

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

Laura J. Turzak, Individually and On Behalf
All Others Similarly Situated,

Plaintiff,

v.

ASB Enterprise Inc., DBA Spring House,
Family Restaurant and Anna Halaris,
individually,

Defendants.

CIVIL ACTION NO: 2:16-cv-01810-DCN

COLLECTIVE ACTION COMPLAINT
(Jury Trial Requested)

Plaintiff Laura J Turzak, individually and on behalf of all others similarly situated, by way of her Complaint in the above captioned matter, alleges the following claim against ASB Enterprise Inc., DBA Spring House Family Restaurant, Anna Halaris individually, pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, (“FLSA”), and the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, *et seq.* (“SCPWA”).

NATURE OF CLAIM

1. Plaintiff brings this action, individually and as an opt-in collective action pursuant 29 U.S.C. §201, *et seq.*, (FLSA), on behalf of a class of all similarly situated servers who worked in excess of forty (40) hours during certain workweeks without receiving overtime compensation, and who were not paid the federal minimum wage, and who had improper deductions from their wages and tips while working for Defendants at Spring House Restaurant.

2. This is an action for violations of the minimum wage and unpaid overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, (FLSA).

3. Plaintiff bring this action as a collective action pursuant to 29 U.S.C. §216(b), individually and on behalf of other similarly situated employees of the Defendants who worked as “servers” and who suffered damages as a result of Defendants’ violations of the FLSA.

4. Plaintiff also brings claims for unpaid wages under the South Carolina Payment of Wages Act, S.C. Code Ann § 41-10-10, *et seq.* (SCPWA).

PARTIES, JURISDICTION AND VENUE

5. Plaintiff Laura J. Turzak is a citizen and a resident of Horry County, South Carolina.

6. ASB Enterprise Inc. 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.

7. Defendant, Anna Halaris, is a citizen and resident of Georgetown County.

8. 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.

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 Plaintiffs’ 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. Defendant, ASB Enterprise Inc, is a South Carolina limited liability company, which operates Spring House Family Restaurant located 41 US-17 BUS, Murells Inlet SC 29407.

12. Defendant Anna Halaris is the owner and manager of Spring House Family Restaurant. Defendant Halaris acts directly and/or indirectly in the interest of Defendants in relation to Plaintiff and similarly situated employees. Defendant Halaris managed, owned and/or operated, Spring House Family Restaurant 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. Halaris was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 et seq.

13. The Defendants employed Laura J Turzak from July of 2003 to January 2016.

14. Plaintiff and other similarly situated servers had an employment agreement whereby Defendants agreed to pay them an hourly rate for all hours worked plus tips.

15. Plaintiff was paid three dollars and thirteen cents (\$3.13) an hour plus tips.

16. Plaintiff and other similarly situated employees worked for the Defendants as servers. Their primary job duties included taking customers' food and beverage orders.

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

18. In order to meet the FLSA minimum wage of \$7.25 for Plaintiff when she worked as a server, and for other similarly situated servers, the Defendants applied a "tip credit" of \$4.10 based on the tips received by the servers for their service to customers.

19. Defendants violated the tip credit notice requirement of 29 U.S.C. § 203(m), because they did not inform the employees that they intend to treat tips as satisfying part of their

minimum wage obligation. Defendants did not notify Plaintiff and similarly situated employees of their policy regarding the FLSA's tip credit provisions.

20. Defendants failed to notify Plaintiff, as well as other similarly situated employees, regarding the provisions of their tip policy.

21. Defendants failed to inform the Plaintiff, as well as other similarly situated employees regarding the amount of the tip credit that it was taking.

22. Defendants failed to inform Plaintiff as well as other similarly situated employees regarding the amount of tip pool contributions they would be required to make either before or after they were hired.

23. Defendants had a policy and practice of requiring their servers to provide portions of their tips to the kitchen employee or back of the house employee who rolled silverware. This employee worked primarily in the kitchen and did not interact with customers.

