

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Yoke Wah Teow and Chi Ming Yau, individually and on
behalf all other employees similarly situated,

Plaintiffs,

- against -

66S Fusion, Inc., d/b/a Asian Fusion USA, James Yao,
Simon “Doe” (last name unknown), and “John” Xu (first
name unknown),

Defendants.

Case No.

COLLECTIVE ACTION
COMPLAINT

Plaintiffs Yoke Wah Teow and Chi Ming Yau (collectively “Plaintiff”) on their own behalf and on behalf of all others similarly situated, by and through their undersigned attorneys, Hang & Associates, PLLC, hereby file this complaint against the Defendants 66S Fusion, Inc., d/b/a Asian Fusion USA, James Yao, Simon “Doe” (last name unknown), and “John” Xu (first name unknown) (collectively “Defendants”), allege and show the Court the following:

INTRODUCTION

1. This is an action brought by Plaintiffs on their own behalf and on behalf of similarly situated employees, alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and the New York Labor Law (“NYLL”), 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 and NYLL by engaging in a pattern and practice of failing to pay their employees, including Plaintiffs, compensation for all hours worked, minimum

wage, and overtime compensation for all hours worked over forty (40) each workweek and “spread of hours” pay for each work day whose interval between beginning and end exceeds 10 hours.

3. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of federal and state labor laws by engaging in a pattern and practice of unlawfully retaining part or all of tips owed to Plaintiff Yau who worked as a delivery man in violation of Section 203(m) of the Fair Labor Standards Act and Sections 196-d and 650 et seq. of New York Labor Law.

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

5. Plaintiffs further allege pursuant to New York Labor Law § 650 et seq. and 12 New York Codes, Rules and Regulations §§ 146 (“NYCRR”) that they are entitled to recover from the Defendants: (1) unpaid wages and minimum wages, (2) unpaid overtime compensation, (3) unpaid “spread of hours” premium for each day they worked ten (10) or more hours, (4) compensation for failure to provide wage notice at the time of hiring and failure to provide paystubs in violation of the NYLL (5) liquidated damages equal to the sum of unpaid minimum wage, unpaid “spread of hours” premium, unpaid overtime pursuant to the NY Wage Theft Prevention Act; (6) prejudgment and post-judgment interest; and (7) attorney’s fees and costs.

JURISDICTION AND VENUE

6. 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 York Labor Law claims pursuant to 28 U.S.C. § 1367(a).

7. 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.

PLAINTIFF

8. Plaintiff Yoke Wah Teow is a resident of New York County and was employed as a kitchen helper by Defendants with its principal place of business at 130 Flushing Avenue, Brooklyn, NY 11205, from February 1, 2018 to June 11, 2018.

9. Plaintiff Chi Ming Yau is a resident of Queens County and was employed to as a delivery man by Defendants with its principal place of business at 130 Flushing Avenue, Brooklyn, NY 11205, from May 21, 2018 to July 30, 2018.

CORPORATE DEFENDANT

10. Upon information and belief, Corporate Defendant, 66S Fusion, Inc., d/b/a Asian Fusion USA, is a domestic business corporation organization and existing under the laws of the State of New York and maintains its principal place of business at 130 Flushing Avenue, Brooklyn, NY 11205.

11. Upon information and belief, at all times relevant hereto, 66S Fusion, Inc., d/b/a Asian Fusion USA, is a business or enterprise engaged in interstate commerce earning gross annual sales over Five Hundred Thousand Dollars (\$500,000).

12. Upon information and belief, at all relevant times hereto, 66S Fusion, Inc., d/b/a Asian Fusion USA has been and continues to be “employers” engaged in interstate “commerce” and/or in the production of “goods” for “commerce”, within the meaning of the Fair Labor Standards Act (“FLSA”), 29 U.S.C § 203.

13. 66S Fusion, Inc., d/b/a Asian Fusion USA constitutes an enterprise within the meaning of the FLSA, 29 U.S.C § 203(r).

14. 66S Fusion, Inc., d/b/a Asian Fusion USA has been Plaintiffs' employer within the meaning of the New York State Labor Law ("NYLL") § 2, 190, and 651.

INDIVIDUAL DEFENDANTS

15. Upon information and belief, Defendant James Yao is the owner, officer, director and/or managing agent of 66S Fusion, Inc., d/b/a Asian Fusion USA at 130 Flushing Avenue, Brooklyn, NY 11205 and participated in its day-to-day operations, acted intentionally and maliciously, 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 66S Fusion, Inc., d/b/a Asian Fusion USA.

