

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

McKENNA LIGHT,
*on behalf of herself and all other employees
similarly situated,*

Plaintiffs,

v.

GREEK PEAK HOLDINGS, LLC

Defendant.

**CLASS AND COLLECTIVE ACTION
COMPLAINT
AND DEMAND FOR JURY TRIAL**

Civil Action No.

5:16-cv-1341 (LEK/DEP)

McKenna Light (“Named Plaintiff”), on behalf of herself and all other persons similarly situated, known and unknown (“Plaintiffs”), by and through their attorney Cordello Law PLLC, brings this class and collective action complaint against Defendant, Greek Peak Holdings, LLC. This lawsuit seeks to recover damages in the form of unpaid wages, injunctive relief and declaratory relief to redress the deprivation of rights on behalf of the Named Plaintiff and similarly situated hourly banquet service workers and hourly tipped employees and other hourly employees who work or have worked for Defendant at its location in Cortland, New York.

INTRODUCTION

1. Named Plaintiff brings this action on behalf of herself and similarly situated employees pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy the violations of New York Labor Law (“NYLL”) including: unpaid minimum wages; improperly withheld tips, gratuities, and/or service charges; unpaid spread of hours premium; providing employees with defective annual notices; and failing to provide employees with wage statements with every payment of wages. Named Plaintiff seeks statutory penalties, liquidated damages and attorney’s fees and costs pursuant to NYLL, including, but not limited to, NYLL §§ 191, 193, 195-1(a), 195(3); 196-d, 198, 650 *et seq.*, and 12 N.Y.C.R.R. §§ 137-2.2 (repealed); 146-2.3; 146-1.3; 12

NYCRR § 146-1.6; 146-1.7; 146-2.2.

2. Named Plaintiff also brings this action on behalf of herself and similarly situated current and former hourly banquet service workers and hourly tipped employees and other hourly employees who elect to opt-in to this action pursuant to the Fair Labor Standards Act of 1938 as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”), specifically, the collective action provision of 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343 (3) and (4) conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights; under 28 U.S.C. § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce; and under the Declaratory Judgment Statute, 28 U.S.C. § 2201; and under 29 U.S.C. § 216(b).

4. This Court’s supplemental jurisdiction of claims arising under the NYLL is also invoked.

5. Venue is appropriate in the Northern District of New York since the allegations arose in this District and Defendant does business in this District.

PARTIES

A. Plaintiffs

Named Plaintiff

6. McKenna Light was an employee of Defendant under the FLSA and NYLL, and was employed within this District during the relevant time period.

7. McKenna Light worked for Defendant from approximately December 2007

through June 2014 in various capacities, including food server and banquet service worker at banquets events such as wedding, parties, conferences, corporate functions and other special events.

B. Defendant

8. At all times relevant hereto, Plaintiffs were “employees” of Defendant as defined by the NYLL, § 651 and the FLSA, 29 U.S.C. § 203(d).

9. At all times relevant hereto, Defendant was an “employer” as defined in the NYLL, § 651, and the FLSA, 29 U.S.C. § 203(d).

10. Defendant owns and operates a resort in New York State, that is an “enterprise[s]” as defined by the FLSA, 29 U.S.C. § 203(r)(1), and is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA. 29 U.S.C. §203(s)(1).

11. Defendant’s employees are engaged in interstate commerce, and their annual gross volume of sales made or business done exceeds \$500,000, exclusive of excise taxes.

12. During the course of their employment by Defendant, Plaintiffs handled goods, including perishable produce and other food and beverage products that moved in interstate commerce.

Greek Peak Holdings, LLC

13. Greek Peak Holdings, LLC is a domestic limited liability company with its principal offices located at 2000 State Route 392, Cortland NY 13045.

14. Defendant owns and operates a resort known as Greek Peak Mountain Resort located in Cortland, New York (the “Resort”).

15. Defendant maintains a website at www.greekpeak.net from which members of the public can view various goods and services provided by Defendant and/or its subsidiaries and

affiliates.

16. There are numerous dining facilities at the Resort, including Trax Pub & Grill, Taverna, Acorn Grill, and Bobcat Lounge.

