**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

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| **GLENDON D. STUBBS, individually, and on behalf of all others similarly situated,** | : | **CIVIL ACTION** |
| **Plaintiff,** | : | **NO. 1:20-cv-19798-RMB-KMW** |
| **v.** | : | **Motion Day: April 19, 2021** |
| **BOARDWALK 1000, LLC d/b/a HARD ROCK HOTEL AND CASINO ATLANTIC CITY,** | : | |
| **Defendant.** | : | |

**PLAINTIFF'S BREIF IN OPPOSITION**
**TO DEFENDANT'S MOTION TO DISMISS**

Defendant Boardwalk 1000, LLC ("Defendant") has moved to dismiss the Fair Labor Standards Act ("FLSA") claims asserted by Plaintiff Glendon Stubbs ("Plaintiff") in his First Amended Collective Action Complaint ("Complaint"). *See* Doc. 10 (the "Motion"). According to Defendant, dismissal is warranted because Plaintiff's Complaint fails to sufficiently plead: (i) the direct cash wage he received from Defendant while its employee; (ii) the "effective hourly rate" he received from Defendant; and (iii) the manner in which Defendant failed to provide the required notice pursuant to 29 U.S.C. § 203(m) and 29 C.F.R. § 531.59(b) to employees, like Plaintiff, for whom Defendant attempted to take the

tip credit against its minimum wage obligations. *See* Def. Brief (Doc. 10-2) at p. 10. However, these arguments ignore the express language in Plaintiff's Complaint, are irrelevant to the tip credit minimum wage exception, and overstate his burden at the pleading stage. As discussed below, Defendant's Motion should be denied:

**A. The FLSA's Tip Credit to its Minimum Wage Requirement.**

The FLSA requires employers to pay employees a minimum wage of at least $7.25/hour, *see* 29 U.S.C. § 206(a)(1)(C), and overtime premium wages equal to one and one-half times their regular rate of pay for hours worked over 40 in a single week, *see id.* at § 207. "Employers who violate these provisions are 'liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.'" *Davis v. Abington Mem'l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (quoting 29 U.S.C. § 216(b)).

However, in determining the minimum wage owed to a "tipped employee," the FLSA contains a "tip credit" exception that enables an employer to pay the tipped employee as little as $2.13/hour so long as the employee's additional tip payments from the employers' customers (not the employer themselves) bring his or her total pay above the $7.25/hour threshold.[1] *See id.* at § 203(m); 29 C.F.R. §

[1] As one district court observed "an employer can save $5.12/hour per employee in

531.50(a); *see also Marlow v. New Food Guy, Inc*., 861 F.3d 1157, 1160 (10th Cir. 2017) (the FLSA's tip credit provision "gives employers of 'tipped employees'—like hotels and restaurants—the option of paying a reduced hourly wage of $2.13 so long as their workers receive enough tips to bring them to the $7.25 minimum. If there are not enough tips, the employer must pay the difference; if there are more than enough, the excess tips go to employees."); *Wintjen v. Denny's, Inc.*, 2021 U.S. Dist. LEXIS 35199, *12-13 (W.D. Pa. Feb. 25, 2021) ("One such exception to the minimum wage requirement, the tip credit exception, permits employers to pay an employee 'engaged in an occupation in which [she] customarily and regularly receives more than $30 a month in tips,' less than the federally mandated minimum wage 'if the employees' wages and tips, added together, meet or exceed the required minimum wage.'").

However, an employer cannot automatically take advantage of this 70% reduction in its out-of-pocket labor costs under the FLSA. Pursuant to the explicit language of the FLSA (and as asserted in Plaintiff's Complaint), a tip credit may not be taken "with respect to any tipped employee unless such employee has been informed by the employer of the provisions of [29 U.S.C. § 203(m)], and all tips received by such employee have been retained by the employee, except that this

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decreased wages by classifying a worker as a 'tipped employee'" under the FLSA. *Irvine v. Destination Wild Dunes Mgmt.*, 106 F. Supp. 3d 729, 731 (D.S.C. 2015).

subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips." 29 U.S.C. § 203(m)(2). The Department of Labor regulation interpreting Section 3(m) of the FLSA explains as follows:

> [A]n employer is not eligible to take the tip credit unless it has informed its tipped employees ***in advance of the employer's use of the tip credit*** of the provisions of section 3(m) of the Act, i.e.: [1] The amount of the cash wage that is to be paid to the tipped employee by the employer; [2] the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; [3] that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and [4] that the tip credit shall not apply to any employee who has not been informed of these requirements in this section.

