

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

HYUN MEE KOO  
8757 Georgia Avenue, Suite 400  
Silver Spring, Maryland 20910

*On Behalf of Herself and  
All Others Similarly Situated*

PLAINTIFFS,

v.

Case No.: 1:17-cv-00124

DOTOMBORI, INC.  
YOKO SUSHI  
2946 Chain Bridge Road, #J  
Oakton, Virginia 22124

Serve: Ki Y In  
4556 Rona Place  
Fairfax, Virginia 22030

And

KI Y IN  
4556 Rona Place  
Fairfax, Virginia 22030

And

MI H IN  
4556 Rona Place  
Fairfax, Virginia 22030

DEFENDANTS.

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**COLLECTIVE ACTION COMPLAINT**

Plaintiff Hyun Mee Koo ("Plaintiff"), by and through her undersigned counsel, on behalf of herself and all others similarly situated, hereby submits this Collective Action

Complaint against Defendants Dotombori, Inc. d/b/a Yoko Sushi, Ki Y In, and Mi H In (collectively, “Defendants”), to recover unpaid wages, liquidated damages, reasonable attorney’s fees, and costs under the Federal Fair Labor Standards Act (“FLSA”).

**PARTIES AND JURISDICTION**

1. Plaintiff is an adult resident of Fairfax, Virginia. By acting as the named plaintiff in this action, Plaintiff does hereby consent to participate as a plaintiff in a collective action for which relief is sought under the FLSA.

2. The FLSA Class Members are defined as:

- a. all current and former waiters and waitresses employed by Defendants at the Yoko Sushi Restaurant located at 2946 Chain Bridge Road, #J Oakton, Virginia 22124 during the period January 26, 2014 through the present (“the Class Period”);
- b. who were paid by Defendants at hourly rates less than the FLSA required minimum wage (\$7.25 per hour) for non-overtime hours worked each week and/or were paid less than the FLSA required minimum wage overtime rate ( $\$7.25 * 1.5 = \$10.88$  per hour) for overtime hours worked over forty (40) per week;
- c. who, in addition to direct wages, received tips from customers but did not retain all tips from customers because of Defendants’ common and class-wide policy of (1) deducting from tips an arbitrarily high credit card transaction service fee of 5%; and/or (2) because Defendants Ki Y In and/or Mi H In deducted \$20.00 to \$25.00 from tips for themselves on shifts when they performed chef and/or sushi chef duties at the

restaurant; and/or (3) because Defendants deducted and skimmed a portion of tips from customers for Defendants' use and enjoyment; and/or

- d. who did not receive notice from Defendants that Defendants were paying Plaintiffs (or attempting to pay Plaintiffs) per the "tip-credit" method as set forth by the FLSA Section 203(m) and/or explain what that method of compensation entails.

3. Dotombori, Inc. is a corporation formed under the laws of the Commonwealth of Virginia with a principal office location in Fairfax County, Virginia.

4. At all times relevant to this action, Defendants Ki Y In and Mi H In were the primary owners and sole officers of Dotombori, Inc. In this capacity, Ki Y In and Mi H In were personally responsible for all operations of the Yoko Sushi Restaurant; personally managed and supervised the work duties of Plaintiff and other waiters and waitresses; set the schedule and hours for Plaintiff and other waiters and waitresses; set the pay rate and compensation method for Plaintiff and other waiters and waitresses; and individually were in charge of maintaining all employment documents for Plaintiff and other employees at the Yoko Sushi Restaurant.

5. At all times material herein, Defendants had annual sales exceeding \$500,000.00.

6. At all times, Defendants sold food and drink products that originated from outside the Commonwealth of Virginia and were otherwise engaged in commerce or in the production of goods for commerce within the meaning of § 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

7. At all times, Defendants qualified as an “enterprise” within the meaning of § 3(r) of the FLSA (29 U.S.C. § 203(r)).

8. At all times, Plaintiff and the FLSA class members were employees who handled food and drink products that originated from outside the Commonwealth of Virginia and were otherwise engaged in commerce or the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

9. At all times, Defendants each qualified as Plaintiff’s employer and the employer of the FLSA class members under the FLSA.

