

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Travis Mullis, individually and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	2:16-cv-3578-PMD
)	COMPLAINT
v.)	Class/Collective Action
)	(JURY TRIAL DEMANDED)
Wings Over Spartanburg, LLC.; Vista)	
Wings, LLC; Aetius Companies, LLC;)	
Aetius Restaurant Holdings, LLC; Aetius)	
Restaurant Group, LLC,)	
)	
Defendants.)	
_____)	

Plaintiff Travis Mullis, individually and on behalf of all similarly situated bartenders (collectively “Plaintiffs”), bring this Class/Collective action lawsuit against Wings Over Spartanburg, LLC, Vista Wings, LLC, Aetius Companies, LLC, Aetius Restaurant Holdings, LLC, and Aetius Restaurant Group, LLC doing business as Wild Wing Café (collectively “Defendant”); seeking to recover for Defendant’s violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and the South Carolina Wages Act, S.C. Code Ann. §§ 41-10-10 to 110., and/or equitable remedy of unjust enrichment. Plaintiff, on behalf of himself and all others similarly situated, alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Travis Mullis is a resident of the State of South Carolina, County of Union.
2. Pursuant to 29 U.S.C. § 216(b), Plaintiff has consented in writing to be a party to the FLSA claims asserted in this action, and Plaintiff’s signed consent form is attached. (See Exhibit A – Plaintiff’s Consent to Sue Form).

3. Upon information and belief Defendant Wings Over Spartanburg, LLC, (hereinafter “WOS”) is a South Carolina Limited Liability Company operating the Wild Wing Café located at 111 West Main Street in Spartanburg, South Carolina. Vista Wings, LLC is located in Columbia, South Carolina and is owned and operated by Defendant Aetius.

4. Aetius Companies, LLC and its subsidiaries Aetius Restaurant Holdings, LLC and Aetius Restaurant Group, LLC (hereinafter “Aetius”) are Delaware Limited Liability Companies with their principal place of business in the State of South Carolina.

5. In January of 2012, WOS sold a controlling interest in the restaurant chain to Aetius.

6. Aetius owns and operates approximately thirteen (13) Wild Wing Café corporate stores through various operating entities and serve as franchisor to approximately thirty (30) franchised restaurants located in South Carolina, North Carolina, Georgia, Tennessee, Virginia, Texas, Florida and Alabama.

7. The operating entities of WOS and Aetius include but are not limited to: Wings Over Spartanburg, LLC; Greenville Wings, LLC; Bluffton Wings, LLC; Columbiana Wings, LLC; Vista Wings, LLC; Mt. Pleasant Wings, LLC; SW Charlotte, LLC; Wild Wings of Hilton Head, LLC; South Carolina Wings, LLC; North Charleston Wings, LLC; and Wilmington Wings, LLC.

8. The above-named operating entities along with the other corporate owned operating entities of Aetius have no separate legal existence as a matter of economic reality, as those entities have no other business purpose, function, or economic viability except to serve as instruments for conducting the operations giving rise to claims asserted in this Complaint.

9. WOS and Aetius, either directly or through intermediaries that they own and control, are the true operators of the operating entities in that WOA and Aetius maintain a complete

level of control over the restaurant chains' operations to include: supervisory authority over all of Wild Wing Café's employees, the company's daily operations, their ability to make hiring and firing decisions, and their authority over the employees' wage payment methods.

10. Further, to ensure uniformity, WOS and Aetius have implemented a comprehensive operating system for all Wild Wing Café franchisees which lays forth mandatory detailed instructions and specifications on operating standards including acceptable payment methods for the company's servers who are Bartenders

11. By virtue of their complete control of the operating entities and the franchised restaurants, WOS and Aetius have assumed the status of joint employer of the Plaintiff and similarly situated individuals. The imposition of joint employer status is justified by the level of control and the directing of decisions regarding day-to-day employment matters at the operating entities including the pay policies at issue here.

