

<b>RETURN DATE: OCTOBER 10, 2017</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>EWELINA KONOPKA and</b>	:	
<b>MEGAN SCHEER</b>	:	<b>JUDICIAL DISTRICT OF</b>
<b>Plaintiffs</b>	:	
	:	<b>HARTFORD</b>
<b>v.</b>	:	
	:	<b>AT HARTFORD</b>
<b>CHICAGO SAM'S, LLC, and</b>	:	
<b>PENNY CORNER PUB, INC</b>	:	
<b>Defendant</b>	:	<b>SEPTEMBER 12, 2017</b>

### **CLASS ACTION COMPLAINT**

1. Defendant, Chicago Sam's, LLC, is a limited liability company organized and existing under the laws of the State of Connecticut, with a principal place of business at 85 Deerfield Run, Rocky Hill, Connecticut. It owns and operates two restaurants – one in Cromwell, Connecticut, and one in Enfield, Connecticut.

2. Defendant, Penny Corner Pub, Inc., is a corporation organized and existing under the laws of the State of Connecticut, with a principal place of business at 51-14 Shunpike Road, Cromwell, Connecticut. It owns and operates two restaurants – one in Cromwell, Connecticut, and one in Enfield, Connecticut.

3. At all relevant times, Defendants were Plaintiffs' joint employers since they own and operate the indicated restaurants as a common enterprise.

4. Konopka was employed by Defendants as a Server at Defendant's Enfield, Connecticut, location from September 2016 until June 2017. In these capacities, she served food and beverages to persons at tables and booths in the restaurant area.

5. Scheer was employed by Defendants as a Server at Defendant's Enfield, Connecticut location from December 2008 until March 2017. She was employed as a Server at Defendants'

Cromwell, Connecticut location from March 2017 to the present. In these capacities, she served food and beverages to persons at tables and booths in the restaurant area.

6. Defendants routinely assigned Plaintiffs “non-service” duties in addition to their service duties. These duties included setting up during the hour before the restaurant was opened to the public and non-service work or “side work” after they had been cut from their shifts. This side work occurred away from the tables or booths that they serviced and included such tasks as general cleaning, sweeping and stocking duties for the restaurants generally, rolling silverware, garbage removal, emptying, cleaning and sorting beer and liquor bottles, and other similar duties.

7. Connecticut Regulation Section 31-62-E4, provides that “[i]f an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category.” Conn. Agencies Regs. § 31-62-E4.

8. The regulation further specifies that in cases where “the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded, no allowances for gratuities may be applied as part of the minimum fair wage.” *Id.*

9. Defendants did not segregate the time that Plaintiffs performed “non-service” and “service” duties and did not pay for their non-service duties at the full minimum wage.

10. Instead, when Plaintiffs performed these “non-service” duties, Defendants took a “Tip Credit” against their earnings and failed to compensate them at the required full minimum wage.

11. For example, for the pay period July 24, 2017 to July 30, 2017, Scheer worked 20.70 hours as a Server in Cromwell. She performed non-service duties during each of her shifts for approximately 30-60 minutes, but that time was not segregated on her pay record and paid at the

full minimum wage of \$10.10. She was entitled to be paid \$10.10 for all hours during that shift but instead, she was paid \$6.38 for all her time.

12. Additionally, for the pay period May 1, 2017 to May 7, 2017, Konopka worked 10.35 hours as a Server in Enfield. She performed non-service duties during each of her shifts for approximately 30-60 minutes, but that time was not segregated on her pay record and paid at the full minimum wage of \$10.10. She was entitled to be paid \$10.10 for all hours during that shift but instead, she was paid \$6.38 for all her time.

13. Connecticut regulations also require employers to obtain “signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.” Conn. Agencies Reg. § 31-62-E2(c).

