

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

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Attorneys for Plaintiffs, Individually
and on behalf of all others similarly
situated

Joh Kie Lee and James Arvay,
on behalf of themselves and
all other persons similarly
situated,

Plaintiffs,

- vs. -

DT Hospitality Group Inc.
d/b/a Co Ba Restaurant, Kien
Truong and John Does #1-10,

Defendants.

DOCKET NO. 16-CV-9326

COMPLAINT

Plaintiffs Joh Kie Lee and James Arvay, by and through
their undersigned attorneys, for their complaint against
defendants DT Hospitality Group Inc. d/b/a Co Ba
Restaurant, Kien Truong and John Does #1-10, allege as

follows, on behalf of themselves and on behalf of all other persons similarly situated:

NATURE OF THE ACTION

1. Plaintiffs Joh Kie Lee and James Arvay allege on behalf of themselves and on behalf of other similarly situated current and former employees of defendants DT Hospitality Group Inc. d/b/a Co Ba Restaurant, Kien Truong and John Does #1-10, who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), that they are entitled to: (i) compensation for wages paid at less than the statutory minimum wage, (ii) unpaid wages from defendants for overtime work for which they did not receive overtime premium pay as required by law, and (iii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 et seq., because defendants' violations lacked a good faith basis.

2. Mr. Lee and Mr. Arvay further complain that they are entitled to (i) compensation for wages paid at less than the statutory minimum wage; (ii) back wages for overtime work for which defendants willfully failed to pay overtime premium pay as required by the New York Labor Law §§ 650 et seq. and the supporting New York State Department of Labor regulations; (iii) compensation for defendants' violations of the "spread of hours" requirements of New

York Labor Law; (iv) compensation for unlawfully-retained tips; (v) liquidated damages pursuant to New York Labor Law for these violations; and (vi) compensation for defendants' violation of the Wage Theft Prevention Act.

THE PARTIES

3. Plaintiffs are adult individuals residing in New York.

4. Plaintiffs consent in writing to be parties to this action pursuant to 29 U.S.C. § 216(b); their written consents are attached hereto and incorporated by reference.

5. Upon information and belief, defendant DT Hospitality Group Inc. d/b/a Co Ba Restaurant ("Co Ba") is a New York corporation with a principal place of business at 110 9th Avenue, New York, New York.

6. At all relevant times, defendant Co Ba has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

7. Upon information and belief, at all relevant times, defendant Co Ba has had gross revenues in excess of \$500,000.00.

8. Upon information and belief, at all relevant times herein, defendant Co Ba has used goods and materials

produced in interstate commerce, and has employed at least two individuals who handled such goods and materials.

9. Upon information and belief, at all relevant times, defendant Co Ba has constituted an "enterprise" as defined in the FLSA.

10. Defendant Kien Truong is an owner or part owner and principal of Co Ba, who has the power to hire and fire employees, set wages and schedules, and maintain their records.

11. Defendant Kien Truong was involved in the day-to-day operations of Co Ba and played an active role in managing the business.

12. Specifically, defendant Kien Truong hired plaintiffs, set their wages and schedules, and paid them each payday.

13. Upon information and belief, defendants John Does #1-10 represent the other owners, officers, directors, members, and/or managing agents of the Defendants, whose identities are unknown at this time, who participated in Defendants' day-to-day operations, who have the power to hire and fire employees, set wages and schedules, and retain their records.

14. Defendants constituted "employers" of plaintiffs as that term is used in the Fair Labor Standards Act and New York Labor Law.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendants' business is located in this district.

COLLECTIVE ACTION ALLEGATIONS

17. Pursuant to 29 U.S.C. § 206 and § 207, plaintiffs seek to prosecute their FLSA claims as a collective action on behalf of a collective of persons defined as follows:

All persons who are or were formerly employed by defendants in the United States at any time since July 20, 2013, to the entry of judgment in this case (the "Collective Action Period"), who were non-exempt employees within the meaning of the FLSA, and who were not paid statutory minimum wages and/or overtime compensation at rates not less than one-and-one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the "Collective Action Members")

18. The Collective Action Members are similarly situated to plaintiffs in that they were employed by defendants as non-exempt restaurant workers, and were denied payment at the statutory minimum wage and/or were denied premium overtime pay for hours worked beyond forty hours in a week.

19. They are further similarly situated in that defendants had a policy and practice of knowingly and willfully refusing to pay them the minimum wage and/or overtime.

20. Plaintiffs and the Collective Action Members performed similar primary duties, and were subjected to the same policies and practices by defendants.

21. The exact number of such individuals is presently unknown, but is known by defendants and can be ascertained through appropriate discovery.

