NO. X03 HHD CV17-6088349-S	:	STATE OF CONNECTICUT
JACQUELINE RODRIGUEZ	:	SUPERIOR COURT
v.	:	COMPLEX LITIGATION DOCKET
	:	JUDICIAL DISTRICT OF HARTFORD
KAIAFFA, LLC d/b/a CHIP'S FAMILY RESTAURANTS, ET AL.	:	MARCH 1, 2019

Ruling on Motion for Class Certification

The plaintiff, who alleges that she was a server at Chip's Family Restaurants in Wethersfield and Southington, has moved for class certification of "All individuals employed as Servers at any Connecticut Chip's Family Restaurant from October 25, 2015 until March 1, 2018." (Motion, p. 2.) The central issue in the case is whether, under the Connecticut Minimum Wage Act, General Statutes § 31-58 et seq. (CMWA), the defendants, who own the restaurants, have correctly taken a "tip credit" and paid the servers less than the minimum wage for certain allegedly nonservice-related duties. For the reasons that follow, the court grants the motion for class certification.

I

In *Standard Petroleum Co. v. Faugno Acquisition, LLC*, 330 Conn. 40, 191 A.3d 147 (2018), our Supreme Court recently delineated the standards for deciding a class action certification motion. "[T]he rules of practice set forth a two step process for trial courts to follow in determining whether an action or claim qualifies for class action status. First, a court must ascertain whether the four prerequisites to a class action, as specified in Practice Book § 9-7, are satisfied. These prerequisites are: (1) numerosity—that the class is too numerous to make joinder

164.00

of all members feasible; (2) commonality—that the members have similar claims of law and fact; (3) typicality—that the [representative] plaintiffs' claims are typical of the claims of the class; and (4) adequacy of representation—that the interests of the class are protected adequately....

"Second, if the foregoing criteria are satisfied, the court then must evaluate whether the certification requirements of Practice Book § 9-8 [3] are satisfied. These requirements are: (1) predominance—that questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) superiority—that a class action is superior to other available methods for the fair and efficient adjudication of the controversy ....

"It is the class action proponent's burden to prove that all of the requirements have been met ....To determine whether that burden has been met, we have followed the lead of the federal courts ... directing our trial courts to undertake a 'rigorous analysis'....

"[A] 'rigorous analysis' ordinarily involves looking beyond the allegations of the plaintiff's complaint. The rigorous-analysis requirement means that a class is not maintainable merely because the complaint parrots the legal requirements of the class-action rule....

"In applying the criteria for certification of a class action, the [trial] court must take the substantive allegations in the complaint as true, and consider the remaining pleadings, discovery, including interrogatory answers, relevant documents, and depositions, and any other pertinent evidence in a light favorable to the plaintiff. However, a trial court is not required to accept as true bare assertions in the complaint that class-certification prerequisites were met.... Class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action ....

"Consequently, a rigorous analysis frequently entail[s] overlap with the merits of the

plaintiff's underlying claim .... In determining the propriety of a class action, [however] the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met ....

"[I]t is important to emphasize that although a rigorous analysis of these requirements may entail consideration of various factors, such an analysis does not require the court to assign weight to any of the criteria listed, or to make written findings as to each factor, but merely requires the court to weigh and consider the factors and come to a reasoned conclusion as to whether a class action should be permitted for a fair adjudication of the controversy. The trial court, [well positioned] to decide which facts and legal arguments are most important to each [rule's] requirement, possesses broad discretion to control proceedings and frame issues for consideration under [the rule].... But proper discretion does not soften the rule: a class may not be certified without a finding that each ... requirement is met ....

"Although no party has a right to proceed via the class mechanism ... doubts regarding the propriety of class certification should be resolved in favor of certification .... Even if certification is granted, the trial court is authorized to monitor developments bearing on the propriety of its class certification orders, and to amend those orders in light of subsequent developments.... In the event that evidence later demonstrates that [an] alleged conflict exists, the trial court may then revisit the issue ...." (Internal citations omitted; internal quotation marks omitted.) Id., 47–51.

