

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

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Ngok Kwan Lui and Shihai Liao, *on  
behalf of themselves and others similarly  
situated,*

Plaintiffs,

v.

New Jade Fountain Enterprises Corp. d/b/a I  
Chopstick Chinese restaurant,  
I Chopstick Chinese Restaurant, Inc.,  
Kevin Lin a/k/a Kevin Lau, and "JoJo" Doe (legal  
name unknown),

Defendants,  
-----X

Case No:

**COLLECTIVE ACTION  
COMPLAINT**

Plaintiffs Ngok Kwan Lui and Shihai Liao (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their attorneys, Hang & Associates, PLLC, hereby bring this complaint against Defendants New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant, I Chopstick Chinese Restaurant, Inc., Kevin Lin a/k/a Kevin Lau (“Kevin”), and "JoJo" Doe (legal name unknown) ("JoJo") (collectively “Defendants”) and allege as follows:

**INTRODUCTION**

1. This action is brought by Plaintiffs, on behalf of themselves and all others similarly situated, against Defendants for alleged violations of the Federal Labor Standards Act, (“FLSA”) 29 U.S.C. §§ 201 et seq., and of New York Labor Law §§190 et seq. (“NYLL”) and implementing New York Codes, Rules, and Regulations (“NYCRR”), arising from Defendants’ various willful and unlawful employment policies, patterns and/or practices.

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA, NYLL, and NYCRR by engaging in a pattern and

practice of failing to pay their employees, including Plaintiffs, wages for each hour worked, minimum wage for each hour worked, overtime for all hours worked in excess of forty (40) in each workweek, and spread-of-hours for all hours worked in excess of ten (10) in each workday.

3. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of federal and state labor laws by engaging in a company-wide policy and practice of requiring their employees to work over 40 hours in a workweek without paying overtime premiums.

4. Defendants willfully failed to record all of the time that Plaintiffs and similarly situated employees work or worked, including time worked in excess of forty (40) hours per week and ten (10) hours per day.

5. Plaintiffs allege pursuant to the FLSA, that they are entitled to recover from the Defendants: (1) unpaid wages, (2) unpaid minimum wages, (3) unpaid overtime, (4) liquidated damages; (5) prejudgment and post-judgment interest; and/or (6) attorneys' fees and costs.;

6. Plaintiff further alleges pursuant to New York Labor Law §190 et seq. and Title 12 of New York Codes, Rules and Regulations Part 146 ("NYCRR") that he is entitled to recover from the Defendants: (1) unpaid wages, (2) unpaid minimum wages, (3) unpaid overtime, (4) unpaid spread-of-hours; (5) liquidated damages equal to one hundred percent (100%) of the sum of unpaid wages, unpaid overtime, and unpaid spread-of-hours under the New York Wage Theft Prevention Act 2009 N.Y. S.N. 8380, (6) up to five thousand dollars (\$5,000) per Plaintiff for Defendants' failure to provide a Time of Hire Notice detailing rates of pay and payday, (7) up to five thousand dollars (\$5,000) per Plaintiff for Defendants' failure to provide a wage statement that accurately and truthfully lists employee's hours along with the name, employer's name, employer's address and telephone number, employee's rate or rates of pay, any deductions made

from employee's wages, any allowances claimed as part of the minimum wage, and the employee's gross and net wages for each pay day (8) nine percent (9%) simple prejudgment interest as provided by the New York Civil Practice Law and Rules ("CPLR") NYCPLR § 5004, (9) post-judgment interest, and (10) attorneys' fees and costs.

### **JURISDICTION AND VENUE**

7. This Court has original federal question jurisdiction over this controversy under 29 U.S.C. §216(b), 28 U.S.C. § 1331, and has supplemental jurisdiction over the New Jersey State Law and New York State Law claims pursuant to 28 U.S.C. § 1367(a).

8. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, and the acts and omissions giving rise to the claims herein alleged took place in this District.

