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

ALICIA ALSHEHABI, on behalf of herself and all others similarly situated, Plaintiff, v. HYMANS SEAFOOD COMPANY, INC.; ELI HYMAN, individually; AARON HYMAN, individually; and BRAD GENA, individually, Defendants.	C/A: 2:14-cv-2724-DCN **FLSA COLLECTIVE ACTION** **JURY TRIAL DEMANDED**

The Plaintiff, Alicia Alshehabi ("Plaintiff"), on her behalf and on behalf of employees similarly situated, complaining of the acts of Defendants Hymans Seafood Company, Inc. ("Hymans"); Eli Hyman ("Eli Hyman"); Aaron Hyman ("Aaron Hyman"); and Brad Gena ("Gena") (Hymans; Eli Hyman; Aaron Hyman; and Gena collectively "Defendants"), alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of the County of Charleston, State of South Carolina, and brings this action on behalf of herself and all other similarly situated employees and former employees of Hymans for minimum wages and overtime compensation as well as other relief allowed under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, et seq. ("FLSA").

2. Upon information and belief, Hymans is a South Carolina corporation maintaining offices and agents and otherwise doing business in the County of Charleston, State

of South Carolina.

3. Upon information and belief, Eli Hyman is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Hymans.

4. Upon information and belief, Aaron Hyman is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Hymans.

5. Upon information and belief, Gena is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Hymans.

6. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 based upon Plaintiff's claims under the FLSA.

7. Based upon the above, jurisdiction and venue are proper in this court and division.

FACTS

8. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 7 as if repeated here verbatim.

9. Hymans owns and operates a restaurant in downtown Charleston.

10. Eli Hyman exercises operational control over Hymans; he has the authority to hire, discipline, and fire employees of Hymans; he was involved in the decisions to set the wages and pay for Plaintiff and all other similarly situated employees; and, therefore, Eli Hyman is individually liable to Plaintiff and all other similarly situated employees.

11. Aaron Hyman exercises operational control over Hymans; he has the authority to hire, discipline, and fire employees of Hymans; he was involved in the decisions to set the wages and pay for Plaintiff and all other similarly situated employees; and, therefore, Aaron Hyman is individually liable to Plaintiff and all other similarly situated employees.

12. Gena exercises operational control over Hymans; he has the authority to hire,

discipline, and fire employees of Hymans; he was involved in the decisions to set the wages and pay for Plaintiff and all other similarly situated employees; and, therefore, Gena is individually liable to Plaintiff and all other similarly situated employees.

13. Hymans hired Plaintiff as an employee on or about 2010 to be a hostess.

14. Subsequently, Hymans promoted Plaintiff to be a server of customers at its tables.

15. Defendants paid Plaintiff, and all other similarly situated employees, less than the statutory minimum wage by taking the "tip credit" under the FLSA, 29 U.S.C. § 203(m).

a. Servers were paid Two and 13/100 dollars ($2.13) per hour, plus tips that they received, less deductions taken by Defendants;

b. Bartenders were paid Six and 50/100 dollars ($6.50) per hour or Six and 0/100 dollars ($6.00) per hour, plus tips that they received, plus a portion of the Tip Pool, less deductions taken by Defendants;

c. Food runners were paid Six and 50/100 dollars ($6.50) per hour, plus a portion of the Tip Pool;

d. Bussers were paid Six and 50/100 dollars ($6.50) per hour, plus a portion of the Tip Pool;

16. When Plaintiff worked more than forty (40) hours in a workweek, Defendants paid her, and all other similarly situated servers, overtime pay at a rate of Five and 75/100 dollars ($5.75) per hour.

17. Hymans requires Plaintiff, and all other similarly situated servers, to remit a portion of their tips at the end of each shift into a mandatory tip pool ("Tip Pool").

18. Hymans takes from each server's tips a constant amount of Five and 00/100 dollars ($5.00) per shift.

19. The Five dollar amount is redistributed as follows:

a. One dollar ($1.00) to the main host;

b. One dollar ($1.00) to the main dishwasher. The dishwasher is an employee who has no contact with customers, and is not an employee who customarily and regularly receives tips;

c. One dollar ($1.00) to the salad preparer. The salad preparer is an employee who functions as kitchen or preparation staff, generally has no contact with customers, and is not an employee who customarily and regularly receives tips; and

d. Two dollars ($2.00) retained by the Defendants for “breakage.” Defendants and their managers have told servers that “breakage” is to pay for lost silverware, broken dishes, and other miscellaneous costs of Hymans doing business.