17. In addition, Greek Peak Holdings, LLC is listed as a principal with the New York State Liquor Authority for the Resort's liquor licenses.

18. Based on these facts, Greek Peak Holdings, LLC can be held liable as an employer of Plaintiffs' for violations complained of in this matter.

COLLECTIVE ACTION ALLEGATIONS

19. Named Plaintiff brings this action on behalf of herself and all other similarly situated employees as authorized under 29 U.S.C. § 216(b). The employees similarly situated for purposes of the collective action are in the following class (referred to as the "Collective Class"):

Subminimum Wage Collective Class: all current and former employees who in the last three years have worked and were paid subminimum wages at the Resort and who elect to opt in to this action.

20. The FLSA requires that employees are paid the statutory minimum wage unless the employer is eligible to apply the tip credit pursuant to 29 U.S.C. § 203(m).

21. Defendant's policy and pattern or practice did not inform the Named Plaintiff and similarly situated employees of the FLSA's tip credit provision 29 U.S.C. § 203(m) and supporting federal regulations, including, but not limited to, 29 C.F.R. § 516.4.

22. Further, Defendant's policy and pattern or practice also included retaining a portion of the mandatory service charges its charged customers for private events rather than distributing the mandatory service charge in its entirety to banquet service workers.

23. Additionally, banquet service workers were not properly considered tipped employees and therefore not eligible to be paid subminimum wages.

24. Accordingly, Defendant is/was not entitled to pay Plaintiffs subminimum wages under the FLSA.

25. Defendant knowingly and willfully operates its business with a policy of not paying the FLSA minimum wage to the Named Plaintiff and other similarly situated employees.

26. Defendant is aware or should be aware that federal law required it to pay the banquet service workers and hourly tipped workers at least minimum wage because Defendant is/was not entitled to a tip credit under 29 U.S.C. § 203(m).

27. Subminimum Wage Collective Class members are similarly situated in that they have similar job duties and similar pay provisions based on Defendant's illegal policies of not providing requisite notice but still paying subminimum wages.

28. There are numerous similarly situated current and former hourly employees of Defendant that were paid subminimum wages who work or worked at the Resort who would benefit from issuance of a Court supervised notice of the instant lawsuit and the opportunity to join in the present lawsuit.

29. Similarly situated employees are known to Defendant and readily identifiable by Defendant through their payroll records.

30. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of those employees similarly situated pursuant to the opt-in provision of the FLSA, 29 U.S.C. § 216(b).

RULE 23 CLASS ACTION ALLEGATIONS-NEW YORK

31. This action is maintainable as a class action under Federal Rule of Civil Procedure 23 ("Rule 23").

32. Named Plaintiff seek to certify the following four subclasses (together referred to

as the “Class”):

- (a) Unpaid Gratuity Subclass: all persons who worked as hourly banquet service workers (including, as examples, banquet servers and bussers) at the Resort, at any time six years prior to the filing of this action through the entry of final judgment in this matter, who did not receive some or all of the collected service charge automatically added on to customer bills.
 - (b) Subminimum Wage Subclass: all persons who worked as hourly tipped service employees at the Resort and who, at any time six years prior to the filing of this action through the entry of final judgment in this matter, were paid subminimum wages.
 - (c) Wage Theft Prevention Act (“WTPA”) Subclass: all persons who worked as hourly employees at the Resort who at any time six years prior to the filing of this action through the entry of final judgment in this matter, did not receive proper written notices as required under the Wage Theft Prevention Act.
 - (d) Spread of Hours Subclass: all persons who worked as hourly employees at the Resort at any time six years prior to the filing of this action through the entry of final judgment in this matter, whose length of time between the beginning and end of any given workday exceeded 10 hours in length, and were not provided an additional hour of wages at the basic minimum wage.
33. The class action is maintainable under subsections (1), (2), (3) and (4) of Rule 23(a).
34. Numerosity is met because the Class size is believed to be over 40 members.

Therefore, the Class is so numerous that joinder of all members is impracticable. The identity of the class members is known to Defendant and is contained in the employment records Defendant is required to maintain under the FLSA and NYLL.