*See* 29 C.F.R. § 531.59(b) (emphasis supplied); *see also* U.S. Department of Labor, Wage and Hour Division, Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA); *Wintjen*, 2021 U.S. Dist. LEXIS 35199, at *13 ("However, an employer may not avail itself of the tip credit exception unless it first provides notice as required by the statute. *See* 29 U.S.C. § 203(m) (tip credit exception does not apply unless the employee 'has been informed by the employer of the provisions of this subsection').").

As the Western District of Pennsylvania recently observed in granting summary judgment in favor of servers asserting similar notice claims as Plaintiff here:

> This "notice requirement is a firm one." *Reich v. Chez Robert, Inc.*, 28 F.3d 401, 404 (3d Cir. 1994); *accord. Richard v. Marriott Corp.*, 549 F.2d 303 (4th Cir. 1977) ("What the Congress has said, in effect, to restaurant employers is that, if you precisely follow the language of 3(m) and fully inform your employees of it, you may obtain a ... credit from the receipt of tips toward your obligation to pay the minimum wage."). As such, "[i]f the employer cannot show that it has informed employees that tips are being credited against their wages, then no tip credit can be taken and the employer is liable for the full minimum-wage." *Reich*, 28 F.3d at 403 (citing *Martin v. Tango's Restaurant, Inc.*, 969 F.2d 1319, 1322-23 (1st Cir. 1992)); *see also, Casco*, 2019 U.S. Dist. LEXIS 65320, at *12 ("[T]he employer bears the burden of showing that it satisfied the notice requirement."). "If the penalty for omitting notice appears harsh, it is also true that notice is not difficult for the employer to provide." *Reich*, 28 F.3d at 404 (quoting *Martin*, 969 F.2d at 1323).

*Wintjen v. Denny's, Inc.*, 2021 U.S. Dist. LEXIS 35199, *13 (W.D. Pa. Feb. 25, 2021); *see also Casco v. Ponzios RD, Inc.*, 2019 U.S. Dist. LEXIS 65320, at *11-12 (D.N.J. Apr. 17, 2019) (granting servers' summary judgment motion and holding that the FLSA's "'notice requirement is a firm one" and courts "'strictly construe[]' it to require an employer to 'take affirmative steps to inform affected employees of the employer's intent to claim the tip credit.'") (Kugler, J.) (internal citations omitted).

### B. Plaintiff Alleges he was Paid a Direct Cash Wage Less than the FLSA's Minimum Wage and Defendant's Claimed Minimum Wage Exception—the Tip Credit—Does Not Apply.

Defendant's Motion does not dispute the basic facts alleged by Plaintiff in his Complaint – most notably that Defendant paid Plaintiff a direct cash wage *less* than the minimum wage and attempted to claim a tip credit, but failed to satisfy the

FLSA's stringent notice requirement. As a result, a minimum wage violation occurred for every workweek during Plaintiff's employment.

