

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

DEIDRA SAREGO, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

SAGE CLIENT 258 LLC,

Defendant.

:  
: CIVIL ACTION  
:  
: NO. \_\_\_\_\_  
:  
: CLASS/COLLECTIVE ACTION  
:  
: NON-JURY TRIAL  
:  
:

**COMPLAINT - CLASS/COLLECTIVE ACTION**

Plaintiff Deidra Sarego (“Plaintiff”), on behalf of herself and similarly situated individuals, brings this class/collective action lawsuit against Defendant Sage Client 258 LLC (“Defendant”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* Plaintiff asserts her FLSA claim as a collective action claim under 29 U.S.C. § 216(b), where her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23.<sup>1</sup>

**JURISDICTION AND VENUE**

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. §216(b) and 28 U.S.C. § 1331.

2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

3. Venue is proper under 28 U.S.C. § 1391.

<sup>1</sup> FLSA collective action claims and Rule 23 class action claims may proceed together in the same lawsuit. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012).

**PARTIES**

4. Plaintiff is an individual residing in Doylestown, PA (Bucks County).

5. Defendant is a corporate entity registered to do business in Pennsylvania and maintaining a corporate headquarters in Philadelphia, PA (Philadelphia County).

6. Defendant is an employer covered by the FLSA and PMWA.

**FACTS**

7. Defendant operates a restaurant in Philadelphia, PA called Urban Farmer Philadelphia (“Urban Farmer”).

8. Defendant employs Servers at Urban Farmer.

9. Plaintiff was employed by Defendant as a Server at Urban Farmer from approximately December 2015 until approximately November 2016.

10. Defendant pays Plaintiff and other 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, Defendant purports to utilize a “tip-credit” in the amount of \$4.42 (\$7.25 - \$2.83) for each hour worked by Plaintiff and other Servers.

11. Defendant requires Plaintiff and other Servers to spend more than 20% of their time performing non-tipped work which consists of, *inter alia*, (i) performing side-work (as briefly described in ¶¶ 14-15); (ii) attending daily meetings; and (iii) attending weekly wine trainings. These activities are collectively referred to as “non-tipped” work.

12. Plaintiff estimates that she spent an average of 2 to 3 hours performing non-tipped work each shift. Because Plaintiff generally worked shifts that lasted between approximately 5 to 8 hours, Plaintiff routinely spent more than 20% of her time performing non-tipped work.

13. Defendant pays Plaintiff and other Servers \$2.83 per hour for time spent performing non-tipped work.

14. Defendant requires Plaintiff and other Servers to perform “opening side-work” such as, among other things: maintaining stock of coffee, tea, and coffee filters; brewing coffee and iced tea; stocking dairy products; stocking plates, spoons, lemons, and napkins at tea station in kitchen; folding napkins; folding crumbers; stocking plates; stocking POS stations; cutting lemons; stocking straws; polishing silverware and glassware; replacing trays and liners; requisitioning wine; cleaning and filling salt and pepper shakers; and rolling silverware.

15. Defendant requires Plaintiff and other Servers to perform “closing side-work” such as, among other things: cleaning and organizing back server station; polishing silverware and glassware; refilling salt and pepper shakers; writing temperature logs on coolers; checking dates on dairy in fridge; stocking printer paper; wiping down POS; dumping coffee urns; dumping iced tea in kitchen; breaking down wine bar; wiping down trays; and filling out temperature logs on all fridges.

16. Defendant requires Plaintiff and other Servers to attend daily meetings that occur prior to when Plaintiff and other Servers begin to interact with restaurant patrons for each shift.

17. Defendant also requires Plaintiff and other Servers to attend weekly wine training sessions on Saturdays that typically last for approximately 1 hour and that occur prior to when Plaintiff and other Servers begin to interact with restaurant patrons for that Saturday shift.

