

PARTIES, JURISDICTION AND VENUE

2. Plaintiff Logan Carbone is a citizen and a resident of Charleston County, South Carolina.

3. Defendant, China Fun, LLC, DBA as Zen Asian Fusion is a for-profit limited liability corporation, organized and existing under the laws of South Carolina, and is registered with the South Carolina Secretary of State.

4. Defendant, Chen Zhou AKA Cindy Alfredson, is a citizen and resident of Charleston County.

5. Defendant, Rong A Zhou, is a citizen and resident of Charleston County.

6. Defendant, Mei Zheng, is a citizen and resident of Charleston County.

7. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in Charleston County. Additionally, the unlawful labor practices and policies giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

8. 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 who worked in excess of forty (40) hours during certain workweeks without receiving overtime compensation, were not paid the federal minimum wage, and had improper deductions from their wages and tips while working for Defendants at Zen Asian Fusion.

9. 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).

10. 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 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

11. China Fun, LLC, a South Carolina limited liability company operates Zen Asian Fusion, which is an Asian cuisine restaurant located at 2037 Sam Rittenberg Blvd. Charleston, SC 29407.

12. Defendant Chen Zhou AKA Cindy Alfredson is an owner and manager of Zen Asian Fusion. Defendant Zhou/Alfredson acts directly and/or indirectly in the interest of Defendants in relation to Plaintiff and similarly situated employees. Defendant Zhou managed, owned and/or operated, Zen Asian Fusion 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 Ms. Zhou/Alfredson was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

13. Defendant Rhon Zhou is an owner and manager of Zen Asian Fusion. Defendant Zhou acts directly and/or indirectly in the interest of Defendants in relation to Plaintiff and similarly situated employees. Defendant Zhou managed, owned and/or operated, Zen Asian Fusion 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 Defendant Zhou was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

14. Defendant Mei Zheng is an owner and manager of Zen Asian Fusion. Defendant Zhou acts directly and/or indirectly in the interest of Defendants in relation to Plaintiff and similarly situated employees. Defendant Zheng managed, owned and/or operated, Zen Asian Fusion 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 Defendant Zheng was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

15. Plaintiff Logan Carbone has been employed by the Defendants since July 1, 2014.

16. Plaintiff and other similarly situated employees have an employment agreement where Defendants pay Plaintiff forty dollars (\$40) a shift when he bartends and two and 25/100 (\$2.25) when he works as a server.

17. Plaintiff and other similarly situated employees work for the Defendants as Servers and Bartenders. Plaintiff is a server and a bartender. His primary job duties as a Server include taking customers' food and beverage orders. His primary duty as a bartender includes preparing alcohol drinks for customers.

18. Defendants paid Plaintiff, and other similarly situated servers and bartenders, less than the statutory minimum wage by taking the "tip credit" under the FLSA, 29 U.S.C. § 203(m).

19. In addition to their hourly wage, Plaintiff and other similarly situated employees received tips from customers when they worked as servers and bartenders.

20. In order to meet the FLSA minimum wage of \$7.25 for Plaintiff when he worked as a server, and for other similarly situated servers, the Defendants applied a "tip credit" of \$5.00 based on the tips received by the servers for their service to customers.

21. Defendants required Plaintiff and other similarly situated servers to participate in three separate “tip pools.”

22. The first tip pool was mandatory and it required the Plaintiff and similarly situated servers to tip the busboys an amount determined by the Defendants.

23. The amount that was contributed to the busboys by the Plaintiff and similarly situated Servers was never disclosed by Defendants to the Servers. The method of calculation that the Defendants used to determine the contribution of the servers’ tips to the busboys was never disclosed to the Plaintiff.

24. The busboys were paid the federal minimum wage.

25. The second tip pool was mandatory and it required the Plaintiff and similarly situated Servers to contribute 3.5% of their alcohol sales to the Bartender.

26. The third tip pool was mandatory and it required the Plaintiff and similarly situated servers to contribute 4.5% of gross sales of food and alcohol made by the Plaintiff and similarly situated Servers during their shift to “the house”, meaning to the Defendants.

27. When the Plaintiff and other similarly situated employees worked as a Bartenders they were required to contribute a percentage of their alcohol sales “to the house,” in a scheme where the Defendants were essentially “double dipping” on alcohol sales.

28. The contributions made by Plaintiffs and other servers to the mandatory tip pool included both cash and credit card transactions. Defendants deducted the “mandatory tip pool” contribution of 4.5% of total sales from all cash and credit card tips. Defendants required Plaintiffs and other similarly situated servers to pay them in cash from the tips they earned during the shift. If the amount of cash tips were insufficient to cover the 4.5% contribution, then

the Defendants would take the difference from the tips Plaintiff and similarly situated employees earned by credit at the end of the shift.

29. Upon information and belief, the Defendants deposited the Plaintiff's and other similarly situated servers' mandatory tip contributions into a general operating account and used the Servers mandatory tip pool contributions to pay hourly wages to employees ("hourly employees") who did not receive tips, such as dishwashers, cooks, and various kitchen staff.

30. The Defendants did not redistribute the contributions from the Plaintiff and other similarly situated Servers among tipped employees.

31. Defendants paid their hourly employees a straight hourly wage so that their pay did not fluctuate based on the amount of money contributed to the third mandatory tip pool that went "to the house" each week.

