

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

DAVID CARLETON)
2615 Miles Avenue)
Baltimore, MD 21211,)
)
On Behalf of Himself and)
All Others Similarly Situated,)
)
Plaintiff,)

v.)

THE LOCAL OYSTER LLC)
2275 Park Hill Ave)
Baltimore MD 21211,)
)

NICHOLAS SCHAUMAN)
2275 Park Hill Ave)
Baltimore MD 21211)
)

PATRICK HUDSON)
209 Goodwood Gardens)
Baltimore, MD 21210)
)

Defendants.)

ECF Case
Case no. 18-cv-2393
JURY TRIAL DEMANDED

COLLECTIVE AND CLASS ACTION COMPLAINT

Plaintiff, David Carleton (“Plaintiff”), on behalf of himself and similarly situated employees, brings this collective and class action lawsuit against Defendants The Local Oyster LLC (“The Local Oyster”), Nicholas Schauman and Patrick Hudson (“Defendants”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.*; the Maryland Wage and Hour Law, Maryland Code Annotated, Labor and Employment Article §

3-401 *et seq.* (the “MWHL”); and the Maryland Wage Payment and Collection Law (the “MWPCCL”), Maryland Code, Labor and Employment Article § 3-501 *et seq.*

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331, which confers jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1337, which confers federal jurisdiction over “any civil action or proceeding arising under any Act of Congress regulating commerce.”

2. This Court has supplemental jurisdiction over Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1367(a), which confers federal subject matter jurisdiction over “all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” As discussed below, Plaintiff’s state-law claims arise from a common set of operative facts—*i.e.*, his employment at The Local Oyster in Maryland—and are so related to the claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy.

3. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

4. Plaintiff resides in Baltimore, Maryland and has been employed by the Local Oyster since October 24, 2017.

5. Defendant, The Local Oyster LLC, is a corporation organized and existing pursuant to the laws of the State of Maryland, with its principal place of business in Baltimore, Maryland. The Local Oyster LLC does business as “The Local Oyster.”

6. Defendant Nicholas Schauman is an owner of the Local Oyster residing in Baltimore, Maryland. Defendant Schauman supervises Plaintiff's and other similarly situated employees' work and pay and has acted in the interest of the Local Oyster during Plaintiff's and other similarly situated employees' employment.

7. Defendant Patrick Hudson is an owner of the Local Oyster residing in Baltimore, Maryland. Defendant Hudson supervises Plaintiff's and other similarly situated employees' work and pay and has acted in the interest of the Local Oyster during Plaintiff's and other similarly situated employees' employment.

8. Defendants employ individuals, including Plaintiff, and are 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.

9. Defendants are employers covered by the minimum wage mandates of the FLSA and MWHL.

FACTS

10. Defendants employ individuals at its restaurant in Baltimore, Maryland.

11. Defendants paid Plaintiff a sub-minimum hourly wage of \$5.50 per hour plus tips earned and paid by restaurant patrons. Defendants utilize a "tip credit" against their minimum wage obligations to Plaintiff under the FLSA in the amount of \$1.75 for minimum wages owed under federal law (the difference between \$7.25 and \$5.50) for each hour worked by Plaintiff. Defendants utilize a "tip credit" against its minimum wage obligations to Plaintiff under the MWHL in the amount of \$4.60 for minimum wages owed under Maryland (the difference between \$10.10 and \$5.50) for each hour worked by Plaintiff. Defendants utilize similar "tip credits" against their minimum wage obligations to other workers similarly situated to Plaintiff who make less than the federal and/or Maryland state minimum hourly wage.

12. Defendants maintain a company-wide policy that requires Plaintiff and other similarly situated employees of the Local Oyster to spend time performing non-tip producing work. Such non-tip producing work includes, but is not limited to, washing dishes, cooking, other food preparation, stocking condiments and cleaning the restaurant.

13. Plaintiff and the other Local Oyster employees regularly spend more than 20% of their time performing the non-tip producing tasks identified in paragraph 12 above. For example, Plaintiff estimates that he spends an average of more than 50% of each shift performing non-tip producing work.

14. Defendants pay Plaintiff and other employees a sub-minimum hourly wage for time spent performing these non-tip producing tasks. Defendants routinely require Plaintiff and other employees to perform non-tip producing work while they are not serving patrons in the restaurant.

