FILED
2017 Dec-05 AM 08:39
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

TIAUNA MOREHOUSE **Individually and on behalf of all others similarly situated** *Plaintiff*, **v.** **LET'S EAT OUT, INCORPORATED** *Defendant.*	§ § § § § § § § § § §	**Civil Action No. _____** **JURY TRIAL DEMANDED** **COLLECTIVE ACTION PURSUANT TO 29 U.S.C. § 216(b)**

ORIGINAL COLLECTIVE ACTION COMPLAINT

Plaintiff Tiauna Morehouse ("Plaintiff" or "Plaintiff Morehouse") brings this action individually and on behalf of all current and former tipped employees (hereinafter "Plaintiff and the Putative Class Members") employed by Let's Eat Out, Incorporated (hereinafter "LEO") who were paid by the hour but were denied compensation for all hours worked, denied payment for overtime, denied minimum wage, and suffered illegal deductions from their pay for the three years preceding the filing of the Original Complaint and through the final disposition of this matter, to recover compensation, liquidated damages, attorneys' fees, and costs, pursuant to the provisions of Section 216(b) of the Fair Labor Standards Act of 1938, as amended 29 U.S.C. § 216(b).

I.
OVERVIEW

1.1 This is a collective action to recover overtime wages brought pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et. seq.*

1.2 Plaintiff and the Putative Class Members are those current and former non-exempt employees who worked for LEO as tipped employees and were paid by the hour but were not paid overtime, were not paid for all hours worked, were not paid proper wages, and suffered illegal wage deductions.

1.3 The FLSA requires that all non-exempt employees—like Plaintiff and the Putative Class Members—receive compensation for time spent working on their employer's behalf at time and one-half for all hours worked over forty in a regular workweek.

1.4 Plaintiff and the Putative Class Members worked in excess of forty (40) hours per workweek.

1.5 Plaintiff and the Putative Class Members were not paid overtime at least one and one half their regular rates for all hours worked in excess of forty (40) hours per workweek.

1.6 LEO knowingly and deliberately failed to compensate Plaintiff and the Putative Class Members for all hours worked in excess of forty (40) hours each workweek.

1.7 LEO knowingly and deliberately deleted time entries for certain hours worked by Plaintiff and the Putative Class Members to avoid having to pay the Plaintiff and the Putative Class overtime.

1.8 Plaintiff and the Putative Class Members did not (and do not) perform work that meets the definition of exempt work under the FLSA.[1]

1.9 Under the tip-credit provisions of the FLSA, an employer of tipped employees—like Plaintiff and the Putative Class Members--may, under certain circumstances, pay those employees less than the minimum hourly wage and take a "tip credit" against its minimum wage obligations. But an employer is ***not*** permitted to take a tip credit against its minimum wage obligations in any of the following circumstances: (1) when it fails to inform tipped employees of the provisions of the tip-credit subsection of the FLSA; (2) when it requires its tipped employees to perform non-tipped work that is unrelated to the employees' tipped occupation (i.e., "dual jobs"); or (3) when it requires its tipped employees to perform non-tipped work that, although related to the employees' tipped

[1] All exemptions are to be narrowly construed and the burden of proof to establish them lies with the employer. *Alvarez Perez v. Stanford-Orlando Kennel Club, Inc.*, 515 F.3d 1150 (11th Cir. 2008).

occupation, exceeds twenty percent (20%) of the employees' time worked during a workweek; or (4) when it requires tipped employees to return a portion of their tips to the employer.[2]

1.10 Plaintiff and the Putative Class Members would spend in excess of 20% of their time performing incidental tasks, and tasks wholly unrelated to their tipped duties.

1.11 Plaintiff and the Putative Class Members were paid a sub-minimum, tip-credit rate of pay when performing non-tip related duties and when they spent in excess of 20% of their time performing incidental duties.

1.12 LEO knowingly and deliberately failed to pay minimum wage to Plaintiff and Putative Class Members for these hours worked where the tip credit was unavailable.

1.13 The FLSA requires that if the cash wage plus the tips are not enough to meet the minimum wage, the employer must top up the cash wage to reach the minimum wage.[3]

1.14 Plaintiff and the Putative Class Members on several occasions would not make enough tips to equal the minimum wage when combined with their cash wage.