From approximately May 2019 through September 2019, Plaintiff was employed by Defendant at its casino property located at 1000 Boardwalk, Atlantic City, New Jersey 08401. *See* Complaint (Doc. 9) at ¶ 9. During his employment, Plaintiff worked as a Table Games Dealer, which is an hourly, non-exempt position. *Id.* As a Table Games Dealer during the Summer of 2019, Plaintiff typically worked between 36 and 40 hours a week. *Id.* at ¶ 10. However, Plaintiff remembers working overtime (as many as approximately 42 hours) during the workweek that included the July 4th holiday in July 2019. *Id.* As a Table Games Dealer, Plaintiff was paid an hourly wage by Defendant below the FLSA's minimum wage requirement of $7.25/hr. *Id.* at ¶ 17. Specifically, Defendant paid Plaintiff "an hourly wage of approximately $5.30, resulting in a tip credit of $1.95 per hour (= $7.25/hr. – $5.30/hr.)." *Id.* According to Plaintiff:

> 17. … Defendant failed to inform Plaintiff and the other individuals it attempted to pay in accordance with 29 U.S.C. § 203(m)(2) either orally or in writing of the FLSA's tip credit notice requirements. In addition, Defendant failed to notify Plaintiff that the tip credit would not apply to him or other tipped employees until they received notice from Defendant as required by 29 U.S.C. § 203(m)(2). Despite these violations of the FLSA's tip credit notice provisions, Defendant has taken a tip credit toward its obligations to pay the federal minimum wage to Plaintiff and other similarly situated tipped employees. During the relevant time period, Plaintiff was paid a direct cash wage less than $7.25 per hour and Defendant improperly claimed a tip credit to bridge the gap between the direct cash wage and the

> required federal minimum wage. Thus, during Plaintiff's employment, Defendant failed to properly compensate Plaintiff for all hours worked at a rate equal to at least the required federal minimum wage and when appropriate, overtime premium wages.
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> 18. Specifically, Plaintiff and other similarly situated employees are not informed, in advance of Defendant's use of the tip credit, of: (1) the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by Defendant, which amount may not exceed the value of the tips actually received the employee; (2) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (3) that the tip credit shall not apply to any employee who has not been informed of these requirements in this section.

Complaint (Doc. 9) at ¶¶ 17-18.

**C. The Applicable Standard.**

This Court recently described the Rule 12(b)(6) standard of review in *Physics v. Nationwide Ins.*, 2021 U.S. Dist. LEXIS 44738 (D.N.J. Mar. 10, 2021) (Bumb, J.) as follows:

> When considering a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Evancho v. Fisher*, 423 F.3d 347, 351 (3d Cir. 2005). It is well-settled that a pleading is sufficient if it contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
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> "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (alteration in original) (citations omitted) (citing *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *Sanjuan v. Am. Bd. Of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994); *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)).

To determine the sufficiency of a complaint, a court must take three steps. First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Third, "whe[n] there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011) (alterations in original) (citations omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 664, 675, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). A court may "generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record." *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

A district court, in weighing a motion to dismiss, asks "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *Twombly*, 550 U.S. at 563 n.8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)); *see also Iqbal*, 556 U.S. at 684 ("Our decision in *Twombly* expounded the pleading standard for 'all civil actions' . . . ."); *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) ("*Iqbal* . . . provides the final nail in the coffin for the 'no set of facts' standard that applied to federal complaints before *Twombly*."). "A motion to dismiss should be granted if the plaintiff is unable to plead 'enough facts to state a claim to relief that is plausible on its face.'" *Malleus*, 641 F.3d at 563 (quoting *Twombly*, 550 U.S. at 570).

*Id.*

**D. Argument.**

In support of its Motion, Defendant argues that Plaintiff's Complaint fails to

sufficiently plead: (i) the direct cash wage he received while working for Defendant; (ii) the "effective hourly rate" he received from Defendant while its employee; and (iii) the manner in which Defendant failed to provide the required notice pursuant to 29 U.S.C. § 203(m) to employees, like Plaintiff, who the Defendant attempted to take the tip credit against their minimum wage obligations. *See* Def. Brief (Doc. 10-2) at p. 10. Unfortunately for Defendant, each of these purported deficiencies either ignore the plain language of Plaintiff's Complaint, find no basis in the FLSA, or overstate his burden at this stage.