15. Defendants require all of their employees who earn a sub-minimum wage to spend more than 20% of their time performing non-tip producing work.

16. Additionally, as described in Defendants' employee manual, during Plaintiff's and other employees' training periods, Defendants paid Plaintiff and other employees a sub-minimum hourly wage of \$8.00/hour without any access to tips.

COLLECTIVE ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of himself and all individuals employed by Defendants at the Local Oyster who spent more than 20% of their time performing non-tip producing work while earning an hourly wage less than federal minimum wage during any workweek since the opening of the Local Oyster (the "Collective Action Period") in October 2015. These individuals are referred to herein as "Collective Action Members."

18. Plaintiff pursues his FLSA claim on behalf of any Collective Action Members who opt-in to this action pursuant to 29 U.S.C. § 216(b).

19. Plaintiff and the Class Members are “similarly situated,” as that term is defined in 29 U.S.C. § 216(b), because, *inter alia*, they have been subjected to Defendants’ company-wide policies, as discussed above.

CLASS ACTION ALLEGATIONS

20. Plaintiff also brings this action as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of himself and those similarly situated for violations of the MWHL and the MWPCL to enjoin Defendants’ unlawful conduct and to recover damages, interest, attorneys’ fees, costs, and all other relief as appropriate for Defendants’ willful statutory violations. Plaintiff and all other persons who are or have been employed by Defendants at the Local Oyster and have earned an hourly wage less than the Maryland state minimum wage during any workweek since the opening of the Local Oyster in October 2015 (the “Class Period”) will be referred to jointly as the “Class Members.”

21. Upon information and belief, Defendants have, during the Class Period, employed at least thirty (30) hourly-paid Class Members. The Class Members are so numerous that joinder of all members is impracticable.

22. The duties and responsibilities of the jobs held by the Class Members were the same as or substantially similar to the duties and responsibilities of the Plaintiff.

23. Plaintiff’s claims are typical of the claims of Class Members because they are or were subject to the same unlawful deductions as described in this Complaint.

24. Plaintiff is an adequate representative of the Class Members because Plaintiff and Class Members are or were subject to, and damaged by, the same unlawful wage theft practices as described in this Complaint.

25. Application of Defendants' policies and compensation practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the alleged wage theft applies to all class members.

26. Plaintiff and Class Members each challenge the legality of the policies and practices as described in this Complaint. By advancing his own claim, Plaintiff will necessarily advance the claims of the Class Members.

27. Plaintiff will have no conflict with any Class Members and is willing to serve in this representative role.

28. Plaintiff has retained counsel that is competent and experienced in class action litigation and who will adequately represent the Class Members.

29. Questions of fact and law common to all Class Members will predominate over any questions solely affecting individual Class Members. Among common questions are:

- a. whether Defendants' wage theft policies and practices set forth in this Complaint took place as alleged;
- b. whether Defendants' policies and practices constitute violations of the MWHL and the MWPCCL; and
- c. whether Class Members are entitled to relief as requested in this Complaint.

30. Defendants have acted and/or refused to act on grounds generally applicable to all Class Members and relief concerning the class as a whole is therefore appropriate.

31. Because Plaintiff and Class Members suffered the same harms and challenge the same practices described in this Complaint, a class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will

permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently, without the duplication of effort and expense and the risk of inconsistent or varying adjudications presented by numerous individuals.

32. No difficulties are likely to be encountered in the management of this class action, and the identity of the Class Members should be readily available from Defendants' records.

33. Additionally, Class Members may be informed of the pendency of this class action by mailing, the internet, posting at the Local Oyster, or other means.

COUNT I - VIOLATION OF FLSA MINIMUM WAGE PROVISIONS

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

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

36. Defendants are employers covered by the FLSA, and are and were employers of Plaintiff and the Collective Action Members.

37. 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).

38. 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); U.S. Dep. of Labor, Field Operations Handbook Ch. 30d00(e) (Dec. 9, 1988).

39. Defendants' company-wide policy of requiring Plaintiff and other employees to spend more than 20% of the time performing non-tip producing work prohibits Defendants from utilizing a tip credit to satisfy its minimum wage obligations to Plaintiff and the Collective Action Members.

