

STATE OF CONNECTICUT

RETURN DATE: DECEMBER 18, 2018 :	SUPERIOR COURT
VALARIE NETTLETON :	J. D. OF NEW HAVEN
Plaintiff :	
:	AT NEW HAVEN
v. :	
:	
C&L Diners, LLC :	NOVEMBER 1, 2018
Defendant :	

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CLASS ACTION COMPLAINT

Count One: *Violation of Connecticut Minimum Wage Act, Conn. Gen. Stat. §§ 31-58 et seq. – Deduction of Tip Credit for Servers While Failing to Segregate Work pursuant to Conn. Agencies Regs. Section 31-62-E4*

Introduction

1. Restaurants in Connecticut may take a partial credit on account of tips received by servers towards satisfaction of the minimum wage for servers “whose duties relate solely” to service and work incidental to service. Today, the server minimum wage is \$6.38 per hour. But, restaurants must pay their servers the full minimum wage (presently \$10.10 per hour) if they assign them non-service work and fail to segregate the time spent on that non-service work and pay for that time at the full minimum wage. *Stevens v. Vito's by the Water, LLC*, 2017 Conn. Super. LEXIS 4845 (Nov. 9, 2017) (Bench trial resulting in award to server in the amount of \$22,455.94 in back wages, interest and penalty damages, plus attorneys’ fees and costs. “Vito’s did not segregate Steven’s non-service work from her service work and thus was obliged to, but did not, pay the service hours at the full minimum fair wage as required by Sec. 31-62-E4.” *Id.* at *13.).

2. This rule prevents employers from taking advantage of servers by assigning them hours of non-service work like general cleaning and stocking, and paying for that work at less than the normal minimum wage.

3. In this case, Defendants C & L Diners, LLC ("C&L Diners") and Mr. Daniel Chu ("Chu"), like the Defendant in *Stevens*, regularly assigned non-service work – "sidework" – to its servers, including Nettleton, but did not segregate that time and pay it at the full minimum wage. Accordingly, Defendants should have paid Nettleton the full minimum wage for all of her work – even her service hours. Instead and in violation of this law, Defendants paid Nettleton the lower server minimum wage for all her time. By this illegal practice, Defendants have underpaid Nettleton by thousands of dollars of wages during the time she worked there.

4. Defendants compounded their error by failing to make a "good faith" effort to learn and comply with our law, as required to avoid penalty damages. These regulations are clearly published in Connecticut's "Mandatory Order No. 8", which is required to be hung in the break rooms of every restaurant in Connecticut. Defendants had actual knowledge of these laws, but nevertheless violated them. Accordingly, Defendants are liable to Nettleton for all of her back pay, interest, penalty damages, attorneys' fees and costs.

Parties

5. Defendant C&L Diners, LLC ("C&L Diners") is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 6800 Owensmouth Avenue, #260, Canoga Park, California. It owns and

operates multiple restaurants in Connecticut, including a Denny's restaurant in Westbrook, Connecticut.

6. Defendant Mr. Daniel Chu ("Chu") is the "Managing Member" and owner of C&L.

7. Chu resides at 6800 Owensmouth Ave, #260, Canoga Park, CA 91303.

8. At all times relevant to this Complaint, Chu had the authority to set the hours of employment, maintain employment records, to direct the work and to determine the rate and method of payment of wages of Plaintiffs and all other similarly situated individuals.

D. Chu's exercise of that authority was the direct cause of C&L's failure to pay wages as set forth below. Accordingly, Chu was the employer of Plaintiffs and all other similarly situated individuals as that term is defined in the CWA.

9. Valarie Nettleton ("Plaintiff" or "Nettleton") is a resident of the Town of Madison, State of Connecticut.

10. Nettleton has been employed by Defendants as a Server at its Westbrook, Connecticut Denny's location since November 2016. In this capacity, she serves food and beverages to persons at tables and booths in the restaurant area.

Factual Background

11. Defendants routinely assign Plaintiff "non-service" duties in addition to her service duties, including but not limited to the following:

- i. Roll full bucket of silverware;
- ii. Salad bar: Replace ALL pans with clean ones [sic];
- iii. Clean Gaskets [sic];
- iv. Fill/rotate all products: all lettuce and veggies, all cheese blends;
- v. Portion / day dot all dressings in 2oz cups / except for ranch, honey mustard and cesar – they should be in squeeze bottles 1 on top and 1 underneath;

- vi. Restock milk, whipped cream and croutons if needed;
- vii. Day dot grapefruit juice and tomato juice;
- viii. **NO OPEN BAGS OF LETTUCE OR CHEESE;**
- ix. **PUT BACK IN WALK IN WITH DAY DOT;**
- x. **NO EXTRA CUT VEGGIES. THEY SHOULD ALL BE CUT FRESH EACH TIME!;**
- xi. Restock oll bowls, plates, ramekins, and veggie bowls;
- xii. At 2pm grits/oatmeal get pulled;
- xiii. Large server isle: Stock All coffee [sic];
- xiv. Wipe down ALL surfaces of large server isle;
- xv. Bring ALL full bus pans to the back and wipe down shelf;
- xvi. Stock napkins;
- xvii. Wipe out garbage area- have SA take garbage to the back;
- xviii. Detail juice/soda machine : pull off all nozzles and clean, wipe down machine, replace day dots on juice containers, replace containers if needed, empty / wash out tray;
- xix. Wipe down coffee machine and pots, clean off sprayer and clean coffee basket, wipe down pots;
- xx. Wipe down shelves for glasses;
- xxi. Dessert Area [sic]; Wipe down all counter tops;
- xxii. Wipe down inside, doors / gaskets and fronts of fridge / cabinets;
- xxiii. Clean blenders;
- xxiv. Portion all smoothie mix in 2oz portion cups, should have fridge full plus 1 pan of back ups in the walk in cooler;
- xxv. Grapes and cut fresh fruit – 1 pan in fridge 1 pan back up walk in cooler;
- xxvi. Refill bananas / apples;
- xxvii. Stock ice cream;
- xxviii. Portion brownies and cheese cake – cheese cake store in walk in cooler;
- xxix. Portion milk in 3oz cups – 1 gallon – store extra in walk in cooler;
- xxx. Replace yogurt if needed;
- xxxi. Replace ALL [sic] day dots;