12. WOS, Aetius and their various other operating entities, to include but not limited to, Wings Over Spartanburg, LLC, and Vista Wings, LLC, (hereinafter collectively referred to as "Defendant") are a single enterprise under the FLSA because the entities perform related activities through unified operation and common control for a common business purpose of all Thirteen (13) present day Wild Wing Café locations¹.

13. During the relevant time period, Defendant employed individuals to include bartenders, who handled, sold, or otherwise worked on goods or materials that have been moved in, or produced for, commerce.

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

¹ <http://www.wildwingcafe.com/locations/>

15. Plaintiffs also assert under S.C. Code Ann 41-10-10 et. seq. for all South Carolina Wild Wing Café similarly situated bartenders in a sub-class (“South Carolina bartenders”) under state law cause of action for failure to pay all wages due and owed and/or in the alternative, a state common law cause of action for unjust enrichment.

16. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because a substantial part of the acts or omissions giving rise to these Plaintiffs’ claims occurred within Charleston County and because this Court has personal jurisdiction over one or more corporate Defendants, and this Court is currently presiding over related litigation, David Meller and Kerstin Robinson, et al. v. Wings Over Spartanburg, LLC, et al; C/A No.: 2:15-CV-02094-PMD

SUMMARY OF CLAIMS

18. Plaintiffs bring this action as a collective action to recover unpaid wages, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* (“FLSA”).

19. In particular, Plaintiffs bring this suit on behalf of the following similarly situated persons:

All current and former employees who have worked for the Defendants WOS, and/or Aetius at their corporate owned locations (specifically twelve (12) locations established by Meller (ECF-51)) in the capacity of a bartender paid within the Defendant’s use of the tip-credit within the statutory period covered by this Complaint, and who elect to opt-in to this action pursuant to FLSA, 29 U.S.C. § 216(b) (“Collective Class”).

20. Defendants have willfully committed widespread violations of the law by engaging in a pattern, practice, and policy of requiring Plaintiff and all those similarly situated to “tip out”, and/or give a percentage of their earned tips to other employees as mandated by the Defendant, on

service of food orders from patrons to other Wild Wing Café employees who were not legally permitted share in receipt of said “tip-out”.

21. In addition, Plaintiff also brings this action as a state class action to recover unpaid wages pursuant to South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 (“PWA”), on behalf of himself and all others similarly situated South Carolina current and former employee bartenders. (“South Carolina Bartenders”)

22. That Defendants have been unjustly enriched by this practice, and each Plaintiff has suffered an unlawful diverting of a portion of their monies for which labor rendered is recompensed. These monies are wages under state law.

23. The sub-class of “South Carolina Bartenders” only seeks to disgorge from Defendants, and recover the monies that exceed minimum wage that represent the monies these Plaintiffs were forced either by pattern, practice and or policy to hand over wages to other employees who could not legally share in the tip pool.

24. Specifically, Plaintiffs bring this suit on behalf of a class of similarly situated persons composed of:

All current and former bartenders who have worked for Defendants in the state of South Carolina during the statutory period covered by this Complaint (“South Carolina Bartenders Class”), and was required and or forced to pay a percentage of their earned wages/monies to expos.

25. Plaintiffs allege on behalf of the Collective Class and South Carolina Bartenders Class that Defendants violated Federal and South Carolina state laws by, *inter alia*:

- (i) failing to pay them the appropriate minimum wages for all hours worked;
- (ii) improperly calculating overtime wages for all hours worked in excess of forty (40) hours in a workweek; and

- (iii) unlawfully diverting and improperly denying to pay all wages that have become due and owed.

FACTUAL ALLEGATIONS

26. Plaintiff Travis Mullis worked as a server and/or bartender for Defendant at their Spartanburg, and Columbia-Vista, South Carolina locations from 2010 to approximately Fall of 2014.

