UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VANESSA CHAVEZ, on behalf of herself and all others similarly situated	)	
Plaintiffs,	)	**Case No. 1:16-CV-1019**
vs.	)	**COMPLAINT - CLASS ACTION** **(Jury Trial Demanded)**
T & B MANAGEMENT, LLC and T & B CONCEPTS OF HICKORY, LLC, each d/b/a HICKORY TAVERN,	)	
Defendants.	)	

NOW COMES plaintiff, Vanessa Chavez ("Plaintiff" and/or "Ms. Chavez"), pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), as amended, in 29 U.S.C. §§ 201, *et seq*., on behalf of herself and all other similarly situated former and current tipped server employees at Hickory Tavern restaurants throughout North Carolina, South Carolina, Alabama, Tennessee, and any other state in which a Hickory Tavern restaurant is located, and brings the following Collective Action against defendants T & B Management, LLC and T & B Concepts of Hickory, LLC, each individually and collectively d/b/a Hickory Tavern (collectively, "Defendants" and/or "Hickory Tavern" and/or the "Hickory Tavern Defendants") and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Hickory Tavern, acting by and through its managers, agents, and/or employees, for engaging in a systemic scheme of wage abuses against its tipped server employees at each of its restaurants. Specifically, Hickory Tavern required its tipper server employees to spend more than twenty percent (20%) of their time performing preparation, maintenance, cleaning, sidework, and other non-tip generating duties and tasks, for which they were paid below minimum wage. This practice is a violation of the FLSA.

PARTIES

2. Plaintiff is a citizen and resident of Winston Salem, Forsyth County, North Carolina.

3. Plaintiff is a former tipped hourly employee of Hickory Tavern. Ms. Chavez was employed as a server for approximately four months at Defendants' restaurant located at 206 Harvey Street, Winston-Salem, North Carolina.

4. Plaintiff was an "employee" of Defendants as that term is defined in the FLSA.

5. Ms. Chavez has consented to be a plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). Plaintiff's executed Consent to Become a Party Plaintiff is attached hereto as Exhibit A.

6. Defendant T & B Management, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

7. Defendant T & B Concepts of Hickory, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

8. The Hickory Tavern Defendants individually and/or collectively operate and manage approximately twenty-three (23) casual dining "sports bar" restaurants in North Carolina, South Carolina, Tennessee and Alabama, including a location in Winston Salem, Forsyth County, North Carolina.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

9. Jurisdiction is proper in this Court pursuant to the FLSA which authorizes court actions by private citizens to recover damages for violation of the FLSA's wage and hour provisions. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

10. The Hickory Tavern Defendants managed and operated the restaurant where Plaintiff worked in Winston-Salem, Forsyth County, North Carolina. Plaintiff performed all of the work alleged herein, and earned all of her wages as alleged herein, in Winston-Salem, Forsyth County, North Carolina. As such, this cause of action for which Plaintiff seeks recovery arose in this District.

11. Upon information and belief, Defendants employ more than two hundred fifty (250) tipped hourly employees among the approximately twenty-three (23) restaurants it manages and operates in North Carolina, South Carolina, Tennessee and Alabama.

12. Defendants have substantial contacts with, and do business in, this District and are subject to personal jurisdiction of this Court.

13. Venue is proper in this Court because Defendants may be found in this District and much of the relevant information and witnesses for Defendants are located in this District.

14. Venue is also proper in this Court because the alleged acts and omissions of Defendants occurred in this District. Defendants manage, operate and maintain a restaurant business in this District, and thereby do significant business in this District.

15. All conditions precedent to the filing of this action have been met or occurred.

CLASS DEFINITIONS

16. Plaintiff brings this action collectively on behalf of herself and the Class of similarly situated persons defined as follows:

> All hourly tipped employees of Hickory Tavern who work, or worked, as servers at any of Defendants' restaurants from August 1, 2014 through the present, and who Defendants did not pay minimum wage when their non-tip generating work exceeded twenty percent (20%) of their workweek.

(Collectively, "Class Members").

17. The proposed Class excludes Defendants' officers, directors, members and managers. The proposed Class also excludes all judicial officers presiding over this action and their immediate family members and staff, and any jury assigned to this action.

