

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

DEBORAH GARCIA, on behalf of herself and others
similarly situated,

Plaintiffs,

- against -

BAYROCK/SAPIR ORGANIZATION LLC; SPRING &
VARICK ASSOCIATES LLC; BAYROCK SPRING
STREET, LLC; BAYROCK/SAPIR ORGANIZATION
REALTY LLC; BAYROCK/SAPIR ORGANIZATION
HOLDINGS LLC; TAMIR SAPIR; ALEX SAPIR;
DONALD J. TRUMP, JR.; IVANKA M. TRUMP;
DONALD J. TRUMP; NICK HAQUE; CORINNE
LAZARZ; and all other related entities,

Defendants.

Index No.:

**CLASS ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiff, by her attorneys, Leeds Brown Law, P.C., alleges upon knowledge to herself and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Labor Law § 190 et seq., Labor Law § 196-d, and 12 NYCRR § 146 et seq. (“Hospitality Wage Order”) to recover unlawfully retained gratuities owed to Plaintiff and other similarly situated persons who are presently or were formerly employed by BAYROCK/SAPIR ORGANIZATION LLC; SPRING & VARICK ASSOCIATES LLC; BAYROCK SPRING STREET, LLC; BAYROCK/SAPIR ORGANIZATION REALTY LLC; BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC; TAMIR SAPIR; ALEX SAPIR; DONALD J. TRUMP, JR.; IVANKA M. TRUMP; DONALD J. TRUMP; NICK HAQUE; CORINNE LAZARZ; and all other related entities (collectively referred to as “TRUMP SOHO” or the “Defendants”) at all of Defendants’ catering facilities in New York.

2. Upon information and belief, beginning in approximately February 2009 and continuing through the present, Defendants have engaged in a policy and practice of unlawfully retaining employees' gratuities at all of Defendants' catering facilities in New York.

3. Upon information and belief, beginning in approximately February 2009 and continuing through the present, Defendants have engaged in a policy and practice of charging its customers a mandatory charge of approximately 22% (the "Service Charge") for functions and parties related to Defendants' catered events.

4. From February 2009 through the present, other documents including menus, contracts, invoices and other catering related documents contained the Service Charge without validly disclaiming that the Service Charge is not a gratuity for the staff.

5. A reasonable customer would believe that the Service Charge was in fact a gratuity for Plaintiff and similarly situated employees.

6. Defendants have engaged in a policy and practice of failing to pay the Service Charge to Plaintiff and similarly situated employees and instead retained the money for their own benefit in violation of Labor Law Article 6 § 196-d.

7. Plaintiff has initiated this action seeking for herself and on behalf of all similarly situated employees, for compensation, including gratuities, that they were deprived of – plus interest, attorneys' fees, and costs.

THE PARTIES

8. Plaintiff DEBORAH GARCIA is an individual who resides in the County of Suffolk, New York, and who worked for Defendants in food and service capacities in 2013.

9. Upon information and belief, Defendant BAYROCK/SAPIR ORGANIZATION LLC is a foreign limited liability company corporation organized and existing under the laws of

the State of Delaware, with its principal place of business located at 160 Varick Street, 2nd Floor, New York, New York 11013 and is engaged in the hospitality industry as that term is used and defined in 12 NYCRR § 146.

10. Upon information and belief, Defendant SPRING & VARICK ASSOCIATES LLC is a domestic limited liability company corporation organized and existing under the laws of the State of New York, with its principal place of business located at 160 Varick Street, 2nd Floor, New York, New York 11013 and is engaged in the hospitality industry as that term is used and defined in 12 NYCRR § 146.

11. Upon information and belief, Defendant BAYROCK SPRING STREET, LLC is a foreign limited liability company corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 160 Varick Street, 2nd Floor, New York, New York 11013 and is engaged in the hospitality industry as that term is used and defined in 12 NYCRR § 146.

12. Upon information and belief, Defendant BAYROCK/SAPIR ORGANIZATION REATY LLC is a foreign limited liability company corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 160 Varick Street, 2nd Floor, New York, New York 11013 and is engaged in the hospitality industry as that term is used and defined in 12 NYCRR § 146.

13. Upon information and belief, Defendant BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC is a foreign limited liability company corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 160 Varick Street, 2nd Floor, New York, New York 11013 and is engaged in the hospitality industry as that term is used and defined in 12 NYCRR § 146.

