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

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DEYBI MONZON BARRIOS, *individually  
and on behalf of others similarly situated,*

*Plaintiff,*

**COMPLAINT**

-against-

GUSTO THAI INC. (D/B/A TUM & YUM),  
TUM YUM PLUS INC. (D/B/A TUM &  
YUM), MUNG MEE THAI INC. (D/B/A  
PRIK THAI KITCHEN), JAKRAPOP  
PANURACH, PATCHANEE TAITONG,  
PHANNARAI CHANTANUKUL, and  
WACHARA NITTAYAROT,

**COLLECTIVE ACTION UNDER  
29 U.S.C. § 216(b)  
ECF Case**

*Defendants.*

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Plaintiff Deybi Monzon Barrios (“Plaintiff Monzon” or “Ms. Monzon”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., upon his knowledge and belief, and as against Gusto Thai Inc. (d/b/a Tum & Yum), Tum Yum Plus Inc. (d/b/a Tum & Yum), Mung Mee Thai Inc. (d/b/a Prik Thai Kitchen), (“Defendant Corporations”), Jakrapop Panurach, Patchanee Taitong, Phannarai Chantanukul, and Wachara Nittayarot, (“Individual Defendants”), (collectively, “Defendants”), alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Monzon is a former employee of Defendants Gusto Thai Inc. (d/b/a Tum & Yum), Tum Yum Plus Inc. (d/b/a Tum & Yum), Mung Mee Thai Inc. (d/b/a Prik Thai Kitchen), Jakrapop Panurach, Patchanee Taitong, Phannarai Chantanukul, and Wachara Nittayarot.

2. Defendants own, operate, or control two Thai restaurants, located at 917 Columbus Ave, New York, NY 10025 under the name “Tum & Yum” and at 47-16 30th Ave, Astoria, NY 11103 under the name “Prik Thai Kitchen”.

3. Upon information and belief, individual Defendants Jakrapop Panurach, Patchanee Taitong, Phannarai Chantanukul, and Wachara Nittayarot, serve or served as owners, managers, principals, or agents of Defendant Corporations and, through these corporate entities, operate or operated the restaurants as a joint or unified enterprise.

4. Plaintiff Monzon was an employee of Defendants.

5. Plaintiff Monzon was employed as a delivery worker at the restaurants located at 917 Columbus Ave, New York, NY 10025 and 47-16 30th Ave, Astoria, NY 11103.

6. Plaintiff Monzon was ostensibly employed as a delivery worker. However, he was required to spend a considerable part of his work day performing non-tipped duties, including but not limited to preparing appetizers, cutting vegetables and meat, cleaning the kitchen, the basement, the floor, bathrooms, and windows, stocking deliveries, taking out the trash, and buying supplies at the supermarket hereafter the (“non-tipped duties”).

7. At all times relevant to this Complaint, Plaintiff Monzon worked for Defendants in excess of 40 hours per week, without appropriate minimum wage, overtime, and spread of hours compensation for the hours that he worked.

8. Rather, Defendants failed to maintain accurate recordkeeping of the hours worked, failed to pay Plaintiff Monzon appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

9. Further, Defendants failed to pay Plaintiff Monzon the required “spread of hours” pay for any day in which he had to work over 10 hours a day.

10. Defendants employed and accounted for Plaintiff Monzon as a delivery worker in their payroll, but in actuality his duties required a significant amount of time spent performing non-tipped duties alleged above.

11. Regardless, at all relevant times, Defendants paid Plaintiff Monzon at a rate that was lower than the required tip-credit rate.

12. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Monzon’s non-tipped duties exceeded 20% of each workday, or 2 hours per day, whichever is less in each day. 12 N.Y. C.R.R. §146.

13. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Monzon’s actual duties in payroll records by designating them as a delivery worker instead of non-tipped employees. This allowed Defendants to avoid paying Plaintiff Monzon at the minimum wage rate and enabled them to pay them at the lower tip-credit rate (which they still failed to do).

14. In addition, Defendants maintained a policy and practice of unlawfully appropriating Plaintiff Monzon’s and other tipped employees’ tips and made unlawful deductions from Plaintiff Monzon’s and other tipped employees’ wages.