As such, Defendants violated the FLSA's minimum wage mandates by failing to pay Plaintiff and other employees the full minimum wage.

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

41. Defendants are liable to Plaintiff and the Collective Action Members under the FLSA § 216(b), for all unpaid overtime wages, plus an equal amount in liquidated damages, plus interest (both pre- and post- judgment), attorney's fees, costs, and any other and further relief this Court deems appropriate.

COUNT II - VIOLATION OF MWHL MINIMUM WAGE PROVISIONS

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

43. Plaintiff and the Class Action Members are employees and entitled to the MWHL's protections.

44. Defendants are employers covered by the MWHL and are and were employers of Plaintiff and the Class Action Members.

45. The MWHL entitles employees to minimum hourly compensation of \$10.10 for hours worked under 40 in a week (\$9.25 for hours worked under 40 in a week between July 1, 2017 and June 30, 2018, \$8.75 for hours worked under 40 in a week between July 1, 2016 and June 30, 2017 and \$8.25 for hours worked under 40 in a week between July 1, 2015 and June 30, 2016), *see* Maryland Wage and Hour Law, Maryland Code Annotated, Labor and Employment Article § 3-413.

46. Maryland law 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 MD Admin Rules 09.12.41.19(D)(4).

47. Defendants' company-wide policy of requiring Plaintiff and other employees to spend more than 20% of the time performing non-tip producing work prohibits Defendants from utilizing a tip credit to satisfy its minimum wage obligations to Plaintiff and the Class Action Members. Defendants also failed to pay Plaintiff and the Class Action Members the required minimum wage by paying them sub-minimum wage during their training period. As such, Defendants violated the MWHL's minimum wage mandates by failing to pay Plaintiff and other employees the full minimum wage.

48. In violating the MWHL, Defendant acted willfully and with reckless disregard of clearly applicable MWHL provisions.

49. Defendants are liable to Plaintiff and the Class Action Members for all unpaid overtime wages, plus liquidated damages, plus interest (both pre- and post- judgment), attorney's fees, costs, and any other and further relief this Court deems appropriate.

COUNT III - VIOLATION OF MWPCCL

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

51. Plaintiff and the Class Action Members are employees and entitled to the MWPCCL's protections.

52. Defendants are employers covered by the MWHL and are and were employers of Plaintiff and the Class Action Members.

53. Under the MWPCCL, § 3-502, Defendants were required to pay Plaintiff and Class Members all wages due for work performed.

54. Defendants failed to timely pay Plaintiff and Class Members their required wage rate for all hours they worked, in violation of the MWPCCL, § 3-502.

55. Defendants' violations of the MWPCL were repeated, willful, intentional, and in bad faith.

56. Defendants are liable to Plaintiff and the Class Members under the MWPCL, § 3-507.1 for three times their unpaid wages, interest (both pre- and post- judgment), attorneys' fees, costs, and any other and further relief this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, respectfully request that the Court:

1. Declare this action to be maintainable as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), and direct Defendants to provide to Plaintiff a list of all Collective Action Members, including the last known address and telephone number of each such person, so that Plaintiff can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it.
2. Determine the damages sustained by the Plaintiff during the Class Period as a result of Defendants' willful and intentional violations of the FLSA, 29 U.S.C. § 207(a), and award such damages against Defendants in favor of Plaintiff and all similarly situated individuals, plus an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b), plus such pre-judgment interest as may be allowed by law;
3. Declare this Action to be maintainable as a Class Action as to the claims brought under the Maryland laws pursuant to Fed. R. Civ. P. 23;

4. Determine the damages sustained by Plaintiff and Class Members during the Class Period as a result of Defendants' willful and intentional violations of the MWHL and the MWPCL, and award all appropriate damages resulting therefrom to Plaintiff and Class Members;
5. Determine that injunctive relief is appropriate as to the Plaintiff and Class Members and enjoin Defendants from continuing to violate the FLSA, the MWHL, and the MWPCL.
6. Award Plaintiff his costs and disbursements of this suit, including, without limitation, reasonable attorneys' fees and other associated costs; and
7. Grant Plaintiff and all similarly situated individuals such other and further relief as this Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE

Respectfully submitted,

Dated: August 6, 2018

/s/ Matthew Handley

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Proposed Class*