### **PLAINTIFFS**

9. Plaintiff Ngok Kwan Lui ("Plaintiff Lui") is an individual residing in Queens, New York.

10. From approximately October, 2016 to about July, 2017, Plaintiff Lui was employed by Defendants as a waiter in their restaurant located at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

11. Plaintiff Shihai Liao ("Plaintiff Liao") is an individual residing in Queens, New York.

12. From September 1, 2016 to on or about June 16, 2017, Plaintiff Liao was employed by Defendants as a helper/dishwasher in their restaurant located at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

**DEFENDANTS**

***Corporate Defendants***

13. Upon information and belief, Defendant I Chopsticks Chinese Restaurant, Inc. is a domestic business corporation organized under the laws of the State of New York with a principal address at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

14. Upon information and belief, I Chopsticks Chinese Restaurant, Inc. is a business engaged in interstate commerce that has gross sales in excess of Five Hundred Thousand Dollars (\$500,000) per year.

15. Upon information and belief, I Chopsticks Chinese Restaurant, Inc. purchased and handled goods moved in interstate commerce.

16. Upon information and belief, Defendant New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant is a domestic business corporation organized under the laws of the State of New York with a principal address at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

17. Upon information and belief, New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant is a business engaged in interstate commerce that has gross sales in excess of Five Hundred Thousand Dollars (\$500,000) per year.

18. Upon information and belief, New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant purchased and handled goods moved in interstate commerce.

***Owner/ Operator Defendants***

19. The Individual Defendants Kevin Lin a/k/a Kevin Lau, and "JoJo" Doe (legal name unknown) ("Individual Defendants") are officers, directors, managers, and/or majority

shareholders or owners of the Corporate Defendants and being among the ten largest corporate shareholders are individually responsible for unpaid wages under the New York Business Corporation Law (“NYBSC”) § 630(a).

20. Kevin Lin a/k/a Kevin Lau, known as “Boss” to Plaintiffs, (1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules and conditions of employment, (3) determined employee rates and methods of payment, and (4) maintained employee records at I Chopsticks Chinese Restaurant, Inc. and New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant.

21. Upon information and belief, Kevin Lin a/k/a Kevin Lau is the owner and manager who has full operational control of I Chopsticks Chinese Restaurant located at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

22. Upon information and belief, Defendant Kevin Lin a/k/a Kevin Lau is the owner, officer, director and/or managing agent of I Chopsticks Chinese Restaurant, Inc. at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365 and participated in the day-to-day operations of I Chopsticks Chinese Restaurant and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2; NYLL §2 and the regulations thereunder; and is jointly and severally liable with I Chopsticks Chinese Restaurant, Inc.

23. Upon information and belief, Defendant Kevin Lin a/k/a Kevin Lau owns the stock of I Chopsticks Chinese Restaurant, Inc. and manages and makes all business decisions including but not limited to the amount in salary the employees will receive and the number of hours employees will work.

24. Upon information and belief, Defendant Kevin Lin a/k/a Kevin Lau is the owner, officer, director and/or managing agent of New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365 and participated in the day-to-day operations of I Chopsticks Chinese Restaurant and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2; NYLL §2 and the regulations thereunder; and is jointly and severally liable with I Chopsticks Chinese Restaurant, Inc.

25. Upon information and belief, Defendant Kevin Lin a/k/a Kevin Lau owns the stock of New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant and manages and makes all business decisions including but not limited to the amount in salary the employees will receive and the number of hours employees will work.

26. "JoJo" Doe (legal name unknown), known as "Manager" to Plaintiffs, (1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules and conditions of employment, (3) determined employee rates and methods of payment, and (4) maintained employee records at I Chopsticks Chinese Restaurant, Inc. and New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant.

27. Upon information and belief, Defendant "JoJo" Doe (legal name unknown) is the owner, officer, director and/or managing agent of I Chopsticks Chinese Restaurant, Inc. at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365 and participated in the day-to-day operations of I Chopsticks Chinese Restaurant and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2; NYLL §2 and the regulations thereunder; and is jointly and severally liable with I Chopsticks Chinese Restaurant, Inc.

28. Upon information and belief, Defendant "JoJo" Doe (legal name unknown) owns the stock of I Chopsticks Chinese Restaurant, Inc. and manages and makes all business decisions including but not limited to the amount in salary the employees will receive, and the number of hours employees will work.