27. At all relevant times, Plaintiff Travis Mullis and the other members of the Collective Class have been similarly situated and have had substantially similar job requirements and job duties. Moreover, they have been subject to Defendant's common decisions, policies, practices, procedures and rules that willfully violate the FLSA.

28. At all times relevant herein, Defendant paid Plaintiff and all those similarly situated for their services pursuant to a tip credit scheme thereby relieving Defendant from paying them minimum wage (\$7.25 per hour) on account of Plaintiffs receiving tips or being a "tipped employee" under the FLSA.

29. Defendant paid Plaintiff a direct wage that ranged from \$2.13 per hour to \$5.00 per hour depending on what capacity they were working. All direct wages were below minimum wage, and Defendant relied upon Plaintiff and all other bartenders to receive enough tips to make at least minimum wage.

30. Defendant had a policy and practice of requiring and/or forcing all their bartenders on their food service orders from patrons to provide portions of their tips to the restaurant's, food runners, and expeditors.

31. Specifically, Plaintiff, along with all the other members of the Collective Class were/are required to pay a percentage of their daily sales to the food runners, and expeditors². The expeditors who are employed by Defendants are tasked with organizing and making presentable all the food that is ready to be distributed by the food runners and Bartenders to the customers.

32. The expeditors, or “expo”, are employees working at Defendant’s restaurants and are a part of the kitchen staff. They are scheduled along with the kitchen staff or “back of the house”; they are not clothed in a Wild Wing uniform; they do not interact with the restaurants’ customers; and they do not render a direct service to any customer of the Defendant.

33. By law, the “expos” are not considered “tipped employees” under the FLSA; therefore, they are forbidden from receiving tips directly from other tipped employees or pursuant to a tip pool. 29 U.S.C. § 203(m).

34. Despite such, the Defendant has carried on a willful policy and practice of requiring all their bartenders at their corporate owned locations to pay a portion of their tips directly to the expeditors at the end of each shift. To facilitate this policy, each bartender is given a print out of each day’s shift which breaks down the exact dollar figure they are to pay to the expeditors.

35. By maintaining such a policy Defendants may not avail themselves of the tip credit provisions of the FLSA; thereby, reducing each of the bartenders’ pay to what they received in direct wages (\$2.13 - \$5.00). These direct wages are less than the federally mandated \$7.25 minimum hourly wage.

² At the Spartanburg location, the bartenders are required to pay, one and a quarter percent (1.25%) of their food sales to food runners, and one and half percent (1.5%) of their food sales to expeditors, which is identical to the alleged requirements in *Meller vs Wild Wing Café, et al.*

36. In addition to maintaining a policy that invalidates the Defendant's tip credit scheme, Defendant also miscalculated the overtime rate for all bartenders who worked in excess of forty (40) hours per week.

37. By law, when tipped employees paid pursuant to a tip credit scheme work overtime, the employer is to calculate the employees' overtime rate at one-and-a-half (1.5) times minimum wage not the lower direct wage payment of the tip credit scheme. 29 U.S.C. § 203(m).

38. Defendant violated the aforementioned law by maintaining an overtime policy calculating the overtime rate at one-and-a-half (1.5) times Plaintiff's direct wages and not one-and-a-half (1.5) times the federal mandated minimum wage, or \$10.88.

39. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

40. At no time did Plaintiff or the Collective Class or the South Carolina Bartender Class ever perform any executive, administrative, or professional duties that would weigh in favor of an exempt salaried employee.

41. The Plaintiff and the Collective Class or the South Carolina Bartender Class worked for Defendant on a full time and continuing basis and did not sell or advertise their services to the general public or work as contractors for anyone other than the above-named Defendant.

42. Plaintiff and the Collective Class and the South Carolina Bartender Class had no control over the manner and method by which they were paid.

43. Defendant retained the right to discharge Plaintiff and/or Collective Class and/or South Carolina Bartender Class without cause.