35. The Named Plaintiff and the other members of the Class share common issues of law and fact as to whether they were paid properly and have common claims that are typical of the claims of the Class because they are or were employed by Defendant as hourly workers, were subject to the same policies and practices and suffered similar losses, injuries and types of damages as a result of Defendant’s failure to comply with the NYLL.

36. Common issues of law and fact exist as to all members of the Class and predominate

over any questions affecting only individual class members. Among the common issues of law and fact are the following:

- Whether Defendant received a mandatory gratuity/service charge related to work performed by members of the Unpaid Gratuity Subclass;
- Whether Defendant failed to remit the mandatory gratuities to members of the Unpaid Gratuity Subclass;
- Whether a reasonable customer believed the mandatory service charges were being paid as gratuities;
- Whether Defendant properly notified customers that the mandatory service charges were not being distributed to members of the Unpaid Gratuity Subclass;
- Whether Defendant is liable for all damages claimed;
- The minimum wage rate to which the Subminimum Wage Subclass members are entitled;
- Whether Defendant's policy of failing to pay Subminimum Wage Subclass members the proper minimum wage was willful or in reckless disregard of the law;
- Whether Defendant violated the NYLL and the supporting regulations by failing to provide the requisite notice to the Subminimum Wage Subclass members;
- Whether Defendant failed to provide proper written notice to Wage Theft Prevention Act Subclass members as required under the Wage Theft Prevention Act; and
- Whether Defendant failed to provide spread of hours wages to Spread of Hours Subclass members when the beginning and end times of a shift exceeded ten hours in length.

37. These common questions of law and fact also predominate over any questions affecting only individual members.

38. The Named Plaintiff's claims are typical of the claims of other members of the Class because Named Plaintiff worked as both an hourly banquet service worker and hourly tipped worker at the Resort and was paid subminimum wages. Further, as a banquet service worker,

Named Plaintiff did not receive all of the mandatory charge for service that was added to customer bills just like other members of the Class. Named Plaintiff also did not receive the proper Wage Theft Prevention Act paperwork. In addition, Named Plaintiff did not receive spread of hours pay. Named Plaintiff therefore sustained damages arising out of Defendant's conduct in violation of the NYLL just like other members of the Class.

39. Named Plaintiff and her counsel will fairly and adequately protect the interests of the Class. Named Plaintiff has no interest antagonistic to the Class, and has retained counsel experienced in wage and hour class action litigation.

40. Cordello Law PLLC as counsel for the Class, is qualified and able to litigate the Named Plaintiff's and Class's claims.

41. Cordello Law PLLC concentrates its practice in employment litigation, and is experienced in class action litigation, including class actions arising under wage and hour laws.

42. The class action is also maintainable under subsection (2) of Rule 23(b) because Named Plaintiff and subclass members seek injunctive relief against Defendant, and all persons acting in concert with them as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein.

43. Moreover, the class action is maintainable under subsection (3) of Rule 23(b) because Named Plaintiff and subclass members seek to resolve common questions of law and fact that predominate among the Named Plaintiff and subclass members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

44. The subclasses are also maintainable under Rule 23(c)(4) because resolution of common issues will significantly advance the litigation or entitle Plaintiffs to injunctive relief.

FACTS RELATING TO FLSA CLAIMS

Defendant Violated the FLSA by Failing to Inform Employees of the Tip Credit Provisions and/or Retaining a Portion of the Tips

45. This claim arises from Defendant's willful violation of the FLSA, 29 U.S.C. § 203(m), for failing to pay Named Plaintiff and similarly situated employees their earned minimum wages.

46. Defendant has a practice of paying Plaintiffs a subminimum wage even though Defendant is not eligible to avail itself of the federal tip credit under the FLSA, 29 U.S.C. § 203(m).

47. In order for Defendant to be eligible for a tip credit under federal law, it must have (1) informed the tipped employees of statutory requirements related to the tip credit; and (2) all tips received by such employees must be retained by the employees or among employees who customarily and regularly receive tips.

