

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHANIE JOSEPH and RYAN
RUTHERFORD, on behalf of themselves and
similarly situated employees,

Plaintiffs,

v.

QUALITY DINING, INC. and GRAYLING
CORPORATION,

Defendants.

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: NO. 5:16-cv-01907-JLS
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: JURY TRIAL DEMANDED
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FIRST AMENDED COMPLAINT – CLASS/COLLECTIVE ACTION

Plaintiffs Stephanie Joseph and Ryan Rutherford (collectively “Plaintiffs”), on behalf of themselves and similarly situated employees, bring this class/collective action lawsuit against Defendants Quality Dining, Inc. and Grayling Corporation (collectively “Defendants”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* Plaintiffs assert their FLSA claim as a collective action under 29 U.S.C. § 216(b) and assert their PMWA claim as class action under Federal Rule of Civil Procedure 23.

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. This Court has supplemental jurisdiction over Plaintiffs’ PMWA claims pursuant to 28 U.S.C. § 1367.
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff Stephanie Joseph (“Joseph”) is an individual residing in Catasauqua, Pennsylvania (Lehigh County).
5. Plaintiff Ryan Rutherford (“Rutherford”) is an individual residing in Bethlehem, Pennsylvania (Northampton County).
6. Defendant Quality Dining, Inc. (“Quality Dining”) is a corporate entity conducting business in Pennsylvania and headquartered at 4220 Edison Lakes Parkway Mishawaka, Indiana.
7. Defendant Grayling Corporation (“Grayling”) is a corporate entity registered with the Pennsylvania Department of State to conduct business in Pennsylvania and headquartered at 4220 Edison Lakes Parkway, Mishawaka, Indiana.
8. Quality Dining and Grayling maintain their principal place of business in Mishawaka, Indiana. *See* Declaration of Patricia Norvell (Notice of Removal (Doc. 1)) at ¶ 4.
9. Defendants’ high level officers, including their President, John Firth, direct, control, and coordinate the corporations’ activities out of Defendants’ corporate headquarters at 4220 Edison Lakes Parkway Mishawaka, Indiana. *Id.* at ¶ 6.
10. Payroll, human resources, accounting, and finance endeavors for Defendants all function out of Defendants’ corporate headquarters at 4220 Edison Lakes Parkway Mishawaka, Indiana. *Id.* at ¶ 7.
11. Defendants employ individuals, including Plaintiffs, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any

person.

12. Defendants are employers covered by the record-keeping, minimum wage, and overtime pay mandates of the FLSA and PMWA.

FACTS

13. Defendants operate multiple Chili's Grill & Bar® ("Chili's") restaurants as franchisees in Pennsylvania.

14. Between March 22, 2013 and March 22, 2016, Defendants have employed approximately 1,760 servers at their Pennsylvania Chili's restaurants. *See* Declaration of Patricia Norvell (Notice of Removal (Doc. 1)) at ¶ 8.

15. From approximately 2009 until approximately November 2015, Joseph was employed by Defendants at their Whitehall, Bartonsville and King of Prussia, Pennsylvania Chili's restaurants.

16. From approximately March 2014 until approximately January 2016, Rutherford was employed by Defendants at their Whitehall and Bartonsville, Pennsylvania Chili's restaurants.

17. Defendants paid Plaintiffs and other individuals who performed the work of servers an hourly wage of only \$2.83. In seeking to comply with the FLSA and PMWA mandate that employees receive a minimum wage of \$7.25/hour, Defendants purport to utilize a "tip credit" in the amount of \$4.42 for each hour worked by Plaintiffs and other individuals performing the work of servers.

18. Defendants maintain a companywide policy at its Pennsylvania Chili's restaurants of requiring Plaintiffs and other individuals performing the work of servers to

contribute a portion of their tips to employees who perform the work of expeditors.¹

19. Employees performing the work of expeditors for Defendants at their Pennsylvania Chili's restaurants do not receive tips directly from customers. That is because they generally work at or near the kitchen area readying (or "traying") food orders for pick-up by servers and do not interact with restaurant customers.