24. The kitchen employee that rolled silverware is not considered a "tipped employee" under the FLSA; therefore, by law they should not be receiving tips directly from other tipped employees pursuant to a tip pool. 29 U.S.C. §203 (m).

25. As a result of the Defendants' mandatory tip pool, the Defendants violated the rights of the Plaintiff and numerous similarly situated employees by failing to pay these employees the federally mandated minimum wage of \$7.25 an hour.

26. The Defendants docked Plaintiff's and similarly situated employee's paychecks by \$1.00 each week for soda.

27. Plaintiff does not drink soda. Additionally, Defendants made these deductions from Plaintiff's and situated servers wages without their permission and without providing notice to the employees in any form.

28. By maintaining these policies the Defendants may not avail themselves of the tip credit provisions of the FLSA.

29. Defendant's actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.

30. Plaintiff and similarly situated employees regularly worked over forty (40) hours in a workweek without receiving overtime compensation or her regular hourly wages.

31. Defendants did not pay Plaintiff or similarly situated employees any hourly wages for the time they spent working over forty hours a week.

32. Plaintiff and other similarly situated servers regularly worked approximately four (4) to five (5) hours a week of overtime that they were not compensated for.

33. By law, when tipped employees paid pursuant to a tip credit scheme work overtime, the employer is to calculate the employees overtime rate at one and half (1.5) times minimum wage not the lower direct wage payment of the tip credit scheme. 29 U.S.C § 203 (m).

34. Defendants violated the aforementioned law by not calculating Plaintiffs overtime rate based upon one and half times (1.5) the minimum wage.

35. 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.

FOR A FIRST CAUSE OF ACTION

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

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

37. At all times pertinent to this Complaint, each Defendant were 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).

38. At all times relevant herein, each Defendants were 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.

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

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

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

42. Defendants’ violations of the FLSA were willful and reckless.

43. 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).

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

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

45. Each Defendant is an “employer” as defined by the SCPWA, S.C. Code § 41-10-10(1).

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

47. Plaintiff and similarly situated employees worked for Defendant with the clear understanding and agreement by Defendant that their compensation would be consistent with all applicable laws, including federal and state wage and hour laws.

48. Plaintiff and similarly situated employees had an employment agreement with Defendants whereby they would be paid for all hours worked.

49. Defendants failed to pay Plaintiff and similarly situated servers according to their employment agreement.

50. Defendants did not pay Plaintiff and similarly situated servers for all hours worked rendered for the benefit of Defendants, in violation of the SCPWA.

51. Defendants owe Plaintiff “wages” as defined in S.C Code Ann. § 41-10-10 (2) of the SCPWA, to compensate her for labor rendered to Defendants, as promised to Plaintiff and similarly situated employees and as required by law.

52. Pursuant to the SCPWA, “[a]n employer shall not withhold or divert any portion of the employee’s wages unless the employer is required or permitted to do so by state or federal law. . . .” S.C. Code Ann. § 41-10-40(C).

53. Further, “any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective.” S.C. Code Ann. § 41-10-30(A).

54. Defendants improperly deducted money from Plaintiff and similarly situated server's paychecks, in violation of the SCPWA.

55. Accordingly, Plaintiff as well as similarly situated employees are entitled to receive all compensation due and owing to them including recovery of their tips that Defendants unlawfully took from them in excess of the minimum wage

56. 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

(Fair Labor Standards Act-Minimum Wage Claim)
(Individual and Collective Claim)

57. Plaintiff, on behalf of herself and all other similarly situated employees, reallege and incorporates by reference all preceding paragraphs as if specifically set forth herein.

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

59. 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.

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 distributed the tip pool to employees who did not customarily and regularly receive tips.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself 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. Restitution of wages and gratuities improperly retained by Defendant
- j. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Turzak, individually and on behalf of all other similarly situated employees
hereby demand a trial by jury.

Respectfully submitted,

s/ Marybeth Mullaney
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Mount Pleasant, South Carolina.