STATE OF CONNECTICUT
SUPERIOR COURT

RETURN DATE: FEBRUARY 12, 2019	:	**SUPERIOR COURT**
	:	
	:	**JUDICIAL DISTRICT OF**
SARAH CHANDLER AND	:	**HARTFORD**
CHRISTOPHER MARCHAND, for themselves	:	
and other similarly situated employees	:	**AT HARTFORD**
	:	
v.	:	
	:	
	:	
RUBY TUESDAY, INC.	:	
Defendant	:	**JANUARY 14, 2019**

CLASS ACTION COMPLAINT

1. Restaurants in Connecticut must pay their servers the full minimum wage unless they limit their work to service and closely related duties. If they do so, then they may take a partial credit on account of tips received by servers towards satisfaction of the minimum wage for servers. This partial credit is known as the "tip credit." If restaurants assign their servers non-service work to perform during their shifts they must segregate the time spent on that non-service work and pay the full minimum wage for that time.

2. If restaurants fail to segregate a server's non-service but take the tip credit anyway, then they are liable to their servers in a civil action for back pay and penalty damages. *Stevens v. Vito's by the Water, LLC,* 2017 Conn. Super. LEXIS 4845, *13 (Conn. Super. Ct. 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.").

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

4. In this case, Ruby Tuesday, Inc., like the defendant in *Stevens,* regularly assigned non-service work – "sidework" - to its servers, including Plaintiffs, Sarah Chandler and Christopher Marchand, but did not segregate that time and pay it at the full minimum wage. Accordingly, Defendant should have paid Plaintiffs the full minimum wage for all of their work – including their service hours. Defendant paid Plaintiffs the lower server minimum wage for all their time in violation of this law. By this illegal practice, Ruby Tuesday underpaid Plaintiffs and all Connecticut servers by hundreds of thousands of dollars during the period of the claim.

5. Ruby Tuesday compounded its 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 every restaurant in Connecticut where employees are able to see it. Ruby Tuesday had actual knowledge of these laws, but nevertheless violated them. Accordingly, Ruby Tuesday is liable to Plaintiffs and the class of Connecticut servers for all of their back pay, interest, penalty damages, attorneys' fees and costs.

I. The Parties.

6. Plaintiff, Sarah Chandler, is an individual presently residing at 65 Avonwood Road, Apartment A4, Avon, Connecticut. Chandler began working for Defendant as a Server in November, 2013, at its West Hartford, Connecticut restaurant.

7. Plaintiff, Christopher Marchand, is an individual presently residing in West Hartford, Connecticut. Marchand began working for Defendant as a Server in May, 2013, at its Bloomfield and North Windham, Connecticut restaurants.

8. Defendant, Ruby Tuesday, Inc., is a Corporation organized under the laws of the State of Tennessee and having its corporate headquarters in Maryville, Tennessee.

9. Defendant owns and operates many restaurants in the State of Connecticut including ones in Bloomfield, West Hartfmrd, and North Windham, Connecticut where Plaintiffs were employed.

II. The Law.

10. Conn. Gen. Stat. Sec. 31-60(b) permits the Labor Commissioner to adopt regulations which "shall recognize, as part of the minimum fair wage, gratuities in an amount … equal to thirty-six and eight-tenths percent of the minimum fair wage for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel resaurant, who customarily and regularly receive gratuities."

11. Regs., Conn. State Agencies Sec. 31-60-E2 defines a "service employee" as an employee "whose duties relate solely to the serving of food and/or beverage to patrons seated at tables or booths, and to the performance of duties incidental to such service."

12. The Connecticut Department of Labor has published a guide which defines the terms "service (and closely related duties)" and the term "non-service duties." By their definition, service and closely related duties are duties that occur at the tables or booths and in "their own **immediate service area**." CONN. DEP'T OF LABOR, *Gratuities in the Restaurant Industry, available at* https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/restaurant.htm (last visited Jan. 14, 2019) (emphasis in the original).

13. Regs., Conn. State Agencies Sec.31-62-E4 states that "[i]f an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded, no allowancews for gratuities may be applied as part of the minimum fair wage."

III. Facts.

14. Defendant hired Plaintiff, Sarah Chandler, in November, 2013, as a server in its West Hartford, Connecticut restaurant. She worked there as a server until April, 2015.

15. Defendant hired Plaintiff, Christopher Marchand, in May, 2013, as a server in its Bloomfield and North Windham, Connecticut restaurants. He worked there as a server until May, 2015.

16. Defendant routinely assigned Plaintiffs and other servers both "service duties" and "non-service" duties. Their service duties included waiting on customers at tables and booths. Their non-service duties included setting up before the restaurant was opened to the public, and "side work" that they were required to do after they had been cut from their shifts.

17. This side-work included general cleaning and stocking duties such as stocking all paper cups and straws, condiments, to go items, restocking and polishing all silverware, sweeping the server alley and other similar activities.

18. Defendant did not segregate the time that Plaintiffs performed "non-service" and "service" duties in their time records.

19. Defendant did not segregate the time that Plaintiffs performed "non-service" and "service" duties in their wage records.