16. Upon information and belief, Defendant James Yao owns the stock of 66S Fusion, Inc., d/b/a Asian Fusion USA and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

17. Upon information and belief, Defendant Simon "Doe" (last name unknown) is the owner, officer, director and/or managing agent of 66S Fusion, Inc., d/b/a Asian Fusion USA at 130 Flushing Avenue, Brooklyn, NY 11205 and participated in its day-to-day operations, acted intentionally and maliciously, 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 66S Fusion, Inc., d/b/a Asian Fusion USA.

18. Upon information and belief, Defendant Simon "Doe" (last name unknown) owns the stock of 66S Fusion, Inc., d/b/a Asian Fusion USA and manages and makes all business

decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

19. Upon information and belief, Defendant “John” Xu (first name unknown) is the owner, officer, director and/or managing agent of 66S Fusion, Inc., d/b/a Asian Fusion USA at 130 Flushing Avenue, Brooklyn, NY 11205 and participated in its day-to-day operations, acted intentionally and maliciously, 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 66S Fusion, Inc., d/b/a Asian Fusion USA.

20. Upon information and belief, Defendant “John” Xu (first name unknown) owns the stock of 66S Fusion, Inc., d/b/a Asian Fusion USA and manages and makes all business decisions including but not limited to the amount in salary the employee will receive and the number of hours employees will work.

21. At all times relevant herein, 66S Fusion, Inc., d/b/a Asian Fusion USA was, and continues to be, an “enterprise engaged in commerce” within the meaning of FLSA.

22. At all relevant times, the work performed by Plaintiffs was directly essential to the business operated by 66S Fusion, Inc., d/b/a Asian Fusion USA.

23. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiffs their lawfully earned minimum wages, overtime compensation and spread-of-hour premiums, and failed to provide him a wage notice at the time of hiring in violation of the NYLL.

24. Plaintiffs have fulfilled all conditions precedent to the institution of this action and/or conditions have been waived.

STATEMENT OF FACTS

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

26. Defendants knew that the nonpayment of minimum wage, overtime pay, spread of hours pay, unlawful retention of tips, and failure to provide the required wage notice at the time of hiring and failure to provide a correct wage statement with every payment of wages would financially injure Plaintiff and similarly situated employees and violate state and federal laws.

Plaintiff Yoke Wah Teow

27. From February 1, 2018 to June 11, 2018, Plaintiff Teow was hired by Defendants as a kitchen helper at Defendants' restaurant at 130 Flushing Avenue, Brooklyn, NY 11205.

28. From February 1, 2018 to June 11, 2018 Plaintiff worked six (6) days per week. Plaintiff's daily hours were from 10 a.m. to 10 p.m. Therefore, Plaintiff worked at least seventy-two (72) hours per week.

29. From February 1, 2018 until March 1, 2018, Plaintiff was paid a flat rate of \$700 per week. From March 2, 2018 until June 11, 2018, Plaintiff was paid a flat rate of \$800 per week.

30. Plaintiff was paid only by checks, no cash.

31. During the first month of employment, Plaintiff was not given any breaks or meal time while working for the Defendants. Thereafter, Plaintiff was given one (1) hour of break per day.

32. Defendants had a time keeping system for employers to punch-in/punch out. However, the system did not work properly, which indicated shorter hours that Plaintiff actually worked. Upon information and belief, Defendants required Plaintiff to sign these falsified records

in order to appear to be in compliance with the FLSA and NYLL, while willfully violating their obligations under the law.

33. Defendants did not compensate Plaintiff for minimum wage or overtime compensation according to state and federal laws.

34. Plaintiff was not compensated for New York's "spread of hours" premium for shifts that lasted longer than ten (10) hours, one day each week.

35. Defendants did not provide Plaintiff with a wage notices at the time of their hiring.

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

37. Defendants knew that the nonpayment of overtime and the "spread of hours" premium would economically injure Plaintiff and the Class Members by their violation of federal and state laws.

38. While employed by Defendants, Plaintiff was not exempt under federal and state laws requiring employers to pay employees overtime.

39. Plaintiff and the New York Class Members' workdays frequently lasted longer than 10 hours.

40. Defendants did not pay Plaintiff and other Class members' New York's "spread of hours" premium for every day in which they worked over 10 hours.

41. Defendants failed to keep full and accurate records of Plaintiff's hours and wages.

42. Defendants did not provide Plaintiff and other Class members with written notices about the terms and conditions of their employment upon hire in relation to their rate of pay, regular pay cycle and rate of overtime pay. These notices were similarly not provided upon Plaintiff and other Class members' pay increase(s).