10. In consideration of the foregoing, Federal Question jurisdiction, personal jurisdiction, and venue are proper in this Court.

#### **COLLECTIVE ACTION ALLEGATIONS**

11. Plaintiff brings this collective action claim on her own behalf on behalf of those similarly situated individuals that meet the definition of the FLSA class members.

12. The FLSA claims arising under this Complaint are properly maintainable as a collective action under Section 216(b) of the FLSA.

13. The class size is believed exceed twenty (20) current and former waiters and waitresses at Defendants’ Yoko Sushi Restaurant making joinder of all members impracticable.

14. Plaintiff will adequately represent the interests of the FLSA class members because she is similarly situated to the FLSA class members and her claims are typical of, and concurrent to, the claims of the other FLSA class members.

15. There are no known conflicts of interest between the Plaintiff and the other FLSA class members.

16. FLSA class counsel, Gregg C. Greenberg and the law firm of Zipin, Amster & Greenberg, LLC are qualified and able to litigate the FLSA class members' claims.

17. Common questions of law and fact predominate in this action because all of the FLSA class' claims implicate the same wage laws; failure by Defendant to pay all wages due and owing under Federal law arising out of a common and class-wide compensation policy that violated the FLSA minimum wage and overtime laws.

### **FACTS**

18. Plaintiff was employed by Defendants as a waitress at the Yoko Sushi Restaurant for the time periods of about 2007 – 2008; January 2011 – May 2011; and September 2013 – January 2017.

19. During her period of employment, Plaintiff's exact hours worked varied slightly from week to week.

20. During her period of employment, Plaintiff often worked more than forty (40) hours per week.

21. While employed, on average, Plaintiff worked between forty (40) to forty-five (45) hours per week.

22. While employed, Defendants paid Plaintiff direct wages for all hours worked (including overtime hours worked more than forty (40) per week) at the rate of \$3.00 per hour plus Plaintiff was permitted to retain some portion of the tips she received from customers.

23. The method by which Defendants attempted to compensate Plaintiff (and other waiters and waitresses who are FLSA class members) is commonly known as the "tip credit" method of compliance set forth in Section 203(m) of the FLSA.

24. For Defendants to have successfully and correctly paid Plaintiff and all FLSA class members in compliance with the FLSA “tip credit,” (1) Defendants must have paid Plaintiff and the FLSA class members direct wages in an amount not less than the “tip credit” minimum wage (\$2.13 per non-overtime hour and at a rate not less than \$10.88 minus the “tip credit” taken for overtime hours worked more than forty (40) per week); (2) Plaintiff and the FLSA class members must have received tips in such an amount at least equal to the difference between the direct wages paid and the FLSA minimum wage and overtime minimum wage required amount; (3) Defendants must have informed Plaintiff and the FLSA class members that Defendants were paying them pursuant to the FLSA “tip credit” method and what that methodology entails; and (4) Plaintiff and the class members must have retained all tips received from customers.

25. Here, Defendants violated the FLSA “tip credit” requirements because:
- a. Defendants never provided Plaintiff or other FLSA class members with notice that Defendants were paying them pursuant to the FLSA “tip credit” method or what that methodology entails;
  - b. Defendants did not pay Plaintiff and other FLSA class members at the required “tip credit” direct wage rate for all hours worked. At all times, Defendant paid Plaintiff and other FLSA class members direct wages at the rate of \$3.00 per hour. As such, Defendant took a \$4.25 per hour “tip credit” ( $\$7.25$  FLSA Minimum Wage -  $\$3.00$  direct wages = “tip credit” of  $\$4.25$  per hour). Therefore, for hours worked over forty (40) per week, Defendant was required to pay direct wages at an hourly rate not less than ( $\$10.88$  FLSA minimum

wage overtime rate - \$4.25 “tip credit” = \$6.63 owed per overtime hour). Defendants failed to pay this required rate for hours worked over forty (40) per week and instead paid the lesser \$3.00 per hour;

c. Defendants did not allow Plaintiff and other FLSA class members to retain all tips they received from customers. Instead, Defendants took Plaintiff and other FLSA class members’ tips for their own use and benefit in the following ways:

