

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

TYLER MCCOY, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

RPM MANAGEMENT GROUP, INC.;
RPM JAMES ISLAND, INC.; RPM
SUMMERVILLE, INC.; 337 KING, LLC;
CENTER STREET RESTAURANT, LLC;
1179 SAM RITTENBERG, LLC; CENTER
STREET MANAGEMENT, LLC; DAVID
R. MILLER, individually; WILLIAM G.
“CHIP” ROBERTS, III, individually; and
BOBBY PERRY, individually,

Defendants.

C/A: 2:14-cv-3171-PMD _____

**FLSA
COLLECTIVE ACTION**

JURY TRIAL DEMANDED

Plaintiff, Tyler McCoy (“Plaintiff”), on behalf of himself and all others similarly situated, complaining of the acts of Defendants RPM Management Group, Inc. (“RPM”); RPM James Island, Inc. (“RPMJI”); RPM Summerville, Inc. (“RPMSVL”); 337 King, LLC (“337 King”); Center Street Restaurant, LLC (“CSR”); 1179 Sam Rittenberg, LLC (“1179 SR”); Center Street Management, LLC (“CSM”); (collectively “Kickin’ Chicken”); David R. Miller (“Miller”); William G. “Chip” Roberts (“Roberts”); and Bobby Perry (“Perry”) (Kickin’ Chicken; Miller; Roberts; and Perry 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 himself and all other similarly situated employees and former employees of Kickin’ Chicken 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, Kickin’ Chicken 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, Miller is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Kickin’ Chicken.

4. Upon information and belief, Roberts is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Kickin’ Chicken.

5. Upon information and belief, Perry is a citizen and resident of the County of Charleston, State of South Carolina, and an owner of Kickin’ Chicken.

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. Kickin’ Chicken owns and operates a restaurant, which has five (5) separate locations, within the Charleston-Berkeley-Dorchester Tri-County area.

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

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

12. Perry exercises operational control over Kickin' Chicken; he has the authority to hire, discipline, and fire employees of Kickin' Chicken; he was involved in the decisions to set the wages and pay for Plaintiff and all other similarly situated employees; and, therefore, Perry is individually liable to Plaintiff and all other similarly situated employees.

13. Kickin' Chicken hired Plaintiff as a server in November 2013.

14. 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).

15. When Plaintiff worked more than forty (40) hours in a workweek, Defendants paid him, and all other similarly situated servers, overtime pay at a rate less than Ten and 88/100 dollars (\$10.88).

16. Kickin' Chicken required 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").

17. Kickin' Chicken redistributed a portion of that tip pool to "back of the house" kitchen staff.

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)

18. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 17 as if repeated here verbatim.

19. As alleged above, Plaintiff, and all other similarly situated employees, were

employed by Kickin' Chicken.

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

21. At all times relevant to this Complaint, Kickin' Chicken' 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.

22. The business of Kickin' Chicken was and is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1) and, as such, Kickin' Chicken is subject to, and covered by, the FLSA.

23. 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.

24. 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.

25. When the employer shares the Tip Pool with back of the house staff, the Tip Pool is invalidated.

26. 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).

27. 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.

28. Defendants have violated the FLSA, 29 U.S.C. § 206.

29. Plaintiff, on behalf of himself and all others similarly situated, seeks to recover from Defendants the amount of minimum wages due, amount remitted to the illegal tip pool, prejudgment interest, and the costs and disbursements of this action, including reasonable attorneys' fees.

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

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

31. Plaintiff realleges each and every allegation contained in Paragraphs 1 through 30 as if repeated here verbatim.

32. 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.

33. 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.

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

35. As such, Plaintiff, on behalf of himself 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.

36. 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.



Bruce E. Miller (Fed Bar No. 3393)
BRUCE E. MILLER, P.A.
147 Wappoo Creek Drive, Suite 603
Charleston, SC 29412
T: 843.579.7373
F: 843.614.6417
bmiller@brucemillerlaw.com

**ATTORNEY FOR TYLER MCCOY,
on behalf of himself and all others
similarly situated**

CHARLESTON, SC

August 7, 2014