

Court of Common Pleas of Philadelphia County
Trial Division

Civil Cover Sheet

For Prothonotary Use Only (Docket Number)	
JANUARY 2018	003412
E-Filing Number: 1801047864	

PLAINTIFF'S NAME RYAN DOWNEY	DEFENDANT'S NAME MCCORMICK & SCHMICK RESTAURANT CORP
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PLAINTIFF'S ADDRESS 1228 SOUTH 3RD STREET PHILADELPHIA PA 19147	DEFENDANT'S ADDRESS 1 SOUTH BROAD STREET PHILADELPHIA PA 19107
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PLAINTIFF'S NAME	DEFENDANT'S NAME
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PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
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PLAINTIFF'S NAME	DEFENDANT'S NAME
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PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS
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TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions
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AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: CLASS ACTION
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CASE TYPE AND CODE C1 - CLASS ACTION

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)	<p style="text-align: center;">FILED PRO PROTHY JAN 22 2018 M. BRYANT</p>	IS CASE SUBJECT TO COORDINATION ORDER? YES NO
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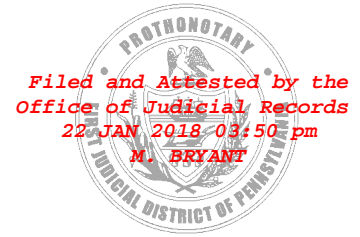
TO THE PROTHONOTARY:
Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: RYAN DOWNEY
Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY R. ANDREW SANTILLO	ADDRESS WINEBRAKE & SANTILLO, LLC TWINING OFFICE CENTER 715 TWINING ROAD, SUITE 211 DRESHER PA 19025
PHONE NUMBER (215) 884-2491	FAX NUMBER (215) 884-2492

SUPREME COURT IDENTIFICATION NO. 93041	E-MAIL ADDRESS asantillo@winebrakelaw.com
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SIGNATURE OF FILING ATTORNEY OR PARTY R. ANDREW SANTILLO	DATE SUBMITTED Monday, January 22, 2018, 03:50 pm
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Peter Winebrake (PA Attorney No. 80496)
R. Andrew Santillo (PA Attorney No. 93041)
Mark J. Gottesfeld (PA Attorney No. 307752)
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025



Attorneys for Plaintiff and the Putative Class

RYAN DOWNEY, on behalf of himself and others similarly situated	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	
v.	:	CLASS ACTION
	:	
MCCORMICK & SCHMICK RESTAURANT CORP,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	

COMPLAINT -- CLASS ACTION
10 — Contract: Other

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notification. Ademas, la corte puede decidira favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE
FILADELFA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-1701

Plaintiff Ryan Downey (“Plaintiff”), on behalf of himself and similarly situated individuals, brings this class action lawsuit against Defendant McCormick & Schmick Restaurant Corp (“Defendant”), seeking all available relief under the Philadelphia Gratuity Protection Bill (“GPB”), Philadelphia Code § 9-614 and the Pennsylvania doctrine of unjust enrichment.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Defendant.
2. Venue in this Court is proper under Pennsylvania Rules of Civil Procedure 1006 and 2179 because, Defendant regularly conducts business within Philadelphia County including operating a McCormick & Schmick Seafood and Steaks restaurant located at 1 South Broad Street in Philadelphia, PA (the “Broad Street Restaurant”).

PARTIES

3. Plaintiff is an individual residing in Philadelphia, PA.
4. Defendant a Delaware corporation registered to do business in Pennsylvania.

FACTS

5. According to its website, Defendant is “the nation’s premier family of seafood restaurants” in which each “restaurant is uniquely designed to create an inviting, original and relaxed atmosphere, where guests can enjoy the highest quality dining experience.”

6. Defendant has employed, upon information and belief, between 40 and 60 individuals as servers at the Broad Street Restaurant since November 29, 2011.¹

¹ The GPB was signed into law on November 29, 2011.

7. Servers at the Broad Street Restaurant are primarily responsible for taking customers' food and drink orders, serving food and drinks to customers, and otherwise waiting on customers at the restaurant tables.

8. Plaintiff was employed by Defendant as a server at the Broad Street Restaurant from approximately 2014 until approximately November 2017.

9. Defendant required Plaintiff and the other servers to contribute a portion of their tips to a "tip pool." In particular, at the end of a shift, each server is charged a tip-pool contribution equaling 3.5% of his/her total customer sales. These tip-pool proceeds are then paid to other restaurant staff as follows: 1.0% of total customer sales are paid to bartenders; 1.5% of total customer sales are paid to bussers; and 1.0% of total customer sales are paid to hosts.