1.15 LEO knowingly and deliberately failed to top up Plaintiff and Putative Class Members wages when Plaintiff and Putative Class Members tips plus cash wage did not amount to the minimum wage.

1.16 The FLSA does not allow employers to deduct from employees' wages for unpaid customer charges where to do so would reduce the employees' compensation below the minimum wage.[4]

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[2] 29 C.F.R § 531.60

[3] 29 U.S.C. § 203(m); 29 C.F.R. § 531.51

[4] 29 C.F.R. § 778.307

1.17 LEO knowingly and deliberately would deduct unpaid customer meals from Plaintiff and Putative Class Members wages when doing so would reduce Plaintiff and Putative Class Members' wages below the minimum wage.

1.18 The FLSA requires employees be compensated for all hours worked.

1.19 LEO knowingly and deliberately would direct Plaintiff and Putative Class Members to work off the clock, LEO would not compensate Plaintiff or Putative Class Members for these hours worked.

1.20 Plaintiff and the Putative Class Members seek to recover all unpaid overtime, proper minimum wage payment for hours worked performing non-tip related duties and for time spent performing incidental duties, payment for illegal wage deductions, payment for all hours worked, liquidated damages, and other damages owed under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b).

1.21 Plaintiff also prays that all similarly situated workers (Putative Class Members) be notified of the pendency of this action to apprise them of their rights and provide them an opportunity to opt-in to this lawsuit.

II.
PARTIES

2.1 Plaintiff Tiauna Morehouse ("Morehouse") worked for LEO within the meaning of the FLSA, within this judicial district, and within the relevant three-year period.

2.2 The Putative Class Members are those current and former tipped employees who were employed by LEO at any time from December 4, 2014 through the final disposition of this matter, and have been subjected to the same illegal pay system under which Plaintiff Morehouse worked and was paid.

2.3 Let's Eat Out, Incorporated ("LEO") is a foreign for-profit corporation, licensed to and doing business in Alabama, and may be served through its registered agent for service of process**: Diana Mahan, 524 Russet Bend Drive, Birmingham, AL 35244.**

III.
JURISDICTION & VENUE

3.1 This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3.2 This Court has personal jurisdiction over LEO because the cause of action arose within this district as a result of LEO's conduct within this District and Division.

3.3 Venue is proper in the Northern District of Alabama because this is a judicial district where a substantial part of the events or omissions giving rise to the claim occurred.

3.4 Specifically, LEO has maintained a working presence throughout the State of Alabama (and the United States), and Plaintiff Morehouse worked in Huntsville, Madison County, Alabama throughout her employment with LEO, all of which are located within this District and Division.

3.5 Venue is therefore proper in this Court pursuant to 28 U.S.C. § 1391(b)**.**

IV.
FLSA COVERAGE

4.1 At all times hereinafter mentioned, LEO has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(r).

4.2 At all times hereinafter mentioned, LEO has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r)

4.3 At all times hereinafter mentioned, LEO has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprises has had employees handling, selling, or

otherwise working on goods or materials that have been moved in or produced for commerce by any person, or in any closely related process or occupation directly essential to the production thereof, and in that those enterprises have had, and have, an annual gross volume of sales made or business done of not less than $500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

4.4 During the respective periods of Plaintiff and the Putative Class Members' employment by LEO, these individuals provided services for LEO that involved interstate commerce for purposes of the FLSA.

4.5 In performing the operations hereinabove described, Plaintiff and the Putative Class Members were engaged in commerce or in the production of goods for commerce within the meaning of §§ 203(b), 203(i), 203(j), 206(a), and 207(a) of the FLSA. 29 U.S.C. §§ 203(b), 203(i), 203(j), 206(a), 207(a).

4.6 Specifically, Plaintiff and the Putative Class Members are (or were) ***non-exempt*** employees who worked for LEO as tipped employees. 29 U.S.C. § 203(j).

4.7 At all times hereinafter mentioned, Plaintiff and the Putative Class Members are (or were) individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–07.

4.8 The proposed collective of similarly situated employees, i.e. potential collective members sought to be certified pursuant to 29 U.S.C. § 216(b), is defined as "all tipped employees employed by Let's Eat Out, Incorporated, at any time from December 4, 2014 through the final disposition of this matter" (the "Putative Class Members").

