

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

KATIE D. MCCLARAN; ASHLEY
THOMAS; and JENNIFER L. ROACH, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

CAROLINA ALE HOUSE OPERATING
COMPANY, LLC; and LM RESTAURANTS,
INC.,

Defendants.

C.A. No. 3:14-cv-03884-JFA

**FLSA
COLLECTIVE ACTION**

JURY TRIAL DEMANDED

Plaintiffs, Katie D. McClaran, Ashley Thomas, and Jennifer L. Roach (“Plaintiffs”), bring this collective action complaint on behalf of themselves and all other similarly situated persons who are or were employed at any restaurant owned and/or managed by Defendants Carolina Ale House Operating Company, LLC (“Carolina Ale House”) and LM Restaurants, Inc. (“LM Restaurants”) (collectively “Defendants”) and, by counsel, allege as follows:

NATURE OF ACTION

1. This action is brought individually and as a collective action for unpaid minimum wages, liquidated damages, and other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (the “FLSA”).

2. Defendants violated the FLSA by paying less than the minimum wage to Plaintiffs and other similarly situated employees and then requiring them to pay a percentage of their tips to Defendants’ other employees who are not employed in a job position that

customarily and regularly receives tips. Defendants have also failed to provide oral or written notice of the requirements for a valid tip pool as required by the FLSA. 29 U.S.C. § 203(m).

3. The collective action provisions of the FLSA provide for opt-in class participation. 29 U.S.C. § 216(b). Plaintiffs' consent/opt-in forms are attached hereto as Exhibit A.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiffs McClaran and Thomas are citizens and residents of Lexington County, the State of South Carolina. Plaintiff Roach is a citizen and resident of Richland County, the State of South Carolina.

5. Carolina Ale House is a North Carolina limited liability corporation. Upon information and belief, Carolina Ale House owns property and conducts business in the County of Lexington, State of South Carolina, including its Harbison restaurant located at 277 Columbiana Drive, Columbia, South Carolina where Defendants employed Plaintiffs and paid them less than the minimum wage in violation of the FLSA.

6. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the FLSA.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because at least one Defendant is located within in this judicial district and division, and the unlawful labor practices giving rise to Plaintiffs' claims were committed, at least in part, within the Columbia Division of this Court.

8. Each of the Defendants is subject to personal jurisdiction in the State of South Carolina. *See* S.C. Code Ann. § 36-2-803 (2011).

FACTS

9. Carolina Ale House is a restaurant chain that owns and operates the “Carolina Ale House- Harbison” location as well as over twenty other separate restaurant locations in South Carolina, North Carolina, Georgia, Florida, Texas, and Tennessee.

10. Upon information and belief, LM Restaurants, as Carolina Ale House’s management company at all times relevant to this Complaint, has exercised operational control over Carolina Ale House’s management practices, including labor and employment practices, at its various restaurant locations, including the Harbison location in Lexington County, South Carolina.

11. At all times relevant to this Complaint, Defendants employed Plaintiffs McClaran, Thomas, and Roach at the Harbison location and paid them less than the minimum wage in violation of the FLSA.

12. LM Restaurants is a North Carolina corporation, maintaining offices and agents in Wake County, North Carolina. Upon information and belief, LM Restaurants is the management company for Carolina Ale House.

13. Plaintiffs and other similarly situated employees worked for Defendants at its restaurants located in South Carolina, North Carolina, Georgia, Florida, Texas and Tennessee as tipped employees whose primary job duties included taking customers’ food and beverage orders, delivering food from the kitchen to the customers, and preparing alcoholic drinks for the customers.

14. Defendants paid Plaintiffs, 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. Defendants paid Plaintiffs and other similarly situated employees an hourly wage of \$2.13. In addition to that hourly wage, Plaintiffs and other similarly situated employees received tips from customers when working as servers.

16. In order to meet the FLSA minimum wage of \$7.25 for Plaintiffs and other similarly situated employees, the Defendants applied a so-called “tip credit” of \$5.12 based on the tips received by the Plaintiffs and other similarly situated employees for their service to customers.

