

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

RACHEL BONTEMPI and TIFFANY  
TATHAM, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

TEXAS ROADHOUSE, INC., TEXAS  
ROADHOUSE MANAGEMENT CORP.;  
TEXAS ROADHOUSE HOLDINGS, LLC;  
and TR VENTURES OF SOUTH  
CAROLINA, LLC, d/b/a Texas Roadhouse,

Defendants.

CA No: 3:15-1587-TLW

**FLSA COLLECTIVE ACTION**

**(Jury Trial Demanded)**

Rachel Bontempi and Tiffany Tatham (“Plaintiffs”) bring this collective action complaint on behalf of themselves and all other similarly situated persons who are or were employed at any Texas Roadhouse restaurant owned, managed, and licensed by Defendants Texas Roadhouse; Inc.; Texas Roadhouse Management Corp.; Texas Roadhouse Holdings, LLC; and TR Ventures of South Carolina, LLC (collectively, “Defendants”) and, by counsel, allege as follows:

**NATURE OF ACTION**

1. This is an action 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 by claiming a tip credit and then requiring contributions of a portion of tips to an invalid tip pool.

3. Specifically, Defendants required Plaintiffs and other tipped employees to share a percentage of their tips – calculated as a percentage of gross sales during each shift – with expediters. The expediters work with cooks performing final food preparation, including putting side items and garnishes on the plates, inspecting the plates to ensure they meet the orders, and organizing the orders to be delivered to the customers by the food runners or servers. The expediters do not serve customers or have any interaction with them.

4. The expeditor is a position that does not customarily and regularly receive tips from the customers. Rather, expediters function as back-of-the-house kitchen staff serving as quality-control gatekeepers between the cooks and the tipped employees delivering food to the customers. Accordingly, by paying tipped employees less than minimum wage, claiming a tip credit under the FLSA, and then requiring tipped employees to contribute a portion of their tips (calculated as a percentage of gross sales) to a tip pool that is distributed, in part, to these expediters, Defendants have violated the minimum-wage provisions of the FLSA.

5. The collective action provisions of the FLSA provide for opt-in class participation. 29 U.S.C. § 216(b). Plaintiffs' consent/opt-in form are attached hereto as **Exhibit A-1 and A-2**.<sup>1</sup>

#### **PARTIES, JURISDICTION, AND VENUE**

6. Plaintiff Rachel Bontempi is a citizen and resident of Richland County, the State of South Carolina and employed by Defendants at the Columbiana Drive Texas Roadhouse location in Columbia, South Carolina. She has worked as a server for Defendants at the Columbiana location on two different occasions since approximately January 2012. Ms. Bontempi is paid \$2.13 per hour.

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<sup>1</sup> Subsequent consent/opt-in forms will be filed as A-3, A-4, A-5, etc. as they are received.

7. Plaintiff Tiffany Tatham is a citizen and resident of Richland County, the State of South Carolina and employed by Defendants at the Columbiana Drive Texas Roadhouse location in Columbia, South Carolina. She has worked as a server and manager for Defendants at the Columbiana location since approximately May 2012. Currently, Ms. Tatham works the floor in a management role but previously worked as a server making \$2.13 per hour.

8. Plaintiffs bring this action on behalf of themselves and all other similarly situated tipped employees who have previously or are currently employed at any Texas Roadhouse restaurant where tipped employees are required to pay a percentage of the gross sales into a tip pool from which employees who performed the tasks or duties of an expediter are paid.

9. Defendant Texas Roadhouse, Inc. is a for-profit company incorporated in the State of Delaware with its principal place of business at Two Paragon Center, 6040 Dutchmans Lane, Louisville, Kentucky.

10. Defendant Texas Roadhouse Management Corp. is a Kentucky corporation with its principal place of business at Two Paragon Center, 6040 Dutchmans Lane, Louisville, Kentucky and is wholly owned by Defendant Texas Roadhouse, Inc.

11. Defendant Texas Roadhouse Holdings, LLC is a Kentucky limited liability corporation with its principal place of business at Two Paragon Center, 6040 Dutchmans Lane, Louisville, Kentucky and is wholly owned by Defendant Texas Roadhouse, Inc.

12. Defendants Texas Roadhouse, Inc., Texas Roadhouse Management Corp., and Texas Roadhouse Holdings, LLC own, operate, and manage the 368 Texas Roadhouse corporate restaurants nationwide and direct relevant employment policies of the additional 79 franchised restaurants, including those franchised restaurants owned by Defendant TR Ventures of South Carolina, LLC.

13. Defendant TR Ventures of South Carolina, LLC is a Kentucky limited liability company with its principal place of business at Two Paragon Center, 6040 Dutchmans Lane, Louisville, Kentucky, and it owns Texas Roadhouse restaurants, including the Texas Roadhouse restaurant located at Columbiana Drive in Columbia, South Carolina.

14. Defendant TR Ventures of South Carolina LLC is contractually obligated under its franchise agreement to operate its restaurants in accordance with standards established by Defendants Texas Roadhouse, Inc., Texas Roadhouse Management Corp., and Texas Roadhouse Holdings, LLC.

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

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants have restaurant operations located within this judicial district and division.

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

### **FACTS**

18. Defendants Texas Roadhouse, Inc., Texas Roadhouse Management Corp., and Texas Roadhouse Holdings, LLC exercise operational control over all of the 368 corporately owned restaurants and the approximately 79 franchise-owned restaurants, including labor and employment practices.