29. Upon information and belief, Defendant "JoJo" Doe (legal name unknown) is the owner, officer, director and/or managing agent of New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365 and participated in the day-to-day operations of I Chopsticks Chinese Restaurant and acted intentionally and maliciously and is an employer pursuant to FLSA, 29 U.S.C. §203d, and regulations promulgated thereunder, 29 C.F.R. §791.2; NYLL §2 and the regulations thereunder; and is jointly and severally liable with I Chopsticks Chinese Restaurant, Inc.

30. Upon information and belief, Defendant "JoJo" Doe (legal name unknown) owns the stock of New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant and manages and makes all business decisions including but not limited to the amount in salary the employees will receive and the number of hours employees will work.

31. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

32. Plaintiffs bring this action individually and on behalf of all other and former non-exempt employees who have been or were employed by the Defendants at their restaurant locations for up to the last three (3) years, through entry of judgment in this case (the "Collective Action Period") (the "Collective Action Members"). Upon information and belief, the Collection Action Members are so numerous the joinder of all members is impracticable. The identity and precise

number of such persons are unknown, and the facts upon which the calculations of that number may be ascertained are presently within the sole control of the Defendants. Upon information and belief, there are more than forty (40) Collective Action members, who have worked for or have continued to work for the Defendants during the Collective Action Period, most of whom would not likely file individual suits because they fear retaliation, lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiff submits that this case should be certified as a collection action under the FLSA, 29 U.S.C. §216(b).

33. Plaintiff will fairly and adequately protect the interests of the Collective Action Members, and have retained counsel that is experienced and competent in the field of employment law and class action litigation. Plaintiff has no interests that are contrary to or in conflict with those members of this collective action.

34. This action should be certified as collective action because the prosecution of separate action by individual members of the collective action would risk creating either inconsistent or varying adjudication with respect to individual members of this class that would as a practical matter be dispositive of the interest of the other members not party to the adjudication, or subsequently impair or impede their ability to protect their interests.

35. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation makes it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as collective action.



36. Questions of law and fact common to members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the questions of fact common to Plaintiff and other Collective Action Members are:

- a. Whether the Defendants employed Collective Action members within the meaning of the FLSA;
- b. Whether the Defendants' violations of the FLSA are willful as that terms is used within the context of the FLSA; and,
- c. Whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive, and statutory damages, interest, costs and disbursements and attorneys' fees.

37. Plaintiffs knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

38. Plaintiffs and others similarly situated have been substantially damaged by Defendants' unlawful conduct.

39. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs and similarly situated employees for each hour worked.

40. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs and similarly situated employees at least the New York minimum wage for each hour worked.

41. While employed by Defendants, Plaintiffs were not exempt under federal and state laws requiring employers to pay employees overtime.

42. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs and similarly situated employees their lawful overtime of one and one-half times (1.5x) their regular rate of pay for all hours worked over forty (40) in a given workweek.

43. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs and similarly situated employees their lawful spread of hours for workdays that began and ended ten (10) hours apart.

44. At all relevant times, Defendants knowingly and willfully failed to keep full and accurate records of Plaintiffs' hours worked and wages paid.

45. Upon information and belief, Defendants failed to keep full and accurate records in order to mitigate liability for wage violations.

46. At all relevant times, Defendants knowingly and willfully failed to provide Plaintiffs and similarly situated employees with Time of Hire Notices in their primary languages reflecting rates of pay and payday as well as paystubs that listed the employee's name, the employer's name, the employer's address and telephone number, the employee's rate or rates of pay, any deductions made from employees' wages, any allowances claimed as part of the minimum wage, and the employee's gross and net wages for each pay day.

47. At all relevant times, Defendants knowingly and willfully failed to provide Plaintiffs and similarly situated employees with statements every payday that accurately listed all of the following: the dates of work covered by that payment of wages; the employee's name; the name of the employer; the address and phone number of the employer; the employee's rate or rates of pay and basis thereof; the employee's gross wages; the employee's deductions; allowances, if any, claimed as part of the minimum wage; net wages; the employee's regular hourly rate or rates

of pay; the employee's overtime rate or rates of pay; the employee's number of regular hours worked, and the employee's number of overtime hours worked

48. Defendants knew that the nonpayment of wages for all hours worked and the nonpayment of wages at one and one-half time (1.5x) employees' regular rates would financially injure Plaintiffs and similarly situated employees and violate state and federal laws.