44. Plaintiff and/or Collective Class and/or South Carolina Bartender Class are clearly not exempt from the FLSA's minimum wage and overtime requirements.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(Collective Class)

45. Plaintiff, on behalf of himself and the Collective Class, re-allege and incorporate by reference the paragraphs above as if they were set forth herein.

46. At all relevant times, Defendant has had gross annual revenues in excess of \$500,000.00.

47. At all relevant times, Defendant has been, and continues to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

48. At all relevant times, Defendant has employed, and/or continues to employ, each of the Collective Class members within the meaning of FLSA.

49. By maintaining a policy that invalidates the tip credit provision of the FLSA, Plaintiffs and the Collective Class were paid less than minimum wage with wages ranging from \$2.13 to \$5.00 per hour.

50. Defendant violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

51. Due to Defendant's FLSA violations, Plaintiff, on behalf of himself and the members of the Collective Class, is entitled to recover from the Defendant compensation for unpaid wages, an additional equal amount as liquidated damages, and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT OVERTIME WAGE VIOLATIONS
(Collective Class)

52. Plaintiff, on behalf of himself and the Collective Class, re-allege and incorporate by reference the paragraphs above as if they were set forth herein.

53. At all relevant times, Defendant has been, and continues to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

54. At all relevant times, Defendant has employed, and/or continues to employ each of the Collective Class members within the meaning of FLSA.

55. At all relevant times in the period encompassed by this Complaint, Defendant has and maintains a willful policy and practice of refusing to pay the proper overtime compensation for all hours worked in excess of forty (40) hours per workweek.

56. Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

57. Due to Defendant's FLSA violations, Plaintiff, on behalf of himself and the members of the Collective Class, is entitled to recover from the Defendant compensation for unpaid overtime wages, an additional equal amount as liquidated damages, and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

THIRD CLAIM FOR RELIEF
SOUTH CAROLINA PAYMENT OF WAGES ACT
(South Carolina Bartenders Class)

58. Plaintiff, on behalf of himself and the members of the South Carolina Bartenders Class, re-allege and incorporate by reference the paragraphs above as if they were set forth again herein.

59. At all relevant times, Defendant has employed, and/or continues to employ, Plaintiff and each of the South Carolina Bartenders Class Members within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 (“PWA”). Plaintiff and the South Carolina Bartenders Class members are “employees” and are not free from the control and direction of Defendant.

60. Plaintiff and the South Carolina Bartenders Class worked for Defendant with the clear understanding and agreement by Defendant that their compensation would be consistent with all applicable laws, including federal and state wage and hour laws.

61. Pursuant to the PWA, “[a]n employer shall not withhold or divert any portion of the employee’s wages unless the employer is required or permitted to do so by state or federal law. . .” S.C. Code Ann. § 41-10-40(C).

62. Further, “any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective.” S.C. Code Ann. § 41-10-30(A).

63. Accordingly, Plaintiff and the members of the South Carolina Bartender Class are entitled to receive all compensation due and owing to them.

64. Because of Defendant’s unlawful policies and practices as set forth above Plaintiff and the members of the South Carolina Bartenders Class have been deprived of compensation earned, due and owing which Defendant was required to pay in their commitment to abide by applicable wage and hour laws and in violation of the PWA’s mandate that no wages be withheld or diverted unless required or permitted under applicable law.

65. Defendant has set and withheld wages of the Plaintiff and South Carolina Bartenders Class members without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

66. As a direct and proximate result of Defendant's conduct, Plaintiff and the South Carolina Bartenders Class have suffered substantial losses and have been deprived of compensation to which they are entitled, including monetary damages in the amount of three (3) times the unpaid wages as well as costs and reasonable attorney's fees.

