

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

ALEX DROUILLARD,)	
On Behalf of Himself and Others)	
Similarly Situated,)	Civil Action No.: <u>2:15-cv-2444-PMD</u>
)	
Plaintiff,)	
)	
v.)	COLLECTIVE ACTION COMPLAINT
)	(Jury Trial Requested)
VESUVIO LLC, d/b/a CHARLESTON)	
BAGEL CO, and JOLANDA MAZZOCCHI,)	
individually,)	
)	
Defendants.)	
_____)	

Plaintiff Alex Drouillard, individually, and on behalf of all other similarly situated individuals, by way of the Complaint in the above-captioned matter, allege and show unto this Honorable Court the following:

NATURE OF CLAIM

1. This is an action for violations of the minimum wage provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.*, and the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. § 41-10-10, *et seq.* Plaintiff also brings claims under South Carolina common law for Conversion.

2. Plaintiff brings this lawsuit against Defendants as a collective action, pursuant to the collective action provisions of 29 U.S.C. § 216(b), on behalf of themselves and all other similarly situated employees who suffered damages as a result of Defendants’ violations of the minimum wage provisions of the FLSA.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff Alex Drouillard is a citizen and resident of Charleston County, South Carolina.

4. Defendant Vesuvio LLC is for-profit limited liability company, organized and existing under the laws of the State of South Carolina, doing business under the trade name “Charleston Bagel Company”.

5. Defendant Jolanda Mazzocchi is a citizen and resident of the State of South Carolina who owns and/or operates Vesuvio LLC doing business under the trade name “Charleston Bagel Co” for profit. Defendant Jolanda Mazzocchi employs persons such as Plaintiff and other similarly situated employees to work on her behalf in providing labor for her benefit. Defendant is within the personal jurisdiction and venue of this Court.

6. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in the Charleston Division of this Court. Additionally, the Defendants committed the unlawful labor practices and policies giving rise to Plaintiffs’ claims in the Charleston Division of this Court.

7. 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 employees within the three years prior to joining this lawsuit, who were non-exempt employees and who were entitled to overtime compensation, but who did not receive overtime compensation for such hours.

8. This Court has jurisdiction of the Plaintiff’s claims brought under the FLSA pursuant to 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b).

9. 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.

FACTS

10. At all times relevant herein, the Defendants own and operate restaurants under the name Charleston Bagel Co located at 656 Long Point Rd Mount Pleasant, SC and 121 South Main Street in Summerville, SC. The Defendants serve bagels, muffins, cakes, breakfast sandwiches, omelets, lunch sandwiches as well as various beverages.

11. At all times material hereto, Defendant Jolanda Mazzocchi, managed, owned and/or operated Charleston Bagel Co, and 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 such business. By virtue of such control and authority Jolanda Mazzocchi was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

12. Plaintiff worked for the Defendants as a sandwich maker and his primary job responsibilities included baking, food prep, serving customers and operating the cash register.

13. Plaintiff was employed by the Defendants from approximately August of 2014 until approximately February 2015.

14. Plaintiff and other similarly situated employees had an employment agreement with the Defendants, whereby the Defendants agreed to pay an hourly rate for all hours worked.

15. The Defendants engaged in the practice of “time shaving” whereby they reduced their labor costs by deleting some of the time Plaintiff worked in violation of the FLSA and SCWPA. These reductions resulted in Plaintiff as well as similarly situated employees being shorted on pay.

16. During some pay periods Plaintiff’s time was shaved by as much as fifteen (15) hours. As a result, Plaintiff and similarly situated employees regularly worked an entire workweek without receiving compensation at the required minimum wage.

17. In addition to their hourly wage, customers left tips in the form of cash and credit card transactions for the Plaintiff and other similarly situated employees.

18. The Defendants kept Plaintiff’s tips for their own purposes.

19. The FLSA prohibits any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. Gratuity or tip is tendered to the employees for a service performed and it is not a gift to the business.

20. The Defendants did not have a legal claim to the gratuity that customers left for Plaintiff and similarity situated employees.

21. Plaintiff and similarly situated employees repeatedly asked the Defendants to give them the tips that they had earned.