49. At all relevant times, Defendants failed to post the required New York State Department of Labor posters regarding minimum wage pay rates, overtime pay, and pay day.

### **STATEMENT OF FACTS**

50. Defendants committed the following alleged acts knowingly, intentionally and willfully.

51. Defendants knew that the nonpayment of overtime pay, spread of hours pay, and failure to provide the required wage notice at the time of hiring would financially injure Plaintiffs and similarly situated employees and violate state and federal laws.

### ***Ngok Kwan Lui***

52. From approximately October 2016 to about July, 2017, Defendants hired Plaintiff Lui to work as a waiter for their restaurant, namely I Chopstick Chinese restaurant located at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

53. As a waiter, Plaintiff Lui provides direct customer service and was a "tipped employee" under FLSA. 29 U.S.C. §203(t).

54. Plaintiff Lui regularly handled goods moved in interstate commerce such as food produced out of state.

55. Plaintiff Lui's job duties required neither discretion nor independent judgment.

56. Throughout his employment with Defendants, Plaintiff Lui regularly worked in excess of 40 hours per week.

57. Throughout his employment with Defendants, Plaintiff Lui worked five days per week with the following schedule: On Monday, Thursday through Sunday, he worked from 10:50 a.m. to 10:00 p.m. without any break.

58. Throughout his employment with Defendants, Plaintiff Lui was not provided with bona fide meal breaks because he was required to be on call the entire shift and to serve customers whenever business so demanded.

59. Although I Chopsticks Chinese Restaurant opens at 11:00 a.m, Plaintiff Lui was required to arrive 10 minutes in advance to help Kevin, the key holder, open the store.

60. Throughout his employment with Defendants, Plaintiff Lui was not required to record his work hours, nor to his knowledge did the Defendants utilize any time tracking device, such as sign in sheets or punch cards, that accurately reflected his actual hours worked.

61. Despite the long hours worked by him, Defendants paid Plaintiff Lui a fixed monthly rate of \$2,700.

62. Throughout his employment, Plaintiff Lui was not paid one additional hour of pay at the basic minimum hourly rate for workdays that began and ended ten (10) hours apart as required under 12 NYCRR §146-1.6

63. Throughout his employment with Defendants, Plaintiff Lui was paid biweekly in cash.

64. Defendants did not provide Plaintiff Lui with an accurate wage statement along with each wage payment as required under NYLL §195(3).

65. Plaintiff identifies Kevin Lin a/k/a Kevin Lau as the owner/boss of I Chopsticks Chinese Restaurant, who were present at the restaurant daily.

66. Plaintiff identifies "Jojo" Doe (legal name unknow) as a manager of I Chopsticks Chinese Restaurant, who were regularly present at the restaurant on weekends, including Friday and Saturday.

67. JoJo interviewed Plaintiff Lui.

68. Kevin hired Plaintiff Lui.

69. Kevin and JoJo supervised and controlled Plaintiff Lui's work schedule including assigning tasks to Plaintiff Lui.

70. Kevin determined the pay rates of Plaintiffs.

71. Kevin handled payrolls of I Chopsticks Chinese Restaurant including Plaintiffs.

72. Plaintiff Lui was not provided a written wage notice, in English and in Chinese (the primary language identified by Plaintiff Lui) when he was hired, including but not limited to information about his rate of pay and basis thereof, allowances, including tip and meals credits, claimed by Defendants, and the regular pay day designated by Defendants.

***Shihai Liao***

73. From September 1, 2016 to on or about June 16, 2017, Defendants hired Plaintiff Liao to work as a helper/dishwasher for their restaurant, namely I Chopstick Chinese restaurant located at 185-20 Horace Harding Expressway, Fresh Meadow, NY 11365.

74. As a helper/dishwasher, Plaintiff Liao's work duties include dishwashing, mopping the floor, cleaning, snow removal during the winter months, laundry uniforms of Defendants' employees, cutting vegetables, opening cans, moving supplies between the kitchen and the basement.

75. Plaintiff Liao regularly handled goods moved in interstate commerce such as dish liquid and cleaning supplies produced out of state.

76. Plaintiff Liao's job duties required neither discretion nor independent judgment.

77. Throughout his employment with Defendants, Plaintiff Liao regularly worked in excess of 40 hours per week.

78. Throughout his employment with Defendants, Plaintiff Liao worked six days per week with Wednesday off, following the schedule: he worked from 10:00 a.m. to 10:30 p.m. without any break.