48. Defendant failed to satisfy the two above-stated requirements and therefore are not eligible to receive the tip credit available under 29 U.S.C. § 203(m).

49. First, despite paying employees subminimum wages, Defendant failed to inform Named Plaintiff and similarly situated employees of the tip credit provisions as required under federal law.

50. Second, for Named Plaintiff and similarly situated banquet service employees, Defendant also retained a portion of the mandatory charge for service, which is the very "tip" Defendant appears to rely upon in satisfying the federal minimum wage requirements.

51. In failing to inform Named Plaintiff and similarly situated employees of the tip credit provisions and/or retaining any portion of the tips, Defendant is not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. § 203(m).

52. In addition, because mandatory service charges are not considered tips under the

FLSA, Defendant was not entitled to apply any portion of mandatory service charges received by Plaintiffs to the tip credit provision of 29 U.S.C. § 203(m).

53. Because Named Plaintiff and those similarly situated employees were all deprived of minimum wage payments by Defendant's policy, as described above, Plaintiffs are similarly situated to each other pursuant to 29 U.S.C. § 216(b).

54. As a result of Defendant's unlawful pay policies and practices as described herein, Named Plaintiff, similarly situated employees, and the Class suffered a loss of wages.

FACTS RELATING TO NYLL CLAIMS

Defendant Illegally Retained Mandatory Charges Collected From Customers

55. This claim arises from Defendant's violation of NYLL Article 6 § 196-d, which provides that an employer may not "demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

56. 12 NYCRR § 146-2.19(a) requires that a charge for the administration of a banquet or other special event "be clearly identified as such and customers shall be notified that the charge is not a gratuity or tip."

57. Further, 12 NYCRR § 146-2.19(b) provides that the employer has the burden of demonstrating that notification was sufficient to ensure that the reasonable customer understood that the charge was not a gratuity.

58. 12 NYCRR § 146-2.19(c) sets forth what an employer needs to do in order to provide adequate notification to customers. For example, the regulations state that a statement shall be included in the contract or agreement with the customer, as well as on any menus and bills, that the charge is for administration, and not purported to be a gratuity, and will not be distributed

to employees who provided service to the guests. These statements must use ordinary language in font similar to surrounding text, but no smaller than 12-point font.

59. Throughout the relevant time period, Defendant's policy has been to retain a portion of the mandatory charge for service that was added to customer bills at all of Defendant's banquet and meeting events. However, Defendant failed to ensure that a reasonable customer would understand that the entire charge was not purported to be a gratuity.

60. Under Defendant's policy, the mandatory service charge was not distributed entirely to banquet service employees.

61. Further, Defendant had a policy that failed to clearly identify that the mandatory charge was not a gratuity or tip.

62. For example, the mandatory charge was referred to as a "service charge" on various materials marketed to the prospective customers. These materials failed to include the necessary disclaimers indicating that these mandatory charges were in fact retained in part by Defendant and not distributed in their entirety to banquet service employees.

63. Therefore, Defendant cannot meet its burden to show that a reasonable customer would know that the mandatory charge added to each bill for banquet and meeting events was not distributed in its entirety to those banquet service employees who provided service to the guests. Instead, Defendant retained a portion of the mandatory charge and Plaintiffs are/were paid on an hourly basis.

64. As a result of Defendant's policy, Named Plaintiff and similarly situated banquet service employees are owed the gratuities illegally retained by Defendant from mandatory service charges paid by customers.

Defendant Violated NYLL by Paying Subminimum Wages to Named Plaintiff and Similarly Situated Banquet Service Employees

65. This claim arises from Defendant's willful violation of the NYLL, New York Minimum Wage Act, Article 19, § 650 et seq., for Defendant's failure to pay Named Plaintiff and similarly situated banquet service employees their earned minimum wages.

66. Defendant has a practice of paying Named Plaintiff and those similarly situated banquet service employees a subminimum wage even though Defendant's received a portion of the mandatory charge added to bills for banquet and meeting events.