14. Upon information and belief, Defendant TAMIR SAPIR is a resident of New York,

with his principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

15. Upon information and belief, Defendant ALEX SAPIR is a resident of New York, with his principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

16. Upon information and belief, Defendant DONALD J. TRUMP, JR. is a resident of New York, with his principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

17. Upon information and belief, Defendant IVANKA M. TRUMP is a resident of New York, with her principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

18. Upon information and belief, Defendant DONALD J. TRUMP is a resident of New York, with his principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

19. Upon information and belief, Defendant NICK HAQUE is a resident of New York, with his principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

20. Upon information and belief, Defendant CORINNE LAZARZ is a resident of New York, with her principal place of business at 246 Spring Street, New York, New York 10013 and is, and at all relevant times was, an officer, and/or owner of TRUMP SOHO.

21. Defendants T. SAPIR, A. SAPIR, D. TRUMP, JR., I. TRUMP, D. TRUMP, HAQUE, and LAZARZ are collectively referred to herein as the "Individual Defendants."

22. BAYROCK/SAPIR ORGANIZATION LLC; SPRING & VARICK ASSOCIATES LLC; TAMIR SAPIR; ALEX SAPIR; DONALD J. TRUMP, JR.; IVANKA M.

TRUMP; DONALD J. TRUMP; NICK HAQUE; CORINNE LAZARZ; and all other related entities jointly employed Plaintiff and similarly situated employees at all relevant times. Each Defendant has had substantial control over Plaintiff's working conditions and over the unlawful policies and practices alleged herein.

23. Defendants are part of a single, integrated enterprise that jointly employed Plaintiff and similarly situated employees at all relevant times.

24. Defendants' operations are interrelated and unified.

25. Upon information and belief, during all relevant times, BAYROCK/SAPIR ORGANIZATION LLC, SPRING & VARICK ASSOCIATES LLC, BAYROCK SPRING STREET, LLC, BAYROCK/SAPIR ORGANIZATION REALTY LLC and BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC shared common management, were centrally controlled, and/or were owned by the same entity/entities and/or individual(s).

26. Upon information and belief, at all relevant times, BAYROCK/SAPIR ORGANIZATION LLC, SPRING & VARICK ASSOCIATES LLC, BAYROCK SPRING STREET, LLC, BAYROCK/SAPIR ORGANIZATION REALTY LLC and BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC shared common management, were centrally controlled, and/or were owned by Defendants.

27. Upon information and belief, at all relevant times, Defendants had control over, and the power to change compensation and other business practices at BAYROCK/SAPIR ORGANIZATION LLC, SPRING & VARICK ASSOCIATES LLC, BAYROCK SPRING STREET, LLC, BAYROCK/SAPIR ORGANIZATION REALTY LLC and BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC.

28. Upon information and belief, at all relevant times, Defendants had the power to determine employee policies at BAYROCK/SAPIR ORGANIZATION LLC, SPRING &

VARICK ASSOCIATES LLC, BAYROCK SPRING STREET, LLC, BAYROCK/SAPIR ORGANIZATION REALTY LLC and BAYROCK/SAPIR ORGANIZATION HOLDINGS LLC, including, but not limited to, policies governing compensation of employees.

CLASS ALLEGATIONS

29. This action is properly maintainable as a Class Action under Article 9 of the New York Civil Practice Law and Rules.

30. This action is brought on behalf of Plaintiff and a class consisting of similarly situated employees who performed work for Defendants as service employees, including such workers as wait staff, waiters, servers, captains, bussers, bartenders, food runners, maitre d's, and in various other related customarily-tipped trades.

31. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 40 employees. In addition, the names of all potential members of the putative class are not known.

32. The questions of law and fact common to the putative class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to:

- 1) whether Defendants assessed charges to its customers in the nature of gratuities, as those terms are defined under the Labor Law and the cases and regulations interpreting same;
- 2) whether Defendants' patrons made payments to Defendants or which were received or retained by Defendants which reasonable patrons would assume to have been in the nature of gratuities; and
- 3) whether Defendants improperly retained gratuities in violation of Labor

Law § 196-d and cases interpreting same.

33. The claims of Plaintiff are typical of the claims of the putative class. Plaintiff and putative class were all subject to Defendants' policies and willful practices of improperly retaining gratuities in violation of Labor Law § 196-d.

34. Plaintiff and her counsel will fairly and adequately protect the interests of the putative class.

35. Plaintiff has retained counsel experienced in complex wage and hour class action litigation.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The individual Plaintiff and putative class lack the financial resources to adequately prosecute separate lawsuits against Defendants.

37. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendants' policies.

FACTS

38. Beginning in or about February 2009, Defendants employed, in furtherance of its catering business, numerous individuals including Plaintiff and putative class members, in trades including wait staff, waiters, servers, captains, bussers, bartenders, food runners, maitre d's, and in other related customarily-tipped trades ("service workers").