79. Throughout his employment with Defendants, Plaintiff Liao was not provided with bona fide meal breaks because his meals were regularly interrupted by Defendants' work assignments.

80. Although the business hours of I Chopsticks Chinese Restaurant is from 11:00 a.m. to 10:00 p.m., Plaintiff Liao started working at 10:00 a.m. when Kevin opened the service entrance and was required to work at least 30 minutes to cleaning up after close of business. In fact, Plaintiff Lian did not stop working until 2:00 a.m. on Chinese New Year in 2017.

81. Throughout his employment with Defendants, Plaintiff Liao was not required to record his work hours, nor to his knowledge did the Defendants utilize any time tracking device, such as sign in sheets or punch cards, that accurately reflected his actual hours worked.

82. Despite the long hours worked by him, Defendants paid Plaintiff Liao a fixed monthly rate of \$2,500.

83. Throughout his employment, Plaintiff Liao was not paid one additional hour of pay at the basic minimum hourly rate for workdays that began and ended ten (10) hours apart as required under 12 NYCRR §146-1.6

84. Throughout his employment with Defendants, Plaintiff Liao was paid biweekly in cash.

85. In November 2016, shortly after the commencement of his employment with Defendants, Plaintiff Liao requested Kevin to report payroll taxes for him but was refused.

86. Defendants did not provide Plaintiff Liao with an accurate wage statement along with each wage payment as required under NYLL §195(3).

87. Plaintiff identifies Kevin Lin a/k/a Kevin Lau as the owner/boss of I Chopsticks Chinese Restaurant, who were present at the restaurant daily.

88. Plaintiff identifies "Jojo" Doe (legal name unknow) as a manager of I Chopsticks Chinese Restaurant, who were regularly present at the restaurant on weekends, including Friday and Saturday.

89. JoJo interviewed Plaintiff Liao.

90. Kevin hired Plaintiff Liao.

91. Kevin supervised and controlled Plaintiff Liao's work schedule including assigning tasks to Plaintiff Liao.

92. JoJo supervised and assigned work tasks to Plaintiff Liao.

93. Kevin determined the pay rates of Plaintiffs.

94. Kevin handled payrolls of I Chopsticks Chinese Restaurant including Plaintiffs.

95. Plaintiff Liao was not provided a written wage notice, in English and in Chinese (the primary language identified by Plaintiff Lui) when he was hired, including but not limited to information about his rate of pay and basis thereof, allowances, including tip and meals credits, claimed by Defendants, and the regular pay day designated by Defendants.

**STATEMENT OF CLAIMS**

**COUNT I**

**[Violation of Fair Labor Standards Act — Minimum Wage]**

96. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

97. At all relevant times, upon information and belief, Defendants have been, and continue to be, “employers” engaged in interstate “commerce” and/or in the production of “goods” or “commerce,” within the meaning of the FLSA, 29 U.S.C. §§206(a) and §§207(a). Further, Plaintiff is covered within the meaning of FLSA, U.S.C. §§206(a) and 207(a). At all relevant times, Defendants employed “employees” including Plaintiffs, within the meaning of FLSA.

98. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.

99. The FLSA provides that any employer engaged in commerce shall pay employees the applicable minimum wage. 29 U.S.C. § 206(a).

100. At all relevant times, Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiffs, and the collective action members, for some or all of the hours they worked.

101. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §206 shall be liable to the employees affected in the amount of their unpaid minimum compensation, and in an additional equal amount as liquidated damages.

102. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by failing to compensate Plaintiffs and Collective Action Members at the statutory



minimum wage when they knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action Members.

## COUNT II

### **Violation of the New York Labor Law — Minimum Wage**

103. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

104. At all relevant times, Plaintiffs were employed by Defendants within the meaning of New York Labor Law §§2 and 651.

105. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay the minimum wage shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

106. Defendants knowingly and willfully violated Plaintiffs' rights by failing to pay them minimum wages in the lawful amount for hours worked.

