

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CHARLES METCALF, individually and)
on behalf of all those similarly situated,)

Plaintiff,)

v.)

SPORTS CITY CAFE, INC. d/b/a)
SNEAKY PETE’S TEXAS USA and)
d/b/a NICK’S SPORTS BAR & GRILL,)

Defendant.)

)

Case No.: 4:18-cv-00202

COLLECTIVE ACTION COMPLAINT

Plaintiff Charles Metcalf (“Plaintiff”), individually and on behalf of all others similarly situated, by and through undersigned counsel, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), brought by Plaintiff on behalf of himself and others similarly situated against Defendant Sports City Cafe, Inc. d/b/a Sneaky Pete’s Texas USA and also d/b/a Nick’s Sports Bar & Grill (“Defendant” or “Sports City Cafe”), for failing to pay its non-managerial staff including servers, bartenders and line cooks overtime wages owed in violation of the FLSA. Defendant failed to pay overtime compensation at a rate of one and one-half their regular hourly rate of pay due to Plaintiff and similarly situated employees for all hours worked over forty in a workweek. Plaintiff seeks to recover unpaid overtime compensation, liquidated damages, interest, attorneys’ fees and costs, and all other relief to which he and similarly situated employees are entitled.

JURISDICTION AND VENUE

2. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff has asserted a claim pursuant to the FLSA.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant resides in this District and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

Plaintiff

4. Plaintiff Charles Metcalf is an adult resident of Lewisville, Texas. From approximately May 2017 through February 2018, Mr. Metcalf worked as a line cook for Defendant at Defendant's restaurant called Sneaky Pete's Texas USA located in Lewisville, Texas and was not paid overtime compensation at a rate of one and one-half times his regular hourly rate for all hours he worked in excess of 40 each workweek. From approximately December 2017 to the present, Mr. Metcalf worked as a line cook for Defendant at Defendant's restaurant called Nick's Sports Bar & Grill located in The Colony, Texas and was not paid overtime compensation at a rate of one and one-half times his regular hourly rate for all hours he worked in excess of 40 each workweek.

6. At all relevant times, as an employee of Defendant, Plaintiff was engaged in commerce or in the production of goods for commerce as described in 29 U.S.C. §§ 206 and 207.

Defendant

7. Defendant Sports City Cafe, Inc. is Texas corporation with its headquarters located in Dallas, Texas. Sports City Cafe, Inc. owns and operates Sneaky Pete's Texas USA and Nick's Sports Bar & Grill.

8. At all relevant times, Sports City Cafe was an "enterprise engaged in commerce or the production of goods for commerce" within the meaning of the FLSA, 29 U.S.C. § 203(s).

9. At all relevant times, Sports City Cafe has employed two or more persons, including Plaintiff, "engaged in commerce or in the production of goods for commerce," as defined in § 203(s)(1)(A)(i).

10. At all relevant times, Sports City Cafe achieved annual gross sales made or business done of not less than \$500,000.00 in accordance with § 203(s)(1)(A)(ii).

11. Defendant issued paychecks to Plaintiff and all similarly situated employees during their employment.

12. Defendant directed the work of Plaintiff and similarly situated employees and benefited from work performed that Defendant suffered or permitted from them.

13. Defendant did not pay Plaintiff and similarly situated employees overtime wages at a rate of one and one-half times their regular hourly rate of pay for all hours they worked for Defendant's benefit in excess of 40 hours in a workweek.

FACTUAL ALLEGATIONS

14. Plaintiff worked for Defendant as a line cook.

15. At all relevant times, Plaintiff was not paid overtime at a rate of one and one-half times their regular hourly rate of pay for all hours worked over 40 in a workweek, even though he regularly worked more than 40 hours per week.

16. Defendant tracked Plaintiff's hours worked by requiring him to clock in and out on a time clock on a computer.

17. During the relevant time period, Plaintiff and other non-managerial restaurant staff members regularly worked more than 40 hours per week and were not paid overtime pay at a rate of one and one-half times their regular hourly rate of pay for hours worked over 40 in a workweek.

18. Through its unlawful actions, Defendant has deprived Plaintiff and other non-managerial restaurant staff members overtime wages owed to them.