67. However, Defendant cannot pay Plaintiffs a subminimum wage because a violation of "N.Y. Lab. Law § 196-d itself constitutes an independent and sufficient reason to find that defendants are not entitled to a tip credit." *Copantitla v. Fiskardo Estiatorio, Inc.*, 788 F. Supp. 2d 253, 291-292 (S.D.N.Y. 2011) (internal citation omitted).

68. Accordingly, Defendant is not entitled to pay Named Plaintiff and similarly situated banquet service employees subminimum wages under the NYLL.

69. Therefore, such violations occurred in each workweek in which Named Plaintiff and those similarly situated banquet service employees worked.

70. Defendant's books and records are material to the action as they disclose the hours worked by each employee and the rate of pay for that work.

71. Defendant violated the NYLL by failing to compensate Named Plaintiff and similarly situated banquet service employees consistent with the minimum wage provisions.

Defendant Violated NYLL by Paying Subminimum Wages to Named Plaintiff and Class Members

72. This claim arises from Defendant's willful violation of the NYLL, New York Minimum Wage Act, Article 19, § 650 et seq., for Defendant's failure to pay Named Plaintiff and

similarly situated employees their earned minimum wages.

73. Defendant failed to provide written notice of the tip credit or allowance to Named Plaintiff and similarly situated employees as required under New York State law.

74. At all relevant times, Defendant did not comply with NYLL's tip credit provision and the supporting New York State Department of Labor Regulations, including, but not limited to, 12 NYCRR §§ 137-2.2 and 146.2-2.

75. Moreover, Defendant failed to provide Named Plaintiff and those similarly situated with wage statements that complied with the requirements of the NYLL. For example, Named Plaintiff was not given wage statements that contained allowances claimed by Defendant including the tip credit as required by NYLL § 195(3) as amended by the New York Wage Theft Prevention Act.

76. Accordingly, Defendant is/was not entitled to pay Named Plaintiff and those similarly situated employees subminimum wages under NYLL.

77. Therefore, such violations occurred in each workweek in which Named Plaintiff and those similarly situated employees worked.

78. Defendant's books and records are material to this action as they disclose the hours worked by each employee and the rate of pay for that work.

79. Defendant violated the NYLL by failing to compensate Named Plaintiff and the similarly situated employees consistent with the minimum wage provisions.

Defendant Violated NYLL by Failing to Provide Wage Notices

80. Since the enactment of the Wage Theft Prevention Act ("WTPA") in April 2011 through February 2015, pursuant to NYLL § 195, Defendant was required to provide all employees, including hourly employees, with a notice, at the time of hiring when newly hired, on

or before February first of each subsequent year of employment and every time a wage rate changes, containing certain required information including the employee's rate of pay, and whether the employer intends to claim allowances.

81. Beginning in February 2015, the requirement to provide employees with a yearly notice was eliminated, but the requirements of providing a notice at the time of hiring, and, for employers in the hospitality industry, every time a wage rate changes, remained.

82. Defendant failed to provide Named Plaintiff and other hourly employees with wage notices as required by the Wage Theft Prevention Act.

Defendant's Failure to Compensate Employees' Spread of Hours Wages Violates NYLL

83. Under the NYLL, including 12 NYCRR § 146-1.6, an employee "shall receive one additional hour of pay at the basic minimum hourly rate" on each date the spread of hours in a workday exceeds 10. Spread of hours is defined as "the length of the interval between the beginning and end of an employee's workday."

84. During the relevant time period, Class members, including Named Plaintiff, worked shifts that exceeded ten hours in length.

85. Despite NYLL requiring that Defendant provide an additional hour of pay at the basic hourly rate when an employee's length of the interval between the beginning and end of a workday exceeds 10 hours, Defendant did not pay Plaintiffs these wages.

86. Because Named Plaintiff and Class members had work days where the spread of hours was in excess of 10 during the relevant time period and they were not compensated for this additional hour, Named Plaintiff and Class members are entitled to an additional hour of pay at the basic minimum hourly rate for each work day where the spread of hours was in excess of 10.

