

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**VANESSA CHAVEZ, on behalf of herself
and all others similarly situated**

Plaintiffs,

vs.

**T & B MANAGEMENT, LLC and T & B
CONCEPTS OF HICKORY, LLC, each
d/b/a HICKORY TAVERN,**

Defendants.

Case No. 1:16-CV-1019

**COMPLAINT - CLASS ACTION
(Jury Trial Demanded)**

NOW COMES plaintiff, Vanessa Chavez (“Plaintiff” and/or “Ms. Chavez”), pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), as amended, in 29 U.S.C. §§ 201, *et seq.*, on behalf of herself and all other similarly situated former and current tipped server employees at Hickory Tavern restaurants throughout North Carolina, South Carolina, Alabama, Tennessee, and any other state in which a Hickory Tavern restaurant is located, and brings the following Collective Action against defendants T & B Management, LLC and T & B Concepts of Hickory, LLC, each individually and collectively d/b/a Hickory Tavern (collectively, “Defendants” and/or “Hickory Tavern” and/or the “Hickory Tavern Defendants”) and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Hickory Tavern, acting by and through its managers, agents, and/or employees, for engaging in a systemic scheme of wage abuses against its tipped server employees at each of its restaurants. Specifically, Hickory Tavern required its tipper server employees to spend more than twenty percent (20%) of their time performing preparation, maintenance, cleaning, sidework, and other non-tip generating duties and tasks, for which they were paid below minimum wage. This practice is a violation of the FLSA.

PARTIES

2. Plaintiff is a citizen and resident of Winston Salem, Forsyth County, North Carolina.

3. Plaintiff is a former tipped hourly employee of Hickory Tavern. Ms. Chavez was employed as a server for approximately four months at Defendants' restaurant located at 206 Harvey Street, Winston-Salem, North Carolina.

4. Plaintiff was an "employee" of Defendants as that term is defined in the FLSA.

5. Ms. Chavez has consented to be a plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). Plaintiff's executed Consent to Become a Party Plaintiff is attached hereto as Exhibit A.

6. Defendant T & B Management, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

7. Defendant T & B Concepts of Hickory, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

8. The Hickory Tavern Defendants individually and/or collectively operate and manage approximately twenty-three (23) casual dining “sports bar” restaurants in North Carolina, South Carolina, Tennessee and Alabama, including a location in Winston Salem, Forsyth County, North Carolina.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

9. Jurisdiction is proper in this Court pursuant to the FLSA which authorizes court actions by private citizens to recover damages for violation of the FLSA’s wage and hour provisions. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

10. The Hickory Tavern Defendants managed and operated the restaurant where Plaintiff worked in Winston-Salem, Forsyth County, North Carolina. Plaintiff performed all of the work alleged herein, and earned all of her wages as alleged herein, in Winston-Salem, Forsyth County, North Carolina. As such, this cause of action for which Plaintiff seeks recovery arose in this District.

11. Upon information and belief, Defendants employ more than two hundred fifty (250) tipped hourly employees among the approximately twenty-three (23) restaurants it manages and operates in North Carolina, South Carolina, Tennessee and Alabama.

12. Defendants have substantial contacts with, and do business in, this District and are subject to personal jurisdiction of this Court.

13. Venue is proper in this Court because Defendants may be found in this District and much of the relevant information and witnesses for Defendants are located in this District.

14. Venue is also proper in this Court because the alleged acts and omissions of Defendants occurred in this District. Defendants manage, operate and maintain a restaurant business in this District, and thereby do significant business in this District.

15. All conditions precedent to the filing of this action have been met or occurred.

CLASS DEFINITIONS

16. Plaintiff brings this action collectively on behalf of herself and the Class of similarly situated persons defined as follows:

All hourly tipped employees of Hickory Tavern who work, or worked, as servers at any of Defendants' restaurants from August 1, 2014 through the present, and who Defendants did not pay minimum wage when their non-tip generating work exceeded twenty percent (20%) of their workweek.

(Collectively, "Class Members").

17. The proposed Class excludes Defendants' officers, directors, members and managers. The proposed Class also excludes all judicial officers presiding over this action and their immediate family members and staff, and any jury assigned to this action.

FACTUAL ALLEGATIONS

18. Upon information and belief, Defendants maintain control, oversight, direction and management of the operations at its restaurant facilities, including employment and/or labor practices, throughout North Carolina, South Carolina, Tennessee, Alabama, and other states in which Defendants operate restaurant facilities.

19. Upon information and belief, Defendants provide written instructions, manuals, handbooks and training materials for its tipped employee servers at each of its restaurant facilities in North Carolina, South Carolina, Tennessee, Alabama, and other states.

20. Upon information and belief, Hickory Tavern's tipped employee servers do not pool their tips to share among other servers. As such, work done by Plaintiff for other servers does not generate tips for Plaintiff.

21. As part of their employment with Hickory Tavern, Plaintiff and the Class Members were required to perform non-tip generating work such as maintenance, preparatory work, cleaning, washing dishes, rolling silverware and other, non-tip generating duties, including running orders to tables for other servers. These tasks do not generate tips for themselves. These tasks are generally known as "sidework."