15. Defendants’ conduct extended beyond Plaintiff Monzon to all other similarly situated employees.

16. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Monzon and other employees to work in excess of forty (40) hours per week without providing the minimum wage and overtime compensation required by federal and state law and regulations.

17. Plaintiff Monzon now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”), and for violations of the N.Y. Labor Law §§ 190 *et seq.* and 650 *et seq.* (the “NYLL”), and the “spread of hours” and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. tit. 12, § 146-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees and costs.

18. Plaintiff Monzon seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiff Monzon’s state law claims under 28 U.S.C. § 1367(a).

20. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because all, or a substantial portion of, the events or omissions giving rise to the claims occurred in this district, Defendants maintain their corporate headquarters and offices within this district, and Defendants operate two Thai restaurants located in this district. Further, Plaintiff Monzon was employed by Defendants in this district.

**PARTIES**

*Plaintiff*

21. Plaintiff Deybi Monzon Barrios (“Plaintiff Monzon” or “Ms. Monzon”) is an adult individual residing in Queens County, New York.

22. Plaintiff Monzon was employed by Defendants at Prik Thai Kitchen and Tum & Yum from approximately March 2014 until on or about January 14, 2018.

23. Plaintiff Monzon consents to being a party plaintiff pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

*Defendants*

24. At all relevant times, Defendants own, operate, or control two Thai restaurants, located at 917 Columbus Ave, New York, NY 10025 under the name “Tum & Yum”, and at 47-16 30th Ave, Astoria, NY 11103 under the name “Prik Thai Kitchen”.

25. Upon information and belief, Gusto Thai Inc. (d/b/a Tum & Yum) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 917 Columbus Ave, New York, NY 10025.

26. Upon information and belief, Tum Yum Plus Inc. (d/b/a Tum & Yum) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 917 Columbus Ave, New York, NY 10025.

27. Upon information and belief, Mung Mee Thai Inc. (d/b/a Prik Thai Kitchen) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 47-16 30th Ave, Astoria, NY 11103.

28. Defendant Jakrapop Panurach is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Jakrapop Panurach is sued individually in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Jakrapop Panurach possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiff Monzon, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

29. Defendant Patchanee Taitong is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Patchanee Taitong is sued individually in her capacity as owner, officer and/or agent of Defendant Corporations. Defendant Patchanee Taitong possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. She determines the wages and compensation of the employees of Defendants, including Plaintiff Monzon, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

30. Defendant Phannarai Chantanukul is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Phannarai Chantanukul is sued individually in her capacity as owner, officer and/or agent of Defendant Corporations. Defendant Phannarai Chantanukul possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. She determines the wages and compensation of the employees of Defendants,

including Plaintiff Monzon, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

31. Defendant Wachara Nittayarot is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Wachara Nittayarot is sued individually in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Wachara Nittayarot possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiff Monzon, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

32. Defendants operate two Thai restaurants located in the Upper West Side section of Manhattan in New York City and the Astoria section of Queens in New York City.

33. Individual Defendants, Jakrapop Panurach, Patchanee Taitong, Phannarai Chantanukul, and Wachara Nittayarot, possess operational control over Defendant Corporations, possess ownership interests in Defendant Corporations, and control significant functions of Defendant Corporations.

34. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

35. Each Defendant possessed substantial control over Plaintiff Monzon's (and other similarly situated employees') working conditions, and over the policies and practices with respect

to the employment and compensation of Plaintiff Monzon, and all similarly situated individuals, referred to herein.

36. Defendants jointly employed Plaintiff Monzon (and all similarly situated employees) and are Plaintiff Monzon's (and all similarly situated employees') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

37. In the alternative, Defendants constitute a single employer of Plaintiff Monzon and/or similarly situated individuals.