FIRST CAUSE OF ACTION
Violation of FLSA-Minimum Wages
Section 216(b) Collective Action

87. Named Plaintiffs re-alleges the above paragraphs as if fully restated herein.

88. This count arises from Defendant's willful violation of the FLSA, 29 U.S.C. § 201, *et seq.*, for their failure to pay minimum wages to the Plaintiffs. Named Plaintiff brings this claim as a collective action under Section 216(b) of the Act. *See* 29 U.S.C. § 216(b).

89. Defendant unlawfully paid banquet service and tipped employees subminimum wage because Defendant failed to inform Named Plaintiff and subclass members of the tip credit provisions and/or Defendant retained a portion of the tips.

90. Further, Named Plaintiff and similarly situated hourly banquet service employees were not even "tipped employees" under federal law.

91. Accordingly, Defendant is/was not eligible to pay Named Plaintiff and the subclasses subminimum wages under the FLSA.

SECOND CAUSE OF ACTION
Illegal Retention of Gratuities Under NYLL

92. Named Plaintiff re-alleges the above paragraphs as if fully restated herein.

93. The mandatory service charges constitute gratuities under NYLL.

94. Under NYLL Article 6 § 196-d, employers may not "demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

95. Defendant unlawfully withheld and retained gratuities that reasonable customers would believe would be distributed to Named Plaintiff and the Unpaid Gratuity Subclass.

96. As a direct and proximate cause of Defendant's acts, including Defendant's failure to act in good faith, Defendant willfully violated the NYLL and Named Plaintiff and the Unpaid

Gratuity Subclass have suffered damages pursuant to NYLL Article 6, § 196-d.

THIRD CAUSE OF ACTION
Violation of NYLL-Minimum Wages

97. Named Plaintiff re-alleges the above paragraphs as if fully restated herein.

98. In violation of New York Minimum Wage Act, Article 19, § 650 *et seq.*, Defendant has failed to pay Unpaid Gratuity Class and Subminimum Wage Subclasses their earned minimum wages.

99. Defendant unlawfully paid banquet service employees subminimum wage despite being ineligible because of their violation of NYLL Section 196-d.

100. Defendant also failed to provide written notice of the tip credit or allowance to Named Plaintiff and the Subminimum Wage Subclasses, as required under New York State law.

101. Further, Defendant failed to provide Named Plaintiff and Subminimum Wage Subclasses with wage statements that complied with the requirements of the NYLL.

102. Accordingly, Defendant is/was not eligible to pay Named Plaintiff and the subclasses subminimum wages under the NYLL.

FOURTH CAUSE OF ACTION
NYLL-Wage Notice Violations

103. Named Plaintiff re-alleges and incorporate the allegations set forth above.

104. The notice provisions of the Wage Theft Prevention Act, Article 6 of the NYLL and its supporting regulations apply to Defendant and protect Named Plaintiff and the WTPA subclass members.

105. Until February 2015, NYLL § 195-1(a) required employers to provide their employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring, on or before February first of each subsequent

year of the employee's employment with the employer, and, for employers in the hospitality industry, every time a wage rate changes, a notice containing, among other things, an employee's rate of pay and allowances paid.

106. As of February 2015, NYLL § 195-1(a) requires employers to provide their employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring, and, for employers in the hospitality industry, every time a wage rate changes, a notice containing, among other things, an employee's rate of pay and allowances paid.

107. Defendant has failed to comply with the notice provisions of the Wage Theft Prevention Act, and more specifically NYLL § 195-1.

108. Due to Defendant's violations of the NYLL, Named Plaintiff and WTPA subclass members are entitled to recover from Defendant statutory penalties as provided for by NYLL Article 6, § 198(1-b).

FIFTH CAUSE OF ACTION
Spread of Hours Violation Under NYLL

109. Named Plaintiff re-alleges the above paragraphs as if fully restated herein.

110. In violation of NYLL, including 12 NYCRR § 146-1.6, Defendant failed to pay Plaintiffs spread of hours wages of an additional hour of pay at the minimum wage for each day Plaintiffs had a spread of hours in excess of ten hours.

111. As a direct and proximate cause of Defendant's acts, including Defendant's failure to act in good faith, Defendant willfully violated the NYLL and Named Plaintiff and the Class have suffered damages.