32. Defendants were not entitled to reduce the minimum wage by applying the tip credit allowance that is available under 29 U.S.C § 203 (m) because Defendants retained portions of Plaintiffs and class members tips, including but not limited to, an amount equal to approximately 4.5% of the Plaintiff's and similarly situated employees gross food and alcohol sales for the shift.

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

34. Plaintiff and similarly situated employees regularly worked over forty (40) hours in a workweek without receiving proper overtime compensation.

35. Plaintiff and similarly situated employees had their wages and tips illegally docked for “breakage” when dishware or liquor bottles were broken, or when an order of food was incorrectly ordered into the kitchen.

36. At all times relevant to this complaint, Plaintiff and other similarly situated employees were non-exempt employees for purposes of the overtime compensation provisions of the FLSA. Plaintiff was not employed as an executive or administrative employee.

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

FOR A FIRST CAUSE OF ACTION

(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

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

39. At all times pertinent to this Complaint, each Defendant was an “enterprise engaged in commerce or in the production of goods for commerce” as that term is defined by 29 U.S.C. § 203(s).

40. At all times pertinent to this Complaint, Plaintiff and similarly situated employees were “engaged in commerce or in the production of goods for commerce” as that term is defined within 29 U.S.C. §207.

41. At all times relevant herein, each Defendant was an “employer” of Plaintiff and similarly situated employees as that term is defined by 29 U.S.C. § 203(d) of the Fair Labor Standards Act.

42. 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).

43. Plaintiff and other similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

44. At all times relevant herein, the annual gross sales volume of the Defendants' business was in excess of \$500,000.

45. Defendants employed Plaintiff and similarly situated employees who worked as servers and bartenders for workweeks longer than forty (40) hours without compensating Plaintiff and similarly situated employees at a rate of one-and-a-half times their regular rate of pay as required by 29 U.S.C. § 207(a).

46. Plaintiff and similarly situated employees are entitled to back pay of unpaid overtime compensation at the rate of one-and-a-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek, liquidated damages in an equal amount, and their reasonable attorneys' fees and costs incurred in bringing this action pursuant to 29 U.S.C. § 216(b).

47. Defendants' violations of the FLSA were willful.

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

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

49. Each Defendant is an "employer" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

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

51. 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 Plaintiff and the members of the Plaintiff's class and as required by law, including overtime pay required by the FLSA.

52. Defendants required Plaintiff and the members of the Plaintiff's class to work "off the clock," and did not pay them for all service rendered for the benefit of Defendants.

53. Defendants improperly deducted money from Plaintiff and similarly situated employees' paychecks.

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

55. Pursuant to S.C. Code § 41-10-80(C), Plaintiff and the members of the Plaintiff's 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.

FOR A THIRD CAUSE OF ACTION
(FLSA Minimum Wage Claim)
(Individual and Collective Claim)

56. Plaintiff, on behalf of himself and all other similarly situated employees, realleges and incorporates by reference all preceding paragraphs as if specifically set forth herein.

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

58. The FLSA, 29 U.S.C. § 203(m), provides an exception allowing Defendants to pay less than the statutory minimum wage to tipped employees, on the condition that the pooling of tips amongst those who customarily and regularly receive tips.

59. When the Defendants shared in the Tip Pool and took a percentage of the tip pool, the tip pool was invalidated.

60. Without the benefit of the tip credit provision, the Defendants must pay the Plaintiff and similarly situated employees the statutory minimum wage of seven and 25/100 (\$7.25) per hour.

61. Defendants' compensation of the Plaintiff and other similarly situated employees violated the minimum wage provisions of the FLSA because Defendants did not permit Plaintiff and other similarly situated employees to retain all the tips they received.

62. Defendants' compensation of the Plaintiff and other similarly situated employees violated the minimum wage provisions of the FLSA because Defendants unlawfully retained portions of the tips received by Plaintiff and other similarly situated employees for Defendant's own profit.

63. Defendants' compensation of the Plaintiff and other similarly situated employees violated the minimum wage provisions of the FLSA because Defendants distributed the tip pool to employees who did not customarily and regularly receive tips.

64. Defendants' compensation of the Plaintiff and other similarly situated employees violated the minimum wage provisions of the FLSA because Defendants distributed the servers' and bartenders' contributions to the tip pool to other employees at an hourly rate regardless of the amount of contributions contained in the tip pool.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other similarly situated employees, seeks judgment against the Defendants as follows:

- a. That this Court certify this action as a collective action pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiff and similarly situated employees' wages at the applicable hourly rate of \$7.25;
- c. Judgment against Defendants for the amount of unlawfully retained portions of the tips they received from Plaintiffs;
- d. An award of compensatory damages in an amount equal to the unpaid overtime compensation and minimum wages owed to Plaintiff and similarly situated employees pursuant to 29 U.S.C. § 216(b);
- e. An award of liquidated damages in an amount equal to the award of compensatory damages pursuant to 29 U.S.C. § 216(b);
- f. An award of treble damages pursuant to the South Carolina Payment of Wages Act;
- g. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- h. An award of the reasonable attorneys' fees and costs incurred by Plaintiff and similarly situated employees in bringing this action; and
- i. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Carbone on his behalf and on behalf of all other similarly situated employees hereby demands a trial by jury.

Respectfully submitted,

s/ Marybeth Mullaney
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Mount Pleasant, South Carolina.