

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RONALD KNIPPLE, JR., on behalf of)
himself and all those similarly situated)
who consent to representation,)

Plaintiffs,)

v.)

ROSWELL LAMBROU, INC.)
a Georgia Corporation, and)
BROADWAY DINER, INC.)
a Georgia Corporation,)

Defendants.)

Civil Action Number:
1:09-CV-1126
FLSA Collective Action
Jury Trial Demanded

COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiff Ronald Knipple, Jr., (hereinafter “Plaintiff”) by and through his undersigned counsel, and files this lawsuit against Defendants Roswell Lambrou, Inc. and Broadway Diner, Inc. (hereinafter collectively “Defendants”) on behalf of himself and all others similarly situated, pursuant to § 216(b) of the Fair Labor Standards Act of 1938, and in support thereof would further state as follows:

INTRODUCTION

1. The instant action arises from Defendants’ violations of Plaintiff’s rights under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, as amended (hereinafter “FLSA”), and specifically the collective action provisions of the FLSA

found at § 216(b) to remedy violations of the minimum hourly wage and overtime provisions of the FLSA by Defendants which have deprived Plaintiff, as well as others similarly situated to the named Plaintiff, of their lawful minimum hourly and overtime wages.

2. Plaintiff brings this action as a collective action on behalf of himself and all other similarly situated employees who consent to representation, pursuant to 29 U.S.C. § 216(b) who were tipped employees of Defendants' Atlanta Restaurant and paid less than the federal minimum hourly wage and from whom Defendants took a tip credit. Plaintiff's individual consent to sue and serve as representative Plaintiff is incorporated herein as Exhibit A.

3. Plaintiff was employed by Defendants, primarily working as a server, at Defendants' restaurant located at 620 Peachtree Street, Atlanta, Fulton County, Georgia 30308 (hereinafter "Defendants' Atlanta Restaurant").

4. Upon information and belief, Plaintiff was employed by Defendant Roswell Lambrou, Inc. (hereinafter "Defendant Lambrou") from on or about July, 2007 until on or about July 2008 when Defendant Broadway Diner, Inc. (hereinafter "Defendant Broadway") assumed ownership of Defendants' Atlanta Restaurant, and from on or about July 2008 by Defendant Broadway until Plaintiff's employment terminated on or about April 15, 2009.

5. Other current and former employees of Defendants' Atlanta Restaurant are also entitled to receive minimum hourly wage and overtime compensation for the reasons alleged in this Complaint. Plaintiff may be permitted to maintain this action "for and on behalf of himself . . . and other employees similarly situated." 29 U.S.C. § 216(b). Any similarly situated current or former employee of Defendants' Atlanta Restaurant wishing to become a party plaintiff to this action must provide "his consent in writing to become such a party," and such consent must be filed with this Court. 29 U.S.C. § 216(b).

6. This action is brought to recover unpaid minimum hourly wage and overtime compensation owed to the named Plaintiff and other current and former employees of Defendants' Atlanta Restaurant who are similarly situated to Plaintiff, pursuant to the FLSA.

7. Plaintiff and any collective group similarly situated were or are employed by Defendants working at various times during their employment by Defendants as servers, bussers or any other position from whom Defendants took a tip credit.

8. During the employment of Plaintiff, and for at least three years prior to the filing of this Complaint in the case of any collective group similarly situated, Defendants committed widespread violations of the FLSA by failing to

compensate employees at the legally appropriate minimum hourly wage and by failing to compensate employees at the legally appropriate overtime rate for hours worked in excess of 40 hours in a given workweek.

9. Plaintiff and all similarly situated current and former employees of Defendants' Atlanta Restaurant who elect to participate in this action seek unpaid minimum hourly wage and overtime compensation for work performed, an equal amount of liquidated damages, attorneys' fees, costs, and other appropriate relief pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28U.S.C. § 1331 (federal question jurisdiction), and 29 U.S.C. § 216(b) (FLSA).

11. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391 (a) and (c) because some of the acts complained of occurred within the State of Georgia and the jurisdiction of this Court and because Defendants are subject to personal jurisdiction in this District.

PARTIES

12. Plaintiff resides in Atlanta, Georgia (within this District) and is a citizen of the United States. Plaintiff was employed by Defendants at Defendants'

Atlanta Restaurant from on or about July, 2007 until on or about April 15, 2009 as a server.

13. At all times material to this action, Plaintiff was an “employee” of Defendants defined by § 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States. Plaintiff is further covered by §§ 203, 206, and 207 of the FLSA for the period in which he was employed by Defendants.

14. At all times material to this action, any collective group similarly situated to Plaintiff were “employees” of either or both Defendant Lambrou, and Defendant Broadway defined by § 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States. These same individuals are further covered by §§ 203, 206, and 207 of the FLSA for the period in which they were employed by one or both of the Defendants.

15. Defendant Lambrou is a corporation formed under the laws of the State of Georgia and owns and operates restaurants in the Atlanta, Georgia area and previously owned and operated Defendants’ Atlanta Restaurant.

16. Defendant Broadway Diner is a corporation formed under the laws of the State of Georgia and owns and operates Defendants’ Atlanta Restaurant.