19. Defendant acted willfully in failing to pay overtime compensation to its non-managerial staff at one and one-half their regular hourly rate of pay for all hours worked over 40 in a workweek. Defendant knew or should have known that its non-managerial staff members such as its servers, bartenders and line cooks were required to be paid overtime compensation at a rate of one and one-half times their regular hourly rate of pay for all hours worked over 40 in a workweek.

COLLECTIVE ACTION ALLEGATIONS

20. Pursuant to 29 U.S.C. § 216(b), Plaintiff brings his FLSA claims on behalf of all similarly situated individuals who have worked for Defendant in the United States as restaurant staff members (however titled, excluding managerial staff), have not received overtime wages at a rate of one and one-half times their regular hourly rate of pay owed to them during the three-year period prior to the filing of the Complaint, and who may choose to "opt in" to this case under the FLSA, 29 U.S.C. § 216(b).

21. The claims under the FLSA meet the requirements for collective action certification set forth in 29 U.S.C. § 216(b).

22. Sports City Cafe has engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Complaint.

23. All potential opt-in plaintiffs are similarly situated as to these claims, because they all were employed by Sports City Cafe as non-managerial staff members, were not paid overtime wages at a rate of one and one-half times their regular hourly rate of pay for hours over 40 worked in a workweek, and Sport City Cafe's compensation practices are uniform as to all potential plaintiffs and result in the alleged violation of the FLSA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. Pursuant to 29 U.S.C. § 216(b), Plaintiff consents to sue as a plaintiff under the Fair Labor Standards Act. Mr. Metcalf's consent to sue form is attached to this Complaint as "Exhibit 1."

COUNT I - FAIR LABOR STANDARDS ACT

25. Plaintiff re-alleges and incorporates by reference Paragraphs 1-23 as if alleged fully herein.

26. As set forth above, Defendant's failure to pay overtime compensation to employees who have worked for Defendant as non-managerial restaurant staff members and have not received overtime wages at a rate of one and one-half times their regular hourly rate of pay owed to them during the three-year period preceding the filing of this Complaint violates the Fair Labor Standards Act, 29 U.S.C. § 207. This claim is brought by the named Plaintiff on behalf of himself and all other similarly situated employees pursuant to 29 U.S.C. § 216(b).

27. Defendant's failure to pay Plaintiff and similarly situated employees in accordance with the requirements of Section 207 of the FLSA was in willful disregard of the overtime wage compensation requirements of the FLSA.

28. Plaintiff seeks unpaid overtime compensation in an amount to be determined, as well as an equal amount of liquidated damages or pre-judgment and post-judgment interest, and attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

JURY DEMAND

29. Plaintiff demands a trial by jury on all of their claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- A. Authorization to notify similarly situated employees of their right to opt in to this action under 29 U.S.C. § 216(b);
- B. An award of all damages for unpaid wages and compensation that are due to the named Plaintiff and all similarly situated employees under the FLSA;
- C. An award of liquidated damages pursuant to 29 U.S.C. § 216(b);
- D. A finding that Defendant's violations of the FLSA have been willful and that, therefore, the statute of limitations for the FLSA claim is three years;
- E. Attorneys' fees and costs;
- F. Pre- and post-interest; and
- G. Any other relief to which the named plaintiff and similarly situated individuals may be entitled.

Dated: March 22, 2018

Respectfully submitted,

/s/ Jenny DeFrancisco
Jenny DeFrancisco, Esq.
Tamra Givens, Esq. (to be admitted
pro hac vice)
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Attorneys for Plaintiff

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHARLES METCALF, individually and on)
behalf of all those similarly situated,)

Plaintiff,)

Case No.:

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Defendant.)
_____)

CONSENT TO JOIN FORM

1. I, Charles Metcalf, consent to opt-in to be a party plaintiff in a lawsuit against Sports City Cafe, Inc. and/or its officers, parent corporations, subsidiaries, franchisees, managers and/or representatives ("Defendant(s)"), in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).
2. I hereby designate Lemberg Law LLC to represent me in this action, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by this Court as fair, adequate, and reasonable.
3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

Signed by:



Charles Metcalf
1531 Oak Forest Apartments
Lewisville, TX 75067

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sneaky Pete's Texas USA, Nick's Sports Bar & Grill Owe Unpaid Overtime, Line Cook Alleges](#)
