UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN GUTTINGER, individually and on behalf of all others similarly situated, *Plaintiff,* v. SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S 58, JAKE'S 58 CASINO & HOTEL, and JAKE'S 58 HOTEL & CASINO, *Defendant.*	COLLECTIVE ACTION COMPLAINT Civil Docket No. 2:26-cv-06860 JURY TRIAL DEMANDED

COLLECTIVE ACTION COMPLAINT WITH JURY DEMAND

Plaintiff KEVIN GUTTINGER ("Plaintiff"), individually and on behalf of all others similarly situated, by and through his undersigned counsel, brings this Collective Action Complaint against Defendant SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S 58, JAKE'S 58 HOTEL & CASINO, and JAKE'S 58 CASINO & HOTEL ("Defendant" or "Jake's 58"), and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), to recover tips unlawfully kept by Defendant by permitting managers or supervisors to receive portions of employee tips through a mandatory tip pool, and to redress Defendant's retaliation against Plaintiff for complaining about Defendant's unlawful tip-pool practices, together with liquidated damages, reasonable attorneys' fees and costs, and all other relief available under the FLSA.

2. Plaintiff brings his federal tip-retention claim individually and on behalf of similarly situated hourly-paid tipped employees employed by Defendant at its Islandia, New York facility.

3. Plaintiff also brings an individual retaliation claim under 29 U.S.C. §§ 215(a)(3) and 216(b) based on Defendant's termination of Plaintiff after he complained about Defendant's tip-pool practices, including the participation of managers and supervisors in the tip pool.

4. Defendant requires hourly-paid tipped employees to participate in a mandatory tip pool.

5. Defendant collects, controls, pools, calculates, and distributes tips received by hourly-paid tipped employees through its payroll practices.

6. Defendant includes managers and/or supervisors in the mandatory tip pool.

7. Defendant requires hourly-paid tipped employees to share tips with managers and/or supervisors who are prohibited from keeping any portion of employees' tips under the FLSA.

8. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) on behalf of himself and the following FLSA Collective:

> *All hourly-paid tipped employees employed by Suffolk Regional Off-Track Betting Corporation d/b/a Jake's 58 at its Islandia, New York facility who were required to participate in Defendant's mandatory tip pool during any workweek in which managers or supervisors participated in that tip pool, at any time during the three years preceding the commencement of this action through the date of judgment.*

9. Plaintiff, on behalf of himself and all other similarly situated employees who opt into this action, seeks all tips unlawfully kept by Defendant, liquidated damages, reasonable attorneys' fees and costs, and all other relief available under the FLSA. Plaintiff also seeks all legal and equitable relief available for Defendant's retaliation, including lost wages and employment

benefits, an additional equal amount as liquidated damages, and all other appropriate relief individually.

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because those claims arise under federal law.

11. This Court has personal jurisdiction over Defendant because Defendant is organized under New York law, operates in New York, employs workers in New York, and committed the FLSA violations alleged herein in New York.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), (b)(2), and (c)(2) because Defendant resides in this District for venue purposes and a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in this District.

13. Plaintiff worked for Defendant at Jake's 58 in Islandia, New York.

14. Defendant operates Jake's 58 at 3635 Express Drive North, Islandia, New York 11749.

15. Islandia, New York is located in Suffolk County, within the Eastern District of New York.

PARTIES

Defendant

16. Defendant Suffolk Regional Off-Track Betting Corporation is a New York public benefit corporation organized under New York law.

17. Defendant does business as Jake's 58, Jake's 58 Hotel & Casino, and Jake's 58 Casino & Hotel.

18. Defendant owns, operates, controls, and/or manages Jake's 58, located at 3635 Express Drive North, Islandia, New York 11749.

19. Jake's 58 is a casino hotel that operates gaming, hotel, dining, customer-service, and related business operations in Islandia, New York.

20. Defendant employs hourly-paid employees at Jake's 58.

21. Defendant employs hourly-paid tipped employees at Jake's 58.

22. Defendant employed Plaintiff during the relevant period.

23. At all relevant times, Defendant has been Plaintiff's employer and the employer of members of the FLSA Collective within the meaning of the FLSA.

24. At all relevant times, Defendant has had the power to hire and fire employees, set employee schedules, control employee work, determine employee pay practices, maintain payroll records, and administer the tip-pool practices challenged in this action.

