

<b>RETURN DATE: AUGUST 27, 2019</b>	:	<b>SUPERIOR COURT</b>
	:	
<b>ERIC SETREUS, individually</b>	:	<b>JUDICIAL DISTRICT OF</b>
<b>and on behalf of others similarly situated</b>	:	
<b>Plaintiff</b>	:	
	:	<b>NEW HAVEN</b>
<b>v.</b>	:	
	:	<b>AT NEW HAVEN</b>
<b>99 WEST, LLC; 99 RESTAURANTS, LLC;</b>	:	
<b>O'CHARLEY'S MANAGEMENT COMPANY,</b>	:	
<b>INC.</b>	:	
<b>Defendants</b>	:	<b>JULY 30, 2019</b>

### **CLASS ACTION COMPLAINT**

#### **I. THE PARTIES**

1. Defendant 99 West, LLC is a limited liability company organized under the laws of the state of Massachusetts, with a principal place of business at 14A Gill Street, Woburn, Massachusetts 01801.
2. Defendant, 99 Restaurants, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 3038 Sidco Drive, Nashville, Tennessee 37204.
3. Defendants 99 Restaurants, LLC and 99 West, LLC own and operate twelve (12) Ninety-Nine restaurants – in Bristol, Cromwell, Danbury, Enfield, Glastonbury, Groton, Killingly, Norwich, Stratford, Torrington, Vernon, and Wallingford, Connecticut.
4. Defendant 99 Restaurants, LLC owns and operates the Ninety Nine Restaurant & Pub's webpage at <https://www.99restaurants.com/> ("Website").
5. Defendant 99 Restaurants, LLC permits individuals to apply for employment as bartenders at each Connecticut Ninety-Nine restaurant through its Website.

6. Defendant 99 Restaurants, LLC is the sole member of 99 West, LLC
7. Defendant O'Charley's Management Company, Inc. (OMC) is a company incorporated under the laws of the State of Tennessee, with a principal place of business at 3038 Sidco Drive, Nashville, Tennessee 37204. OMC manages the twelve (12) "Ninety Nine" restaurants in Connecticut.
8. Defendant 99 Restaurants, LLC is a wholly-owned subsidiary of Defendant O'Charley's Management Company, Inc.
9. Plaintiff Eric Setreus is a resident of Wallingford, Connecticut.
10. Setreus was employed by Defendants as a Bartender at their Wallingford, Connecticut, location from 1999 until approximately January 11, 2019. In these capacities, he served food and beverages to persons seated in the bar area in the Wallingford restaurant.
11. At all times during the period of the claim, 99 West, LLC was Plaintiff's employer within the meaning of the CWA.
12. At all times during the period of the claim, 99 West, LLC was the employer of all Connecticut bartenders working at a Ninety-Nine Restaurant within the meaning of the CWA.
13. At all times during the period of the claim, 99 Restaurants, LLC was Plaintiff's employer within the meaning of the CWA.
14. At all times during the period of the claim, 99 Restaurants, LLC was the employer of all Connecticut bartenders working at a Ninety-Nine Restaurant within the meaning of the CWA.

15. At all times during the period of the claim, O'Charley Management Company, Inc. was Plaintiff's employer within the meaning of the CWA.

16. At all times during the period of the claim, O'Charley Management Company, Inc. was the employer of all Connecticut bartenders working at a Ninety-Nine Restaurant within the meaning of the CWA.

## **II. THE APPLICABLE LAW**

17. Connecticut restaurants cannot take a tip credit from the wages of a bartender unless they comply with each mandatory precondition of Regs., Conn. State Agencies Sec. 31-62-E3 *et seq.* ("Gratuities may be recognized as constituting a part of the minimum fair wage when ***all of the following provisions*** are complied with...").

18. Connecticut restaurants cannot recognize gratuities as constituting a part of the minimum fair wage for their employees unless they "obtain weekly 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. Such statement shall contain the week ending date of the payroll week for which credit is claimed." Regs., Conn. State Agencies § 31-62-E3.

19. Connecticut restaurants can only take a tip credit for the time their employees are performing "service" or closely related duties. "If 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." Regs., Conn. State Agencies § 31-62-E4. If "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.*

20. “Non-service” duties include “general set-up work before the restaurant opens,” “waiting on take-out customers,” and “general cleaning work.” *Stevens v. Vito’s by the Water, LLC*, 2017 Conn. Super. LEXIS 4845, \*3-6 (Conn. Super. Ct. Nov. 9, 2017); CONN. DEP’T OF LABOR, *Gratuities in the Restaurant Industry*, <https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/restaurant.htm>.

### **III. FACTS**

21. During the period of this claim, the maximum allowable tip credit a Connecticut restaurant could claim on its bartenders’ time has been \$1.87 per hour (Jan. 1, 2017 – present) provided it complies with Connecticut’s tip credit regulations.

22. Defendants took the maximum tip credit (\$1.87/hr.) from the Plaintiff’s and all bartenders wages for every hour they worked as bartenders during the period of the claim.

23. Defendants paid Plaintiff and all Connecticut bartenders \$8.23 per hour for every hour they worked as bartenders.

24. Defendants failed to obtain any written statements signed by Plaintiff or from any of their Connecticut bartenders during any week they worked as bartenders, confirming that they received in gratuities at least the amount Defendants claimed as credit for that payroll period.