FACTUAL ALLEGATIONS

18. Upon information and belief, Defendants maintain control, oversight, direction and management of the operations at its restaurant facilities, including employment and/or labor practices, throughout North Carolina, South Carolina, Tennessee, Alabama, and other states in which Defendants operate restaurant facilities.

19. Upon information and belief, Defendants provide written instructions, manuals, handbooks and training materials for its tipped employee servers at each of its restaurant facilities in North Carolina, South Carolina, Tennessee, Alabama, and other states.

20. Upon information and belief, Hickory Tavern's tipped employee servers do not pool their tips to share among other servers. As such, work done by Plaintiff for other servers does not generate tips for Plaintiff.

21. As part of their employment with Hickory Tavern, Plaintiff and the Class Members were required to perform non-tip generating work such as maintenance, preparatory work, cleaning, washing dishes, rolling silverware and other, non-tip generating duties, including running orders to tables for other servers. These tasks do not generate tips for themselves. These tasks are generally known as "sidework."

22. As a tipped server, Ms. Chavez was only paid an hourly rate of $2.13, well below minimum wage. The FLSA does, however allow a "tip credit" to be taken by the employer of tipped employees. A tip credit allows for a server's earned tips to make up the difference between $2.13 an hour and minimum wage.

23. Despite the allowed tip credit, the U.S. Department of Labor's Wage and Hour Division's Fact Sheet #15: "Tipped Employees Under the Fair Labor Standards Act (FLSA)" ("Fact Sheet #15") states on page 2 under "Dual Jobs," that "where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties [such as sidework], no tip credit may be taken for the time spent in such duties." A copy of Fact Sheet #15 is attached hereto as Exhibit B.

24. When sidework is performed by Plaintiff and the Class Members that exceeds twenty percent (20%) of all time worked during a shift, Plaintiff and the Class Members are required to be paid minimum wage for all of the sidework performed.

25. It is a violation of the FLSA for Hickory Tavern to not pay Plaintiff and Class Members minimum wage for all of the time they perform sidework – when such work exceeds twenty percent (20%) of their workweek.

26. The Hickory Tavern Defendants failed to pay the Plaintiff and Class Members a wage differential to meet the requirements of the FLSA for all sidework when such work exceeded twenty percent (20%) of the workweek Plaintiff and the Class Members worked and currently work. In other words, Plaintiff and Class Members are only paid $2.13 for doing sidework when they should be paid minimum wage.

27. The Hickory Tavern Defendants continually and willfully violate the FLSA by not paying the Class Members proper wages.

28. The Hickory Tavern Defendants, individually, and/or through an enterprise, willfully engage in a pattern and/or practice of unlawful conduct by failing to record, credit and/or compensate work performed by the Class Members for all the time such employees perform non-tip generating sidework done in excess of twenty percent (20%) of their workweek.

29. Plaintiff brings this action on behalf of herself and the Class Members pursuant to the FLSA, and specifically the collective action provision of 29 U.S.C. § 216(b), to remedy the knowing and intentional violations of the wage-and-hour provisions of the FLSA that have deprived Plaintiff and the Class Members of proper pay.

30. Plaintiff and the Class Members were/are tipped employees as defined by the FLSA 29 U.S.C. § 203(t).

31. The Hickory Tavern Defendants individually and/or through an enterprise, directed, managed and/or exercised control over Plaintiff and the Class Members at all relevant times.

32. Plaintiff and the Class Members' work, were, and are, performed pursuant to Hickory Tavern's policies, procedures, and guidelines.

33. During Plaintiff and the Class Member's employment as tipped employee servers by the Hickory Tavern Defendants, they were not paid proper wages for all time worked.

COUNT ONE
FLSA Wage and Hour Violations

34. Plaintiff incorporates the allegations contained in each prior paragraph as if fully set forth herein.

35. Plaintiff brings this action on behalf of herself and all other similarly situated Class Members of Hickory Tavern, and/or its subsidiaries, that perform general preparation, maintenance, sidework, and/or other non-tipped work in excess of twenty percent (20%) of their workweek, and who are not paid at least the full hourly minimum wage while performing such duties – as required by 29 U.S.C. §201, et. seq.