Plaintiff

25. Plaintiff Kevin Guttinger is a former employee of Defendant.

26. Plaintiff worked for Defendant at Jake's 58 in Islandia, New York.

27. Plaintiff worked on the casino side of Jake's 58.

28. Plaintiff worked as a Cage Cashier.

29. Plaintiff's duties included customer-facing cashier work involving vouchers, tickets, money, and related casino transactions.

30. Defendant employed Plaintiff from approximately March 2022 through approximately November 1, 2024.

31. Defendant paid Plaintiff on an hourly basis.

32. Plaintiff's hourly rate was approximately $18.00 per hour during at least part of his employment.

33. Plaintiff also received tips and tip-pool payments.

34. At the time his employment ended, Defendant had not paid Plaintiff all tips to which he was entitled under the FLSA as a result of Defendant's challenged tip-pool practices.

FACTUAL ALLEGATIONS

Defendant's Operations and Workforce

35. Defendant operates a casino-hotel business known as Jake's 58.

36. Jake's 58 includes casino operations, hotel operations, customer-facing gaming operations, dining, promotions, loyalty-program services, and related services.

37. Defendant employs more than one hundred (100) employees.

38. Defendant employs hourly-paid tipped employees, including employees who interact with customers in connection with casino operations.

39. Defendant maintains payroll, scheduling, timekeeping, and employment records for hourly-paid tipped employees at Jake's 58.

40. Defendant maintains and/or administers pay practices applicable to hourly-paid tipped employees at Jake's 58, including the tip-pool practices challenged in this action.

41. Defendant is an enterprise engaged in commerce within the meaning of the FLSA.

42. Defendant has employees engaged in commerce or handling goods, materials, supplies, money, vouchers, payment systems, communications systems, and other instrumentalities or items that moved in or are used in interstate commerce.

43. Defendant's annual gross volume of sales made or business done is not less than $500,000.

Hourly-Paid Tipped Employees

44. Hourly-paid tipped employees at Jake's 58 receive tips and gratuities from customers.

45. Hourly-paid tipped employees include, among others, cage cashiers and floor attendants.

46. Cage cashiers perform customer-facing cashier work involving vouchers, tickets, money, and related casino transactions.

47. Floor attendants perform customer-facing work involving customers' tickets, vouchers, and related casino transactions.

48. Customers leave cash tips and gratuities for hourly-paid tipped employees.

49. Tips, gratuities, and tip-pool payments are a substantial part of compensation for hourly-paid tipped employees.

Defendant's Mandatory Tip-Pool Practice

50. Defendant requires hourly-paid tipped employees to participate in a mandatory tip pool.

51. Defendant requires hourly-paid tipped employees to turn over customer tips for inclusion in the tip pool.

52. Hourly-paid tipped employees are required to turn over all or substantially all customer cash tips collected during their shifts.

53. At the end of shifts, hourly-paid tipped employees turn over tip cups and/or customer tips to supervisors.

54. Supervisors collect the tips, place them into bags, boxes, lock boxes, or similar containers, and control the tips before they are counted and redistributed.

55. Supervisors count or participate in counting customer tips, or cause customer tips to be counted, after hourly-paid tipped employees turn over the tips.

56. Supervisors send or cause the cash to be sent to Defendant's bank, banking department, or another department responsible for handling tip-pool cash.

57. Supervisors prepare, send, or cause tip-count slips, records, or related information to be sent to accounting, payroll, finance, or another department responsible for tip-pool calculations.

58. Defendant calculates tip-pool distributions on a weekly basis.

59. The weekly tip-pool period generally runs from Monday through Sunday.

60. Defendant calculates a weekly tip rate by comparing the total tip pool to the total hours credited for participants in the pool.

61. Defendant pays each tip-pool participant a tip-pool amount based on the weekly tip rate multiplied by the participant's hours for the week.