- i. Defendants regularly and customarily took 5% of Plaintiff and other FLSA class members’ tips received by credit card. This amount was arbitrarily set significantly higher than the actual credit card service processing fees which are typically not higher than 2%. This allowed Defendants to keep the balance of the 5% of Plaintiff and other FLSA class members’ tips for their own benefit;
- ii. Defendants Ki Y In and Mi H In would often perform chef and sushi chef job duties at the Yoko Sushi Restaurant. When they performed duties, Ki Y In and Mi H In would take a portion of Plaintiff and other FLSA class members’ tips in direct violation of the “tip credit” restrictions set forth in Section 203(m); and
- iii. Defendants engaged in a class wide scheme of skimming a portion of Plaintiff and other FLSA class members’ tips and taking the portion of the tips for use for Defendants’ own benefit.

26. Defendants' action of taking portions of Plaintiff and other FLSA class members' tips; failing to pay the required FLSA "tip credit" direct wage for all hours worked; and failing to provide required notice as required by the FLSA prohibits Defendants from asserting a Section 203(m) "tip credit" compliance as a defense in this action.

27. At no time did Defendants ever pay Plaintiff or the FLSA class members direct wages at an hourly rate at least equal to the applicable Federal Minimum Wage.

28. At no time did Defendant ever pay Plaintiff or the FLSA class members direct wages for overtime hours worked per week in excess of forty (40) at the FLSA required overtime rate of one-and-one-half times the applicable Federal Minimum Wage.

29. Defendants are now liable to Plaintiff and the FLSA class members in the amount of the difference between the direct wages Defendants paid and the applicable minimum wage and or overtime rates for all hours worked.

**CAUSE OF ACTION**  
**VIOLATION OF FLSA**

30. Plaintiff re-alleges and reasserts every allegation set forth herein, as if each were set forth herein.

31. The FLSA requires that employers pay employees for non-overtime hours worked each week at an hourly rate not less than the Federal Minimum Wage.

32. The FLSA requires that employers pay employees for overtime hours worked each week more than forty (40) at an hourly rate equal to the higher of one-and-one-half (1½) times the employee's regular rate of pay or one-and-one-half (1½) times the Federal Minimum Wage.



33. As set forth above, Defendants failed to compensate Plaintiff and the FLSA class members properly and as required by the FLSA for numerous hours worked.

34. Defendants' failure to pay Plaintiff and the FLSA class members wages as required by the FLSA was knowing, willful, intentional, and not in good faith.

WHEREFORE, Defendants are liable, jointly and severally, to Plaintiff (and all FLSA class members that opt-in to this action) for unpaid FLSA wages in such an amount as is proven at trial, plus an equal amount in liquidated damages, interest (both pre- and post-judgment), attorney's fees, the costs of this action, and any other and further relief this Court deems appropriate.

Respectfully submitted,



Gregg C. Greenberg, VA Bar No. 79610  
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Email: [ggreenberg@zagfirm.com](mailto:ggreenberg@zagfirm.com)

*Counsel for Plaintiff*

JS 44 (Rev. 08-16)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Hyun Mee Koo</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <b>Fairfax, VA</b> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Zipin, Amster &amp; Greenberg, LLC - 301-587-9373 8757 Georgia Ave #400 Silver Spring, MD 20910</p>	<p><b>DEFENDANTS</b> Dotombori, Inc., et al.</p> <p>County of Residence of First Listed Defendant <b>Fairfax, VA</b> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: <b>IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</b></p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

[Click here for: Nature of Suit Code Descriptions.](#)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act-Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		<p><b>LABOR</b></p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
		<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 29 USC 201, et seq.

Brief description of cause:  
**FAILURE TO PAY REQUIRED FLSA WAGES (COLLECTIVE ACTION)**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMANDS** TBD    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE:    DOCKET NUMBER:

DATE: 01/26/2017    SIGNATURE OF ATTORNEY OF RECORD:

**FOR OFFICE USE ONLY**

RECEIPT #    AMOUNT    APPLYING IFP    JUDGE:    MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Virginia Sushi Restaurant Rolled Up in Tip Theft Class Action](#)

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