WHEREFORE, Named Plaintiff and the Class demand judgment against Defendant in their favor and that they be given the following relief:

- (a) an order preliminarily and permanently restraining Defendant from engaging in the aforementioned pay violations;
- (b) an order certifying the class as requested and designating Cordello Law PLLC as class counsel;
- (c) designation of Named Plaintiff McKenna Light as the representative of the Class;
- (d) an award of unpaid minimum wages due under the FLSA and NYLL;
- (e) an award of unpaid spread of hours pay due under NYLL;
- (f) liquidated and/or punitive damages as a result of Defendant's willful failure to pay minimum wages pursuant to 29 USC § 216;
- (g) liquidated damages in an amount equal to the amount of unpaid minimum wages, gratuities and spread of hours pay under NYLL;
- (h) under N.Y. Lab. Law § 198, damages, for Named Plaintiffs and Class members, in the amount of fifty dollars for each work day that Defendant failed to provide them with a proper wage notice, not to exceed a total of five thousand dollars;
- (i) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Named Plaintiff's and Class members' rights;
- (j) an award of pre- and post-judgment interest;
- (k) service payments for the Named Plaintiff;
- (l) the amount equal to the value that would make Named Plaintiff and the Class members whole for the violations; and
- (m) such other and further legal or equitable relief as this Court deems to be just and appropriate.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of Civil Procedure 38(b).

Dated: November 8, 2016

CORDELLO LAW PLLC

/s/Justin M. Cordello
Justin M. Cordello, Esq.
Attorney for Plaintiffs
693 East Avenue, Suite 220
Rochester, New York 14607
Telephone: (585) 857-9684
justin@cordellolaw.com

EXHIBIT A

CONSENT TO BECOME A PARTY PLAINTIFF

I consent to become a "party plaintiff," including if appropriate a named or representative plaintiff in any lawsuit that is filed seeking payment of unpaid wages, reimbursement of illegal deductions, and related relief against my employer(s), on behalf of myself and other former and current employees of the employer(s).

I am/was employed by GREEK PEAK MOUNTAIN RESORT

I authorize the representative plaintiffs or plaintiffs' counsel to file this consent with the Clerk of the Court. I hereby further authorize the named plaintiffs to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, including any settlement and, therefore, the entering into of an agreement with plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.


Signature

03/07/2016
Date

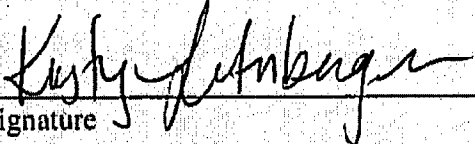
McKenna Nicole Light
Print Full Legal Name

CONSENT TO BECOME A PARTY PLAINTIFF

I consent to become a "party plaintiff," including if appropriate a named or representative plaintiff in any lawsuit that is filed seeking payment of unpaid wages, reimbursement of illegal deductions, and related relief against my employer(s), on behalf of myself and other former and current employees of the employer(s).

I am/was employed by GREEK PEAK MOUNTAIN RESORT

I authorize the representative plaintiffs or plaintiffs' counsel to file this consent with the Clerk of the Court. I hereby further authorize the named plaintiffs to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, including any settlement and, therefore, the entering into of an agreement with plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.


Signature

5, 2, 16
Date

Kristy Alice Litzenberger
Print Full Legal Name

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

McKenna Light, on behalf of herself and all other employees similarly situated

(b) County of Residence of First Listed Plaintiff Wellsboro, Pennsylvania
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Cordello Law PLLC
693 East Avenue, Suite 220
Rochester, New York 14607 585-857-9684

DEFENDANTS

Greek Peak Holdings, LLC

County of Residence of First Listed Defendant Cortland
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201, 206, 216(b)

Brief description of cause:
Failure to pay minimum wages under the Fair Labor Standards Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 11/8/16
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD
Justin Cordello

RECEIPT # _____ AMOUNT \$400.00 APPLYING IFP _____ JUDGE LEK MAG. JUDGE DEP

0206-3844857

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FLSA Class Action Filed Against Greek Peak Mountain Resort](#)