62. Defendant distributes tip-pool payments through regular payroll.

63. Tip-pool payments appear on employee pay statements as tips, tip-pool payments, or similar payroll entries.

64. The tip pool is large and recurring.

65. In many weeks, the tip pool exceeds $50,000.

66. The tip pool affects more than 50 employees.

Supervisor Participation in the Tip Pool

67. Defendant includes managers, supervisors, and/or other employees with managerial authority in the tip pool.

68. Tip-pool participants include cage supervisors.

69. Tip-pool participants include floor supervisors and/or supervisors of floor attendants.

70. Supervisors who receive tip-pool distributions have authority over hourly-paid tipped employees.

71. Cage supervisors and floor supervisors who received tip-pool distributions directed the work of hourly-paid tipped employees in their respective departments and possessed authority or input concerning hiring, firing, and discipline.

72. Supervisors who receive tip-pool distributions are part of Defendant's management structure.

73. Supervisors who receive tip-pool distributions do not contribute customer tips to the pool in the same manner as hourly-paid tipped employees.

74. Supervisors who receive tip-pool distributions do not customarily and regularly receive customer tips in the same manner as cage cashiers, floor attendants, and other hourly-paid tipped employees.

75. Supervisors who receive tip-pool distributions control, handle, count, report, and/or cause the counting or reporting of customer tips that are later distributed through the tip pool.

76. Defendant thereby permits employees with managerial authority to keep portions of tips received by hourly-paid tipped employees.

77. Defendant added supervisors to the tip pool in or around January 2022.

78. Defendant added supervisors to the tip pool instead of providing increased supervisor compensation directly from Defendant's own funds.

79. Defendant's practice shifts part of the cost of supervisor compensation from Defendant to hourly-paid tipped employees' gratuities.

80. As a result, hourly-paid tipped employees receive less in tips than they would have received if Defendant excluded managers, supervisors, and other ineligible employees from the tip pool.

81. Defendant's inclusion of managers and supervisors in the tip pool increased the total hours used to calculate the weekly tip rate, thereby reducing the hourly tip rate and corresponding tip distributions paid to Plaintiff and other hourly-paid tipped employees.

Tip-Pool Transparency and Records

82. Defendant controls the records and information necessary to determine the full amount of tips collected and redistributed through the tip pool.

83. Hourly-paid tipped employees do not receive complete transparency into the amounts collected from their own tips, tip cups, or customer transactions.

84. Hourly-paid tipped employees do not receive complete transparency into the total tips collected each day.

85. Hourly-paid tipped employees do not receive complete transparency into the total tips collected each week.

86. Hourly-paid tipped employees do not receive complete transparency into the identities, job titles, duties, authority, or hours of all employees included in the tip pool.

87. Hourly-paid tipped employees do not receive complete transparency into the calculations used to determine weekly tip-pool distributions.

88. Defendant's payroll, tip-pool, accounting, banking, scheduling, timekeeping, and personnel records can identify, or are expected to identify, the amounts collected, the employees included, the hours credited, the weekly rate, and the amounts distributed.

Defendant's Knowledge and Willfulness

89. Defendant knew or should have known that hourly-paid tipped employees received tips and gratuities from customers.

90. Defendant knew or should have known that federal law restricts employer retention, diversion, and redistribution of employee tips and gratuities.

91. Defendant knew or should have known that supervisors and/or other employees with managerial authority participated in the tip pool.

92. Defendant knew or should have known that supervisors collected, controlled, counted, reported, and/or caused the counting or reporting of tips that were later distributed through the tip pool.

93. Defendant knew or should have known that supervisors received portions of customer tips through payroll.

94. Plaintiff complained to Defendant's managers and/or supervisors that Defendant's tip-pool practices were unlawful, including that managers and supervisors should not receive portions of employee tips through the mandatory tip pool.

95. When Plaintiff complained to certain supervisors that their participation in the tip pool was unlawful, some acknowledged that the practice might violate the law but stated that Defendant nevertheless continued administering the tip pool in that manner.

96. Defendant knew or recklessly disregarded that its tip-pool practices caused hourly-paid tipped employees to lose tips and gratuities that belonged to them.

97. Defendant's tip-pool violations were willful within the meaning of the FLSA.

Plaintiff's Protected Complaints and Retaliatory Termination

98. During his employment, Plaintiff complained to Defendant's managers and/or supervisors that Defendant's tip-pool practices were unlawful, including that managers and supervisors should not receive portions of employee tips through the mandatory tip pool.