FACTS

22. At all relevant times herein, defendants owned and operated a Vietnamese restaurant in New York City.

23. Mr. Lee was employed by defendants from approximately July 2014 through July 2015.

24. Mr. Arvay was employed by defendants from approximately May 2011 through January 2015, although there

was approximately a four-month gap in his employment from November 2013 through February 2014.

25. Plaintiffs were employed primarily as waiters and bussers, though they were both assigned other tasks such as bartending, dishwashing, and occasional deliveries, as well.

26. Plaintiffs' work was performed in the normal course of defendants' business and was integrated into the business of defendants, and did not involve executive or administrative responsibilities.

27. At all relevant times herein, plaintiffs were employees engaged in commerce and/or in the production of goods for commerce, as defined in the FLSA and its implementing regulations.

28. Mr. Lee's regular schedule was five days per week - generally, three weekdays as well as Saturdays and Sundays, except that in approximately the last month of his employment he typically worked just three days per week.

29. Mr. Lee worked from roughly 11 a.m. to 11 p.m. (though occasionally he was required to work later). On weekdays he typically received a two-hour break in the middle of the day, for a total of 10 hours; on weekends he did not receive a break so he generally worked 12 hours per day.

30. As a result, for roughly the first 11 months of his employment at Co Ba, Mr. Lee worked in excess of 50 hours per week each week; for the final month of his employment he worked 30 - 35 hours per week.

31. Mr. Arvay regularly worked five days per week throughout his employment.

32. For roughly the first two and a half years of his employment at Co Ba, Mr. Arvay generally worked four full days of between 10 and 12 hours and a half-day of five or six hours. For approximately the final year of Mr. Arvey's employment, he worked a schedule of three full days and two half-days.

33. As a result, Mr. Arvay worked between 45 and 50 hours per week each week for the first two-and-a-half years of his employment, and between 40 and 45 hours per week each week in his final year of employment at Co Ba.

34. Defendants did not provide a time clock, sign in sheet, or any other method for employees to track their time worked.

35. For most of their employment, plaintiffs were paid at a shift rate of \$20 per shift, with a full day consisting of two shifts. However, on a shift during which plaintiffs received what defendants deemed to be a

sufficient amount in tips - generally \$40 - plaintiffs were not paid their shift pay for that shift.

36. In addition, for roughly the final three months of Mr. Lee's employment, he did not receive any shift pay.

37. As a result, plaintiffs' effective rate of pay was always below the statutory federal and state minimum wages in effect at relevant times.

38. In addition to their pay, plaintiffs generally received tips, as part of a tip pooling arrangement created by defendants.

39. However, defendants never provided plaintiffs with any notice or information regarding the "tip credit," when plaintiffs were hired or at any other time.

40. Moreover, Mr. Lee did not receive any tips for roughly the final three months of his employment because they were withheld by defendants.

41. Upon information and belief, defendants did not keep accurate records of the tips received by plaintiffs.

42. Defendants' failure to pay plaintiffs an amount at least equal to the federal or New York state minimum wages in effect during all relevant time periods was willful, and lacked a good faith basis.

43. In addition, defendants failed to pay plaintiffs any overtime "bonus" for hours worked beyond 40 hours in a

workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

44. Defendants' failure to pay plaintiffs the overtime bonus for overtime hours worked was willful, and lacked a good faith basis.

45. Plaintiffs worked four or more shifts per week that lasted in excess of ten hours from start to finish, yet defendants willfully failed to pay them one additional hour's pay at the minimum wage for each such day, in violation of the New York Labor Law and the supporting New York State Department of Labor regulations.

46. Plaintiffs were paid by a combination of cash and check, and although they received what purported to be paystubs with their pay, the information on the paystubs was generally incomplete, typically not listing regular or overtime hours worked or regular or overtime pay; on the occasions when the paystubs did provide some of this information, it was inaccurate.

47. Defendants failed to provide plaintiffs with written notices providing the information required by the Wage Theft Prevention Act - including, *inter alia*, defendants' contact information, their regular and overtime rates, and intended allowances claimed - and failed to

obtain their signatures acknowledging the same, upon their hiring or at any time thereafter, in violation of the Wage Theft Prevention Act in effect at the time.

48. Defendants applied the same employment policies, practices, and procedures to all Collective Action Members, including policies, practices, and procedures with respect to the payment of overtime.

49. Upon information and belief, throughout the period of plaintiffs' employment, both before that time (throughout the Collective Action Period) and continuing until today, defendants have likewise employed other individuals like plaintiffs (the Collective Action Members) in positions at defendants' restaurant that required little skill, no capital investment, and with duties and responsibilities that did not include any managerial responsibilities or the exercise of independent judgment.

