, neither of whom performed tipped duties and did not have any meaningful customer interaction.

54. These unlawful practices under Section 196-d took place at all the Philippe Chow Restaurants, including the locations in Manhattan, the Hamptons and Jericho.

#### **Off-the-Clock, Overtime and Spread-of-Hours Violations**

55. In addition, Plaintiffs and the members of the FLSA Collective and New York Class were required to work “off-the-clock,” and were not paid in any manner for such time.

56. For instance, but only by way of example, managers would clock Plaintiffs out before the end of their actual shift, and require Plaintiffs to perform tasks such as cleaning and stocking that went well beyond the recorded clock-out time.



57. Plaintiffs and the members of the FLSA Collective and New York Class were not compensated in any manner for the time worked off-the-clock, in violation of the requirement under the FLSA and NYLL to pay employees a minimum hourly wage for all hours worked.

58. Moreover, as a result of the time Plaintiffs and the members of the FLSA Collective and New York Class worked off-the-clock, they often worked substantial time off-the-clock for which overtime compensation was required. As such, these off-the-clock violations also constitute violations of the requirement that all employees be paid at a time-and-a-half rate for all hours worked in excess of 40 hours per week.

59. Furthermore, as a result of the time Plaintiffs and the members of the New York Class worked off-the-clock, they often worked workdays exceeding 10 hours despite payroll records showing a shorter workday. However, Plaintiffs and the members of the New York Class were not paid any additional spread-of-hours compensation as required by the NYLL and the NYCRR.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

60. Plaintiffs bring their FLSA claims as a collective action pursuant to the FLSA on behalf of all other similarly-situated persons who were employed by Defendants at the Philippe Chow Restaurants as “Servers,” “Bussers,” “Runners,” “Bartenders,” “Barbacks,” or similar service “tipped” positions at any of the Philippe Chow Restaurants during the FLSA Collective Period.

61. 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 and overtime wage for all hours worked, and allowing non-tipped employees to share in their tips.

62. 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 and overtime wage provisions of the FLSA.

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

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

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

66. While the exact number of the FLSA Collective is unknown to Plaintiffs at the present time, upon information and belief, there are at least two hundred (200) other similarly-situated persons who were employed by Defendants at the Philippe Chow Restaurants as "Servers," "Bussers," "Runners," "Bartenders," "Barbacks," or similar service "tipped" positions during the FLSA Collective Period.

67. 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 at the Philippe Chow Restaurants as "Servers," "Bussers," "Runners," "Bartenders," "Barbacks," or similar service "tipped" positions at the Philippe Chow Restaurants

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

**NEW YORK CLASS RULE 23 ALLEGATIONS**

68. Plaintiffs bring their NYLL claims as a class action pursuant to FRCP 23 on behalf of himself and on behalf of all other similarly-situated persons who were employed by Defendants at the Philippe Chow Restaurants as “Servers,” “Bussers,” “Runners,” “Bartenders,” “Barbacks,” or similar service “tipped” positions during the New York Class Period who were: (i) not paid the prevailing minimum wage for all hours worked; (ii) unlawfully denied gratuities or charges purported to be gratuities; (iii) unlawfully denied compensation for off-the-clock work; (iv) unlawfully denied overtime compensation; and (v) unlawfully denied spread-of-hours compensation.

69. The basic job duties of the New York Class were the same as or substantially similar to those of Plaintiffs, and the New York Class members were paid in the same manner and under the same common policies, plans and practices as Plaintiff.

70. The New York Class, like Plaintiffs, all have been subject to the same unlawful policies, plans and practices of Defendants, including not paying the prevailing minimum and overtime wages for all hours worked, retaining gratuities or charges purported to be gratuities and all related off-the-clock violations.

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

72. 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 New York Class.

73. As a result of Defendants' conduct, Defendants are liable to Plaintiffs and the New York Class for damages, including liquidated damages, plus the attorneys' fees and costs incurred by Plaintiffs and the New York Class.

74. Certification of the New York 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 New York Class. Plaintiffs have standing to seek such relief because of the adverse effect that Defendants' unlawful compensation policies and practices have had on him individually and on members of the New York 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 New York Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the New York Class and Defendants.

75. Plaintiffs' claims raise questions of law and fact common to the New York Class.

Among these questions are:

- a. Whether Defendants employed Plaintiffs and the New York Class members within the meaning of the NYLL;
- b. Whether Defendants paid Plaintiffs and the New York Class members the federal and state minimum wage for all hours worked during the New York Class Period;
- c. Whether Defendants paid Plaintiffs and the New York Class members the federal and state overtime wage for all hours worked during the New York Class Period;

- d. Whether Defendants illegally retained Plaintiffs and New York Class members' tips and distributed them to non-tipped employees, and other individuals who were not working in customarily tipped positions and/or did not have meaningful contact with customers;
- 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 New York Class' gratuities or charges purported to be gratuities;
- g. Whether Defendants required Plaintiffs and the New York Class' to work off-the-clock;
- h. Whether Defendants compensated Plaintiffs and the New York Class' for spread-of-hours pay; and
- i. Whether Defendants' violations of the NYLL and/or its regulations were willful.

