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

<p><b>YOSHIKO JONES, on behalf of herself and all others similarly situated,</b></p> <p><b>Plaintiff,</b></p> <p><b>-against-</b></p> <p><b>SHO RIKI, INC., RIKI HASHIZUME, and SATOMI HASHIZUME,</b></p> <p><b>Defendants.</b></p>	<p><b>CLASS ACTION COMPLAINT</b></p>
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Plaintiff Yoshiko Jones (“Plaintiff”), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to herself, and upon information and belief as to other matters, alleges as follows:

**NATURE OF THE ACTION**

- This lawsuit seeks to recover minimum wages, overtime compensation, spread-of-hours pay, misappropriated gratuities, and other wages for Plaintiff and her similarly situated co-workers, servers who work or have worked at Restaurant Riki, Box Snack Riki, and Riki Yakniku Izakaya in New York (collectively, the “Riki Restaurants”).
- Riki and Satomi Hashizume own, operate and control Restaurant Riki and Box Snack Riki, a Japanese restaurant and karaoke bar located at 141 East 45<sup>th</sup> Street, New York, New York 10017. At all times, Restaurant Riki and Box Snack Riki have operated under the corporate identity Sho Riki, Inc. (collectively with Riki Hashizume and Satomi Hashizume, “Defendants”).
- Riki and Satomi Hashizume also owned, operated and controlled Riki Yakniku Izakaya, a Japanese restaurant located at 250 East 52<sup>nd</sup> Street, New York, New York 10022, until its closing in 2011. At all times relevant, Riki Yakniku Izakaya operated under the corporate identity the corporate identity CMS Riki, Inc., which dissolved on December 29, 2011.
- The three Riki Restaurants have been reviewed and covered in numerous print and online publications, including New York Magazine, tripadvisor.com, and nyc.com.
- Throughout Plaintiff’s employment, Defendants have maintained a policy and practice of unlawfully misappropriating tips intended for servers. Prior to in or around December 2011, Defendants willfully retained all customer tips received by servers at the Riki Restaurants. From in or around December 2011 to present, Defendants have required servers to participate in a mandatory tip pool that includes Riki and Satomi Hashizume, the restaurants’ owner and manager, as well as individuals hired to perform at the karaoke bar.
- Defendants have also maintained a policy and practice whereby servers at the Riki Restaurants are denied minimum wage, overtime compensation, and spread-of-hours pay.
- In that regard, Defendants have consistently failed to accurately monitor and record the hours worked by servers, and have failed to compensate servers for all hours worked.
- Additionally, prior to in or around December 2011, servers received straight time for all compensated hours, including hours worked in excess of 40 per workweek. From in or around December 2011 to present, Defendants have continuously failed to pay servers the appropriate minimum wage and overtime rates required by federal and state law. At all times, Defendants have also withheld statutory spread-of-hours pay.
- Defendants have applied the same employment policies, practices, and procedures to all servers at the Riki Restaurants.
- Plaintiff brings this action on behalf of herself and all similarly situated current and former servers who elect to opt-in to this action pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 , and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiff and other similarly situated employees of their lawfully earned wages.
- Plaintiff also brings this action on behalf of herself and all similarly situated current and former servers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law (“NYLL”), Article 6, §§ 190 , and Article 19, §§ 650 , and the supporting New York State Department of Labor Regulations.

**THE PARTIES**

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- **Plaintiff**
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**Yoshiko Jones**

- Plaintiff is an adult individual who is a resident of Jersey City, New Jersey.

- Plaintiff has been employed by Defendants as a server at the Riki Restaurants from in or around October 2009 to present.
- Plaintiff worked as a server at Riki Yakiniku Izakaya (the “52<sup>nd</sup> Street Riki”), located at 250 East 52<sup>nd</sup> Street, New York, New York 10022, from in or around October 2009 to November 2010.
- Plaintiff has worked as a server at Restaurant Riki and Box Snack Riki (the “45<sup>th</sup> Street Riki”), located at 141 East 45<sup>th</sup> Street, New York, New York 10017, from in or around November 2010 to present.
- Plaintiff is a covered employee within the meaning of the FLSA and the NYLL.
- A written consent form for Plaintiff is being filed with this Class Action Complaint.