FOURTH CLAIM FOR RELIEF
SOUTH CAROLINA COMMON LAW – UNJUST ENRICHMENT
(South Carolina Bartenders Class)

67. This Fourth Claim is brought in the alternative to the Third Claim (violation of the PWA), to the extent that Defendant disavows any agreement to pay South Carolina Bartenders Class in a manner consistent with state and federal law. Plaintiff, on behalf of himself and the members of the South Carolina Bartenders Class, re-allege and incorporate by reference the paragraphs above as if they were set forth again herein.

68. Plaintiff and members of South Carolina Bartenders Class were employed by Defendant as employees within the meaning of South Carolina Common Law.

69. At all relevant times, Defendant maintains a policy of denying their bartenders a portion of tips that, by law, and/or equitably belong to Bartenders.

70. During the class period covered by this Complaint, Defendant had, and maintains, a willful policy and practice of having their bartenders subsidize Defendant's business expenses by requiring them to tip the expeditors employed by Defendant.

71. Defendant retained the benefit of their unlawful deductions from the tips of Plaintiff and all other similarly situated bartenders and servers which rendered it inequitable and unjust for Defendant to retain such benefits.

72. Defendant was unjustly enriched by subjecting Plaintiff and other similarly situated bartenders to such unlawful deductions.

73. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the South Carolina Bartender Class have suffered an injury and are entitled to reimbursement, restitution, and disgorgement from Defendant of the benefits conferred by Plaintiff and South Carolina Bartender Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of himself and all other similarly situated members of the Collective Class and members of the South Carolina Bartenders Class, pray that the Court grant the following relief:

- A. Designation of this action as a collective action on behalf of the Collective Class, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b), apprising class members of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);
- B. Designation of the action as a class action under Fed. R. Civ. P. 23 on behalf of the South Carolina Bartenders Class;
- C. Appointment of the undersigned as Class Counsel;
- D. Find that Defendant's FLSA violations were willful;
- E. An injunction against Defendant and its officers, agents, successors, employees, representative and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein in the future;
- F. For *disgorgement* of revenues, profits and money unjustly earned from the unlawful practices;

- G. An award of unpaid minimum wages to Plaintiff and the members of the Collective Class;
- H. An award of unpaid overtime wages to Plaintiff and the members of the Collective Class;
- I. An award of payment of all due and owed wages and/or monies and/or gratuities;
- J. Restitution of wages and/or gratuities and/or monies improperly diverted or retained by Defendant;
- K. An award of liquidated damages to Plaintiff and members of the Collective Class;
- L. An award of treble damages to Plaintiff and members of the South Carolina Bartenders Class to the extent permitted by S.C. Code Ann. § 41-10-80(C);
- M. An award of costs and expenses of this action together with reasonable attorneys' fees; and
- N. Such other and further equitable relief as this Court deems just and proper.

Respectfully Submitted,

By: S/ John G. Reckenbeil
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Dated: November 7, 2016
Spartanburg, South Carolina

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Travis Mullis, individually and on behalf)
of all others similarly situated,)

Plaintiffs,)

v.)

**CONSENT TO BE A PARTY TO A
COLLECTIVE ACTION PURSUANT
TO 29 U.S.C. § 216**

Wings Over Spartanburg, LLC; Wings)
Over America, Inc.; Vista Wings, LLC;)
Aetius Companies, LLC; Aetius Holdings,)
LLC; Aetius Restaurant Holdings, LLC;)
Aetius Restaurant Group, LLC,)

Defendants.)

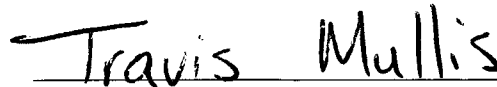
CONSENT TO BECOME PARTY PLAINTIFF

I consent and agree to pursue my claims for unpaid overtime and minimum wages through the lawsuit filed against the above named Defendants.

By my signature below, I authorize the prosecution of the above-styled Fair Labor Standards Act/South Carolina Wage Payment Act action against the Defendants on my behalf and on behalf of all others similarly situated effective this 27 day of October, 2016.



SIGNATURE (Sign your name here)



PRINTED NAME (Print your name here)