

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FILED
IN CLERK'S OFFICE

2005 MAY 20 A 11:00

MARK JOHNSON,
on behalf of himself and all others
similarly situated,

Plaintiffs,

v.

MORTON'S RESTAURANT GROUP, INC.,

Defendant.

05 11058 MLW

JURY DEMANDED

RECEIPT # 64446
AMOUNT \$ 250.04
SUMMONS ISSUED 1
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. M.P.
DATE 5/20/05

COMPLAINT

I. INTRODUCTION

MAGISTRATE JUDGE MJB

1. This is an action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., by Mark Johnson on behalf of himself and other current and former waitstaff employees at Morton's of Chicago restaurants throughout the United States, which are owned and operated by Defendant Morton's Restaurant Group, Inc. ("Morton's"), an upscale steakhouse chain. As set forth below, Morton's has had a longstanding national policy throughout its restaurants under which its waitstaff employees have not been permitted to retain all of their tips and yet have received less than the permissible standard minimum wage, as the defendant has improperly taken a "tip credit" against the minimum wage for these employees. On behalf of himself and all others similarly situated who may choose to opt-in to this action, plaintiff Mark Johnson now seeks restitution for the tips they have not been permitted to retain, as well as the portion of the minimum wage that they did not receive in base pay, liquidated damages,

attorneys' fees and costs, and any other damages to which they may be entitled under law.

II. PARTIES

2. Plaintiff Mark Johnson is an adult resident of Cambridge, Massachusetts. Mr. Johnson worked as a waiter at Morton's of Chicago in Boston, Massachusetts, from May 1998 until July 2002.

3. Mr. Johnson brings this action on his own behalf and on behalf of all others similarly situated, who may choose to opt-in to this case. This opt-in class may exclude waiters who have participated in similar actions that have resolved or are currently pending.

4. Defendant Morton's Restaurant Group, Inc., is a Delaware corporation that operates more than 60 Morton's of Chicago restaurants throughout the United States.

III. JURISDICTIONAL STATEMENT

5. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331. This case arises under the laws of the United States of America.

IV. STATEMENT OF FACTS

6. In its restaurants throughout the United States (with a few limited exceptions), Morton's waitstaff have received a base pay which is less than the standard federal minimum wage, currently \$5.15 per hour. Morton's waitstaff are generally paid the "service minimum wage" applicable in each state. For states that do not have their own service minimum wage, Morton's waitstaff are paid the federal service minimum wage, which is currently \$2.13 per hour. In some states, the state minimum wage rate which the waitstaff receive is somewhat higher, but still less than the standard federal

minimum wage. For example, in Massachusetts, Morton's waitstaff, including Mr. Johnson, received the state service minimum wage, which is currently \$2.63 per hour.

7. Morton's employees have not been permitted to retain all of their tips.

8. Instead, under a formula devised by management, tipped employees are required to "tip out" various other employees from the tips they receive from customers, including a percentage of their tips to management.

9. In each Morton's restaurant, there is a set percentage of tips that waitstaff employees are expected to pay to their managers. These managers are not traditionally tipped employees. The managers whom waitstaff are expected to tip out include General Managers, as well as other managers. The managers whom waitstaff are expected to tip out include those who have power to hire and fire and who would be classified as "employers" under the FLSA.

10. Morton's does not explain to its waitstaff employees that it intends to take a "tip credit" against the minimum wage, that it intends to treat tips as satisfying part of their minimum wage obligation, nor does it explain anything to its waitstaff about a "tip credit" or what a "tip credit" is.

11. Morton's has been subjected to a number of investigations and legal actions regarding its tip policy in certain parts of the country, which should have placed it on notice of its legal violation, but Morton's has nevertheless maintained this policy as a general policy throughout the country.

12. Morton's violation of the minimum wage and "tip credit" requirements of the FLSA in requiring or expecting its waitstaff employees to tip out managers and other non-traditionally tipped employees, has been knowing and willful.

COUNT I

FAIR LABOR STANDARDS ACT, 29 U.S.C. §§ 201 et seq.

Defendant's conduct, as set forth above, in failing to pay its waitstaff employees the full federal minimum wage, in failing to allow these employees to retain all of their tips, and in failing to provide the legally required notice regarding its intention to take a "tip credit," violates the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. As set forth above, Defendant has improperly taken a "tip credit" against the minimum wage in violation of 29 U.S.C. § 203(m).

JURY DEMAND

Plaintiffs request a trial by jury on their claims.

WHEREFORE, Plaintiffs request that this Court enter the following relief:

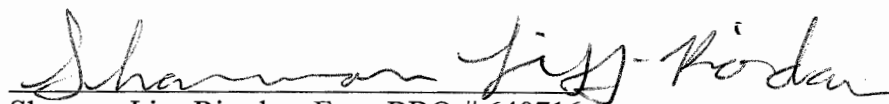
1. Opportunity to notify other similarly situated employees of their right to opt-in to this action;
2. Restitution for tips that Morton's waitstaff employees have not been permitted to retain;
3. Restitution for the portion of the minimum wage that Morton's waitstaff employees have not received in base pay;
4. Liquidated damages;
5. Attorneys' fees and costs; and

6. Any other relief to which Plaintiffs may be entitled.

Respectfully submitted,

MARK JOHNSON, on behalf of himself and all
others similarly situated,

By his attorney,

A handwritten signature in cursive script, reading "Shannon Liss-Riordan", written in black ink.

Shannon Liss-Riordan, Esq., BBO # 640716

PYLE, ROME, LICHTEN, EHRENBURG

& LISS-RIORDAN, P.C.

18 Tremont Street, 5th Floor

Boston, MA 02108

(617) 367-7200

Dated: May 20, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Mark Johnson, et al v. Morton's Restaurant Group, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 375, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

05 11058 MLW

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Shannon Liss-Riordan, Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan

ADDRESS 18 Tremont Street, Ste. 500, Boston, MA 02108

TELEPHONE NO. 617-367-7200

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Mark Johnson on behalf of himself and all others similarly situated

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Shannon Liss-Riordan
Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan
18 Tremont Street, Ste 500, Boston, MA 02108
617-367-7200

DEFENDANTS

Morton's Restaurant Group, Inc.

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

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

Attorneys (If Known)

Elise M. Bloom & Diane Windholz
Jackson, Lewis LLP
59 Maiden Lane, New York, NY 10038-4502
212-545-4000

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

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

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

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> Judgment/Act <input type="checkbox"/> 152 Recovery of Defrauded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Decision Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 U.S.C. Secs. 201 et seq. FLSA Tip Credit Violation

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE 5/20/05 SIGNATURE OF ATTORNEY OF RECORD Shannon Liss-Riordan

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____