17. Defendants conduct business within this State and District.

18. Defendants maintained either actual or constructive control, oversight and direction of Defendants' Atlanta Restaurant, including the employment and pay and other practices of that operation.

19. Defendant Lambrou is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its registered agent, Tom Lambrou, 3652 Roswell Road, N.E Atlanta Georgia 30305.

20. Defendant Broadway is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its registered agent, Spehar & Associates, LLC, 250 Langley Drive Lawrenceville, Georgia 30045.

21. At all times relevant to this action, Defendant Lambrou was an enterprise engaged in commerce or in the production of goods for commerce as defined by § 203 of the FLSA, and had an annual gross volume of sales which exceeded \$500,000.

22. At all times relevant to this action, Defendant Lambrou was an "employer" of the named Plaintiff and of others similarly situated, as defined by § 203(d) of the FLSA.

23. At all times relevant to this action, Defendant Broadway was an enterprise engaged in commerce or in the production of goods for commerce as

defined by § 203 of the FLSA, and had an annual gross volume of sales which exceeded \$500,000.

24. At all times relevant to this action, Defendant Broadway was an “employer” of the named Plaintiff and of others similarly situated, as defined by § 203(d) of the FLSA.

25. The tipped employee provisions set forth in § 203 of the FLSA apply to Defendants.

26. The minimum hourly wage provisions set forth in § 206 of the FLSA apply to Defendants.

27. The overtime provisions set forth in § 207 of the FLSA apply to Defendants.

FACTUAL ALLEGATIONS

28. Upon information and belief, Defendants employed, at Defendants’ Atlanta Restaurant, in the past three years prior to the filing of this Complaint over 25 separate individuals who received tips as part of their compensation.

29. Plaintiff’s duties and the duties of other current and former employees similarly situated of Defendants’ Atlanta Restaurant included servicing Defendants’ customers at Defendants’ Atlanta Restaurant by performing duties

such as leading customers to tables, taking food and drink orders, serving food and drink orders, clearing tables, and “side work” before and after each shift.

30. At all times relevant to this action, Plaintiff’s primary duty and the primary duty of other current and former employees similarly situated of Defendants’ Atlanta Restaurant was not the management of the enterprise in which they were employed, nor of a customarily recognized department or subdivision thereof.

31. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants’ Atlanta Restaurant were not responsible for supervising or directing the work of any other employees.

32. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants’ Atlanta Restaurant did not possess the authority to hire or fire other employees.

33. At all times relevant to this action, Plaintiff’s suggestions and recommendations, if any, as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

34. At all times relevant to this action, the suggestions and recommendations, if any, of other current and former employees similarly situated

of Defendants' Atlanta Restaurant, as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

35. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant did not possess discretion or exercise independent judgment with respect to matters of significance in the daily activities they performed.

36. At all times relevant to this action, it was the policy and/or practice of Defendants to compensate Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant an hourly wage plus tips.

37. At all times relevant to this action, it was the policy and/or practice of Defendants to compensate Plaintiff and other current and former employees an hourly cash wage that was less than the minimum as required pursuant to § 203(m) of the FLSA for tipped employees.

38. At all times relevant to this action, because Defendants compensated Plaintiff and other current and former employees an hourly cash wage that was less than the minimum as required under § 203(m) of the FLSA for tipped employees, the tips received by Plaintiff and those similarly situated may not be considered as part of wages paid to them for purposes of satisfying Defendants' minimum wage obligations.

39. At all times relevant to this action, it was the policy and/or practice of Defendants to compensate Plaintiff and other current and former employees similarly situated of Defendant's Atlanta Restaurant for less hours than they actually worked in violation of the FLSA.

40. At all times relevant to this action, Defendants failed to inform Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant of the tip credit as required by § 203(m) of the FLSA.

41. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant did not retain all tips they received.

42. At all times relevant to this action, Defendants retained a portion of the tips from the tip pool.

43. At all times relevant to this action, the Defendants took a tip credit against the wages of Plaintiff and those similarly situated.

44. At all times relevant to this action, Defendants maintained an invalid tip pool with respect to Plaintiff and those similarly situated.

45. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant were non-exempt employees for purposes of overtime compensation.

46. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant were at times required to work in excess of forty (40) hours a week.

47. At all times relevant to this action, Defendants had a policy and/or practice of not compensating Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant for time worked in excess of 40 hours per week on a basis of one and one-half times minimum wage at which they were by law required.

48. Defendants maintained records concerning the number of hours actually worked by Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant, and the compensation actually paid to Plaintiff and other current and former employees similarly situated.

49. Defendants failed to meet the requirements for paying Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant minimum wage, exclusive of an additional amount on account of the tips received by such employees, as required by the FLSA under 29 U.S.C. §§ 203 and 206.

50. Defendants are liable to Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant for compensation

for all time worked in which they were paid at a rate of pay less than the federal minimum wage rate.

51. Defendants failed to meet the requirements for any of the exemptions from application of the overtime compensation requirements of the FLSA under 29 U.S.C. §§ 207 or 213 with respect to Plaintiff and other current and former employees similarly situated.