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

77. Plaintiffs are members of the New York Class that they seek to represent. Plaintiffs' claims are typical of the claims of the New York Class. The relief Plaintiffs seek is also typical of the relief which is sought on behalf of the New York Class.

78. Plaintiffs' interests are co-extensive with those of the New York Class that they seek to represent. Plaintiffs are willing and able to represent the New York Class fairly and to vigorously pursue their similar individual claims in this action.

79. 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 New York

Class claims at issue in this case satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

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

81. 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 New York Class members' entitlement to monetary and non-monetary remedies to be determined at a later stage of the proceedings.

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

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

84. 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 New York Class to pursue their claims individually.

85. Maintenance of a class action promotes judicial economy by consolidating a large class of plaintiffs litigating identical claims. The claims of the New York Class interrelate such that the interests of the members will be fairly and adequately protected in their absence.

86. Additionally, the questions of law and fact common to the New York Class arise from the same course of events and each class member makes similar legal and factual arguments to prove the Defendants' liability.

87. The New York Class is so numerous that joinder of all members is impracticable. While the exact number of the New York Class is unknown to Plaintiffs at the present time, upon information and belief, there are at least two hundred (200) similarly-situated persons who were employed by Defendants at the Philippe Chow Restaurants as "Servers," "Bussers," "Runners," "Bartenders," "Barbacks," or similar service "tipped" positions during the New York Class Period.

**FIRST CLAIM FOR RELIEF**  
**(Failure to Pay Minimum and Overtime Wage in Violation of 29 U.S.C. § 206)**  
***On Behalf of Plaintiffs and the FLSA Collective***

88. 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.

89. 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.

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

91. The FLSA requires covered employers, such as Defendants, to pay all non-exempt employees a premium overtime rate for all hours worked in excess of 40 hours per week. Plaintiffs and the FLSA Collective were not exempt from the requirement that Defendants pay premium overtime compensation under the FLSA.

92. During the FLSA Collective Period, Defendants did not pay Plaintiffs and the FLSA Collective premium overtime compensation for all hours worked for Defendants.

93. As a result of Defendants' failure to pay Plaintiffs and the FLSA Collective the prevailing minimum wage and/or premium overtime compensation, Defendants violated the FLSA.

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

95. 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 and overtime wages, an additional equal amount in liquidated damages, and attorneys' fees and costs.

**SECOND CLAIM FOR RELIEF**

**(Failure to Pay Minimum and Overtime Wage in Violation of NYLL §§ 650 *et seq.*)  
*On Behalf of Plaintiffs and the New York Class***

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

97. 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 New York Class were not exempt from the requirement that Defendants pay them the prevailing minimum wage under the NYLL.

98. During the New York Class Period, Defendants did not pay Plaintiffs and the New York Class the prevailing minimum wage for all hours worked for Defendants.

99. The NYLL requires covered employers, such as Defendants, to pay all non-exempt employees a premium overtime rate for all hours worked in excess of 40 hours per week. Plaintiffs and the New York Class were not exempt from the requirement that Defendants pay premium overtime compensation under the NYLL



100. During the New York Class Period, Defendants did not pay Plaintiffs and the New York Class premium overtime compensation for all hours worked for Defendants.

101. As a result of Defendants' failure to pay Plaintiffs and the New York Class the prevailing minimum wage and/or premium overtime compensation, Defendants violated the NYLL.

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

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

**THIRD CLAIM FOR RELIEF**  
**(NYLL Violations for Illegal Retention of Gratuities)**  
***On Behalf of Plaintiffs and the New York Class***

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

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

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

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

108. Due to Defendants' NYLL violations, Plaintiffs and the New York 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 New York Class***

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

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

111. NYLL § 196-d bars an employer from retaining “any part of a gratuity or of any charge purported to be gratuity[.]”

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

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

**FIFTH CLAIM FOR RELIEF**  
**(NYLL Violations for Spread-of-Hours Compensation)**  
***On Behalf of Plaintiffs and the New York Class***

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

115. During the NYLL Class Period, Plaintiffs and members of the New York Class regularly worked more than 10 hours in a workday.

116. Defendants failed to fully compensate Plaintiffs and members of the New York Class one hour’s pay at the minimum hourly wage rate, as required by the NYLL and NYCRR.

117. Due to Defendants' NYLL and NYCRR violations, Plaintiffs and the New York Class members are entitled to recover from Defendants the spread-of-hours pay underpayment, liquidated damages, as well as attorneys' fees, costs, and interest.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves, the FLSA Collective and the New York 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 New York 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 the New York Class, and Plaintiffs' counsel of record as class counsel;

G. Determine the damages sustained by Plaintiffs and the New York 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 New York Class, plus such pre-judgment and post-judgment interest as may be allowed by law;

H. Award Plaintiffs and the New York 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 New York 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 New York 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: January 27, 2016  
New York, New York

Respectfully submitted,

**WIGDOR LLP**

By: 

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