4.9 The precise size and identity of the proposed FLSA Collective should be ascertainable from the business records, tax records, and/or employee or personnel records of LEO.

V.
FACTS

5.1 LEO operates food service franchises throughout the United States.

5.2 Plaintiff Morehouse worked for LEO from August 2015 through June 2016 as a tipped employee. During this time, Plaintiff Morehouse was paid by the hour but did not receive time and a half for all hours worked in excess of forty (40) in a workweek.

5.3 As tipped employees, Plaintiff and Putative Class Members were responsible for serving food and drinks to customers and cleaning tables.

5.4 Plaintiff and Putative Class Members would also have to perform physical tasks like scrubbing the restaurant walls, managing the beer kegs, washing dirty dishes, scrubbing the restaurant floors, cleaning kitchen equipment, taking out the garbage, preparing the dining area, taking the ice out of the ice machine, cleaning the ice machine, bussing tables, performing hostess duties, bartending, vacuuming, mopping, cleaning windows, scrubbing the outside walls of the building, scrubbing the concrete parking lot(s) outside, and scrubbing the concrete walkway(s) outside. These duties were generally performed before the restaurant opened or after the restaurant was closed. During these times, Plaintiff was paid a sub-minimum hourly wage even though tips could not be earned since customers were not present.

5.5 Plaintiff and Putative Class Members would perform these physical janitorial duties for multiple hours per week and would spend in excess of twenty percent (20%) of their total work time performing these non-tipped and incidentally-related duties.

5.6 LEO would direct Plaintiff and Putative Class Members to clock out after customers left even though Plaintiff would spend the next hour or two closing the restaurant and performing janitorial duties.

5.7 LEO, on several occasions, would knowingly and deliberately shave and/or deduct hours from Plaintiff and Putative Class Members' work record to avoid Plaintiff and Putative Class Members accruing more than forty (40) hours worked in one week.

5.8 LEO would deduct these wages from the Plaintiff and Putative Class members when customers did not pay for their meals. LEO would do this even when it reduced Plaintiff and Putative Class Members' wages below the minimum wage. This is a blatant violation of the FLSA.

5.9 Plaintiff and Putative Class Members on several occasions would earn a pittance in tip amount and when their tips were combined with their cash wage, this amount would not equal the minimum wage as is required by the FLSA.

5.10 When Plaintiff and Putative Class Member did not earn enough tip money to equate to the minimum wage when combined with their cash wage, LEO did not top off their cash wage.

5.11 The FLSA mandates that overtime be paid at one and one-half times an employee's regular rate of pay.

5.12 Plaintiff and the Putative Class Members regularly worked in excess of forty (40) hours per week but did not receive overtime pay.

5.13 The FLSA further mandates that all hours worked are to be compensated.

5.14 Plaintiff and Putative Class Members were not compensated for all hours worked.

5.15 Although the FLSA allows a tip credit to be used to supplement wages when an employee is performing tip-related duties or duties incidental to tip-related duties—it is only permissible to use a tip credit when an employee does not spend more than twenty percent (20%) of their time performing such incidental duties.

5.16 Plaintiff and Putative Class Members were always paid the tip wage—even when not performing tip-related duties or when performing incidental duties in excess of 20% of their time worked.

5.17 The FLSA mandates that when an employee's tips and cash wages do not amount to minimum wage, the employer must top off the employee's wages so that the wage plus tips received amount to the federally mandated minimum wage.

5.18 LEO never topped off Plaintiff or the Putative Class Members' wages when their tips plus cash wage did not amount to minimum wage.

5.19 The FLSA prohibits employers from deducting from employees' wages when such deductions would result in the employee receiving less than minimum wage.

5.20 LEO deducted (and continues to deduct) from Plaintiff and the Putative Class Members' wages even where it reduces their wages below minimum wage.

5.21 Accordingly, LEO pay policies and practices blatantly violated the FLSA**.**

VI.
CAUSES OF ACTION

A. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT

6.1 LEO violated provisions of Sections 6, 7 and 15 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2) by employing individuals in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than forty (40) hours without compensating such employees for their employment in excess of forty (40) hours per week at rates at least one and one-half times the regular rates for which they were employed, failing to pay a minimum wage, and failing to compensate such employees for all hours worked.