## COUNT III

### **[Violations of the Fair Labor Standards Act—Overtime Wage]**

107. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

108. The FLSA provides that no employer engaged in commerce shall employ a covered employee for a work week longer than forty (40) hours unless such employee receives compensation for employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he or she is employed, or one and one-half times the minimum wage, whichever is greater. 29 USC §207(a).

109. The FLSA provides that any employer who violates the provisions of 29 U.S.C. §207 shall be liable to the employees affected in the amount of their unpaid overtime compensation, and in an additional equal amount as liquidated damages. 29 U.S.C. §216(b).

110. Defendants' failure to pay Plaintiffs and the FLSA Collective their overtime premiums violated the FLSA.

111. At all relevant times, Defendants had, and continue to have, a policy of practice of refusing to pay overtime compensation at the statutory rate of time and a half to Plaintiffs and Collective Action Members for all hours worked in excess of forty (40) hours per workweek, which violated and continues to violate the FLSA, 29 U.S.C. §§201, et seq., including 29 U.S.C. §§207(a)(1) and 215(a).

112. The FLSA and supporting regulations required employers to notify employees of employment law requirements. 29 C.F.R. §516.4.

113. Defendants willfully failed to notify Plaintiffs and FLSA Collective of the requirements of the employment laws in order to facilitate their exploitation of Plaintiffs' and FLSA Collectives' labor.

114. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs and Collective Action Members the statutory overtime rate of time and one half for all hours worked in excess of forty (40) per week when they knew or should have known such was due and that failing to do so would financially injure Plaintiffs and Collective Action Members.

#### **COUNT IV**

#### **[Violation of New York Labor Law—Overtime Pay]**

115. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

116. Pursuant to the New York Wage Theft Prevention Act, an employer who fails to pay proper overtime compensation shall be liable, in addition to the amount of any underpayments, for liquidated damages equal to the total of such under-payments found to be due the employee.

117. Defendants' failure to pay Plaintiffs and the Rule 23 Class their overtime pay violated the NYLL.

### **COUNT V**

#### **[Violation of New York Labor Law—Time of Hire Wage Notice Requirement]**

118. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

119. At all times relevant to this action, Plaintiffs were employed by some or all of the Defendants within the meaning of NYLL §§ 2 and 651.

120. The NYLL and supporting regulations require employers to provide written notice of the rate or rates of pay and the basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as a part of minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer. NYLL §195-1(a).

121. Defendants intentionally failed to provide notice to employees in violation of New York Labor Law § 195, which requires all employers to provide written notice in the employee's primary language about the terms and conditions of employment related to rate of pay, regular pay cycle and rate of overtime on his or her first day of employment.

122. Defendants not only did not provide notice to each employee at Time of Hire, but failed to provide notice to each Plaintiffs even after the fact.

123. Due to Defendants' violations of New York Labor Law, each Plaintiff is entitled to recover from Defendants, jointly and severally, \$50 for each workday that the violation occurred or continued to occur, up to \$5,000, together with costs and attorneys' fees pursuant to New York Labor Law. N.Y. Lab. Law §198(1-b).

## COUNT VI

### **[Violation of New York Labor Law—New York Pay Stub Requirement]**

124. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

125. At all times relevant to this action, Plaintiffs were employed by some or all of the Defendants within the meaning of NYLL §§ 2 and 651.

126. The NYLL and supporting regulations require employers to provide detailed paystub information to employees every payday. NYLL §195-1(d).

127. Defendants have failed to make a good faith effort to comply with the New York Labor Law with respect to compensation of each Plaintiff and did not provide the paystub on or after each Plaintiff' payday.

128. Due to Defendants' violations of New York Labor Law, Plaintiffs are entitled to recover from Defendants, jointly and severally, \$250 for each workday of the violation, up to \$5,000 for each Plaintiff together with costs and attorneys' fees pursuant to New York Labor Law N.Y. Lab. Law §198(1-d).

## COUNT VII

### **[Violation of New York Labor Law—Spread of Hours Pay]**

129. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

130. The NYLL requires employers to pay an extra hour's pay for every day that an employee works an interval in excess of ten hours pursuant to NYLL §§190, et seq., and §§650, et seq., and New York State Department of Labor regulations 12 NYCRR §146-1.6.