**CLASS/COLLECTIVE ALLEGATIONS**

18. Plaintiff brings her FLSA claim on behalf of herself and all individuals who, during any time within the past three years, worked as Servers at Defendant’s Urban Farmer Philadelphia restaurant. Such individuals are “similarly situated,” as that term is defined in 29

U.S.C. § 216(b), because they were subject to Defendant's mandatory companywide non-tipped work policies as described herein.

19. Plaintiff brings her PMWA claim as a class action on behalf of herself and all individuals who, during any time since December 21, 2013, worked as Servers at Defendant's Urban Farmer Philadelphia restaurant.

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

21. The class, upon information and belief, includes over 50 individuals, all of whom are readily ascertainable based on Defendant's timekeeping and payroll, and, as such, are so numerous that joinder of all class members is impracticable.

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

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

24. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's uniform pay policies, including Defendant's practice of using the tip credit to satisfy its minimum wage obligations and requiring class members to perform non-tipped work. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

25. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual

class members 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)**

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

27. Plaintiff and the Collective Action Members are employees entitled to the FLSA's protections.

28. Defendant is an employer covered by the FLSA.

29. The FLSA entitles employees to minimum hourly compensation of \$7.25 for hours worked under 40 in a week, *see* 29 U.S.C. §206(b), and \$10.875 for hours worked over 40 in a week, *see id.* at § 207(a)(1).

30. Restaurants may use a tip credit to satisfy their minimum wage obligations to an employee. *See* 29 U.S.C. § 203(m). However, the FLSA prohibits an employer from utilizing a tip credit to satisfy its minimum wage obligations to an employee where such employee is spending more than 20% of the time performing non-tip producing work. *See* 29 C.F.R. § 531.56(e); *Fast v. Applebee's Intl., Inc.*, 638 F.3d 872, 879-82 (8th Cir. 2011); U.S. Dep. of Labor, Field Operations Handbook Ch. 30d00(e) (Dec. 9, 1988) (available at <http://www.dol.gov/whd/foh/FOH-Ch30.pdf>).

31. Having required Plaintiff and other Servers to spend more than 20% of the time performing non-tipped work, as described in ¶¶ 11-17, Defendant may not utilize a tip credit to satisfy its minimum wage obligations to Plaintiff and the Collective Action Members. As such, Defendant violated the FLSA's minimum wage and overtime pay mandates by failing to pay Plaintiff and other Servers the full minimum wage and all overtime premium compensation.

32. In violating the FLSA, Defendant 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. Plaintiff and the Class Members are employees entitled to the PMWA's protections.

35. Defendant is an employer covered by the PMWA.

36. The PMWA entitles employees to a minimum wage of \$7.25/hour for hours worked under 40 in a week, *see* 43 P. S. § 333.104(a.1); 34 Pa. Code § 231.21, and \$10.875/hour for hours worked over 40 in a week, *see* 43 P.S. § 333.104(c).

37. Restaurants may use a tip credit to satisfy their minimum wage obligations to an employee. *See* 43. P.S. § 333.103(d). However, the FLSA's limitations on the tip credit generally apply to the PMWA. *See generally Ford v. Lehigh Restaurant Group, Inc.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 11 (Lackawanna Cty. April 14, 2015); *see also Zellaugi v. MCD Pizza, Inc.*, 59 F. Supp. 3d 712, 715 (E.D. Pa. 2014).

38. Having required Plaintiff and other Servers to spend more than 20% of the time performing non-tipped work, as described in ¶¶ 11-17, Defendant may not utilize a tip credit to satisfy its minimum wage obligations to Plaintiff and the Class Action Members. As such, Defendant violated the PMWA's minimum wage and overtime pay mandates by failing to pay Plaintiff and other Servers the full minimum wage and all overtime premium compensation.

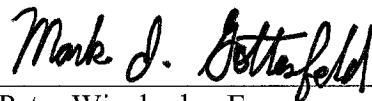
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and other Collective Action/Class

Members, seeks the following relief:

- A. All unpaid minimum wages and overtime wages;
- B. Prejudgment interest;
- C. Liquidated damages;
- D. Litigation costs, expenses, and attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

Date: December 21, 2016



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