First, Defendant asserts that Plaintiff's complaint "fails to articulate Plaintiff's cash wage" that he received from Defendant. *See* Def. Brief (Doc. 10-2) at p. 10. However, as discussed in section B *supra*, Plaintiff specifically pleads in his Complaint that Defendant attempted to take the tip credit against the FLSA's minimum wage obligations throughout his entire employment and paid him a direct wage below $7.25/hour. *See* Complaint (Doc. 9) at ¶ 17 ("during Plaintiff's employment, Defendant paid him an hourly wage of approximately $5.30, resulting in a tip credit of $1.95 per hour (= $7.25/hr. – $5.30/hr.).").[2] Under the Third Circuit's *Davis v. Abington Memorial Hosp.*, 765 F.3d 236 (3d Cir. 2014) decision, this factual assertion is all that is needed to sufficiently plead a minimum

[2] Importantly, Defendant does not dispute that it paid Plaintiff less than the FLSA's floor of $7.25/hour.

wage violation under the FLSA. *See*, *e.g.*, *Vasquez v. Spain Inn, Inc.*, 2019 U.S. Dist. LEXIS 179778, *6 (D.N.J. Oct. 17, 2019) ("a plaintiff need only plead that a defendant failed to pay an employee overtime or minimum wage to state an FLSA claim [under *Davis*]. The employer's underlying reason for failing to comply with the FLSA is irrelevant."); *Razak v. Uber Techs., Inc.*, 2016 U.S. Dist. LEXIS 139668, *15-20 (E.D. Pa. Oct. 7, 2016) (applying the *Davis* approach to FLSA minimum wage claims, and finding that plaintiffs' general allegations that they were paid less than minimum wage sufficed, even though they never specified any particular week as *Davis* instructed for overtime claims); *Mackereth v. Kooma, Inc.*, 2015 U.S. Dist. LEXIS 63143, *23 (E.D. Pa. May 14, 2015) (noting in a post-*Davis* case that "Plaintiffs' allegations that they were entitled to and did not receive the mandated hourly minimum wage for all hours worked are more than plausible."); *see also Sec'y of Labor v. Labbe*, 319 F. App'x 761, 763 (11th Cir. 2008) ("Unlike the complex antitrust scheme at issue in *Twombly* that required allegations of an agreement suggesting conspiracy, the requirements to state a claim of a FLSA violation are quite straightforward. The elements that must be shown are simply a failure to pay overtime compensation and/or minimum wages to covered employees."); *accord Yau v. He Cheng Rest. Corp.*, 2013 U.S. Dist.

LEXIS 202495, *4 (D.N.J. Feb. 1, 2013).[3]

Second, Defendant argues that Plaintiff's Complaint needs to articulate "his effective hourly rate (*i.e.*, the actual hourly rate that he received while working for [Defendant])." *See* Def. Brief (Doc. 10-2) at p. 10. While not specifically defining what it means by, or is included in, Plaintiff's "effective hourly rate," Defendant appears to suggest that it is the combination of the cash wage paid by Defendant plus the total tips Plaintiff received from Defendant's customers divided by the number of hours Plaintiff worked during a week. *Id.* at p. 1. Setting aside that "effective hourly rate" is not a term of art under the FLSA, this argument is objectively irrelevant to Plaintiff's claims against Defendant. As numerous courts have observed, when employers attempt to take the tip credit against their minimum wage obligations to employees, those employees do not need to allege the amount of tips and gratuities they received when asserting a violation of the notice requirement in 29 U.S.C. § 203(m). *See*, *e.g.*, *Reich v. Chez Robert, Inc.*, 28 F.3d 401, 404 (3d Cir. 1994) ("When the employer has not notified employees that their wages are being reduced pursuant to the [FLSA's] tip-credit provision, the district court may not equitably reduce liability for back wages to account for tips

[3] Moreover, based on Defendant's discussion of the FLSA's tip credit and notice provisions in its Motion, *see* Def. Brief (Doc. 10-2) at pp. 9-10, it cannot be said that Defendant was not "adequately put … on notice of the essential elements of the plaintiffs' cause of action." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996).