99. On or about February 16, 2024, Plaintiff met in person with members of Defendant's upper management and Human Resources, including Daniel Fried, Craig Hoffman, and Lora Gellerstein, and formally complained about Defendant's tip-pool practices and communicated his belief that those practices were unlawful.

100. During that meeting, Plaintiff communicated that he believed Defendant's tip-pool practices were unlawful.

101. Plaintiff also raised concerns regarding Defendant's tip-pool practices on other occasions during his employment.

102. Defendant, through its upper management and Human Resources personnel, knew that Plaintiff had complained about Defendant's tip-pool practices.

103. On or about November 1, 2024, Defendant terminated Plaintiff's employment.

104. Defendant terminated Plaintiff because of and in retaliation for Plaintiff's complaints concerning Defendant's unlawful tip-pool practices.

105. As a result of Defendant's retaliatory termination, Plaintiff lost wages, employment benefits, and other compensation.

COLLECTIVE ACTION ALLEGATIONS

106. Plaintiff brings Count I as an FLSA collective action pursuant to 29 U.S.C. § 216(b) on behalf of himself and the FLSA Collective defined above. Plaintiff brings his retaliation claim individually.

107. Members of the FLSA Collective are similarly situated to Plaintiff because they are or were hourly-paid tipped employees at Jake's 58 who were required to participate in Defendant's mandatory tip pool during periods in which managers or supervisors received portions of that pool.

108. Members of the FLSA Collective are similarly situated because they are or were subject to Defendant's common tip-pool practices.

109. Members of the FLSA Collective are similarly situated because Defendant required hourly-paid tipped employees to turn over customer tips for inclusion in the tip pool.

110. Members of the FLSA Collective are similarly situated because Defendant collected, controlled, pooled, calculated, and redistributed their tips through its payroll practices.

111. Members of the FLSA Collective are similarly situated because supervisors and/or other employees with managerial authority received portions of the tip pool.

112. Members of the FLSA Collective are similarly situated because Defendant's payroll, tip-pool, timekeeping, scheduling, and personnel records can identify, or are expected to identify, the employees included in the tip pool, the amounts collected, the hours credited, the weekly tip rate, and the amounts distributed.

113. Plaintiff's FLSA tip-retention claim and the claims of members of the FLSA Collective arise from the same policies and practices and involve common questions of law and fact.

114. Court-authorized notice is appropriate so that similarly situated employees may receive notice of this action and make an informed decision whether to file written consents to join.

COUNT I
(Brought Individually and as a Collective Action)
Violation of the Fair Labor Standards Act, 29 U.S.C. §§ 203(m)(2)(B) and 216(b)
UNLAWFUL RETENTION OF TIPS

115. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

116. Plaintiff brings this Count under the FLSA on behalf of himself and the FLSA Collective.

117. Defendant was Plaintiff's employer within the meaning of the FLSA.

118. Defendant was the employer of members of the FLSA Collective within the meaning of the FLSA.

119. The FLSA prohibits an employer from keeping tips received by employees for any purpose, including by allowing managers or supervisors to keep any portion of employees' tips.

120. Under 29 C.F.R. §§ 531.52(b)(2) and 531.54(b)(1), an employer may not permit managers or supervisors to retain portions of other employees' tips through a mandatory tip pool.

121. Defendant required hourly-paid tipped employees to participate in a mandatory tip pool.

122. Defendant collected, controlled, pooled, calculated, and redistributed employee tips.

123. Defendant allowed supervisors and/or other employees with managerial authority to receive portions of employee tips through the tip pool.

124. By permitting managers and supervisors to receive distributions from the mandatory tip pool, Defendant unlawfully retained or diverted portions of employee tips that otherwise would have been distributed to Plaintiff and other hourly-paid tipped employees in violation of the FLSA.

125. Defendant's violations were willful.

126. Pursuant to 29 U.S.C. § 216(b), Plaintiff and members of the FLSA Collective who opt into this action are entitled to recover the tips unlawfully kept by Defendant, an additional equal amount as liquidated damages, reasonable attorneys' fees and costs, and all other relief available under the FLSA.

COUNT II
(Brought Individually)
Violation of the Fair Labor Standards Act, 29 U.S.C. §§ 215(a)(3) and 216(b)
RETALIATION

127. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

128. Defendant was Plaintiff's employer within the meaning of the FLSA.

129. The FLSA prohibits an employer from discharging or otherwise discriminating against an employee because the employee has filed a complaint under or related to the FLSA.