## Defendants

- Defendants have jointly employed Plaintiff and similarly situated employees at all times relevant. Each Defendant has had substantial control over Plaintiff’s and similarly situated employees’ working conditions, and over the unlawful policies and practices alleged herein.

- **Sho Riki, Inc.**

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- Together with the other Defendants, Defendant Sho Riki, Inc. (“**Sho Riki**”) has owned and/or operated **the 45<sup>th</sup> Street Riki** during the relevant period.
- Sho Riki is a domestic business corporation organized and existing under the laws of New York.
- Upon information and belief, **Sho Riki’s** principal executive office is located at 141 East 45<sup>th</sup> Street, New York, New York 10017.
- **Sho Riki** is the “premises name” that appears on the New York State Liquor Authority license for the premises located at “141 E 45TH ST BSMNT, FL 1, NEW YORK, NY 10017.”
- Sho Riki is the corporate identity that has appeared on Plaintiff’s paystubs for work performed at **the 45<sup>th</sup> Street Riki**.
- **Sho Riki** is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.
- At all relevant times, **Sho Riki** has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.
- **Sho Riki** applies the same employment policies, practices, and procedures to all servers, including policies, practices, and procedures with respect to payment of minimum wage, overtime compensation, spread-of-hours pay, and customer tips.

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

- **Riki Hashizume**

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- Upon information and belief, Riki Hashizume is a resident of the State of New York.
- At all relevant times, Riki Hashizume has been the owner of the Riki Restaurants.
- **Riki Hashizume** is the “Principal’s Name” that appears on the active New York State Liquor Authority license for Sho Riki, as well as the inactive New York State Liquor Authority license for the premises named “CMS RIKI INC,” located at “250 E 52ND STREET, 2ND & 3RD AVENUE, NEW YORK, NY 10022.
- Riki Hashizume is identified by the New York State Department of State – Division of Corporations as the Chief Executive Officer of CMS Riki, INC., the inactive domestic business corporation that did business as the 52<sup>nd</sup> Street Riki, and employed Plaintiff and similarly situated employees.
- At all relevant times, Riki Hashizume has had the power over personnel decisions at the Riki Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.
- At all relevant times, Riki Hashizume has had power over payroll decisions at the Riki Restaurants, including the power to retain time and/or wage records.
- At all relevant times, Riki Hashizume has been actively involved in managing the day to day operations of the Riki Restaurants.
- At all relevant times, Riki Hashizume has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.
- At all relevant times, Riki Hashizume has had the power to transfer the assets and/or liabilities of the Riki Restaurants.
- At all relevant times, Riki Hashizume has had the power to declare bankruptcy on behalf of the Riki Restaurants.
- At all relevant times, Riki Hashizume has had the power to enter into contracts on behalf of the Riki Restaurants.
- Riki Hashizume is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed and/or jointly employed Plaintiff and similarly situated employees.

- **Satomi Hashizume**

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- Upon information and belief, Satomi Hashizume is a resident of the State of New York.
- At all relevant times, Satomi Hashizume has been the manager of the Riki Restaurants.
- Satomi Hashizume’s LinkedIn profile currently identifies her as the “manager at shoriki inc,” a restaurant in the greater New York City area.

- At all relevant times, Satomi Hashizume has had the power over personnel decisions at the Riki Restaurants, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.
- At all relevant times, Satomi Hashizume has had power over payroll decisions at the Riki Restaurants, including the power to retain time and/or wage records.
- At all relevant times, Satomi Hashizume has been actively involved in managing the day to day operations of the Riki Restaurants.
- At all relevant times, Satomi Hashizume has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.
- At all relevant times, Satomi Hashizume has had the power to transfer the assets and/or liabilities of the Riki Restaurants.
- At all relevant times, Satomi Hashizume has had the power to declare bankruptcy on behalf of the Riki Restaurants.
- At all relevant times, Satomi Hashizume has had the power to enter into contracts on behalf of the Riki Restaurants.
- Satomi Hashizume is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed and/or jointly employed Plaintiff and similarly situated employees.