actually received."); *Martin v. Tango's Restaurant, Inc.*, 969 F.2d 1319, 1323 (1st Cir. 1992) ("It may at first seem odd to award back pay against an employer . . . where the employee has actually received and retained base wages and tips that together amply satisfy the minimum wage requirements. Yet Congress has in section 3(m) expressly required notice as a condition of the tip credit and the courts have enforced that requirement."); *Shibetti v. Z Rest., Diner & Lounge, Inc.*, 2019 U.S. Dist. LEXIS 149769, *17 (E.D.N.Y. Aug. 30, 2019) ("Plaintiffs here specifically alleged that the Diner failed to provide them with notice that they were claiming a tip credit on their compensation. Therefore, accepting these allegations as true, Plaintiffs did not need to allege the amounts received in tips and gratuities because the Diner was liable for paying the full statutory minimum wage.") (internal reference omitted); *Camara v. Kenner*, 2018 U.S. Dist. LEXIS 54039, *30 (S.D.N.Y. Mar. 29, 2018) ("'Even if the employee received tips at least equivalent to the minimum wage,' the notice provision must be satisfied.") (quoting *Chung v. New Silver Palace Rest., Inc.*, 246 F. Supp. 2d 220, 229 (S.D.N.Y. 2002)).[4]

[4] Though Defendant's "effective hourly rate" argument fails for the reasons set forth above, it also reflects a fundamental misunderstanding of the issue. For purposes of calculating a tipped employee's minimum wage under the FLSA, the only relevant wages and tips are (1) the amount of the direct cash wage paid by the employer and (2) the amount of any *lawful* tip credit (which is the difference between the direct cash wage and $7.25 per hour and, in any event, cannot be more than $5.12, *see* 29 U.S.C. § 203(m)(2)(a); 29 C.F.R. § 531.50 (a)). To the extent

Finally, Defendant asserts that its Motion should be granted because Plaintiff's Complaint fails to include "any information about when or how [Defendant] purportedly failed to provide notice to its employees" as required by 29 U.S.C. § 203(m). *See* Def. Brief (Doc. 10-2) at p. 10.[5] In essence, Defendant argues that Plaintiff must "plead a negative" as to how Defendant failed to provide the required § 203(m) notice. Yet, such specificity is not necessary at the pleading stage—nor is it logical because Plaintiff has specifically identified the information he was not provided. *See* Complaint (Doc. 9) at ¶¶ 17-18. District courts have repeatedly held that tipped employees asserting similar notice violations can satisfy

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Defendant's "effective hourly rate" argument is a suggestion Defendant is entitled offset its minimum wage obligations with Plaintiff's tips beyond the tip credit exception that Plaintiff alleges does not apply, there is *no* support for that proposition under the FLSA (nor does Defendant cite any). *See* 29 U.S.C. § 203(m)(2)(B) ("An employer may not keep tips received by its employees for any purposes"); 29 C.F.R. § 531.52 ("Tips are the property of the employee whether or not the employer has taken a tip credit under section 3(m) of the FLSA."); 29 C.F.R. § 531.59 ("With the exception of tips contributed to a valid tip pool as described in § 531.54, the tip credit provisions of section 3(m) also require employers to permit employees to retain all tips received by the employee."); *Marlow*, 861 F.3d at 1160 ("This provision gives employers of 'tipped employees'—like hotels and restaurants—the option of paying a reduced hourly wage of $2.13 so long as their workers receive enough tips to bring them to the $7.25 minimum. If there are not enough tips, the employer must pay the difference; if there are more than enough, the excess tips go to employees.").

[5] This argument also overlooks the express language of Plaintiff's Complaint which specifically states that "Defendant failed to inform Plaintiff and the other individuals it attempted to pay in accordance with 29 U.S.C. § 203(m)(2) ***either orally or in writing*** of the FLSA's tip credit notice requirements." *See* Complaint (Doc. 9) at ¶ 17 (emphasis supplied).