131. Defendants' failure to pay Plaintiffs spread-of-hours pay was not in good faith.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves, and the FLSA Collective Plaintiffs, respectfully requests that this Court enter a judgment providing the following relief:

- a) Authorizing Plaintiffs at the earliest possible time to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have up through the extent allowable under the statute of limitations and including the date of issuance of court-supervised notice, been employed by Defendants as non-exempt employees. Such notice shall inform them that the civil notice has been filed, of the nature of the action, of their right to join this lawsuit if they believe they were denied premium overtime wages;
- b) Certification of this case as a collective action pursuant to FLSA;
- c) Issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b), and appointing Plaintiff and his counsel to represent the Collective Action Members;

- d) A declaratory judgment that the practices complained of herein are unlawful under FLSA and NYLL;
- e) An injunction against Corporate Defendants, its officers, agents, successors, employees, representatives and any and all persons acting in concert with them as provided by law, from engaging in each of unlawful practices and policies set forth herein;
- f) An An award of unpaid wages and minimum wages due Plaintiffs and the Collective Action members under the FLSA and New York Labor Law, plus compensatory and liquidated damages in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after April 9, 2011 under NY Wage Theft Prevention Act, and interest;
- g) An award of unpaid overtime wages due under FLSA and New York Labor Law;
- h) An award of unpaid “spread of hours” premium due under the New York Labor Law;
- i) An award of damages for Defendants’ failure to provide wage notice at the time of hiring as required under the New York Labor Law.
- j) An award of liquidated and/or punitive damages as a result of Defendants’ knowing and willful failure to pay wages, minimum wages and overtime compensation pursuant to 29 U.S.C. §216;
- k) An award of liquidated and/ or punitive damages as a result of Defendants’ willful deduction of Plaintiffs’ tips, failure to pay wages, minimum wages, overtime compensation, and “spread of hours” premium pursuant to New York Labor Law;
- l) An award of costs and expenses of this action together with reasonable attorneys’ and expert fees pursuant to 29 U.S.C. §216(b) and NYLL §§198 and 663;
- m) The cost and disbursements of this action;

- n) An award of prejudgment and post-judgment fees;
- o) Providing that if any amounts remain unpaid upon the expiration of ninety days following the issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL §198(4); and
- p) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: Flushing, New York

May 4, 2018

Respectfully Submitted,

HANG & ASSOCIATES, PLLC

/s/ Ge Qu

Ge Qu, Esq.  
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*Attorneys for Plaintiffs*

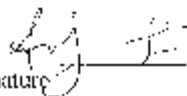
# EXHIBIT 1



**CONSENT TO SUE UNDER  
FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed by 1 Chingstic's Chinese Restaurant, Inc. d/b/a 1 Chopstick Chinese Restaurant, Kevin Lau, "JoJo" Doe and related entities and 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 Contingent Fee Retainer signed by the named plaintiff in this case.

Mark Kwok Lau  
Full Legal Name (Print)

  
Signature

3/22/2018  
Date

**CONSENT TO SUE UNDER  
FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed by I Chapsticks Chinese Restaurant, Inc  
d/b/a I Chapstick Chinese Restaurant, Kevin Lam, "JoJo" Doe and related entities and 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 Contingent Fee Retainer signed by the named plaintiff in this case.

Kevin Lam  
Full Legal Name (Print)

Kevin Lam  
Signature

4/3/2018  
Date

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.)

I. (a) PLAINTIFFS

Ngok Kwan Lui and Shihai Liao

(b) County of Residence of First Listed Plaintiff Queens (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) HANG & ASSOCIATES, PLLC 136-20 38th Ave., Suite 10G Flushing, NY 11354 (718)-353-8588

DEFENDANTS

New Jade Fountain Enterprises Corp. d/b/a I Chopstick Chinese restaurant, I Chopstick Chinese Restaurant, Inc., Kevin Lin a/k/a Kevin Lau, and "JoJo" Doe (legal name unknown)

County of Residence of First Listed Defendant Queens (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

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): FLSA 29 USC 216(b)

Brief description of cause: UNPAID WAGES FOR OVERTIME OF WORK

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 05/04/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Ge Qu

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Ge Qu, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  Yes  No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County?  Yes  No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  Yes  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: .

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?  Yes  No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: /s Ge Qu

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Suit Filed Against I Chopstick Chinese Restaurant](#)

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