**JURISDICTION AND VENUE**

- This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.
- This Court also has jurisdiction over Plaintiff’s claims under the FLSA pursuant to 29 U.S.C. § 216(b).
- This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.
- Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

**COLLECTIVE ACTION ALLEGATIONS**

- Plaintiff brings the First and Second Causes of Action, FLSA claims, on behalf of herself and all similarly situated current and former servers at the Riki Restaurants, who elect to opt-in to this action (the “FLSA Collective”).
- Defendants are liable under the FLSA for, failing to properly compensate Plaintiff and the FLSA Collective.
- Consistent with Defendants’ policy and pattern or practice, Plaintiff and the FLSA Collective were not paid minimum wages for all hours worked or the appropriate premium overtime compensation for all hours worked beyond 40 per workweek.
- All of the work that Plaintiff and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.
- 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 Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- 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 lawfully compensate employees for the hours they work.
- Defendants are aware or should have been aware that federal law required them to pay employees minimum wage for all of the hours they worked.
- Defendants are aware or should have been aware that federal law required them to pay Plaintiff and the FLSA Collective premium overtime compensation for all hours worked in excess of 40 per workweek.
- Plaintiff and the FLSA Collective perform or performed the same primary duties.
- Defendants’ unlawful conduct has been widespread, repeated, and consistent.
- There are many similarly situated current and former servers who have been underpaid 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).
- Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants’ records.

**CLASS ACTION ALLEGATIONS**

- Plaintiff brings the Third, Fourth, Fifth, Sixth, and Seventh Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and a class of persons consisting of:
- All persons who work or have worked as servers at the Riki Restaurants in New York between April 30, 2007 and the date of final judgment in this matter (the “Rule 23 Class”).



Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the Rule 23 members.

- In recognition of the services Plaintiff has rendered, and will continue to render, to the Rule 23 Class, Plaintiff will request payment of a service award upon resolution of this action.
- 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 , such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiff lacks the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.
- This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

### **PLAINTIFF'S FACTUAL ALLEGATIONS**

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

#### **Yoshiko Jones**

- Defendants did not pay Plaintiff the proper minimum wages, overtime wages, and spread-of-hours pay for all of the time that she was suffered or permitted to work each workweek.
- Defendants suffered or permitted Plaintiff to work over 40 hours per week at the Riki Restaurants, up to a maximum of approximately 75 hours per week. Defendants did not compensate Plaintiff with the appropriate overtime premiums for all of the hours she worked in excess of 40 per workweek.
- Defendants suffered or permitted Plaintiff to work over 10 hours per day. Defendants did not pay Plaintiff one additional hour of pay at the basic minimum hourly rate for all of the times that the length of the interval between the beginning and end of her workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.
- Defendants did not allow Plaintiff to retain all of the tips she earned.
- Defendants unlawfully demanded, handled, pooled, counted, distributed, accepted, and/or retained portions of the tips that Plaintiff earned.
- Defendants imposed upon Plaintiff a tip redistribution scheme to which she never agreed.
- Defendants unlawfully redistributed part of Plaintiff's tips to employees who are in positions that are not entitled to tips under the FLSA and/or the NYLL, including Riki and Satomi Hashizume, the restaurants' owner and manager, as well as individuals hired to perform at the karaoke bar.
- Defendants did not provide Plaintiff with notification of the tipped minimum wage or tip credit provisions of the FLSA or NYLL, or their intent to apply a tip credit to Plaintiff's wages.
- Defendants did not keep accurate records of wages or tips earned, or of hours worked by Plaintiff.
- Defendants have failed to furnish Plaintiff with annual wage notices, or with accurate statements of wages, hours worked, rates paid, gross wages and the claimed tip allowance.

