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

AARON ACOFF, on behalf of himself and similarly situated employees, Plaintiff, v. HAUTE RESTAURANT & LOUNGE INC. Defendant.	CIVIL ACTION NO. 18 1562 JURY TRIAL DEMANDED

FILED
APR 13 2018
KATE BARKMAN, Clerk
Dep. Clerk

COMPLAINT - CLASS/COLLECTIVE ACTION

Aaron Acoff ("Plaintiff") brings this class/collective action lawsuit against Haute Restaurant & Lounge Inc., seeking all available relief under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, and the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. §§ 333.101, *et seq*. Plaintiff asserts his FLSA claim as a collective action claim under 29 U.S.C. § 216(b) and asserts his PMWA claim as a class action claim under Federal Rule of Civil Procedure 23.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. This Court has subject matter jurisdiction over the PMWA claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Philadelphia, PA.

5. Defendant Haute Restaurant & Lounge Inc. ("Haute) is a corporate entity

headquartered in Philadelphia, PA and operating a restaurant/bar located at 1420 Locust Street, Philadelphia, PA 19133 and called the "Haute Restaurant & Lounge" ("the Restaurant").

6. Haute employs individuals, including Plaintiff, 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.

7. Haute is an employer covered by the FLSA and PMWA.

FACTS

8. From November 2017 until February 24, 2018, Haute employed Plaintiff as a bartender at the Restaurant.

9. During the first few weeks of Plaintiff's employment, he was considered a trainee and paid an hourly wage of $7.25. During this brief training period, Plaintiff received two payroll checks issued by "Haute Restaurant & Lounge Inc., 1420 Locust Street, Philadelphia, PA 19133." This lawsuit does not concern Haute's conduct during Plaintiff's brief training period.

10. In approximately early-December 2017, Plaintiff's training period came to an end. Thereafter, Plaintiff was paid in the same manner as the Restaurant's other servers and bartenders. In particular, Plaintiff did not receive any paychecks or paystubs. Instead, he was paid *exclusively* through (i) tips from customers and (ii) occasional cash payments from the Restaurant's owner and manager. The occasional cash payments made to Plaintiff totaled $180.00 during the entire duration of his employment.

11. Plaintiff estimates that, during the post-training period of early-December to February 24, 2018, he worked a total of approximately 190-200 hours at the Restaurant.

12. Haute never informed Plaintiff or other servers or bartenders that any portion of their tips were being used to satisfy Haute' minimum wage obligations under the FLSA or

PMWA.

COLLECTIVE AND CLASS ALLEGATIONS

13. Plaintiff brings his FLSA claim pursuant to 29 U.S.C. § 216(b) on behalf of all individuals who, during any time within the past three years, have been employed as servers or bartenders at the Restaurant.

14. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

15. Plaintiff brings his PMWA claim pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during any time within the past three years, have been employed as servers or bartenders at the Restaurant.

16. The putative class, upon information and belief, includes over 40 individuals, all of whom are readily ascertainable based on Haute's payroll records, and, as such, is so numerous that joinder of all class members is impracticable.

17. Plaintiff is a class member, his claims are typical of the claims of other class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

18. Plaintiff will fairly and adequately represent the class members and their interests, and he has retained competent and experienced counsel who will effectively represent the class members' interests.

19. Questions of law and fact are common to all class members, since, *inter alia*, this action concerns the legality of Haute's standardized compensation practices.

20. 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 Plaintiff 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)

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

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

23. Restaurants may utilize customer tips to satisfy *a portion of* their minimum wage obligations to servers, bartenders, and other tipped employees. See 29 U.S.C. § 203(m). This is called taking a "tip credit."

24. In order to take advantage of the "tip credit" provision referenced above, a restaurant must satisfy at least two independent requirements. First, the restaurant "must pay the employee the minimum wage required for tipped employees, currently $2.13 per hour." Verma v. 3001 Castor, Inc., 2016 U.S. Dist. LEXIS 164026, *16 (E.D. Pa. Nov. 29, 2016) (citing 29 U.S.C. § 203(m)). Second, the restaurant "must notify the employee of the FLSA tip credit provision." Id. at *16-17 (citing 29 U.S.C. § 203(m)).

25. Having failed to satisfy the requirements described in the prior paragraph, Haute cannot take advantage of the FLSA's "tip credit" provision and, therefore, was obligated to pay Plaintiff and other FLSA collective members $7.25 for every hour worked under the 40-hour-per-week overtime threshold and $10.875 for every hour worked over the 40-hour-per week overtime threshold. Haute's failure to do so violates the FLSA and demonstrates a willful and reckless disregard of clearly applicable FLSA provisions.

COUNT II
(Alleging Violations of the PMWA)

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

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

28. Restaurants may utilize customer tips to satisfy *a portion of* their minimum wage obligations to servers, bartenders, and other topped employees." See 43 P.S. § 333.103(d). This is called taking a "tip credit."

29. In order to take advantage of the "tip credit" provision referenced above, a restaurant must satisfy at least two independent requirements. First, the tipped employees must "be paid an hourly wage of at least $2.83." Mackereth v. Kooma, Inc., 2015 U.S. Dist. LEXIS 63143, *22-23 n. 8 (E.D. Pa. May 14, 2015). Second, the restaurant must notify the employee of the PMWA's tip credit provision. 43 P.S. § 333.103(d)(1).

30. Having failed to satisfy the requirements described in the prior paragraph, Haute cannot take advantage of the PMWA's "tip credit" provision and, therefore, was obligated to pay Plaintiff and other class members $7.25 for every hour worked under the 40-hour-per-week overtime threshold and $10.875 for every hour worked over the 40-hour-per week overtime threshold. Haute' failure to do so violates the PMWA.

JURY TRIAL DEMAND

Plaintiff demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other members of the class/collective, seeks the following relief:

A. $7.25 for every regular hour worked and $10.875 for every overtime hour worked

at the Restaurant;[1]

B. Prejudgment interest;

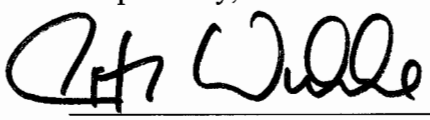
C. Liquidated damages (under the FLSA only);

D. Litigation costs, expenses, and attorneys' fees; and

E. Such other and further relief as the Court deems just and proper.

Date: April 11, 2018

Respectfully,



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[1] Plaintiff did not work any overtime hours and, therefore, is not entitled to the $10.875 rate for any of his work. However, some collective/class members may have worked overtime.

CONSENT TO JOIN

I, AARON ACOFF, consent to participate in this action as a party-plaintiff pursuant to 29 U.S.C. § 216(b).

AARON ACOFF