20. Hymans takes from each server’s tips three percent (3%) of Hymans’ sales made by the server for each shift.

21. The three percent (3%) is then redistributed to other tipped employees as follows:

a. One third (1/3) is redistributed to the food runners;

b. One third (1/3) is redistributed to the bussers; and

c. One third (1/3) is redistributed to the bartenders.

22. Defendants knowingly allow its servers to “work off the clock.”

a. For the morning shift, servers arrive at 10 am, start to prepare the restaurant for service, and generally do not clock in until 11 am;

b. For the afternoon shift, servers arrive at 3 pm or 3:15 pm, and do not clock in until a daily mandatory meeting has ended.

FOR A FIRST CAUSE OF ACTION
Violation of Fair Labor Standards Act
29 U.S.C. § 203(m), 206
(Violation of Tip Credit / Failure to Pay Proper Minimum Wage)

23. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 22 as if repeated here verbatim.

24. As alleged above, Plaintiff, and all other similarly situated employees, were employed by Hymans.

25. At all times pertinent to this Complaint, Hymans engaged in interstate commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(r) and 203(s).

26. At all times relevant to this Complaint, Hymans' annual gross volume of sales made or business done was not less than Five Hundred Thousand and 00/100 dollars ($500,000.00). Alternatively, Plaintiff, and all other similarly situated employees, worked in interstate commerce so as to fall within the protection of the FLSA.

27. The business of Hymans was and is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1) and, as such, Hymans is subject to, and covered by, the Fair Labor Standards Act.

28. The FLSA, 29 U.S.C. § 206, requires employers to pay its nonexempt employees a minimum wage of Seven and 25/100 dollars ($7.25) an hour.

29. The FLSA, 29 U.S.C. § 203(m), provides an exception allowing employers to pay less than the statutory minimum wage to tipped employees, on the condition that the pooling of tips is only amongst those who customarily and regularly receive tips.

30. When the employer, its owners, or its managers share in the Tip Pool, the Tip Pool exception is invalidated.

31. When the employer shares the Tip Pool with the salad preparation employees, the

Tip Pool the pool is invalidated.

32. When the employer shares the Tip Pool with dishwashers, the Tip Pool is invalidated.

33. When the Tip Pool is invalidated, the employer can no longer enjoy the benefits of the tip credit provision, 29 U.S.C. § 203(m).

34. Without the benefit of the tip credit provision, Defendants must pay each nonexempt employee the statutory minimum wage of Seven and 25/100 dollars ($7.25) per hour.

35. As such, Defendants have violated the FLSA, 29 U.S.C. § 206.

36. Defendants knowingly allowed employees to work while off the clock.

37. As such, Defendants owe Plaintiff and all other similarly situated employees minimum wage for all time worked between:

a. 10:00 am and the employee clock in, and

b. 3:00 or 3:15 pm and the employee clock in.

38. As such, Plaintiff, on behalf of herself and all other similarly situated employees, seeks to recover from Defendants the amount of minimum wages due, prejudgment interest, and the costs and disbursements of this action, including reasonable attorneys' fees.

39. Defendants' violation of the Act was willful, knowing, intentional, and reckless, therefore, Plaintiff on behalf of herself and all other similarly situated employees are entitled to recover liquidated damages from Defendants.

<u>FOR A SECOND CAUSE OF ACTION</u>
Violation of Fair Labor Standards Act
29 U.S.C. § 207
(Failure to Pay Proper Overtime Wage)

40. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 39 as if repeated here verbatim.

41. Pursuant to the terms of the FLSA, 29 U.S.C. § 207, an employer must pay a nonexempt employee time and a half for all hours worked over forty (40) hours in a workweek.

42. Plaintiff and all other similarly situated employees were nonexempt employees under the FLSA, and Defendants have failed to pay Plaintiff and all other similarly situated employees the proper amount for overtime hours worked.

43. Defendants have violated the FLSA, 29 U.S.C. § 207.

44. As such, Plaintiff, on behalf of herself and all other similarly situated employees, seeks to recover the amount of overtime wages due, prejudgment interest, and the costs and disbursements of this action, including reasonable attorneys' fees.

45. Defendants' violation of the FLSA was willful, knowing, intentional, and reckless, therefore, Plaintiff and other similarly situated employees are entitled to recover liquidated damages from Defendants.

WHEREFORE, Plaintiff, and all other similarly situated employees and former employees, pray for judgment against Defendants for such an amount of actual damages as the trier of fact may find (including, but not limited to, all wages, minimum wages, and overtime wages due), liquidated damages, reasonable attorneys' fees and costs, prejudgment interest, and for such other and further relief as the court deems just and proper.

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CHARLESTON, SC

July 3, 2014