50. Upon information and belief, defendants likewise failed to pay these other individuals at a rate at least equal to the applicable minimum wage, in violation of the FLSA and the New York Labor Law.

51. Upon information and belief, these other individuals have worked in excess of forty hours per week, yet defendants have likewise failed to pay them overtime

compensation of one-and-one-half times their regular hourly rate in violation of the FLSA and the New York Labor Law.

52. Upon information and belief, these other individuals were not paid "spread of hours" premiums on days when they worked shifts lasting in excess of ten hours from start to finish.

53. Upon information and belief, these other individuals were not provided with required annual or accurate weekly wage notices as specified in New York Labor Law §§ 195.1, 195.3, and the Wage Theft Prevention Act.

54. Defendants' policy of paying plaintiffs and these other individuals on a shift basis rather than on an hourly basis violated 12 N.Y.C.R.R. § 146- 2.5.

55. Upon information and belief, while defendants employed plaintiffs and the Collective Action members, and through all relevant time periods, defendants failed to maintain accurate and sufficient time records or provide accurate records to employees, and failed to post or keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA or New York Labor Law.

COUNT I

(Fair Labor Standards Act - Minimum Wage)

56. Plaintiffs, on behalf of themselves and all Collective Action Members, repeat, reallege, and

incorporate by reference the foregoing allegations as if set forth fully and again herein.

57. At all relevant times, defendants employed plaintiffs and the Collective Action Members within the meaning of the FLSA.

58. Defendants failed to pay a salary greater than the minimum wage to plaintiffs and the Collective Action Members for all hours worked.

59. As a result of defendants' willful failure to compensate plaintiffs and the Collective Action Members at a rate at least equal to the federal minimum wage for each hour worked, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 206.

60. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), and lacked a good faith basis within the meaning of 29 U.S.C. § 260.

61. Due to defendants' FLSA violations, plaintiffs and the Collective Action Members are entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Minimum Wage)

62. Plaintiffs repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

63. At all relevant times, plaintiffs were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

64. Defendants willfully violated plaintiffs' rights by failing to pay them compensation in excess of the statutory minimum wage in violation of the New York Labor Law §§ 190-199, 652 and their regulations.

65. Defendants' failure to pay compensation in excess of the statutory minimum wage was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

66. Due to defendants' New York Labor Law violations, plaintiffs are entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT III

(Fair Labor Standards Act - Overtime)

67. Plaintiffs, on behalf of themselves and all Collective Action Members, repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

68. At all relevant times, defendants employed plaintiffs and each of the Collective Action Members within the meaning of the FLSA.

69. At all relevant times, defendants had a policy and practice of refusing to pay overtime compensation to their employees for hours they worked in excess of forty hours per workweek.

70. As a result of defendants' willful failure to compensate their employees, including plaintiffs and the Collective Action Members, at a rate not less than one-and-one-half times the regular rate of pay for work performed in excess of forty hours per workweek, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).

71. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), and lacks a good faith basis within the meaning of 29 U.S.C. § 260.

72. Due to defendants' FLSA violations, plaintiffs and the Collective Action Members are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT IV

(New York Labor Law - Overtime)

73. Plaintiffs repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

74. At all relevant times, plaintiffs were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

75. Defendants willfully violated plaintiffs' rights by failing to pay them full overtime compensation at rates at least one-and-one-half times the regular rate of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 et seq. and its supporting regulations in 12 N.Y.C.R.R. § 146.

76. Defendants' failure to pay overtime was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

77. Due to defendants' New York Labor Law violations, plaintiffs are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT V

(New York Labor Law - Spread of Hours)

78. Plaintiffs repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

79. At all relevant times, plaintiffs were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

80. Defendants willfully violated plaintiffs' rights by failing to pay them an additional hour's pay at the minimum wage for each day they worked shifts lasting longer than ten hours from start to finish, in violation of the New York Labor Law §§ 650 *et seq.* and its regulations in 12 N.Y.C.R.R. § 146-1.6.

81. Defendants' failure to pay the "spread of hours" premium was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

82. Due to defendants' New York Labor Law violations, plaintiffs are entitled to recover from defendants their unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT VI

(New York Labor Law - Failure to pay wages)

83. Mr. Lee repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

84. At all relevant times, Mr. Lee was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

85. Defendants willfully violated the rights of Mr. Lee by failing to pay him his wages for all of his hours worked, in violation of New York Labor Law § 191.