10. The above tip-pool proceeds are distributed to bartenders, bussers, and hosts regardless of whether or how much they worked during the shift. For example, on September 5, 2017, Plaintiff contributed \$13.29 to the tip pool based on his total customer sales during the shift. A portion to of this tip pool contribution was paid to a restaurant host who did not even work during the particular shift.

11. In essence, Defendant is using customer tips – which should belong to the servers – to subsidize the pay of bartenders, bussers, and hosts who either do not work during the shift or work during only part of the shift.

12. In addition, the bussers who receive payments from the tip pool do not directly interact with customers. Instead, the bussers' duties are generally limited to non-interactive duties such as, *inter alia*, cleaning and resetting tables once customers have left; ensuring floors and chairs surrounding tables are clean and free of debris; and

stocking clean glassware, silverware, and dishware.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this lawsuit as a class action on behalf of himself and all individuals who, during any time since November 29, 2011, were employed by Defendant as servers at the Broad Street Restaurant.

14. This action is properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

15. The class is so numerous that joinder of all individual members is impracticable.

16. Defendant's conduct with respect to Plaintiff and the class raises questions of law and fact that are common to the entire class.

17. Plaintiff's claims and Defendant's anticipated defenses are typical of the claims or defenses applicable to the entire class.

18. Plaintiff's interests in pursuing this lawsuit are aligned with the interests of the entire class.

19. Plaintiff will fairly and adequately protect class members' interests because he and his experienced and well-financed counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the entire class.

20. A class action provides the fairest and most efficient method for adjudicating the legal claims of all class members.

COUNT I (Alleging Violations of the GPB)

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

22. Defendant is an employer covered by the GPB's mandates, and Plaintiff

and other servers at the Broad Street Restaurant are employees entitled to the GPB's protections.

23. The GPB requires that “[e]very gratuity shall be the sole property of the employee or employees to who it was paid, given or left for, and shall be paid over in full to such employee or employees.” Phila. Code § 9-614(2)(a).

24. Under the GPB, gratuities are only able to be “pooled and distributed among all employees who *directly provide service to patrons.*” Phila. Code § 9-614(2)(c) (emphasis supplied).

25. Defendant has violated the GPB by requiring Plaintiff and other servers at the Broad Street Restaurant to forfeit a portion of their tips each shift to be shared with employees who were not working at the time the tips were earned, making it impossible for those individuals to “directly provide service” to the patrons who paid those gratuities to the servers.

26. Defendant has also violated the GPB by requiring Plaintiff and other servers at the Broad Street Restaurant to share a portion of their tips each shift with bussers who do not “directly provide service” to restaurant customers as part of their job responsibilities.

COUNT II
(Alleging Unjust Enrichment)

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

28. Defendant has received a monetary benefit from Plaintiff and other servers at the Broad Street Restaurant by requiring them to share a portion of their tips with bartenders, bussers, and hosts regardless of whether or how much these employees worked during a particular shift.

29. By using the tips of Plaintiff and the other servers to subsidize the pay of bartenders, bussers, and hosts for time that those employees either do not work during a shift or work only part of a shift, Defendant realized significant revenues and profits to its own benefit and to the detriment of Plaintiff and other servers.

30. Defendant's acceptance and retention of such revenues and profits is inequitable and contrary to fundamental principles of justice, equity, and good conscience.

PRAYER FOR RELIEF

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

- A. An order permitting this action to proceed as a class action;
- B. Reimbursement of all gratuities retained by Defendant and paid to bartenders, bussers, and hosts who were not working at the time the tip was earned by the server;
- C. Exemplary damages of \$2,000 per class member;
- D. Reasonable attorney's fees, expenses, and court costs;
- E. An award of prejudgment and post-judgment interest; and
- F. Such other relief as this Court may deem appropriate.

JURY DEMAND

Plaintiff demands a jury trial as to all claims so triable.

Date: January 22, 2018

/s/ R. Andrew Santillo
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211

Dresher, PA 19025
Phone: (215) 884-2491
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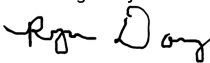
Attorneys for Plaintiff and the Putative Class

VERIFICATION

I, RYAN DOWNEY, hereby state:

1. I am the plaintiff in this action;
2. I verify that the statements made in the Complaint are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the Complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 1/21/2018

DocuSigned by:

Signature

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