130. Plaintiff engaged in protected activity by complaining to Defendant's managers and/or supervisors that Defendant's tip-pool practices were unlawful, including that managers and supervisors should not receive portions of employee tips through the mandatory tip pool.

131. On or about February 16, 2024, Plaintiff met in person with members of Defendant's upper management and Human Resources and formally complained about Defendant's tip-pool practices and communicated his belief that those practices were unlawful.

132. Plaintiff also raised concerns regarding Defendant's tip-pool practices on other occasions during his employment.

133. Defendant, through its upper management and Human Resources personnel, knew of Plaintiff's protected complaints concerning its tip-pool practices.

134. Defendant thereafter terminated Plaintiff's employment on or about November 1, 2024.

135. Defendant terminated Plaintiff because of and in retaliation for Plaintiff's protected complaints concerning Defendant's tip-pool practices.

136. Defendant thereby violated 29 U.S.C. § 215(a)(3).

137. As a result of Defendant's retaliation, Plaintiff suffered lost wages, lost employment benefits, and other damages.

138. Pursuant to 29 U.S.C. § 216(b), Plaintiff is entitled to such legal and equitable relief as may be appropriate to effectuate the purposes of the FLSA's anti-retaliation provision, including lost wages, an additional equal amount as liquidated damages, reasonable attorneys' fees and costs, and all other appropriate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that the Court enter judgment in his favor and against Defendant as follows:

A. Certifying Count I as a collective action under 29 U.S.C. § 216(b);

B. Authorizing notice to members of the FLSA Collective and permitting similarly situated employees to opt in to this action;

C. Ordering Defendant to disclose, in a reasonably usable electronic format, the names, last-known addresses, telephone numbers, email addresses, dates of employment, job titles, and work locations of members of the FLSA Collective;

D. Declaring that Defendant's tip-pool and tip-retention practices violate the FLSA;

E. Finding that Defendant's FLSA tip-retention violations alleged in Count I were willful;

F. Awarding Plaintiff and members of the FLSA Collective who opt in to this action all tips unlawfully kept, retained, or diverted by Defendant;

G. Awarding Plaintiff such legal and equitable relief as is appropriate under 29 U.S.C. § 216(b) for Defendant's retaliation, including lost wages and employment benefits, an additional equal amount as liquidated damages, reinstatement or other appropriate equitable relief, and all other relief available under the FLSA;

H. Awarding Plaintiff and members of the FLSA Collective who opt into this action an additional equal amount as liquidated damages under the FLSA on Count I;

I. Awarding pre- and post-judgment interest to the extent permitted by law;

J. Awarding reasonable attorneys' fees and costs; and

K. Awarding such other and further relief as the Court deems just and proper.

JURY DEMAND

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

Respectfully Submitted,

Dated: October 26, 2026 **By:** /s/ Nicholas Conlon

Nicholas Conlon (#5257092)
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Counsel for Plaintiff

Revised 7.16.2026; Effective 7.16.2026

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

KEVIN GUTTINGER, individually and on behalf of all others similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Brown, LLC
111 Town Square Place, Suite 400

DEFENDANTS

SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S

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

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

Attorneys *(If Known)*

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

- ☐ 1 U.S. Government Plaintiff
- ☒ 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)*

(For Diversity Cases Only)

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

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☒ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee *
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
29 U.S.C. §§ 203(m)(2)(B) and 215(a)(3)

Brief description of cause:
Unlawful retention of employee tips and retaliation under the FLSA.

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

FOR OFFICE USE ONLY

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

* Please respond to Part F on Page 2

PART A - CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration [No]

I, Nicholas Conlon, counsel for Kevin Guttinger, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- [x] monetary damages sought are in excess of $150,000.00 exclusive of interest and costs,
- [ ] the complaint seeks injunctive relief, or
- [ ] the matter is otherwise ineligible for the following reason:

PART B - DISCLOSURE STATEMENT - FEDERAL RULES of CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks. Add an additional page if needed.

N/A – Plaintiff is an individual.

PART C - RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

None known.