22. By exercising a right of ownership over the gratuities that Plaintiff and other similarly situated employees had earned, Defendants conduct was malicious, willful, reckless, and was committed with a conscious indifference to the rights of others.

23. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendant and performed the essential functions of his job in an exceptional and competent manner

FOR A FIRST CAUSE OF ACTION
Violations of the Minimum Wage Provisions of the
Fair Labor Standards Act, 29 U.S.C. §216
(Individual and Collective Action Against All Defendants)

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

25. Plaintiff and similarly situated employees were not exempt from the minimum wage requirements of the FLSA, and were entitled to receive the required minimum wage for all hours worked each workweek.

26. Defendants failed to pay Plaintiff and similarly situated employees the required minimum wage for the hours worked during some workweeks.

27. Defendants misclassified and/or mistreated the Plaintiff and similarly situated employees as exempt from the minimum wage requirements of the FLSA.

28. Defendants were aware of the minimum wage requirements of the FLSA, and knew or should have known that Plaintiff and similarly situated employees did not qualify for an exemption to the minimum wage requirements of the FLSA.

29. Defendants' failure to pay Plaintiff and similarly situated employees according to the minimum wage requirements of the FLSA was willful.

30. Defendants did not make a good faith effort to comply with the minimum wage requirements of the FLSA.

31. As a result of Defendants violations of the minimum wage provisions of the FLSA, Plaintiffs and similarly situated employees are entitled to recover:

- a. Damages in the amount of their unpaid minimum wages;
- b. Liquidated damages in an equal amount; and
- c. Reasonable attorneys' fees and costs incurred in bringing this action.

FOR A SECOND CAUSE OF ACTION
(South Carolina Payment of Wages Act)

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

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

34. Defendants employed Plaintiff within the State of South Carolina.

35. Defendants owe Plaintiff "wages" as defined in S.C. Code §41-10-10(2), to compensate them for labor rendered to Defendants, as promised to Plaintiffs and as required by law.

36. Defendants deducted amounts from Plaintiff wages for improper purposes and without providing written notice in violation of S.C. Code §41-10-30(A).

37. Defendants have failed to pay Plaintiff all wages due, as required by S.C. Code § 41-10-40 and -50.

38. 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.

39. Pursuant to S.C. Code §41-10-80(C), Plaintiff's are entitled to recover 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.

FOR A THIRD CAUSE OF ACTION
(Common Law Conversion)

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

41. Defendants engaged in the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the Plaintiff's rights.

42. Defendant's engaged in a wrongful taking by retaining Plaintiff's tips for their own personal use.

43. Defendants did not give Plaintiff the tips he earned after Plaintiff made repeated demands for those monies.

44. The Defendants did not have a legal right to Plaintiff's cash and credit card tips.

45. Defendants owe Plaintiff damages for conversion in the value of the tips retained plus interest.

46. Defendants owe punitive damages to Plaintiff because their conduct has been malicious, willful, reckless, or committed with a conscious indifference to the rights of others.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all similarly situated employees, respectfully pray that this Court award the following relief against Defendants jointly and severally:

- a. Certification of this action as a collective action pursuant to 29 U.S.C. § 216 (b);
- b. Award Plaintiff and similarly situated employees an amount equal to each of their unpaid overtime compensation and liquidated damages in an equal amount;
- c. Award Plaintiff and similarly situated employees an amount equal to each of their unpaid minimum wages and liquidated damages in an equal amount;
- d. Award Plaintiffs an amount equal to three times their unpaid wages pursuant to the South Carolina Payment of Wages Act;
- e. Award Plaintiff and similarly situated employees the gratuities plus interest that they rightfully earned plus interest;
- f. Award Plaintiff and similarly situated employees punitive damages for the monies that Defendant wrongfully converted for their own personnel gain;
- g. Award Plaintiff their reasonable attorney's fees and costs incurred herein; and
- h. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Alex Drouillard, on behalf of himself and all other similarly situated employees, hereby demand a trial by jury.

Respectfully submitted,

s/ Marybeth Mullaney

Marybeth Mullaney Fed. ID No. 11162

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Attorney for Plaintiff

June 17, 2015

Mount Pleasant, South Carolina.