38. Upon information and belief, Individual Defendants Jakrapop Panurach, Patchanee Taitong, Phannarai Chantanukul, and Wachara Nittayarot operate Defendant Corporations as either alter egos of themselves and/or fail to operate Defendant Corporations as entities legally separate and apart from themselves, by among other things:

- a) failing to adhere to the corporate formalities necessary to operate Defendant Corporations as Corporations,
- b) defectively forming or maintaining the corporate entities of Defendant Corporations, by, amongst other things, failing to hold annual meetings or maintaining appropriate corporate records,
- c) transferring assets and debts freely as between all Defendants,
- d) operating Defendant Corporations for their own benefit as the sole or majority shareholders,
- e) operating Defendant Corporations for their own benefit and maintaining control over these corporations as closed Corporations,
- f) intermingling assets and debts of their own with Defendant Corporations,



g) diminishing and/or transferring assets of Defendant Corporations to avoid full liability as necessary to protect their own interests, and

h) Other actions evincing a failure to adhere to the corporate form.

39. At all relevant times, Defendants were Plaintiff Monzon's employers within the meaning of the FLSA and New York Labor Law. Defendants had the power to hire and fire Plaintiff Monzon, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for Plaintiff Monzon's services.

40. In each year from 2014 to 2018, Defendants, both separately and jointly, had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

41. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. As an example, numerous items that were used in the restaurants on a daily basis are goods produced outside of the State of New York.

*Individual Plaintiff*

42. Plaintiff Monzon is a former employee of Defendants who was employed as a delivery worker. However, he spent over 20% of each shift performing the non-tipped duties described above. Plaintiff Monzon seeks to represent a class of similarly situated individuals under 29 U.S.C. 216(b).

*Plaintiff Deybi Monzon Barrios*

43. Plaintiff Monzon was employed by Defendants from approximately March 2014 until on or about January 14, 2018.

44. Defendants ostensibly employed Plaintiff Monzon as a delivery worker.

45. However, Plaintiff Monzon was also required to spend a significant portion of his work day performing the non-tipped duties described above.

46. Although Plaintiff Monzon ostensibly was employed as a delivery worker, he spent over 20% of each day performing non-tipped work throughout his employment with Defendants.

47. Plaintiff Monzon regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

48. Plaintiff Monzon's work duties required neither discretion nor independent judgment.

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

50. From approximately March 2014 until on or about June 8, 2014, Plaintiff Monzon worked as a delivery worker from approximately 11:30 a.m. until on or about 11:00 p.m., five days a week at Tum & Yum and from approximately 11:30 a.m. until on or about 11:00 p.m. to 11:30 p.m., one day a week at Prik Thai Kitchen (typically 69 to 69.5 hours per week).

51. From approximately June 9, 2014 until on or about March 29, 2015, Plaintiff Monzon worked at Prik Thai Kitchen from approximately 11:30 a.m. until on or about 10:45 p.m. to 11:30 p.m., six days a week and from approximately 2:00 p.m. until on or about 10:45 p.m. to 11:30 p.m., one day a week (typically 76.25 to 81.5 hours per week).

52. From approximately March 30, 2015 until on or about June 2017, Plaintiff Monzon worked at Prik Thai Kitchen from approximately 11:30 a.m. until on or about 10:45 p.m. to 11:30 p.m., six days a week (typically 67.5 to 72 hours per week).

53. From approximately June 2017 until on or about January 14, 2018, Plaintiff Monzon worked at Prik Thai Kitchen from approximately 11:15 a.m. until on or about 10:30 p.m., five days a week (typically 56.25 hours per week).

54. Throughout his entire employment, Defendants paid Plaintiff Monzon his wages in cash.

55. From approximately March 2014 until on or about June 8, 2014, Defendants paid Plaintiff Monzon a fixed salary of \$60 per day at Prik Thai Kitchen and \$90 per day at Tum & Yum.

56. From approximately June 9, 2014 until on or about March 29, 2015, Defendants paid Plaintiff Monzon a fixed salary of \$70 per day at Prik Thai Kitchen.

57. From approximately March 30, 2015 until on or about January 14, 2018, Defendants paid Plaintiff Monzon a fixed salary of \$100 per day.

58. Plaintiff Monzon's pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

59. For example, Defendants required Plaintiff Monzon to work an additional 30 to 45 minutes after his scheduled departure time every day, and did not pay him for the additional time he worked.