17. However, in violation of the FLSA, Defendants required Plaintiffs and all other similarly situated employees to remit a portion of their tips at the end of each shift based on their respective gross food and beverage sales to the restaurant manager who would then distribute the money to expeditors, food runners, and bartenders:

- a. For gross sales of \$100 to \$150, Plaintiffs and other similarly situated employees were forced to pay \$1 to (1) the expeditor, (2) the food runner, and (3) the bartender for a total of \$3;
- b. For gross sales of \$151 to \$249, Plaintiffs and other similarly situated employees were forced to pay \$2 to (1) the expeditor, (2) the food runner, and (3) the bartender for a total of \$6;
- c. For gross sales of \$250 to \$349, Plaintiffs and other similarly situated employees were forced to pay \$3 to (1) the expeditor, (2) the food runner, and (3) the bartender for a total of \$9;
- d. For gross sales of \$350 to \$449, Plaintiffs and other similarly situated employees were forced to pay \$4 to (1) the expeditor, (2) the food runner, and (3) the bartender for a total of \$12;

- e. For gross sales of \$450 to \$549, Plaintiffs and other similarly situated employees were forced to pay \$5 to (1) the expeditor, (2) the food runner, and (3) the bartender for a total of \$15; and so on.

18. At all times relevant to this Complaint, the expeditor referenced above did not hold a restaurant job position that customarily or regularly receives tips.

19. The Defendants' expeditors have no interaction with customers but rather work with the cooks, performing final food preparation, including placing french fries on the customers' plates, garnishing and inspecting plates to ensure the plates match orders, and placing the plates on a kitchen preparation table to be picked up by food runners or wait staff for delivery to the customers.

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)

20. Plaintiffs, on behalf of themselves and all other similarly situated employees, re-allege and incorporate by reference all preceding paragraphs as if specifically set forth herein.

21. The FLSA mandates that employers compensate non-exempt employees at a minimum wage rate of \$7.25 per hour.

22. 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.

23. When the employer, its owners, its managers or other persons who hold job positions in the restaurant industry that do not customarily and regularly receive tip compensation (such as cooks and kitchen staff) share in the tip pool, the tip pool exception is invalidated.

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

25. Defendants paid Plaintiffs and other similarly situated employees an hourly rate of \$2.13 and took the maximum tip credit of \$5.12 toward Defendants' minimum wage obligation. Defendants likewise paid other tipped employees less than the minimum wage and took a tip credit to make up the difference under the FLSA.

26. Defendants' compensation of Plaintiffs and other tipped employees violates the minimum wage provisions of the FLSA in several particulars, including but not limited to:

- a. Defendants did not permit Plaintiffs and other similarly situated employees to retain all tips they received;
- b. Defendants mandated, controlled, and distributed the tip pool to employees who did not customarily and regularly receive tips;
- c. Defendants distributed the Plaintiffs and other similarly situated employees' contributions to the tip pool to other employees paid at an hourly rate regardless of the amount of contributions contained in the tip pool; and
- d. Defendants failed to provide oral or written notice of the FLSA's requirements for a valid tip credit.

27. At all times relevant herein, Defendants have been regularly engaged in interstate commerce.

28. At all times relevant herein, Defendants have been an enterprise within the meaning of § 3(r) and § 3(s)(1) of the FLSA, 29 U.S.C. §§ 203(r) & (s).

29. At all times relevant herein, Defendants have been an employer within the meaning of the FLSA, 29 U.S.C. §§ 203.

30. At all times relevant herein, Defendants owned an operation and were an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the Act, 29 U.S.C. §203(r) and 203(s).

31. At all times relevant herein, the annual gross sales volume of the Defendants' business was in excess of \$500,000.00. Additionally, the Plaintiffs and other similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

32. Plaintiffs, on behalf of themselves and other similarly situated employees who are currently or have previously worked at any restaurant owned and/or managed by Defendants, are entitled to recover their damages as a result of the Defendants' violations of the minimum wage provisions of the FLSA, liquidated damages in an equal amount, and their reasonable attorneys' fees and costs incurred in bringing this action.

33. Defendants' violation of the tip pool credit was willful, knowing, intentional, and reckless; therefore, Plaintiffs, on behalf of themselves and all other similarly situated employees, are entitled to recover liquidated damages from Defendants.

WHEREFORE, Plaintiffs, and all other similarly situated employees and former employees, pray for judgment against Defendants in 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated individuals who join this action, demand the following:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiffs' unpaid minimum wages at the applicable hourly rate of \$7.25;
- c. Judgment against Defendants for all overtime worked at one and one half times the regular rate of pay;
- d. Judgment against the Defendants for the amount of unlawfully retained portions of the tips they received from Plaintiffs;
- e. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- f. Liquidated damages in an amount equivalent to the overtime damages, and unpaid minimum wages owed to Plaintiffs;
- g. Attorneys' fees and costs; and
- h. All such further relief as the Court deems just and equitable.

JURY TRIAL DEMANDED

Plaintiffs on behalf of themselves and on behalf of all other similarly situated employees hereby demand a trial by jury.

Respectfully submitted,

s/ James M. Griffin

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