

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

Paul T. Watkins, On Behalf of Himself and
Others Similarly Situated,

Plaintiff,

v.

Courtney Bay Seafood Restaurant &
Lounge, LLC and Karlene O’Neal
individually,

Defendants,

CIVIL ACTION NO.: 2:14-cv-03976-RMG

COLLECTIVE
ACTION COMPLAINT
(Jury Trial Requested)

Plaintiff Paul T. Watkins individually (collectively “Plaintiffs”), and on behalf of himself and all others similarly situated individuals, by way of their Complaint in the above-captioned matter, allege and show unto this Honorable Court the following

NATURE OF CLAIMS

1. This is an action for violations of the minimum wage and unpaid provisions of the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*. Plaintiff is a former employee of Defendants. The Plaintiff brings this action as a collective action pursuant to 29 U.S.C. §216(b). Plaintiff and other similarly situated employees of the Defendants worked as Servers. Defendants engaged in a practice of wage theft whereby they did not pay Plaintiff an hourly rate and they improperly took a portion of the tips received by Plaintiff and used this money for their own purposes.

2. Plaintiff bring this lawsuit against Defendants as a collective action on behalf of themselves and all other similarly situated employees who suffered damages as a result of

Defendants' violations of the FLSA pursuant to the collective action provisions of 29 U.S.C. § 216(b).

3. Plaintiff also includes other causes of action under South Carolina Law on an individual and class wide basis. These claims are proposed as opt-out claims under Rule 23 of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

4. Plaintiff brings this action, individually and as an opt-in collective action pursuant to 29 U.S.C. § 216(b), on behalf of a class of all similarly situated Server employed by Defendant within the three years prior to joining this lawsuit, who were non-exempt employees and who were entitled to minimum wage, but who did not receive minimum wage for such hours.

5. Plaintiff also brings this action individually and as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all Servers employed by Defendant in at any time within the three years prior to the commencement of this lawsuit who were not paid all of their lawful wages for hours worked as required by state and federal law.

6. Upon information and belief, this action satisfies the requirements of Rule 23(a), Fed. R. Civ. P., as alleged in the following particulars:

- a. The proposed Plaintiff's class is so numerous that joinder of all individual members in this action is impracticable;
- b. There are questions of law and/or fact common to the members of the proposed Plaintiff class;
- c. The claims of Plaintiff, the representative of the proposed Plaintiff's class, are typical of the claims of the proposed Plaintiff class; and

d. Plaintiff, the representative of the proposed Plaintiff's class, will fairly and adequately protect the interests of the class.

7. In addition, upon information and belief, this action satisfies one or more of the requirements of Rule 23(b), Fed. R. Civ. P., because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

8. This Court has jurisdiction of the state claims alleged herein, and of the FLSA claim per 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b).

9. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over Plaintiff's pendent claims, which are brought pursuant to the statutory and common law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

10. At all times pertinent to this Complaint, Defendant was 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).

11. Based upon information and belief, the annual gross sales volume of the Defendant's business was in excess of \$500,000.00 per year at all times material hereto. Alternatively, the Plaintiff and those similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

PARTIES

12. Plaintiff Paul Watkins is over the age of nineteen (19) and is a resident of Richland County, South Carolina. Mr. Watkins worked for the Defendants under the title of Server from approximately 2009 until December of 2012.

13. Defendant, Courtney Bay Seafood Restaurant & Lounge, LLC is a for-profit corporation, organized and existing under the laws of South Carolina.

14. On information and belief, Defendant Karlene O'Neal is a citizen and resident of the State of South Carolina and is the owner and operator of Courtney Bay Seafood Restaurant & Lounge, LLC.

FACTS AND ALLEGATIONS

15. At all times relevant herein, Defendants own and operate Courtney Bay Seafood Restaurant & Lounge, LLC a restaurant that serves both food and alcohol.

16. Courtney Bay Seafood Restaurant & Lounge, LLC was originally located in Yemassee, South Carolina. Upon information and belief, sometime in 2011 the restaurant moved to its current location at 1 Dogwood Lane, Walterboro, SC 29488.

17. At all times relevant herein, Defendant O'Neal regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of the business.

18. Upon information and belief, Ms. O'Neal was actively involved in managing the day-to-day operations of Courtney Bay Seafood Restaurant & Lounge, LLC.

19. At all times relevant, Ms. O'Neal had the power to stop any illegal pay practices that harmed Plaintiff and other Servers.