II

The court therefore turns to the factors set forth in the Practice Book. The court addresses first some of the less controversial factors. The plaintiff has satisfied the numerosity factor by representing that the class could encompass several hundred servers in six Chip's Connecticut

restaurants, including at least 100 servers in the Wethersfield restaurant. (Plaintiff's Exhibit (Ex.) Z.) The defendants' only objection is the claim that the plaintiff was never employed by the named defendants, George Chatzopolous or Kaiaffa, LLC d/b/a Chip's Family Restaurants. In addition to the fact that this objection has little to do with numerosity, the defendants' objection runs counter to the plaintiff's allegation in the complaint, which the court must assume is true at this point, that the plaintiff "was employed by Defendants' [sic] as a Server at their Wethersfield, Connecticut, location from 2015 until October 2, 2017." (Complaint, paragraph (para.) 3.) Therefore, the plaintiff has satisfied the numerosity factor.

The next factor to consider is typicality. The defendants argue that, because the plaintiff worked only in the Wethersfield restaurant and nine additional weeks in Southington, her experience was not typical of servers in the other four restaurants, which are each run by its own general manager. This argument, however, does not negate typicality. "Typicality requires that the disputed issue of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class ....[T]he mere existence of individualized factual questions with respect to the class representative's claim will not bar class certification ...." (Internal citations omitted; internal quotation marks omitted.) Id., 55. Under this standard, the plaintiff's claim is typical because her principal claim – that she should have received the full minimum wage for all her work as a server – is the same as the principal claim of the putative class members from the other restaurants. The fact that there were some differences among the restaurants in some respects (a matter discussed in greater detail below) does not undermine the typicality of the plaintiff's claim.

The defendants contest the next factor – the adequacy of the plaintiff's representation –

on the ground that she has filed individual administrative claims and a separate lawsuit against the defendants and therefore has a conflict of interest. The plaintiff represents, however, that these actions concern her termination from employment, not her pay as a server. Thus, the plaintiff's other actions do not seek the same damages as the putative class seeks in this case and do not put her interests in conflict with the rest of the class. The court accordingly finds that the plaintiff is an adequate class representative. See id., 58 (citing *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012) ("Put another way, to forestall class certification the intraclass conflict must be so substantial as to overbalance the common interests of the class members as a whole.") (Internal quotation marks omitted.)

III

The court analyzes the factors of commonality and predominance together because the defendants' central argument – that there are fact differences among the six restaurants and even among the servers in any given restaurant that require individual adjudication of each server's claims – implicates both factors. The court must now set forth the plaintiff's claim in more detail. The CMWA permits an employer to pay restaurant employees who customarily and regularly earn gratuities a minimum wage that recognizes the receipt of such gratuities. See General Statutes § 31–60 (b).[1] The difference between the minimum fair wage provided for by the CMWA (currently $10.10 per hour) and the minimum wage permitted to be paid to service employees who customarily and regularly receive gratuities (currently $6.38 per hour) is known

[1]Section 31-60 (b) provides in pertinent part: "The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations ... shall recognize, as part of the minimum fair wage, gratuities ...."

as the "tip credit." See *Amaral Brothers, Inc. v. Dept. of Labor*, 325 Conn. 72, 74, 155 A.3d 1255 (2017); *Stevens v. Vito's By The Water, LLC*, No. HHDCV156062506S, 2017 WL 6045302, at *1 (Conn. Super. Ct. Nov. 9, 2017).

In authorizing a tip credit, state regulations distinguish between "service duties" and "non-service duties." Section 31-62-E4 of the Regulations of Connecticut State Agencies provides as follows: "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. If 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] allowances for gratuities may be applied as part of the minimum fair wage." Regs., Conn. State Agencies § 31-62-E4. The plaintiff claims that, in addition to serving customers and performing "service duties," she and her class performed "sidework" that falls under the category of "non-service duties." Although the defendants dispute the proposition that the sidework performed by the putative class constitutes "non-service duties," they do not dispute that they did not keep separate records of the sidework that the putative class performed. Thus, if the plaintiff is correct about the categorization of sidework as non-service duties, she would be entitled to the full minimum wage, without any tip credit, for all of her work.