#### **FIRST CAUSE OF ACTION**

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

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.
- Plaintiff has consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).
- At all times relevant, Plaintiff and the members of the FLSA Collective were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201 , and/or they were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 201
- At all times relevant, Plaintiff and the members of the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 201
- At all times relevant, Defendants have been employers of Plaintiff and the members of the FLSA Collective, engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 201
- The minimum wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 , and the supporting federal regulations, apply to Defendants and protect Plaintiff and the members of the FLSA Collective.
- Defendants have failed to pay Plaintiff and the members of the FLSA Collective the minimum wages to which they are entitled under the FLSA.
- Defendants have been required to pay directly to Plaintiff and the members of the FLSA Collective the full federal minimum wage rate for all hours worked.
- Defendants are not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. §§ 201 , because Defendants failed to inform Plaintiff and the FLSA Collective of the provisions of subsection 203(m) of the FLSA and distributed a portion of their tips to workers who do not "customarily and regularly" receive tips.
- Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the members of the FLSA Collective.
- Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201

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

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

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the members of the FLSA Collective.
- Defendants have failed to pay Plaintiff and the members of the FLSA Collective the appropriate overtime wages for all of the hours they worked in excess of 40 hours in a workweek.
- Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the members of the FLSA Collective.
- Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201
- As a result of Defendants' willful violations of the FLSA, Plaintiff 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. §§ 201.

**THIRD CAUSE OF ACTION**

**New York Labor Law – Minimum Wage**  
**(Brought on behalf of Plaintiff and the Rule 23 Class)**

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.
- At all times relevant, Plaintiff and the members of the Rule 23 Class have been employees of Defendants, and Defendants have been employers of Plaintiff and the members of the Rule 23 Class within the meaning of the NYLL §§ 650, and the supporting New York State Department of Labor Regulations.
- At all times relevant, Plaintiff and the members of the Rule 23 Class have been covered by the NYLL.
- The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.
- Defendants have failed to pay Plaintiff and the members of the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.
- Defendants have been required to pay Plaintiff and the members of the Rule 23 Class the full minimum wage at a rate of (a) \$7.15 per hour for all hours worked from April 30, 2007 through July 23, 2009; and (b) \$7.25 per hour for all hours worked from July 24, 2009 through the present, under the NYLL §§ 650 and the supporting New York State Department of Labor Regulations.
- Defendants have failed to furnish with every payment of wages to Plaintiff and the members of the Rule 23 Class a statement listing hours worked, rates paid, gross wages, and tip allowance claimed as part of their minimum hourly wage rate, in violation of the NYLL and the supporting New York State Department of Labor Regulations.
- Defendants have failed to notify Plaintiff and the members of the Rule 23 Class of the tip credit as required by the NYLL and the supporting New York State Department of Labor Regulations.
- Defendants have distributed a portion of Plaintiff's and the members of the Rule 23 Class' tips to workers who are not eligible to receive tips under the NYLL and the supporting New York State Department of Labor Regulations.
- Through their knowing or intentional failure to pay minimum hourly wages to Plaintiff and the members of the Rule 23 Class, Defendants have willfully violated the NYLL, Article 19, §§ 650, and the supporting New York State Department of Labor Regulations.
- Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid minimum wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

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

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.
- Defendants have failed to pay Plaintiff and the members of the Rule 23 Class the premium overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations for all hours worked beyond 40 per workweek.
- Defendants have failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the members of the Rule 23 Class.