60. Defendants never granted Plaintiff Monzon any breaks or meal periods of any kind.

61. Plaintiff Monzon was never notified by Defendants that his tips were being included as an offset for wages.

62. Prior to March 2017, Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Monzon's wages.

63. Defendants withheld a portion of Plaintiff Monzon's tips; specifically, Defendants pocketed a percentage of his tips.

64. Plaintiff Monzon was not required to keep track of his time, nor to his knowledge, did the Defendants utilize any time tracking device such as punch cards, that accurately reflected his actual hours worked.

65. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Monzon regarding overtime and wages under the FLSA and NYLL.

66. Defendants did not provide Plaintiff Monzon an accurate statement of wages, as required by NYLL 195(3).

67. Defendants did not give any notice to Plaintiff Monzon, in English and in Spanish (Plaintiff Monzon's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

68. Defendants required Plaintiff Monzon to purchase "tools of the trade" with his own funds—including five electric bicycles, bike supplies, and maintenance.

*Defendants' General Employment Practices*

69. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Monzon (and all similarly situated employees) to work in excess of 40 hours a week without paying him appropriate minimum wage, spread of hours pay, and overtime compensation as required by federal and state laws.

70. Plaintiff Monzon was a victim of Defendants' common policy and practices which violate his rights under the FLSA and New York Labor Law by, *inter alia*, not paying him the wages he was owed for the hours he worked.

71. Defendants' pay practices resulted in Plaintiff Monzon not receiving payment for all his hours worked, and resulting in Plaintiff Monzon's effective rate of pay falling below the required minimum wage rate.

72. Defendants habitually required Plaintiff Monzon to work additional hours beyond his regular shifts but did not provide him with any additional compensation.

73. Defendants required all delivery workers, including Plaintiff Monzon, to perform general non-tipped tasks in addition to their primary duties as delivery workers.

74. Plaintiff Monzon and all similarly situated employees, ostensibly were employed as tipped employees by Defendants, although their actual duties included a significant amount of time spent performing non-tipped duties.

75. Plaintiff Monzon and all other tipped workers were not even paid at the required lower tip-credit rate by Defendants.

76. However, under state law, Defendants were not entitled to a tip credit because the tipped worker's and Plaintiff Monzon's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever is less) (12 N.Y.C.R.R. § 146).

77. New York State regulations provide that an employee cannot be classified as a tipped employee on any day in which he or she has been assigned to work in an occupation in which tips are not customarily received. (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

78. Plaintiff Monzon's duties were not incidental to his occupation as a tipped worker, but instead constituted entirely unrelated general restaurant work with duties, including the non-tipped duties described above.

79. In violation of federal and state law as codified above, Defendants classified Plaintiff Monzon and other tipped workers as tipped employees, and paid them at a rate that was lower than

the tip-credit rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

80. Defendants failed to inform Plaintiff Monzon who received tips that Defendants intended to take a deduction against Plaintiff Monzon's earned wages for tip income, as required by the NYLL before any deduction may be taken.

81. Defendants failed to inform Plaintiff Monzon who received tips, that his tips were being credited towards the payment of the minimum wage.

82. Prior to March 2017, Defendants failed to maintain a record of tips earned by Plaintiff Monzon for the tips he received from customers.

83. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly harmed Plaintiff Monzon who received tips, by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL. This policy and pattern or practice included depriving a delivery worker of a portion of the tips earned during the course of employment.

84. Defendants unlawfully misappropriated charges purported to be gratuities received by Plaintiff Monzon and other tipped employees, in violation of New York Labor Law § 196-d (2007).

85. Under the FLSA and NYLL, in order to be eligible for a "tip credit," employers of tipped employees must either allow employees to keep all the tips that they receive, or forgo the tip credit and pay them the full hourly minimum wage.

86. Defendants willfully disregarded and purposefully evaded record keeping requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets and payroll records.

87. Plaintiff Monzon was paid his wages in cash.

88. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

89. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Monzon (and similarly situated individuals) worked, and to avoid paying Plaintiff Monzon properly for his full hours worked.

90. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

91. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiff Monzon and other similarly situated former workers.