39. Beginning in or about February 2009 and continuing through the present, Defendants contracted with customers to cater events such as parties, birthdays, gatherings, holidays, celebrations, weddings, anniversaries, and other parties or occasions ("catered events").

40. For these catered events, Defendants utilized standard forms, including contracts, bills, invoices, and menus.

41. For each catered event, Defendants employed a staff of numerous service workers to perform food and service related tasks.

42. Many of these service workers would perform services under the same contracts at the same parties.

43. Defendants included a service charge in the amount of approximately 22% on the contract for catered events.

44. Defendants provided customers with other documents – such as menus, bills, and invoices – that conveyed a “service charge.”

45. Defendants failed to validly disclaim that the Service Charge was not a gratuity for the staff.

46. Defendants utilized the same standard forms for numerous events that contained a mandatory Service Charge on it – without a valid disclaimer.

47. Upon information and belief, reasonable patrons would have understood the Service Charge to be in the nature of a gratuity.

48. Upon information and belief, Defendants’ sales staff and/or event staff represented or allowed Defendants’ patrons to believe that the Service Charge was a gratuity.

49. Plaintiff, and, upon information and belief, other members of the putative class, were not paid the Service Charge.

50. Plaintiff, and, upon information and belief, other members of the putative class, were paid an hourly wage.

51. While employed by Defendants, Plaintiff Garcia was paid \$15.00 per hour, in check, as her only compensation.

52. Plaintiff Garcia did not receive any portion of the Service Charge.

53. Upon information and belief, Defendants retained the Service Charge for

themselves.

54. Upon information and belief, Defendants willfully disregarded and purposefully evaded recordkeeping requirements of applicable New York State law by failing to maintain proper and complete records of service charges in the nature of gratuities, as required under 12 NYCRR § 146-2.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
UNLAWFUL WITHOLDING OF GRATUITIES**

55. Pursuant to Labor Law Article 6 § 196-d, and the supporting New York State Department of Labor Regulations, “No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee.”

56. Pursuant to 12 NYCRR 146-2.18(b), “There shall be a rebuttable presumption that any charge in addition to charges for food, beverage, lodging, and other specified materials or services, including but not limited to any charge for ‘service’ or ‘food service,’ is a charge purported to be a gratuity.”

57. Pursuant to 12 NYCRR 146-2.19(b), “The employer has the burden of demonstrating, by clear and convincing evidence, that the notification [via a disclaimer] was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity.”

58. BAYROCK/SAPIR ORGANIZATION LLC and SPRING & VARICK ASSOCIATES LLC, and the Individual Defendants are employers, within the meaning contemplated, pursuant to Labor Law Article 6 § 190(3) and the supporting New York State Department of Labor Regulations.

59. Defendants exercised control over Plaintiff as she performed her job duties for Defendants' catered events.

60. Upon information and belief, the Individual Defendants all exercised dominion and control over the employees that performed work for TRUMP SOHO, including employees that worked catered events.

61. Upon information and belief, the Individual Defendants had (1) the power to hire and fire employees of TRUMP SOHO, (2) had the power to set schedules of hours worked by employees of TRUMP SOHO, (3) had the authorize to set the wages for payment to employees of TRUMP SOHO, and (4) had the power to exercise control over the tasks and job duties performed by employees at TRUMP SOHO.

62. Plaintiff and other members of the putative class are employees, within the meaning contemplated, pursuant to Labor Law Article 6 § 190(2) and the supporting New York State Department of Labor Regulations.

63. Upon information and belief, Plaintiff and all members of the putative class constituted "employees" as that term is defined under Labor Law § 190 et seq. and case law interpreting the same.

64. Gratuities provided by Defendants' patrons to service employees constitute "wages" as that term is defined under Article 6 of the Labor Law, specifically including but not limited to Labor Law §§ 193, 196-d, and 198(3).

65. Defendants unlawfully withheld and retained portions of gratuities provided to service employees.

66. Defendants unlawfully withheld and retained Service Charges.

67. Defendants therefore violated Labor Law Article 6 § 196-d and the supporting New York State Department of Labor Regulations by withholding and retaining portions of gratuities

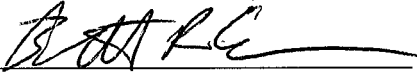
and Service Charges earned by service employees.

68. By the foregoing reasons, Defendants have violated Labor Law Article 6 § 190 et seq. and the supporting New York State Department of Labor Regulations, and are liable to Plaintiff and other members of the putative class action in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated who were employed by Defendants, demands judgment:

- (1) on the first cause of action against Defendants, in an amount to be determined at trial, plus interest, attorneys' fees, and costs, pursuant to the cited Labor Law sections;
- (2) together with such other and further relief the Court may deem appropriate.

Dated: Carle Place, New York
February 11, 2015


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