- Through their knowing or intentional failure to pay Plaintiff and the members of the Rule 23 Class overtime wages for hours worked in excess of 40 hours per workweek, Defendants have willfully violated the NYLL, Article 19, §§ 650 , and the supporting New York State Department of Labor Regulations.
- Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

#### **FIFTH CAUSE OF ACTION**

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

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- Defendants failed to pay Plaintiff and the members of the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day that the length of the interval between the beginning and end of their workday – including working time plus time off for meals plus intervals off duty – was greater than 10 hours.
- Through their knowing or intentional failure to pay Plaintiff and the members of the Rule 23 Class spread of-hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 , and the supporting New York State Department of Labor Regulations.
- Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid spread-of-hours wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

#### **SIXTH CAUSE OF ACTION**

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

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- At all times relevant, Plaintiff and the members of the Rule 23 Class have been employees within the meaning of NYLL, Article 6, §§ 190 , and the supporting New York State Department of Labor Regulations.
- At all times relevant, each Defendant has been an employer within the meaning of the NYLL, Article 6, §§ 190 , and the supporting New York State Department of Labor Regulations.
- The wage payment provisions of Article 6 of the NYLL, and the supporting New York State Department of Labor Regulations, apply to Defendants, and protect Plaintiff and the members of the Rule 23 Class.
- Defendants unlawfully demanded or accepted, directly or indirectly, part of the gratuities received by Plaintiff and the members of the Rule 23 Class in violation of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations.
- Defendants unlawfully retained part of the gratuities earned by Plaintiff and the members of the Rule 23 Class in violation of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations.
- Defendants required Plaintiff and the members of the Rule 23 Class to share part of the gratuities they received with employees other than waiters, servers, bussers, or similar employees, in violation of NYLL, Article 6 § 196-d, and the supporting New York State Department of Labor Regulations.
- Through their knowing or intentional demand for, acceptance of, and/or retention of gratuities received by Plaintiff and the members of the Rule 23 Class, Defendants have willfully violated the NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 137 and Part 146.
- Due to Defendants' willful violations of the NYLL, Plaintiff and the members of the Rule 23 Class are entitled to recover from Defendants the value of the misappropriated gratuities, 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 – Notice and Recordkeeping Violations (Brought on behalf of Plaintiff and the Rule 23 Class)**

- Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.
- Defendants have willfully failed to supply Plaintiff and the members of the Rule 23 Class notice as required by NYLL, Article 6, § 195, in English or in the language identified by Plaintiff and the members of the Rule 23 Class as their primary language, containing Plaintiff's and the members of the Rule 23 Class' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.
- Defendants have willfully failed to supply Plaintiff and the members of the Rule 23 Class with an accurate statement of wages as required by NYLL, Article 6, § 195, containing 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; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.
- Through their knowing or intentional failure to provide Plaintiff and the members of the Rule 23 Class with the notices and statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 , and the supporting New York State Department of Labor Regulations.

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

### **PRAYER FOR RELIEF**

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

- That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all servers who are presently, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at the Riki Restaurants. 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;
- Unpaid minimum wages, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;
- Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- Designation of Plaintiff as representative of the Rule 23 Class and counsel of record as Class Counsel;
- Payment of a service award to Plaintiff, in recognition of the services she has rendered, and will continue to render, to the FLSA Collective and Rule 23 Class;
- Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL, Article 6, §§ 190, NYLL, Article 19, §§ 650, and the supporting New York State Department of Labor Regulations;
- Unpaid minimum wages, overtime pay, spread-of-hours pay, misappropriated gratuities, and liquidated damages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;
- Statutory penalties of fifty dollars for each workweek that Defendants failed to provide Plaintiff and the members of the Rule 23 Class with a wage notice, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;
- Statutory penalties of one hundred dollars for each workweek that Defendants failed to provide Plaintiff and the members of the Rule 23 Class with accurate wage statements, or a total of twenty-five hundred dollars each, as provided for by NYLL, Article 6 § 198;
- Prejudgment and post-judgment interest;
- An injunction requiring Defendants to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;
- Reasonable attorneys' fees and costs of the action; and
- Such other relief as this Court shall deem just and proper.

Dated: New York, New York

April 30, 2013

Respectfully submitted,

Brian S. Schaffer

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