20. The Defendants employed more than 5 employees.

21. Plaintiff worked for the Defendants as a Server. His primary job duties included taking customers' food and beverage orders along with delivering food from the kitchen to the customers.

22. Plaintiff was employed at both the Yemassee and Walterboro locations.

23. Defendants did not pay Plaintiff, and all other similarly situated Servers, any hourly wage. The Plaintiff and other servers worked only for the tips they received from customers.

24. Defendants deprived Plaintiff and other servers of the minimum wage.

25. Plaintiff and other similarly situated Servers were required to pay Defendants a percentage of the tips they earned from customers.

26. Before distributing the tips earned by credit card to the servers, Defendants deducted a "mandatory tip pool" contribution. The Defendants required the Plaintiff and other servers to contribute a percent of their gross alcohol sales to the tip pool. If Plaintiff and other servers did not have enough in credit card tips to cover this amount then the Defendants required Plaintiff and other similarly situated servers to pay the remainder in cash.

27. Upon information and belief, the Defendants deposited the server's mandatory tip pool contributions into the general operating account.

28. As a result of the Defendants' mandatory tip pool, the Defendants violated the rights of numerous employees and failed to pay these employees the federally mandated minimum wage.

29. Defendants unlawfully confiscated a portion of their workers' hard-earned tips in order to supplement their own profits.

30. The Defendant did not pay wages owed to the Plaintiff at the time of his separation from employment or within thirty days thereafter.

31. The Plaintiff and other servers spent a substantial amount of time performing non-tip producing activities that were not incidental to the regular duties of a server. They frequently swept, mopped, washed dishes and wiped down tables, and chairs. When they performed these activities they were not paid any hourly wage.

32. Plaintiff and other Servers were not exempt from the minimum wage compensation provisions of the FLSA.

33. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendants and consistently performed all of the essential functions of his job in an acceptable and competent manner.

FOR A FIRST CAUSE OF ACTION
(FLSA Minimum Wage Claim, 29 U.S.C. §§ 201, et seq.)
(Individual and Collective Action)

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

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

36. 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.

37. When the employer, its owners, or its managers share in the tip pool, the tip pool exception is invalidated.

38. 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.

39. Defendants did not pay Plaintiff or other Servers any hourly wage.

40. The Defendants willfully violated their minimum wage obligation.

41. Defendants unlawfully retained portions of the tips received by Plaintiff and other similarly situated food servers for their own profit.

42. Plaintiff, on behalf of himself and other Servers, is entitled to recover his 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.

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

FOR A SECOND CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action)

44. Plaintiff, on behalf of himself and all similarly situated Plaintiffs, realleges and incorporate by reference all preceding paragraphs as if they were set forth again herein.

45. Defendants are "employers" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

46. Defendants employed Plaintiff and the members of the Plaintiff's class within the State of South Carolina.

47. Defendants owe Plaintiff and the members of the Plaintiff's class "wages" as defined in Section 41-10-10(2) of the Act, to compensate them for labor rendered to Defendants,

as promised to Plaintiffs and the members of the Plaintiff class and as required by South Carolina Payment of Wages Act.

48. Defendants required Plaintiffs and the members of the Plaintiff class to work and did not pay them for services rendered for the benefit of Defendants.

49. Defendants have failed to pay Plaintiffs and the members of the Plaintiff class all wages due, as required by Sections 41-10-40 and -50 of the Act.

50. Defendants failure to pay Plaintiff and the members of the Plaintiff's class all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

51. Pursuant to Section 41-10-80(C) of the Act, Plaintiffs and the members of the Plaintiff class are entitled to recover in this action an amount equal to three times the full amount of their unpaid wages, or their wrongfully deducted wages, plus costs and reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff individually and on behalf of all others similarly situated individuals who join this action demand:

- 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 the Defendants for the amount of unlawfully retained portions of the tips they received from Plaintiff;

- d. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- e. Liquidated damages in an amount equivalent to the overtime damages, and unpaid minimum wages owed to Plaintiff;
- f. Treble damages pursuant to the South Carolina Payment of Wages Act
- g. Leave to add additional plaintiffs by motion, the filing of written consent forms; or any other method approved by the Court;
- h. Leave to amend to add other defendants who meet the definition of Plaintiffs “employer, 29 U.S.C. § 203(d);
- i. Attorneys’ fees and costs; and
- j. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Watkins on his behalf and on behalf of all other similarly-situated employees hereby demand a trial by jury.

Respectfully submitted,

/s/ Marybeth Mullaney
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