92. Defendants failed to provide Plaintiff Monzon and other employees with accurate wage statements at the time of their payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

93. Defendants failed to provide Plaintiff Monzon and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the 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 the employer’s main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

**FLSA COLLECTIVE ACTION CLAIMS**

94. Plaintiff Monzon brings his FLSA minimum wage, overtime compensation, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons (the “FLSA Class members”), i.e., persons who are or were employed by Defendants or any of them, on or after the date that is three years before the filing of the complaint in this case (the “FLSA Class Period”).

95. At all relevant times, Plaintiff Monzon and other members of the FLSA Class were similarly situated in that they had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans including willfully failing and refusing to pay them the required minimum wage, overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA, and willfully failing to keep records required by the FLSA.

96. The claims of Plaintiff Monzon stated herein are similar to those of the other employees.

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA**

97. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

98. At all times relevant to this action, Defendants were Plaintiff Monzon’s employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power



to hire and fire Plaintiff Monzon (and the FLSA Class Members), controlled the terms and conditions of their employment, and determined the rate and method of any compensation in exchange for their employment.

99. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

100. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

101. Defendants failed to pay Plaintiff Monzon (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

102. Defendants' failure to pay Plaintiff Monzon (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

103. Plaintiff Monzon (and the FLSA Class members) were damaged in an amount to be determined at trial.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA**

104. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

105. Defendants, in violation of 29 U.S.C. § 207(a)(1), failed to pay Plaintiff Monzon (and the FLSA Class members) overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

106. Defendants' failure to pay Plaintiff Monzon (and the FLSA Class members), overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

107. Plaintiff Monzon (and the FLSA Class members) were damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**

**VIOLATION OF THE NEW YORK MINIMUM WAGE ACT**

108. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

109. At all times relevant to this action, Defendants were Plaintiff Monzon's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Monzon, controlled the terms and conditions of his employment, and determined the rates and methods of any compensation in exchange for his employment.

110. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff Monzon less than the minimum wage.

111. Defendants' failure to pay Plaintiff Monzon the minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

112. Plaintiff Monzon was damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF THE OVERTIME PROVISIONS**

**OF THE NEW YORK STATE LABOR LAW**

113. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

114. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.*, and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Monzon overtime compensation

at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

115. Defendants' failure to pay Plaintiff Monzon overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

116. Plaintiff Monzon was damaged in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**

**VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**

**OF THE NEW YORK COMMISSIONER OF LABOR**

117. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

118. Defendants failed to pay Plaintiff Monzon one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Monzon's spread of hours exceeded ten hours in violation of NYLL §§ 650 *et seq.* and 12 N.Y.C.R.R. §§ 146-1.6.

119. Defendants' failure to pay Plaintiff Monzon an additional hour's pay for each day Plaintiff Monzon's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

120. Plaintiff Monzon was damaged in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**

**VIOLATION OF THE NOTICE AND RECORDKEEPING**

**REQUIREMENTS OF THE NEW YORK LABOR LAW**

121. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

122. Defendants failed to provide Plaintiff Monzon with a written notice, in English and in Spanish (Plaintiff Monzon's primary language), containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the 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 the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by NYLL §195(1).

123. Defendants are liable to Plaintiff Monzon in the amount of \$5,000, together with costs and attorneys' fees.

**SEVENTH CAUSE OF ACTION**

**VIOLATION OF THE WAGE STATEMENT PROVISIONS**

**OF THE NEW YORK LABOR LAW**

124. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

125. With each payment of wages, Defendants failed to provide Plaintiff Monzon with an accurate statement listing each of the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

126. Defendants are liable to Plaintiff Monzon in the amount of \$5,000, together with costs and attorneys' fees.

**EIGHTH CAUSE OF ACTION**

**RECOVERY OF EQUIPMENT COSTS**

127. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

128. Defendants required Plaintiff Monzon to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform his job, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

129. Plaintiff Monzon was damaged in an amount to be determined at trial.

**NINTH CAUSE OF ACTION**

**UNLAWFUL DEDUCTIONS FROM TIPS IN VIOLATION**

**OF THE NEW YORK LABOR LAW**

130. Plaintiff Monzon repeats and realleges all paragraphs above as though fully set forth herein.

131. At all relevant times, Defendants were Plaintiff Monzon's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651.

132. New York State Labor Law § 196-d prohibits any employer or his agents, including owners and managers, from demanding or accepting, directly or indirectly, any part of the gratuities received by an employee, or retaining any part of a gratuity, or any charge purported to be a gratuity, for an employee.