22. As a tipped server, Ms. Chavez was only paid an hourly rate of \$2.13, well below minimum wage. The FLSA does, however allow a "tip credit" to be taken by the employer of tipped employees. A tip credit allows for a server's earned tips to make up the difference between \$2.13 an hour and minimum wage.

23. Despite the allowed tip credit, the U.S. Department of Labor's Wage and Hour Division's Fact Sheet #15: "Tipped Employees Under the Fair Labor Standards Act (FLSA)" ("Fact Sheet #15") states on page 2 under "Dual Jobs," that "where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties [such as sidework], no tip credit may be taken for the time spent in such duties." A copy of Fact Sheet #15 is attached hereto as Exhibit B.

24. When sidework is performed by Plaintiff and the Class Members that exceeds twenty percent (20%) of all time worked during a shift, Plaintiff and the Class Members are required to be paid minimum wage for all of the sidework performed.

25. It is a violation of the FLSA for Hickory Tavern to not pay Plaintiff and Class Members minimum wage for all of the time they perform sidework – when such work exceeds twenty percent (20%) of their workweek.

26. The Hickory Tavern Defendants failed to pay the Plaintiff and Class Members a wage differential to meet the requirements of the FLSA for all sidework when such work exceeded twenty percent (20%) of the workweek Plaintiff and the Class Members worked and currently work. In other words, Plaintiff and Class Members are only paid \$2.13 for doing sidework when they should be paid minimum wage.

27. The Hickory Tavern Defendants continually and willfully violate the FLSA by not paying the Class Members proper wages.

28. The Hickory Tavern Defendants, individually, and/or through an enterprise, willfully engage in a pattern and/or practice of unlawful conduct by failing to record, credit and/or compensate work performed by the Class Members for all the time such employees perform non-tip generating sidework done in excess of twenty percent (20%) of their workweek.

29. Plaintiff brings this action on behalf of herself and the Class Members pursuant to the FLSA, and specifically the collective action provision of 29 U.S.C. § 216(b), to remedy the knowing and intentional violations of the wage-and-hour provisions of the FLSA that have deprived Plaintiff and the Class Members of proper pay.

30. Plaintiff and the Class Members were/are tipped employees as defined by the FLSA 29 U.S.C. § 203(t).

31. The Hickory Tavern Defendants individually and/or through an enterprise, directed, managed and/or exercised control over Plaintiff and the Class Members at all relevant times.

32. Plaintiff and the Class Members' work, were, and are, performed pursuant to Hickory Tavern's policies, procedures, and guidelines.

33. During Plaintiff and the Class Member's employment as tipped employee servers by the Hickory Tavern Defendants, they were not paid proper wages for all time worked.

COUNT ONE
FLSA Wage and Hour Violations

34. Plaintiff incorporates the allegations contained in each prior paragraph as if fully set forth herein.

35. Plaintiff brings this action on behalf of herself and all other similarly situated Class Members of Hickory Tavern, and/or its subsidiaries, that perform general preparation, maintenance, sidework, and/or other non-tipped work in excess of twenty percent (20%) of their workweek, and who are not paid at least the full hourly minimum wage while performing such duties – as required by 29 U.S.C. §201, et. seq.

36. The Hickory Tavern Defendants also failed to properly record the time the Plaintiff and Class Members performed sidework in excess of twenty percent (20%) of their workweek.

37. The work of the Class Members is essentially the same as the work of the Plaintiff described above. At all times during the FLSA class period, all of the Class Members were paid in substantially the same manner and under substantially the same employment guidelines and practices as the Plaintiff.

38. The Class Members, like the Plaintiff, were all subject to the same policy and/or practice whereby Hickory Tavern willfully failed to record, credit, and compensate work performed by the Class Members for all the time they performed non-tipped work, such as maintenance, preparatory work, and/or sidework in excess of twenty percent (20%) of their workweek.

39. Hickory Tavern's refusal to pay Plaintiff and the Class Members the required wage differential when the Class Members worked in excess of twenty percent (20%) of their time performing general preparation, maintenance work and/or sidework, was willful and intentional.

40. Plaintiff and the Class Members have been damaged in the amount of the difference between the wages they were actually paid and the amount of the wages they should have been paid pursuant to the FLSA and regulations adopted thereunder.

41. Hickory Tavern's refusal to pay Plaintiff and the Class Members the required wage differential is a violation of 29 U.S.C. §§ 201, et. seq.

42. Hickory Tavern's violations of 29 U.S.C. §§ 201, et. seq. were repeated, willful and intentional.

43. Plaintiff and the Class Members are entitled to liquidated damages in an amount equal to the amount of lost wages as set forth in 29 U.S.C. §201 et. seq.

44. Plaintiff and the Class Members are also entitled to reasonable attorney's fees and costs of this action as set forth in 29 U.S.C. §201 et. seq.

WHEREFORE, Plaintiff Vanessa Chavez, prays this Court enter Judgment against the Defendants T & B Managements, LLC and T & B Concepts of Hickory, LLC, and for herself and the Class Members, in an amount that is fair and reasonable under the circumstances, for all unpaid wages, enjoining Defendants from further violations of the Fair Labor Standards Act, for the costs of this action, attorney's fees, liquidated damages, prejudgment interest thereon from the date the employee was owed the wages, and for such other and further relief as is necessary and proper.

This the 1st day of August, 2016.

/s/ Paul R. Dickinson, Jr.

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