PART D - NEW YORK EASTERN DISTRICT DIVISION OF BUSINESS RULE 1(d)(3)

*If you answer "Yes" to any of the questions below, this case will be designated as a Central Islip case and you **must select Office Code 2**.*

1. Is the action being removed from a state court that is located in Nassau or Suffolk County? [No]
2. In actions not involving real property, is the action being brought against United States, its officers or its employees AND the majority of the plaintiffs reside in Nassau or Suffolk County? [No]
3. If you answered "No" to all parts of Questions 1 and 2:
   a. Did a substantial part of the events or omissions giving rise to claim or claims occur in Nassau or Suffolk County? [Yes]
   b. Do the majority of defendants reside in Nassau or Suffolk County? [Yes]
   c. Is a substantial amount of any property at issue located in Nassau or Suffolk County? [No]
4. If this is a Fair Debt Collection PracticeAct case, was the offending communication received in either Nassau or Suffolk County? [No]

(Note, a natural person is considered to reside in the county in which that person is domiciled; an entity is considered a resident of the county that is either its principal place of business or headquarters, of if there is no such county in the Eastern District, the county within the District with which it has the most significant contacts).

PART E - BAR ADMISSION

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

If you answered No to E(1), please see instructions and Local Civ. R. 1.3.

2. Are you currently the subject of any disciplinary action (s) in this or any other state or federal court? [No] If yes, please explain:

PART F - IMMIGRATION HABEAS

1. Is this petition based on an immigration detention? [No]
2. Does this case require immediate attention of a judge? [No]

If you answered Yes in Part F, and are filing this action after business hours, please see instructions here: https://www.nyed.uscourts.gov/emergency-applications-filed-after-business-hours.

Check Form to Validate Before Signing

I certify the accuracy of all information provided above.

Signature: /s/ Nicholas Conlon Date: 10/26/2026

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

Page One Instructions

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Page Two Instructions

A. Certification of Arbitration Eligibility: Indicate whether the case is eligible for arbitration under Local Civil Rule 83.7. If you answer No, please check at least one of the reasons that the case is not eligible.

B. Disclosure Statement - Federal Rules of Civil Procedure 7.1: If additional space is needed, please add the parties on an additional page.

C. Related Case Statement: If additional space is needed, please add the parties on an additional page.

D. Division of Business Rule 1(d)(3): Your answers in this section will determine whether your case will be designated as a Central Islip or Brooklyn case. Failure to complete this section may result in a delay assigning your case to a judge. Anwer all four (4) questions in this part, including 3(a), 3(b), and 3(c).

E. Bar Admission: Answer both questions.

F. Immigration Habeas: Answer both questions.

Click "Check Form to Validate Before Signing." If any required fields have not been completed, please do so before signing.

Date and Attorney Signature. Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KEVIN GUTTINGER, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S 58, JAKE'S 58 CASINO & HOTEL, and JAKE'S 58 HOTEL & CASINO,

Defendant(s)

Civil Action No. 2:26-cv-06860

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Suffolk Regional Off-Track Betting Corporation
d/b/a Jake's 58
Attn: Philip (Phil) Boyle, President and CEO
1180 Veterans Memorial Highway
Hauppauge, NY 11788

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: Nicholas Conlon
Brown, LLC
111 Town Square Place, Suite 400
Jersey City, NJ 07310

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.

BRENNA B. MAHONEY
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:

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN GUTTINGER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S 58, JAKE'S 58 CASINO & HOTEL, and JAKE'S 58 HOTEL & CASINO,

Defendant.

CONSENT TO SUE

I consent to the filing of this form in, and to being a plaintiff in, the above-captioned collective action lawsuit against Defendant SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATION d/b/a JAKE'S 58. I consent to pursue my claim for tips unlawfully kept by Defendant under the Fair Labor Standards Act ("FLSA"), individually and on behalf of similarly situated employees, as well as my individual claim for retaliation under the FLSA.

I understand that this lawsuit seeks recovery of unlawfully retained tips, lost wages and employment benefits, liquidated damages, attorneys' fees and costs, and other appropriate legal and equitable relief under the FLSA.

I further consent to pursuing my tip-retention claim on a collective basis with other current and former employees of Defendant pursuant to 29 U.S.C. § 216(b), and to being represented by Brown, LLC in this action.

Signed: Kevin Guttinger **Dated:** 10/23/2026

Name: **KEVIN GUTTINGER**