COLLECTIVE AND CLASS ALLEGATIONS

20. Plaintiffs bring their FLSA claim on behalf of themselves and all individuals who, during any time within the past three years, worked as servers at one of Defendants' Chili's restaurants in Pennsylvania. Such individuals are "similarly situated," as that term is defined in 29 U.S.C. § 216(b), because they were subjected to Defendants' uniform tip-pooling compensation policies as described herein.

21. Plaintiffs bring their PMWA claim as a class action on behalf of themselves and all individuals who, during any time since March 22, 2013, worked as servers at one of Defendants' Chili's restaurants in Pennsylvania.

22. Class action treatment of Plaintiffs' PMWA claim is appropriate because, as alleged herein, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

23. The class includes well over 100 individuals, all of whom are readily ascertainable based on Defendants' timekeeping and payroll records, and, as such, are so numerous that joinder of all class members is impracticable.

24. Plaintiffs are class members, their claims are typical of the claims of other

¹ In an attempt to disguise such employees' participation in the tip pool, Defendants often require these employees to clock into its corporate timekeeping system as "Food Runners" even though they will only perform expeditor work during that shift.

class members, and they have no interests that are antagonistic to or in conflict with the interests of other class members.

25. Plaintiffs will fairly and adequately represent class members and their interests, and they have retained competent and experienced counsel who will effectively represent the class members' interests.

26. Questions of law and fact are common to all class members, since, *inter alia*, this action concerns the legality of Defendants' standardized compensation practices, including Defendants' practice of using the tip credit to satisfy its minimum wage obligations and requiring class members to share tips with individuals performing the work of expeditors.

27. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any questions affecting only Plaintiffs and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging Violations of the FLSA)

28. All previous paragraphs are incorporated as though fully set forth herein.

29. The FLSA entitles employees to a minimum hourly wage of \$7.25.

30. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not "customarily and regularly receive tips." *See* 29 U.S.C. § 203(m). Federal courts interpreting this statutory language hold that restaurants lose their right to utilize a tip credit when tips are shared with employees – such as individuals performing the work of expeditors for Defendants – whose direct

customer interaction is minimal. *See, e.g., Montano v. Montrose Restaurant Associates, Inc.*, 800 F.3d 186 (5th Cir. 2015); *Ford v. Lehigh Valley Restaurant Group, Inc.*, 2014 U.S. Dist. LEXIS 92801 (M.D. Pa. July 9, 2014).

31. By requiring Plaintiffs and other servers to share tips with individuals performing the work of expeditors, Defendants have forfeited their right to utilize the tip credit in satisfying its minimum wage obligations to Plaintiffs and other employees who have worked as servers. As such, Defendants have violated the FLSA's minimum wage mandate by paying Plaintiff and other employees who have worked as servers an hourly wage of \$2.83 rather than \$7.25.

32. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II
(Alleging Violations of the PMWA)

33. All previous paragraphs are incorporated as though fully set forth herein.

34. The PMWA entitles employees to a minimum hourly wage of \$7.25.

35. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not "customarily and regularly receive tips." *See* 43 P.S. § 333.103(d)(2). The sole court to interpret this statutory language has held that restaurants lose their right to utilize a tip credit when tips are shared with employees whose direct customer interaction is minimal. *See Ford v. Lehigh Valley Restaurant Group, Inc.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 11 (P.C.C.P., Lackawanna Cty. Apr. 24, 2015) (Nealon, J.).

36. By requiring Plaintiffs and other servers to share tips with other

employees performing the work of expeditors, Defendants have forfeited their right to utilize the tip credit in satisfying its minimum wage obligations to Plaintiffs and other employees who have worked as servers. As such, Defendants have violated the PMWA's minimum wage mandate by paying Plaintiffs and other employees who have worked as servers an hourly wage of \$2.83 rather than \$7.25.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial as to all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and other members of the class/collective, seek the following relief:

- A. An order permitting this action to proceed as a collective action pursuant to 29 U.S.C. § 216(b) and a class action pursuant to Federal Rule of Civil Procedure 23;
- B. \$4.42 for every hour worked;
- C. Prejudgment interest to the fullest extent permitted under federal and state law;
- D. Liquidated damages to the fullest extent permitted under the FLSA;
- E. Litigation costs, expenses, and attorneys' fees; and
- F. Such other and further relief as this Court deems just and proper.

Date: April 26, 2016



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