43. Defendants committed the foregoing acts against the Plaintiff, the FLSA Collective Plaintiff, and the Class.

Plaintiff Chi Ming Yau

44. From May 21, 2018 to July 30, 2018, Plaintiff Yau was hired by Defendants as a delivery man at Defendants' restaurant at 130 Flushing Avenue, Brooklyn, NY 11205.

45. From May 21, 2018 to May 31, 2018 Plaintiff worked six (6) days per week. Plaintiff's daily hours were from 12 p.m. to 10 p.m. Therefore, Plaintiff worked at least sixty (60) hours per week.

46. From June 1, 2018 to July 30, 2018 Plaintiff worked six (6) days per week. Plaintiff's daily hours were from 11 a.m. to 9 p.m. Therefore, Plaintiff worked at least sixty (60) hours per week.

47. From May 21, 2018 until May 31, 2018, Plaintiff was paid at a tip credit rate of \$5.75 per hour. From June 1, 2018 until July 30, 2018, Plaintiff was paid a flat rate of \$130 per day.

48. Plaintiff was paid only by checks, no cash.

49. Upon information and belief, Defendants retained tips earned by Plaintiff.

50. By unlawfully retaining part or all of the tips earned by Plaintiff, Defendants prevented Plaintiff from retaining all of the tips he should have received in violation of NYLL §196-d.

51. Defendants had a time keeping system for employers to punch-in/punch out. However, the system did not work properly, which indicated shorter hours that Plaintiff actually worked. Upon information and belief, Defendants required Plaintiff to sign these falsified records

in order to appear to be in compliance with the FLSA and NYLL, while willfully violating their obligations under the law.

52. Defendants did not compensate Plaintiff for minimum wage or overtime compensation according to state and federal laws.

53. Defendants did not provide Plaintiff with a wage notices at the time of their hiring.

54. Defendants failed to give notice to Plaintiff of their intention to take tip credits in violation of Section 203(m) of the Fair Labor Standards Act and 12 NYCRR §142.

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

56. While employed by Defendants, Plaintiff was not exempt under federal and state laws requiring employers to pay employees overtime.

57. Defendants failed to keep full and accurate records of Plaintiff's hours and wages.

58. Defendants did not provide Plaintiff and other Class members with written notices about the terms and conditions of their employment upon hire in relation to their rate of pay, regular pay cycle and rate of overtime pay. These notices were similarly not provided upon Plaintiff and other Class members' pay increase(s).

59. Defendants committed the foregoing acts against the Plaintiff, the FLSA Collective Plaintiff, and the Class.

COLLECTIVE ACTION ALLEGATIONS

60. Defendants knowingly and willfully operated their business with a policy of not paying either the FLSA minimum wage or the New York State minimum wage to Plaintiffs or other similarly situated employees.

61. Defendants knowingly and willfully operated their business with a policy of not paying Plaintiffs and other similarly situated employees either the FLSA overtime rate (of time and one-half), or the New York State overtime rate (of time and one-half), in violation of the FLSA and New York Labor Law and the supporting federal and New York State Department of Labor Regulations.

62. Defendants knowingly and willfully operated their business with a policy of not paying the New York State “spread of hours” premium to Plaintiff Teow and other similarly situated employees.

63. Plaintiffs bring this this action individually and on behalf of all other and former non-exempt employees who have been or were employed by the Defendants at each of their three restaurant locations for up to the last three (3) years, through entry of judgment in this case (the “Collective Action Period”) and whom failed to receive minimum wages, spread-of-hours pay, overtime compensation for all hours worked in excess of forty (40) hours per week (the “Collective Action Members”), and have been subject to the same common decision, policy, and plan to not provide required wage notices at the time of hiring, in contravention to federal and state labor laws.

64. 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 fifteen (15) 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, Plaintiffs submit that this case should be certified as a collection action under the FLSA, 29 U.S.C. §216(b).

65. Plaintiffs 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. Plaintiffs have no interests that are contrary to or in conflict with those members of this collective action.

66. 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.

67. 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.