52. Defendants failed to meet the requirements for paying Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant overtime at a rate not less than one and one-half times minimum wage, exclusive of an additional amount on account of the tips received by such employees, at which Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant were legally required to be paid under the compensation requirements of the FLSA under 29 U.S.C. §§ 203, 206, and 207.

53. Defendants are liable to Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant for compensation for any and all time worked in excess of 40 hours per week at the rate of at least one and one-half times minimum wage, exclusive of an additional amount on account of the tips received by such employees, at which Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant were

legally required to be paid under the compensation requirements of the FLSA under 29 U.S.C. §§ 203, 206, and 207.

54. By reason of the said intentional, willful and unlawful acts of Defendants, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant have suffered damages plus incurring costs and reasonable attorneys' fees.

55. As a result of Defendants' willful violations of the FLSA, Plaintiff and other current and former employees similarly situated of Defendants' Atlanta Restaurant are entitled to liquidated damages.

56. Plaintiff has retained the undersigned counsel to represent him and other current and former employees similarly situated of Defendants' Atlanta Restaurant in this action, and pursuant 29 U.S.C. § 216(b), Plaintiff and other employees similarly situated are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

57. Plaintiff demands a jury trial.

COUNT I

58. Plaintiffs repeat and incorporate by reference paragraphs 1- 57 herein.

59. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

60. Defendants have willfully, intentionally, and/or recklessly engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to properly pay minimum wage compensation to current and former employees of Defendants' Atlanta Restaurant, including Plaintiff and other similarly situated employees in accordance with §§ 203 and 206 of the FLSA.

61. As a result of Defendants' violations of the FLSA, Plaintiff, as well as other similarly situated employees have suffered damages by failing to receive minimum wage compensation in accordance with §§ 203 and 206 of the FLSA.

62. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff and other similarly situated current and former employees of Defendants' Atlanta Restaurant.

63. As a result of the unlawful acts of Defendants, Plaintiff and all current and former employees similarly situated of Defendants' Atlanta Restaurant have been deprived of minimum wage compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys' fees, costs and other relief.

COUNT II

64. Plaintiff repeats and incorporates by reference paragraphs 1- 57 herein.

65. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

66. Defendants have willfully, intentionally, and/or recklessly engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by requiring Plaintiff, as well as others similarly situated to contribute a percentage of their credit card tips to an invalid tip pool.

67. As a result of Defendants' violations of the FLSA, Plaintiff, as well as other similarly situated employees have suffered damages by failing to receive all of their credit card tips in accordance with §§ 203 and 206 of the FLSA.

68. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff and other similarly situated current and former employees of Defendants' Atlanta Restaurant.

69. As a result of the unlawful acts of Defendants, Plaintiff and all current and former employees similarly situated of Defendants' Atlanta Restaurant have been deprived of legally earned compensation in an amount to be determined at

trial, and are entitled to recovery of such amounts, liquidated damages, attorneys' fees, costs and other relief.

COUNT III

70. Plaintiff repeats and incorporates by reference paragraphs 1- 57 herein.

71. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

72. Defendants have willfully, intentionally, and/or recklessly engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to properly pay overtime compensation in an amount of at least minimum wage and one-half. Such overtime compensation practice was applicable to current and former employees of Defendants' Atlanta Restaurant, including Plaintiff and other similarly situated employees.

73. As a result of Defendants' violations of the FLSA, Plaintiff, as well as other similarly situated employees have suffered damages by failing to receive an overtime rate of at least minimum wage and one-half in accordance with §§ 203 and 207 of the FLSA.

74. Defendants have not made a good faith effort to comply with the FLSA with respect to its overtime compensation of Plaintiff and other similarly situated former employees of Defendants' Atlanta Restaurant.

75. As a result of the unlawful acts of Defendants, Plaintiff and all current and former employees similarly situated of Defendants' Atlanta Restaurant have been deprived of overtime compensation equal to at least minimum wage and one-half in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs and other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons who will opt-in to this action, pursuant to § 216(b) of the FLSA, pray for the following relief:

A. Certification of a class and any necessary sub-classes pursuant to 29 U.S.C. § 216(b) to be described as and to include any and all employees from whom Defendants took a tip credit at Defendants' Atlanta Restaurant within three years of the filing of this Complaint;

B. That, at the earliest possible time, Plaintiff be allowed to give Notice of this action, or that the Court issue such Notice, to all persons who have at any time

during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of Court-supervised Notice. Such Notice shall inform them that this civil action has been filed and of the nature of the action, and of their right to opt into this lawsuit;

C. That all Plaintiffs be awarded damages for the three years preceding the filing of this Complaint in the amount of their respective unpaid compensation, plus an equal amount of liquidated damages;

D. That all Plaintiffs be awarded reasonable attorneys' fees;

E. That all Plaintiffs be awarded the costs and expenses of this action; and

F. That all Plaintiffs be awarded such other, further legal and equitable relief, including, but not limited to, any injunctive and/or declaratory relief to which they may be entitled.

Respectfully submitted this 28th day of April, 2009.

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