- xxxii. Portion Oreo pieces and nuts in 2 oz portion cups;
- xxxiii. Restock goldfish if needed;
- xxxiv. Wipe inside and out of desert cooler;
- xxxv. Clean and fill hot fudge and all syrups – chocolate syrup, liquid sugar, vanilla, etc.;
- xxxvi. Refill peanut butter;
- xxxvii. Wipe down all shelves;
- xxxviii. High chairs must be clean!!!;
- xxxix. Dining Room: Set up ALL your table tops;
- xl. Sweep / vacuum your floors, Rotate / clean / fill sugar and jelly caddies, fix p.o.p. and dessert menus; and
- xli. **NO EXTRA PRODUCT OR NON-PORTIONED CONTAINERS LEFT IN ANY AREAS.**

12. Defendants did not segregate the time that Plaintiff performed “non-service” and “service” duties and did not pay for her non-service duties at the full minimum wage.

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

14. For instance, for the two week period ending December 21, 2016, Defendants paid Plaintiff for 61.48 hours at a rate of \$6.07 per hour.

15. For the two week period ending January 4, 2017, Defendants paid Plaintiff for 46.62 hours at a rate of \$6.38 per hour.

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

17. 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, while failing to

segregate said work, is a violation of Conn. Agencies Regs. Section 31-62-E4, and the CMWA.

Class Allegations

18. Plaintiff brings 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.

19. 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 Defendant owned and operated multiple in Connecticut during the applicable time period. The Defendant has, on information and belief, over 200 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 Defendant assigns non-service work to its Servers and fails to pay them the full minimum wage as required by Connecticut law and the question of whether Defendant fails to obtain necessary tip statements from its Servers before taking the tip credit from their pay.

9-7(3). The named Plaintiff's claim is typical of those of the class members. The named Plaintiff's claims encompasses the challenged practices and course of conduct of the Defendant. Furthermore, the named Plaintiff's 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 Plaintiff and to the class.

9-7(4). The named Plaintiff will fairly and adequately protect the interests of the class. The named Plaintiff's 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.

20. Defendants' conduct in failing to pay Plaintiff and other Servers the full fair minimum wage for each shift in which they performed both "service" and "non-service" duties, while failing to segregate said work, is a violation of Conn. Agencies Regs. Section 31-62-E4 and the CMWA.

21. Defendants' violation of Conn. Agencies Regs. Section 31-62-E4 and the CMWA, as set forth above, entitles Plaintiff 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.

Count TWO: Violation of Connecticut Minimum Wage Act, Conn. Gen. Stat. §§ 31-58 et seq. – Deduction of Tip Credit for Servers While Failing to Obtain Tip Statements Conn. Agencies Reg. § 31-62-E3(c)

22. Plaintiff hereby incorporates the paragraphs of Count One as if more fully set forth herein.

23. Connecticut regulations state employers claiming the service minimum wage credit "shall obtain weekly a statement signed by the employee attesting that he has received in gratuities the amount claimed as credit for part of the minimum fair wage.

Such statement shall contain the week ending date of the payroll week for which credit is claimed.” Conn. Agencies Regs. § 31-62-E3(c).

24. Connecticut Employers taking the service tip credit “must ensure that all employees on whom it was taken received at least the full minimum wage when tips are added to regular wages. In order to verify this, the employer is required to obtain a signed “tip credit statement” from each employee on a weekly basis. In lieu of a signed tip statement, our division will accept a reasonable declaration, signed by the employee on a weekly basis, in which the employee certifies receipt of tips in an amount sufficient to ensure he or she received at least the minimum wage. The statement must contain a specific amount in tips received, not simply a declaration that minimum wage was achieved.” *See Dept. Labor Basic Guide to Wage and Hour and Related Laws Regarding the Restaurant Industry.*

25. The Connecticut Department of Labor provides a form “tip statement” for employers to use for such purpose. This tip statement form can be obtained at <https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/tips.pdf>.

26. Defendants failed to obtain such signed tip statements from Plaintiff and all other Servers.

27. Defendants compounded their error by failing to make a “good faith” effort to learn and comply with our law, as required to avoid penalty damages. These regulations are clearly published in Connecticut’s “Mandatory Order No. 8”, which is required to be hung in the break rooms of every restaurant in Connecticut. Defendants had actual knowledge of these laws, but nevertheless violated them.

Class Allegations

28. Plaintiff brings 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.

29. 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:

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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.

30. Defendants' conduct in failing to pay Plaintiff and other Servers the full fair minimum wage for each shift in which they performed without obtaining tip statements, is a violation of Conn. Agencies Regs. Section 31-62-E3(c) and the CMWA.

31. Defendants' violation of Conn. Agencies Regs. Section 31-62-E3(c) and the CMWA, as set forth above, entitles Plaintiff 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, Plaintiff claims:

1. Certification of this case as a class action under Rules 9-7 and 9-8;
2. Damages for Plaintiff 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.

Plaintiffs, Valarie Nettleton, individually and on behalf of others similarly situated.

By: 

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STATEMENT OF AMOUNT IN DEMAND

WHEREFORE, Plaintiff claims 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, Valarie Nettleton, individually and on behalf of others similarly situated.

By: _____


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