36. The Hickory Tavern Defendants also failed to properly record the time the Plaintiff and Class Members performed sidework in excess of twenty percent (20%) of their workweek.

37. The work of the Class Members is essentially the same as the work of the Plaintiff described above. At all times during the FLSA class period, all of the Class Members were paid in substantially the same manner and under substantially the same employment guidelines and practices as the Plaintiff.

38. The Class Members, like the Plaintiff, were all subject to the same policy and/or practice whereby Hickory Tavern willfully failed to record, credit, and compensate work performed by the Class Members for all the time they performed non-tipped work, such as maintenance, preparatory work, and/or sidework in excess of twenty percent (20%) of their workweek.

39. Hickory Tavern's refusal to pay Plaintiff and the Class Members the required wage differential when the Class Members worked in excess of twenty percent (20%) of their time performing general preparation, maintenance work and/or sidework, was willful and intentional.

40. Plaintiff and the Class Members have been damaged in the amount of the difference between the wages they were actually paid and the amount of the wages they should have been paid pursuant to the FLSA and regulations adopted thereunder.

41. Hickory Tavern's refusal to pay Plaintiff and the Class Members the required wage differential is a violation of 29 U.S.C. §§ 201, et. seq.

42. Hickory Tavern's violations of 29 U.S.C. §§ 201, et. seq. were repeated, willful and intentional.

43. Plaintiff and the Class Members are entitled to liquidated damages in an amount equal to the amount of lost wages as set forth in 29 U.S.C. §201 et. seq.

44. Plaintiff and the Class Members are also entitled to reasonable attorney's fees and costs of this action as set forth in 29 U.S.C. §201 et. seq.

WHEREFORE, Plaintiff Vanessa Chavez, prays this Court enter Judgment against the Defendants T & B Managements, LLC and T & B Concepts of Hickory, LLC, and for herself and the Class Members, in an amount that is fair and reasonable under the circumstances, for all unpaid wages, enjoining Defendants from further violations of the Fair Labor Standards Act, for the costs of this action, attorney's fees, liquidated damages, prejudgment interest thereon from the date the employee was owed the wages, and for such other and further relief as is necessary and proper.

This the 1st day of August, 2016.

/s/ Paul R. Dickinson, Jr.
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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

VANESSA CHAVEZ, on behalf of herself and all others similarly situated	)	
Plaintiffs,	)	**Case No.**
vs.	)	
T & B MANAGEMENT, LLC and T & B CONCEPTS OF HICKORY, LLC, each d/b/a HICKORY TAVERN,	)	
Defendants.	)	

CONSENT TO JOIN AND BECOME PARTY PLAINTIFF

I, Vanessa Chavez hereby consent and agree to join and "opt-in" to this lawsuit in order to pursue my claims against Defendants, T & B Management, LLC and T & B Concepts of Hickory, LLC, each individually and collectively d/b/a Hickory, arising out of alleged Federal wage and hour law violations. I understand and acknowledge that this lawsuit is being brought under the Federal Fair Labor Standards Act of 1938, as amended in 29 U.S.C. §§ 201, et seq., to secure unpaid wages, attorneys' fees, and costs, plus an additional amount of liquidated damages in an amount equal to any unpaid wages, and other relief arising out of my employment with "Hickory Tavern" as the Court may allow. I understand and consent to be bound by any settlement of this action or adjudication by the Court.

I hereby designate the attorneys identified below to represent me in this lawsuit.

Signed Name

Vanessa Chavez
Printed Name

7/28/16
Date

(CONTINUED ON NEXT PAGE)

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EXHIBIT B

U.S. Wage and Hour Division
(Revised July 2013)

Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees who receive tips.

Characteristics

Tipped employees are those who customarily and regularly receive more than $30 per month in tips. Tips are the property of the employee. The employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit.

Tip Credit: Section 3(m) of the FLSA permits an employer to take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least $2.13) and the federal minimum wage. Thus, the maximum tip credit that an employer can currently claim under the FLSA is $5.12 per hour (the minimum wage of $7.25 minus the minimum required cash wage of $2.13).

Tip Pool: The requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), bussers, and service bartenders. A valid tip pool may not include employees who do not customarily and regularly received tips, such as dishwashers, cooks, chefs, and janitors.