25. Defendants assigned Plaintiff and other bartenders “non-service” work in addition to his “service” work every shift during his employment. Defendants failed to

segregate and pay his “non-service” work in the wage record and pay for that time at the full minimum wage. Instead, Defendants’ took the full tip credit for all hours worked by Plaintiff and all other bartenders – including his “non-service” work – and paid for all that work at \$8.23 per hour.

26. For example, Plaintiff and other bartenders frequently performed up to thirty minutes of pre-shift work before the restaurant opened to the public. Plaintiff frequently arrived around 10:30 a.m. and did work setting up in the restaurant before the restaurant opened to the public at 11:00 a.m. Plaintiff and other bartenders were not serving customers during those twenty to thirty minutes before the restaurant opened to the public.

27. Defendants required Plaintiff and other bartenders to handle take-out orders during the shifts he worked as a bartender throughout the period of the claim. This work took about ten minutes for each order and there were approximately 1-3 orders per hour during his shifts.

28. Defendants assigned all Connecticut bartenders “non-service” work in addition to their “service” work every shift during their employment. Defendants failed to segregate and pay their “non-service” work in the wage record and pay for that time at the full minimum wage. Instead, Defendants’ took the full tip credit for all hours worked by their Connecticut bartenders – including their “non-service” work – and paid for all that work at \$8.23 per hour.

29. Defendants should not have taken the tip credit at all and instead should have paid Plaintiff and their other Connecticut bartenders the full minimum wage – now \$10.10 per hour - for their work.

30. As a result, Defendants paid Plaintiff and their other Connecticut bartenders \$8.23 per hour – underpaying them by \$1.87 per hour.

31. Defendants' conduct in failing to pay Plaintiff and all other Connecticut bartenders the full fair minimum wage for their hours worked without complying with the mandatory prerequisites necessary to take a tip credit violated the Connecticut Wage Act.

32. Defendants' violation of the CWA, specifically, C.G.S. § 31-60, Regs., Conn. State Agencies Sec. 31-62-E3(c), and Regs. Conn. State Agencies Sec. 31-62-E4 as set forth above, requires Defendants to pay Plaintiff and all Connecticut bartenders for all hours worked as a bartender at "twice the full amount of such minimum wage less any amount actually paid to him by the employer, with costs and such reasonable attorney's fees as may be allowed by the court." C.G.S. § 31-68.

### **CLASS ALLEGATIONS**

33. Plaintiff brings this action for himself and on behalf of a class of similarly situated bartenders including all current and former employees of Defendants who held the position of bartender in any of their Connecticut locations during the two years immediately preceding the filing of this complaint through date of final judgment.

34. 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 twelve (12) restaurants in Connecticut during the applicable time period. The Defendants have, on information and belief, over 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 their bartenders 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 bartenders 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 Defendants. 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 CWA 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 he 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.

**COUNT ONE: Eric Setreus, individually and on behalf of other similarly situated individuals vs. 99 West, LLC.**

35. Defendant 99 West, LLC took a tip credit from the wages of the Plaintiff, and all Connecticut bartenders in its restaurants, for all hours they worked as bartenders from July 26, 2017 through the date of final judgment, even though it failed to comply with the mandatory prerequisites to taking the tip credit as described above.

36. Defendant 99 West, LLC's conduct in failing to pay Plaintiff and other Connecticut bartenders the full fair minimum wage for each shift was a violation of the CWA.

37. Defendant 99 West, LLC's violation of the CWA, as set forth above, entitles Plaintiff and other Connecticut bartenders 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: Eric Setreus, individually and on behalf of other similarly situated individuals vs. 99 Restaurants, LLC.**

38. Defendant 99 Restaurants, LLC took a tip credit from the wages of the Plaintiff, and all Connecticut bartenders in its restaurants, for all hours they worked as bartenders from July 26, 2017 through the date of final judgment, even though it failed to comply with the mandatory prerequisites to taking the tip credit as described above.

39. Defendant 99 Restaurants, LLC's conduct in failing to pay Plaintiff and other Connecticut bartenders the full fair minimum wage for each shift, was a violation of the CWA.



40. Defendant 99 Restaurants, LLC's violation of the CWA, as set forth above, entitles Plaintiff and other Connecticut bartenders 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 THREE: Eric Setreus, individually and on behalf of other similarly situated individuals vs. O'Charley's Management Company, Inc.**

41. Defendant O'Charley's Management Company, Inc. took a tip credit from the wages of the Plaintiff, and all Connecticut bartenders in its restaurants, for all hours they worked as bartenders from July 26, 2017 through the date of final judgment, even though it failed to comply with the mandatory prerequisites to taking the tip credit as described above.

42. Defendant O'Charley's Management Company, Inc.'s conduct in failing to pay Plaintiff and other Connecticut bartenders the full fair minimum wage for each shift, was a violation of the CWA.

43. Defendant O'Charley's Management Company, Inc.'s violation of the CWA, as set forth above, entitles Plaintiff and other Connecticut bartenders 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. Appointment of Eric Setreus as Class Representative;
3. Appointment of the Hayber Law Firm, LLC as Class Counsel;
4. 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.

5. Interest;
6. Reasonable attorney's fees and costs as may be allowed by the court. C.G.S. Sec. 31-68;
7. Such other relief as in law or equity may pertain.

Plaintiff, Eric Setreus, individually and on behalf of others similarly situated

By: 

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<b>O'CHARLEY'S MANAGEMENT COMPANY,</b>	:	
<b>INC.</b>	:	
<b>Defendants</b>	:	<b>JULY 26, 2019</b>

**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.

Plaintiff, Eric Setreus, individually and on behalf of others similarly situated

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

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