68. 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 Plaintiffs and other Collective Action Members are:

- a. Whether the Defendants employed Collective Action members within the meaning of the FLSA;

- b. Whether the Defendants failed to pay the Collective Action Members the minimum wage in violation of the FLSA and the regulations promulgated thereunder;
- c. Whether the Defendants failed to pay the Collective Action Members overtime wages for all hours worked above forty (40) each workweek in violation of the FLSA and the regulation promulgated thereunder;
- d. Whether the Defendants failed to pay the Collective Action Members spread of hours payment for each day an employee worked over 10 hours;
- e. Whether the Defendants failed to provide the Collective Action Members with a wage notice at the time of hiring as required by the NYLL;
- f. Whether the Defendants' violations of the FLSA are willful as that terms is used within the context of the FLSA; and,
- g. 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.

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

70. Plaintiff and others similarly situated have been substantially damaged by Defendants' unlawful conduct.

STATEMENT OF CLAIM

COUNT I

[Violations of the Fair Labor Standards Act—Minimum Wage Brought on behalf of the Plaintiff and the FLSA Collective]

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

72. 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” for “commerce,” within the meaning of the FLSA, 29 U.S.C. §§206(a) and §§207(a). Further, Plaintiffs are covered within the meaning of FLSA, U.S.C. §§206(a) and 207(a).

73. At all relevant times, Defendants employed “employees” including Plaintiffs, within the meaning of FLSA.

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

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

76. 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.

77. 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.

78. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by failing to compensate Plaintiffs and Collective Class 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 Plaintiff and Collective Action members.

COUNT II
[Violation of New York Labor Law—Minimum Wage]

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

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

81. 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.

82. Defendants knowingly and willfully violated Plaintiffs' and Class Members' 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
Brought on behalf of the Plaintiffs and the FLSA Collective]**

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

84. 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).

85. 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 USC §216(b).

86. Defendants' failure to pay Plaintiff and the FLSA Collective their overtime pay violated the FLSA.

87. 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).

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

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

90. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs and Collective Class 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]

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

92. 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.

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

94. Defendants' failure to pay Plaintiffs and the Rule 23 Class was not in good faith.

COUNT V
[Violation of New York Labor Law—Spread of Time Pay]

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

96. 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 §146-1.6.

97. Defendants' failure to pay Plaintiff Teow and Rule 23 Class spread-of-hours pay was not in good faith.

COUNT VI
[Violation of New York Labor Law—Time of Hire Wage Notice Requirement]

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

99. 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).

100. 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.

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

102. 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 VII
[Violation of New York Labor Law—New York Pay Stub Requirement]

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

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

105. 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 Plaintiff's payday.

106. 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 XI
[Violation of New York Labor Law - Gratuities Violations]

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

108. NYLL § 196-d bars an employer from retaining “any part of a gratuity or of any charge purported to be gratuity [.]”

109. New York Labor Law further prohibits an employer or his agent from demanding or accepting, “directly or indirectly, any part of the gratuities received by an employee, or retaining any part of a gratuity or of any charge purported to be a gratuity for an employee.” N.Y. Labor Law §196-d.

110. Defendants unlawfully retained and/or redistributed to portions of the tips earned by Plaintiff Yau, as such, Defendants did not allow him to retain all the tips he earned.

111. Defendants retained part of Plaintiff's gratuities for unauthorized purpose in violation of NYLL § 196-d.

112. Defendants' retention of Plaintiff's gratuities was willful.

113. Accordingly, Plaintiff Yau is entitled to recover from Defendants, jointly and severally, damages in the amount of unlawfully retained gratuities and an amount equal of their unlawfully retained gratuities in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including pre-and post-judgment interest, pursuant to NYLL § 198.

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 been employed by defendants as non-exempt tipped or non-tipped 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 proper hourly compensation and 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 Plaintiffs and their counsel to represent the Collective Action Members;
- d) A declaratory judgment that the practices complained of herein are unlawful under FLSA and New York Labor Law;
- e) An injunction against 66S Fusion, Inc., d/b/a Asian Fusion US, 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 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 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.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiffs, on behalf of themselves and the Collective Action Members and members of the Class, demand a trial by jury on all questions of fact raised by the complaint.

Dated: Flushing, New York
September 19, 2018

HANG & ASSOCIATES, PLLC

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EXHIBIT 1

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

I am an employee currently or formerly employed by 66S FUSION INC. and/or 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.

Tew York weh
Full Legal Name (Print)

Tew
Signature

08-01-2018
Date

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

I am an employee currently or formerly employed by 66S FUSION, INC., and/or 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.

Yan Chi-Ming
Full Legal Name (Print)

[Signature]
Signature of

8/01/2018
Date

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Asian Fusion USA Facing Former Employees' Lawsuit Over Allegedly Unpaid Wages](#)