*Twombly* by merely stating that the requisite notice was not provided. *See*, *e.g.*, *Roberts v. Apple Sauce, Inc.*, 945 F. Supp. 2d 995, 1004 (N.D. Ind. 2013) ("The Plaintiff alleges in her Amended Complaint that the 'Defendants failed to inform their tipped employees of the provisions of the tip credit subsection of the Act.' (First Am. Compl. ¶ 3.) Given the straight-forward notice requirement, this is sufficient to state a claim for a violation of the tip credit provision."); *Perez v. Prime Steak House Rest. Corp.*, 939 F. Supp. 2d 132, 138-39 (D.P.R. 2013) (stating there was a reasonable inference the defendant failed to provide notice where, "[t]he complaint explicitly states that defendant . . . failed to inform them of the provisions of section 203(m)"); *see also Spiciarich v. Mexican Radio Corp.*, 2017 U.S. Dist. LEXIS 47502, *6-7 (N.D.N.Y. Mar. 30, 2017). Plaintiff has more than satisfied this standard here. *See* Complaint (Doc. 9) at ¶¶ 17-18.

In addition, Defendant's argument overlooks that it is *Defendant's burden* to prove compliance with the FLSA's tip credit exception. Plaintiff need only allege that he was paid less than the FLSA's minimum wage and that the claimed exception did not apply. *See*, *e.g.*, *Driver v. AppleIllinois, LLC*, 917 F. Supp. 2d 793, 800 (N.D. Ill. 2013) ("The tip credit is an exception to an employer's minimum wage obligation, and the employer has the burden of establishing its entitlement to take it."); *Perez v. Lorraine Enterprises, Inc.*, 769 F.3d 23, 27 (1st Cir. 2014) ("This notice provision is strictly construed and normally requires that

an employer take affirmative steps to inform affected employees of the employer's intent to claim the tip credit. It is the employer's burden to show that it satisfied all the requirements for tip-credit eligibility."); *Acosta v. Mezcal, Inc.*, 2019 U.S. Dist. LEXIS 103834, *18 (D. Md. June 20, 2019) ("the employer bears the burden of demonstrating eligibility for the [tip credit] exception"). Unsurprisingly, Defendant failed to cite a single case that stands for the proposition that a plaintiff who alleges he was paid a direct cash wage less than the minimum wage (which is, on its face, a minimum wage violation) has had his FLSA claims dismissed for failing to plead how a defendant failed to comply with the tip credit exception or how much the plaintiff earned in aggregate tips.

**E. Conclusion.**

In sum, because the Complaint adequately pleads claims under the FLSA, Defendant's Motion to dismiss should fail, and Defendant should be required to file an answer.

Date: April 5, 2021

Respectfully submitted,

s/ R. Andrew Santillo

**WINEBRAKE & SANTILLO, LLC**
R. Andrew Santillo, Esq. (NJ ID #025512004)
Mark J. Gottesfeld, Esq. (NJ ID #027652009)
Twining Office Center, Suite 211
715 Twining Road
Dresher, PA 19025
Telephone: 215-884-2491
Facsimile: 215-884-2492
Email: asantillo@winebrakelaw.com

Email: mgottesfeld@winebrakelaw.com

**STUEVE SIEGEL HANSON LLP**
George A. Hanson, Esq.
*pro hac vice application forthcoming*
Alexander T. Ricke, Esq.
*pro hac vice application forthcoming*
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
Telephone: 816-714-7100
Facsimile: 816-714-7101
Email: hanson@stuevesiegel.com
Email: ricke@stuevesiegel.com

**McCLELLAND LAW FIRM, P.C.**
Ryan L. McClelland, Esq.
*pro hac vice application forthcoming*
Michael J. Rahmberg, Esq.
*pro hac vice application forthcoming*
The Flagship Building
200 Westwoods Drive
Liberty, Missouri 64068
Telephone: 816-781-0002
Facsimile: 816-781-1984
Email: ryan@mcclellandlawfirm.com
Email: mrahmberg@mcclellandlawfirm.com

*COUNSEL FOR PLAINTIFF*

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically on April 5, 2021. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

s/ R. Andrew Santillo
R. Andrew Santillo (NJ ID #025512004)