Requirements

The employer must provide the following information to a tipped employee before the employer may use the tip credit:

1) the amount of cash wage the employer is paying a tipped employee, which must be at least $2.13 per hour;

2) the additional amount claimed by the employer as a tip credit, which cannot exceed $5.12 (the difference between the minimum required cash wage of $2.13 and the current minimum wage of $7.25);

3) that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;

4) that all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and

5) that the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.

The employer may provide oral or written notice to its tipped employees informing them of items 1-5 above. An employer who fails to provide the required information cannot use the tip credit provisions and therefore must pay the tipped employee at least $7.25 per hour in wages and allow the tipped employee to keep all tips received.

Employers electing to use the tip credit provision must be able to show that tipped employees receive at least the minimum wage when direct (or cash) wages and the tip credit amount are combined. If an employee's tips combined with the employer's direct (or cash) wages of at least $2.13 per hour do not equal the minimum hourly wage of $7.25 per hour, the employer must make up the difference.

Retention of Tips: A tip is the sole property of the tipped employee regardless of whether the employer takes a tip credit. [1] The FLSA prohibits any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. For example, even where a tipped employee receives at least $7.25 per hour in wages directly from the employer, the employee may not be required to turn over his or her tips to the employer.

Tip Pooling: As noted above, the requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips. The FLSA does not impose a maximum contribution amount or percentage on valid mandatory tip pools. The employer, however, must notify tipped employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each tipped employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

Dual Jobs: When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

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[1] In *Oregon Restaurant and Lodging Ass'n et al. v. Solis*, -- F. Supp. 2d --, 2013 WL 2468298 (D. Or. 2013), the U.S. District Court for the District of Oregon declared the Department's 2011 regulations that limit an employer's use of its employees' tips when the employer has not taken a tip credit against its minimum wage obligations to be invalid. As a result of that decision and the judgment entered in that case, at least until the resolution of any appeal that may be taken in this case, the Department is prohibited against enforcing its tip retention requirements against plaintiffs (which include several associations, one restaurant, and one individual) and members of the plaintiff associations that can demonstrate that they were a member of one of the plaintiff associations in this litigation on June 24, 2013. The plaintiff associations in the Oregon litigation were the National Restaurant Association, Washington Restaurant Association, Oregon Restaurant and Lodging Association, and Alaska Cabaret, Hotel, Restaurant, and Retailer Association. As a matter of enforcement policy, the Department has decided that it will not enforce its tip retention requirements against any employer that has not taken a tip credit in jurisdictions within the Ninth Circuit while the federal government considers its options for appeal of the decision. The Ninth Circuit has appellate jurisdiction over the states of California, Nevada, Washington, Oregon, Alaska, Idaho, Montana, Hawaii, and Arizona; Guam; and the Northern Mariana Islands.

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Sums distributed to employees from service charges cannot be counted as tips received, but may be used to satisfy the employer's minimum wage and overtime obligations under the FLSA. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and in the application of the tip credit.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. For example, where a credit card company charges an employer 3 percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the FLSA. However, this charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than $4.25 per hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Typical Problems

Minimum Wage Problems:

- Where an employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment (which must be at least $2.13 per hour) and the minimum wage, the employer must make up the difference.
- Where an employee receives tips only and is paid no cash wage, the full minimum wage is owed.
- Where deductions for walk-outs, breakage, or cash register shortages reduce the employee's wages below the minimum wage, such deductions are illegal. Where a tipped employee is paid $2.13 per hour in direct (or cash) wages and the employer claims the maximum tip credit of $5.12 per hour, no such deductions can be made without reducing the employee below the minimum wage (even where the employee receives more than $5.12 per hour in tips).
- Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee is owed all tips he or she contributed to the pool and the full $7.25 minimum wage.

Overtime Problems:

- Where the employer takes the tip credit, overtime is calculated on the full minimum wage, **not** the lower direct (or cash) wage payment. The employer may not take a larger tip credit for an overtime hour than for a straight time hour (i.e., $4.00 tip credit per hour for the nonovertime hours and $5.12 tip credit per hour for overtime hours).
- Where overtime is not paid based on the regular rate including all service charges, commissions, bonuses, and other remuneration.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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