20. Defendant did not pay the Plaintiffs the full minimum wage for the time they spent performing non-service duties.

21. Defendant took the tip credit for all the hours that Plaintiffs worked as servers.

22. Defendant paid Plaintiffs the server minimum wage for every hour they worked as servers.

23. Defendant took the tip credit for all the hours Plaintiffs spent performing service work and the hours they spent performing non-service work.

24. During a typical week, Defendant assigned Plaintiffs to work closing shifts. Each day, it assigned them approximately an hour of sidework which was in the nature of general cleaning and stocking and did not occur at their tables or booths. Defendant paid Plaintiffs $5.69 per hour – the server rate in 2014. It paid them $5.78 per hour – the server rate in 2015. Defendant failed to segregate Plaintiffs' sidework and pay it at the full minimum wage for those years. Accordingly, Defendant should have paid Plaintiffs $8.70 and $9.15 respectively for all their server hours.

25. Defendant failed to make any good faith effort to learn and comply with this law.

26. Defendant posts "Mandatory Order No.8" in each of its restaurants in Connecticut.

27. "Mandatory Order No. 8" explains these rules, including Regs., Conn. State Agencies Sec. 31-62-E4, which explains the "segregation" of "service" and "nonservice" duties rule.

28. Defendant nevertheless violated these rules despite being on actual notice of them.

29. Defendant's conduct in failing to pay Plaintiffs the full fair minimum wage for each shift in which they performed both "service" and "non-service" duties, was a violation of Connecticut's "tip credit" laws. Regs., Conn. State Agencies Sec. 31-62-E4, and Conn. Gen. Stat. Sec. 31-60.

30. Defendant's violation of Connecticut's tip credit law, as set forth above, entitles Plaintiffs to payment for all hours worked as a "server" at "twice the full amount of such minumum 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." Conn. Gen. Stat. Sec. 31-68.

31. A lawsuit was filed in Connecticut's Superior Court on January 26, 2016 by Ashley Pagano, a server who worked at Defendant's Meriden, Connecticut location. Docket No.: UWY-CV16-6032409-S. That lawsuit was amended on May 27, 2016 to include class allegations for all servers in Connecticut who worked as far back as May 27, 2014.

32. In that litigation, it was learned that Ruby Tuesday implemented an arbitration policy in October 2015. Pagano did not sign that policy and argued in the case that she was not bound by it. Ruby Tuesday argued that she was bound by their arbitration policy and moved to compel her to arbitrate her claims.

33. The claims of the class were tolled during the pendence of that litigation. *Grimes v. Housing Auth.*, 242 Conn. 236 (1997).

34. On January 9, 2019 the court issued an order compelling Pagano to arbirtrate her claims and to otherwise stay that action.

35. The *Pagano* Court did not rule that the class could not be maintained or that Pagano could not meet any of the elements of Rules 9-7 or 9-8.

36. This case is known as a "follow on" class action. As such, the claims of the class are deemed to relate back to the filing of the earlier case, i.e., May 27, 2016. *Yang v. Odom,* 392 F.3d 97, 111 (3d Cir. 2004).

IV. CLASS ALLEGATIONS

37. Plaintiffs bring this action for themselves and on behalf of a class of similarly situated servers defined as:

> All current and former servers at Ruby Tuesdays who worked in any of its Connecticut locations from May 27, 2014 until October 1, 2015 and whose employment ended before October 1, 2015.

38. 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 has operated approximately 14 restaurants in Connecticut during the applicable time period. The Defendant has, on information and belief, several hundred former and/or current employees and/or participants meeting the class definitions set forth above throughout the State of Connecticut. While the exact number and identities of class members are unknown at this time, and can only be ascertained through appropriate discovery, the named Plaintiffs are informed and believe that hundreds of putative class members, if not more, worked for the Defendant without receiving appropriate pay under Connecticut law.

9-7(2). There are questions of law and fact common to the class, especially, the questions of whether Defendant assigned non-service work to its servers and failed to pay them the full minimum wage as required by Connecticut law.

9-7(3). The named Plaintiffs' claims are typical of those of the class members. The named Plaintiffs' claims encompass the challenged practices and course of conduct of the Defendant. 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.

39. Defendant's 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 Regs., Conn. State Agencies Sec. 31-62-E4 and the CMWA.

40. Defendants' violation of Regs., Conn. State Agencies Sec. 31-62-E4 and the CMWA, as set forth above, entitles Plaintiffs and all other servers in the class, to payment for all hours worked at "twice the full amount of such minumum 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." Conn. Gen. Stat. Sec. 31-68.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs claim:

1. Cerfication of this action as a class action pursuant to Connecticut Practice Book Section 9-7 and 9-8;

2. Designation of Plaintiffs as class representatives and Plaintiffs' counsel as class counsel;

3. Damages in the amount of unpaid wages and liquidated damages calculated at "twice the full amount of such minumum wage less any amount actually paid [] by the employer." C.G.S. Sec. 31-68.

4. Interest;

5. Reasonable attorney's fees and costs as may be allowed by the court. C.G.S. Sec. 31-68;

6. Such other relief as in law or equity may pertain.

PLAINTIFFS, SARAH CHANDLER and CHRISTOPHER MARCHAND, for themselves and other similarly situated employees

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STATEMENT OF AMOUNT IN DEMAND

WHEREFORE, the 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, SARAH CHANDLER and CHRISTOPHER MARCHAND, for themselves and other similarly situated employees

By: _____

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