6.2 Moreover, LEO knowingly, willfully and in reckless disregard carried out their illegal pattern of failing to pay Plaintiff Morehouse and other similarly situated employees overtime compensation. 29 U.S.C. § 255(a).

6.3 LEO knew or should have known its pay practices were in violation of the FLSA.

6.4 LEO is a sophisticated party and employer, and therefore knew (or should have known) its policies were in violation of the FLSA.

6.5 Plaintiff and the Putative Class Members, on the other hand, are (and were) unsophisticated laborers who trusted LEO to pay according to the law.

6.6 The decision and practice by LEO to not pay overtime was neither reasonable nor in good faith.

6.7 Accordingly, Plaintiff and the Putative Class Members are entitled to minimum wages and overtime wages for all hours worked in excess of forty (40) hours per workweek pursuant to the FLSA in an amount equal to one-and-a-half times their regular rate of pay, plus liquidated damages, attorneys' fees and costs.

B. COLLECTIVE ACTION ALLEGATIONS

6.8 Pursuant to 29 U.S.C. § 216(b), this is a collective action filed on behalf of all those who are (or were) similarly situated to Plaintiff.

6.9 Other similarly situated employees have been victimized by LEO's patterns, practices, and policies, which are in willful violation of the FLSA.

6.10 The Putative Class Members are "all tipped employees employed by Let's Eat Out, Incorporated, at any time in the last three years through the final disposition of this matter."

6.11 LEO's failure to pay overtime compensation at the rates required by the FLSA results from generally applicable policies and practices, and does not depend on the personal circumstances of the Putative Class Members.

6.12 Thus, Plaintiff's experiences are typical of the experiences of the Putative Class Members.

6.13 The specific job titles or precise job requirements of the various Putative Class Members does not prevent collective treatment.

6.14 All of the Putative Class Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to be properly compensated for all hours worked in excess of forty (40) hours per workweek.

6.15 All of the Putative Class Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to minimum wage for all hours worked.

6.16 All of the Putative Class Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to minimum wage when not performing tip related duties or when spending in excess of twenty percent (20%) of their time performing incidental duties.

6.17 All of the Putative Class Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to top up wages when their cash wage plus their tips did not amount to minimum wage.

6.18 All of the Putative Class Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to payments for illegal wage deductions.

6.19 Although the issues of damages may be individual in character, there is no detraction from the common nucleus of liability facts. Indeed, the Putative Class Members are non-exempt workers entitled to overtime after 40 hours in a week.

6.20 LEO employed a substantial number of workers during the past three years. These workers are geographically dispersed, residing and working in cities across the Country.

6.21 Absent a collective action, many members of the proposed FLSA class likely will not obtain redress of their injuries and LEO will retain the proceeds of their rampant violations.

6.22 Moreover, individual litigation would be unduly burdensome to the judicial system. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of the individual members of the classes and provide for judicial consistency.

6.23 Accordingly, the class of similarly situated plaintiffs should be defined as:

ALL TIPPED EMPLOYEES EMPLOYED BY LET'S EAT OUT, INCORPORATED, AT ANY TIME FROM DECEMBER 4, 2014 THROUGH THE FINAL DISPOSITION OF THIS MATTER

VII.
RELIEF SOUGHT

7.1 Plaintiff Morehouse respectfully prays for judgment against LEO as follows:

a. For an Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA and requiring LEO to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative class members;

b. For an Order approving the form and content of a notice to be sent to all potential collective action members advising them of the pendency of this litigation and of their rights with respect thereto;

c. For an Order awarding Plaintiff (and those who have joined in the suit) back wages that have been improperly withheld;

d. For an Order pursuant to Section 16(b) of the FLSA finding LEO liable for unpaid back wages due to Plaintiff (and those who have joined in the suit), and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those who have joined in the suit);

e. For an Order awarding Plaintiff (and those who have joined in the suit) the costs and expenses of this action;

f. For an Order awarding Plaintiff (and those who have joined in the suit) attorneys' fees;

g. For an Order awarding Plaintiff (and those who have joined in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law;

h. For an Order awarding Plaintiff Morehouse a service award as permitted by law;

i. For an Order compelling the accounting of the books and records of LEO; and

j. For an Order granting such other and further relief as may be necessary and appropriate.

Date: December 4, 2017

Respectfully submitted,

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