19. Defendant TR Ventures of South Carolina, LLC shares responsibility with the other Defendants for the management of the Texas Roadhouse restaurant at Columbiana Drive in Columbia, South Carolina, and upon information and belief, other Texas Roadhouse restaurants in the region.

20. Defendants have employed Plaintiffs and other similarly situated persons as tipped employees at the Texas Roadhouse restaurant at Columbiana Drive in Columbia, South Carolina and other Texas Roadhouse restaurants and paid them less than the minimum wage in violation of the FLSA by requiring participation in an invalid tip pool.

21. Plaintiffs and other similarly situated employees have worked as tipped employees for Defendants at Texas Roadhouse restaurants, where Defendants have 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.)

22. The rate of pay for the tipped employees in Defendants’ restaurants can range from the \$2.13 per hour, the amount paid to the Plaintiffs as servers, or a rate between \$2.13 and \$4.00 per hour for bartenders, food runners, and hostesses who were also allowed to receive gratuities and who customarily and regularly interact with customers.

23. In order to meet the FLSA minimum wage of \$7.25 for Plaintiffs and other similarly situated employees, Defendants have claimed a so-called “tip credit” for the difference between the cash wages paid and the federal minimum wage of \$7.25 based on tips received by Plaintiffs and other similarly situated employees for their service to customers.

24. In violation of the FLSA, Defendants have required Plaintiffs and all other similarly situated employees to remit 3% of their respective gross food and beverage sales to the tip pool and then directed distributions to unqualified employees in the expeditors. For some extended period of time, Defendants have paid their expeditors a rate less than minimum wage and allowed them to participate in the tip pool.

25. Defendants’ expeditors are the gate-keepers of the kitchen who are not permitted to participate in the tip pool under the FLSA because they are not employed in a position that

involves customer interaction or anything more than an occasional and sporadic interaction and, accordingly, do not ordinarily and regularly receives tips.

26. Unlike food runners, servers, busboys, hostesses, and bartenders who have regular and direct customer contact and thus customarily receive tips, Defendants' expeditors rarely, if ever, leave the setup area in the kitchen between the cooks and the servers and food runners. Very infrequently, and not according to policy, do the expeditors deliver an order to a table.

27. Therefore, by virtue of the expeditors' participation in Defendants' mandated tip pools, Defendants have entirely invalidated these tip pools under the FLSA.

28. In order to disguise this improper participation in the tip pool at the Columbiana Drive location, Defendants eliminated the title of "expediter" from their electronic management system and thereafter had the employees who performed the tasks or duties of an expediter sign into the electronic management system as "food runners."

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

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

30. At all times relevant herein, Plaintiffs and all others similarly employed at Defendants' restaurants worked in interstate commerce so as to fall within the protections of the FLSA.

31. At all times relevant herein, Defendants have been:

- a. Regularly engaged in interstate commerce;
  - b. An enterprise within the meaning of § 203(r) and § 203(s)(1) of the FLSA;
- and

c. An employer under the FLSA, 29 U.S.C. § 203.

32. At all times relevant herein, Defendants have owned, operated, and licensed an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the FLSA, 29 U.S.C. § 203(r) and (s).

33. At all times relevant herein, the annual gross sales volume of Defendants' business has been in excess of \$500,000.00.

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

35. Section 203(m) of the FLSA 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.

36. 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.

37. Without the benefit of the tip credit provision, Defendants must pay each non-exempt employee the statutory minimum wage of \$7.25 per hour.

38. Defendants paid Plaintiffs and other similarly situated employees an hourly rate of \$2.13 for servers and some bartenders and food runners \$3.00 to \$4.00 an hour and claimed the tip credit of \$5.12 for servers and something less for the bartenders and food runners toward Defendants' minimum wage obligation.

39. 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 have mandated, controlled, and distributed portions of the tip pool to employees who did not customarily and regularly receive tips;
- b. Defendants have claimed a tip credit for Plaintiffs and other similarly situated employees despite distributing a portion of the mandatory tip pool to employees who do not customarily and regularly receive tips or have any customer interaction as expeditors; and
- c. Defendants have not permitted Plaintiffs and other similarly situated tipped employees to retain all tips they received and instead mandated contributions to an invalid tip pool.

40. Defendants have not made a good faith effort to comply with the FLSA because Defendants have known or should have known that their policies and practices relating to the tip pool violated the FLSA.

41. Plaintiffs, on behalf of themselves and other similarly situated employees who are currently or have previously worked at Defendants' restaurants as tipped employees where Defendants required tipped employees to pay a percentage of their gross sales to a tip pool that was distributed, in part, to persons who performed the duties of an expeditor. Plaintiffs and these similarly situated employees are entitled to recover damages as a result of the Defendants' violations of the minimum wage provisions of the FLSA, liquidated damages in an equal amount, and reasonable attorneys' fees and costs incurred in bringing this action.

42. Defendants' violations of the tip-pool credit provisions of the FLSA have been willful, knowing, intentional, and reckless. Therefore, Plaintiffs, on behalf of themselves and all other similarly situated employees, are entitled to recover liquidated damages from Defendant, and the limitations period for the claims extends back accordingly.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated employees and former employees 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 their unpaid minimum wages at the applicable hourly rate of \$7.25;
- c. Liquidated damages in an amount equivalent to the unpaid minimum wages owed to them;
- d. Prejudgment interest;
- e. Judgment against Defendants for the amount of unlawfully redistributed portions of the tips it received from Plaintiffs and the collective class;
- f. Judgment against Defendants that their violations of the FLSA and its implementing regulations were willful;
- 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,

By: s/ James M. Griffin

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April 10, 2015

Columbia, South Carolina