14. The Connecticut Department of Labor provides a form “tip statement” for employers to use for such purpose.

15. This tip statement form can be obtained at <https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/tips.pdf>.

16. Defendants failed to obtain such signed statements from Plaintiffs and all other servers.

17. Defendants have violated Connecticut law and failed to pay Plaintiffs and all other Servers at their Connecticut restaurants at the full minimum wage rate for each shift in which they performed “non-service” duties.

18. Defendants’ conduct in failing to pay Plaintiff the full fair minimum wage for each shift in which she performed both “service” and “non-service” duties, was a violation of Conn. Agencies Regs. Section 31-62-E1 *et seq.* and the CMWA.



## CLASS ALLEGATIONS

19. Plaintiffs bring this action for herself and on behalf of a class of similarly situated servers including all current and former employees of Defendants who held the position of server in any of its Connecticut locations during the two years immediately preceding the filing of this complaint.

20. Class certification for the claims is appropriate under Connecticut Practice Book Sections 9-7 and 9-8 because all of the requirements of those Rules are met:

9-7(1). The class is so numerous that joinder of all members is impractical. The Defendants have operated two (2) restaurants in Connecticut during the applicable time period. The Defendants have, on information and belief, between 50 and 100 former and/or current employees and/or participants meeting the class definitions set forth above throughout the State of Connecticut.

9-7(2). There are questions of law and fact common to the class, especially, the questions of whether Defendants assigned non-service work to its servers and failed to pay them the full minimum wage as required by Connecticut law and the question of whether Defendants failed to obtain necessary tip statements from their servers before taking the tip credit from their pay.

9-7(3). The named Plaintiffs' claim is typical of those of the class members. The named Plaintiffs' claims encompasses the challenged practices and course of conduct of the Defendants. Furthermore, the named Plaintiffs' legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to whether the CMWA and the applicable regulations of the State of Connecticut Department of Labor are violated by such conduct apply equally to the named Plaintiffs and to the class.

9-7(4). The named Plaintiffs will fairly and adequately protect the interests of the class. The named Plaintiffs' claims are not antagonistic to those of the putative class and she has hired counsel skilled in the prosecution of class actions.

9-8. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. While the individual compensatory damage suffered by each class member is not insignificant, it is not substantial enough to justify the expense and burden of individual litigation. To conduct this

action as a class action under Practice Book Sections 9-7 and 9-8 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member, and maximizes recovery to them.

21. Defendants' conduct in failing to pay Plaintiffs and other servers the full fair minimum wage for each shift in which they performed both "service" and "non-service" duties, was a violation of Conn. Agencies Regs. Section 31-62-E1 *et seq.* and the CMWA.

22. Defendants' violation of Conn. Agencies Regs. Section 31-62-E1 *et seq.* and the CMWA, as set forth above, entitles Plaintiffs and other servers to payment for all hours worked at "twice the full amount of such minimum wage [] less any amount actually paid to [them] by the employer, with costs and such reasonable attorney's fees as may be allowed by the court." C.G.S. Sec. 31-68.

## DEMAND FOR RELIEF

WHEREFORE, Plaintiffs claim:

1. Certification of this case as a class action under Rules 9-7 and 9-8;
2. Damages for Plaintiffs and the class calculated at “twice the full amount of such minimum wage [] less any amount actually paid to [the class] by the employer.” C.G.S. Sec. 31-68.
3. Interest;
4. Reasonable attorney’s fees and costs as may be allowed by the court. C.G.S. Sec. 31-68;
5. Such other relief as in law or equity may pertain.

Plaintiff, Ewelina Konopka and Megan Scheer

By: \_\_\_\_\_

  
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**STATEMENT OF AMOUNT IN DEMAND**

WHEREFORE, Plaintiffs claim a cause of action seeking damages of not less than \$15,000, exclusive of interest and costs, which cause is within the jurisdiction of the Superior Court.

Plaintiffs, Ewelina Konopka and Megan Scheer

By: \_\_\_\_\_

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