86. Defendants' failure to pay all wages owed, was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

87. Due to defendants' New York Labor Law violations, Mr. Lee is entitled to recover from defendants his unpaid wages, liquidated damages, interest, reasonable attorneys'

fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT VII

(New York Labor Law - Illegal tip retention)

88. Mr. Lee repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

89. At all relevant times, Mr. Lee was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

90. Defendants violated the rights of Mr. Lee by illegally retaining his tips at times, in violation of New York Labor Law § 196-d.

91. Defendants' illegal retention of tips was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

92. Due to defendants' New York Labor Law violations, Mr. Lee is entitled to recover from defendants his unlawfully retained tips, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198 and § 663(1).

COUNT VIII

(New York Labor Law - Wage Theft Prevention Act)

93. Plaintiffs repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

94. At all relevant times, plaintiffs were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

95. Defendants willfully violated plaintiffs' rights by failing to provide them with the wage notices required by the Wage Theft Prevention Act when they was hired, or at any time thereafter.

96. Defendants willfully violated plaintiffs' rights by failing to provide them with accurate, compliant weekly wage statements required by the Wage Theft Prevention Act at any time during their employment.

97. Due to defendants' New York Labor Law violations relating to the failure to provide accurate, compliant wage statements, plaintiffs are entitled to recover from the defendants statutory damages of \$100 per week through February 26, 2015, and \$250 per day from February 27, 2015 through the end of their employment, up to the maximum statutory damages.

98. Due to defendants' New York Labor Law violations relating to the failure to provide wage notices, plaintiffs are entitled to recover from the defendants statutory damages of \$50 per week through February 26, 2015, and \$50 per day from February 27, 2015 to the termination of their employment, up to the maximum statutory damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and appointing plaintiffs and their counsel to represent the Collective Action members;
- b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

- c. An injunction against defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- d. Compensatory damages for failure to pay the minimum wage pursuant to the FLSA and New York Labor Law;
- e. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;
- f. An award of liquidated damages as a result of defendants' willful failure to pay the statutory minimum wage and overtime compensation pursuant to 29 U.S.C. § 216;
- g. Compensatory damages for failure to pay the "spread of hours" premiums required by New York Labor Law;
- h. Damages for defendants' failure to pay Mr. Lee all of his wages earned, in violation of the New York Labor Law;

- i. Damages for defendants' illegal retention of a portion of Mr. Lee's tips;
- j. Liquidated damages for defendants' New York Labor Law violations;
- k. Statutory damages for defendants' violation of the New York Wage Theft Prevention Act;
- l. Back pay;
- m. Punitive damages;
- n. An award of prejudgment and postjudgment interest;
- o. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- p. Such other, further, and different relief as this Court deems just and proper.

Dated: July 20, 2016



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Attorneys for Plaintiffs

EXHIBIT A

CONSENT TO JOIN FORM
CONSENT TO SUE UNDER FEDERAL FAIR LABOR STANDARDS ACT (FLSA)

I am an employee currently or formerly employed by DT HOSPITALITY GROUP INC. d/b/a COBA and or related entities/individuals. I consent to be a Plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Retainer Agreement signed by the named Plaintiff in this case:

To opt into this collective action, fill out this form and mail, fax, or e-mail it to:

Law Offices of Vincent S. Wong

39 East Broadway, Suite #306

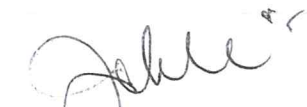
New York, NY 10002

Fax: (212) 349-6599

vswlaw@gmail.com

Joh Kie Lee

Full Legal Name (Print)



Signature

7/21/2016

Date:

Further Information Regarding the Consent to Join Form:

Please fill out this sheet of information, so that I, your attorney, may reach you in the future to provide updates regarding the progression of the lawsuit, and so that we can give you your share of any money that is recovered (if any) from the defendant on your behalf.


CONSENT TO JOIN FORM
CONSENT TO SUE UNDER FEDERAL FAIR LABOR STANDARDS ACT (FLSA)

I am an employee currently or formerly employed by DT HOSPITALITY GROUP INC. d/b/a COBA and or related entities/individuals. I consent to be a Plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Retainer Agreement signed by the named Plaintiff in this case:

To opt into this collective action, fill out this form and mail, fax, or e-mail it to:

Law Offices of Vincent S. Wong
39 East Broadway, Suite #306
New York, NY 10002
Fax: (212) 349-6599
vswlaw@gmail.com

James Arvay
Full Legal Name (Print)


Signature

08/17/16
Date:

Further Information Regarding the Consent to Join Form:

Please fill out this sheet of information, so that I, your attorney, may reach you in the future to provide updates regarding the progression of the lawsuit, and so that we can give you your share of any money that is recovered (if any) from the defendant on your behalf.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [DT Hospitality Group Accused of Alleged Wage and Hour Violations](#)