133. Defendants unlawfully misappropriated a portion of Plaintiff Monzon's tips that were received from customers.

134. Defendants knowingly and intentionally retained a portion of Plaintiff Monzon's tips in violations of the NYLL and supporting Department of Labor Regulations.

135. Plaintiff Monzon was damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Monzon respectfully requests that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members apprising them of the pendency of this action, and permitting them to promptly file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Monzon and the FLSA Class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Monzon and the FLSA Class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Monzon's and the FLSA Class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violations of the provisions of the FLSA were willful as to Plaintiff Monzon and the FLSA Class members;

(f) Awarding Plaintiff Monzon and the FLSA Class members damages for the amount of unpaid minimum wage, overtime compensation, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiff Monzon and the FLSA Class members liquidated damages in an amount equal to 100% of his damages for the amount of unpaid minimum wage and overtime compensation, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Monzon;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Monzon;

(j) Declaring that Defendants violated the spread-of-hours requirements of the NYLL and supporting regulations as to Plaintiff Monzon;

(k) Declaring that Defendants violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiff Monzon's compensation, hours, wages and any deductions or credits taken against wages;

(l) Awarding Plaintiff Monzon damages for the amount of unpaid minimum wage and overtime compensation, and for any improper deductions or credits taken against wages, as well as awarding spread of hours pay under the NYLL as applicable

(m) Awarding Plaintiff Monzon damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(n) Awarding Plaintiff Monzon liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, overtime compensation, and spread of hours

pay shown to be owed pursuant to NYLL § 663 as applicable; and liquidated damages pursuant to NYLL § 198(3);

(o) Awarding Plaintiff Monzon and the FLSA Class members pre-judgment and post-judgment interest as applicable;

(p) Awarding Plaintiff Monzon and the FLSA Class members the expenses incurred in this action, including costs and attorneys' fees;

(q) Providing that if any amounts remain unpaid upon the expiration of ninety days following 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

(r) All such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Monzon demands a trial by jury on all issues triable by a jury.

Dated: New York, New York  
February 20, 2018

MICHAEL FAILLACE & ASSOCIATES, P.C.

By:                     /s/ Michael Faillace                      
Michael Faillace [MF-8436]  
60 East 42nd Street, Suite 4510  
New York, New York 10165  
Telephone: (212) 317-1200  
Facsimile: (212) 317-1620  
*Attorneys for Plaintiff*



# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

January 26, 2018

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

**(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)**

Name / Nombre: Deybi Monzon Barrios

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: \_\_\_\_\_

Date / Fecha: 26 de enero de 2018

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) GUSTO THAI INC. (D/B/A TUM & YUM)
917 Columbus Ave
New York, NY 10025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace, MICHAEL FAILLACE & ASSOCIATES, P.C., 60 East 42nd Street, Suite 4510, New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TUM YUM PLUS INC. (D/B/A TUM & YUM)
917 Columbus Ave
New York, NY 10025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MUNG MEE THAI INC. (D/B/A PRIK THAI KITCHEN)
47-16 30th Ave
Astoria, NY 11103

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JAKRAPOP PANURACH
917 Columbus Ave
New York, NY 10025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PATCHANEE TAITONG
917 Columbus Ave
New York, NY 10025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PHANNARAI CHANTANUKUL
917 Columbus Ave
New York, NY 10025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

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Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

DEYBI MONZON BARRIOS, et al.

Plaintiff(s)

v.

GUSTO THAI INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WACHARA NITTAYAROT
47-16 30th Ave
Astoria, NY 11103

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael A. Faillace
MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 4510
New York, New York 10165

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

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Save As...

Reset

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NYC Thai Restaurants Hit with Ex-Delivery Worker's Unpaid Wage Case](#)

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