Unfortunately, the regulations do not contain definitions of "service duties" and "non-service duties." However, the regulations do contain analogous definitions of "service employee" and "non-service employee." The regulations define "Service employee" in pertinent part as "any employee whose duties relate solely to the serving of food and/or beverages to

patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities." Regs., Conn. State Agencies § 31-62-E2 (c). "Non-service employee" under the regulations refers to "an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above." Regs., Conn. State Agencies § 31-62-E2 (d).

The definition of "service employee" thus contains several components. First, a service employee's duties must "relate solely to the serving of food and/or beverages to patrons seated at tables and booths."[2] Second, his or her work can include "duties incidental to such service." Third, the employee must be one who "customarily receives gratuities."

The main controversy here centers on whether the sidework in question took place "at tables and booths" and whether it was "incidental to such service." As plaintiff describes it, the sidework consisted of general cleaning, stocking, food preparation, and handling take-out orders. The plaintiff has presented evidence, including admissions of corporate representatives for the defendants, that servers for all six restaurants are trained with the same Server Side Work Guide (Exhibits (Exs.) E, U) and that all servers performed side work in either the "server line" or the kitchen, which were not located at the tables and booths. (Exs. G-R.) The plaintiff has also presented evidence, again based in part on admissions of the defendants' agents, that servers at

---

[2]Although the regulations require a service employee to perform duties that relate "*solely* to the serving of food and/or beverages to patrons seated at tables and booths," the regulations also contemplate an employee who "performs *both* service and non-service duties ...." (Emphasis added.) Regs., Conn. State Agencies § 31-62-E2 (c), (d). Neither party focuses on this point or argues that a service employee cannot perform both service and nonservice duties.

every Chip's Restaurant performed sidework for at least twenty minutes of every shift during the period of the claim (Exs. F-Q.)[3] This evidence, according to the plaintiff, demonstrates that every member of the putative class did sidework on every shift at a location other than the tables and booths, that the sidework was not incidental to their service duties, and that therefore this work qualified as "non-service" duty.

The defendants dispute almost every aspect of the plaintiff's case. What the defendants do not successfully dispute, however, is that every server has essentially the same claim. Although the defendants show that the type and amount of sidework varied from shift to shift, server to server, and restaurant to restaurant, the type and amount of sidework (assuming there was at least some) is not critical to the plaintiff's claim. What is critical is that servers performed some sidework on every shift at locations other than the tables and booths. The defendants do not present or identify any evidence negating that general proposition.[4]

The defendants present many colorable arguments on the merits. They argue that the service line is located in the dining area and essentially not away from the tables and booths.

---

[3]There was some evidence that, on a given day, an employee might not do sidework. (Exs. G, p. 29; Q, p. 19). These days, if any, appear to have been infrequent. The defendants, in fact, have not identified any specific shift in which a server did not perform sidework. Under these circumstances, the court applies the rule that "doubts regarding the propriety of class certification should be resolved in favor of certification." (Internal quotation marks omitted.) *Standard Petroleum Co. v. Faugno Acquisition, LLC*, supra, 330 Conn 50.

[4]The defendants' brief cites to the plaintiff's deposition for the proposition that "whether any side-work needs to be done" varied at each restaurant. The cited pages of the plaintiff's deposition do not support that assertion. (Defendants' Brief, pp. 19-20.) The defendants also cite the deposition of a corporate representative for the statement that "some servers may not have performed any side work." The cited pages of the deposition establish that some sidework tasks did not have to be done on some shifts, not that no sidework would be done. (Defendants' Brief, p. 25.) A final citation reveals testimony only that there are no records of a manager informing the Southbury servers not to perform any side-work. (Defendants' Brief, p. 31.)

They assert that sidework is "incidental" to the basic service duties because sidework helps to generate tips. And they contend that "non-service duties" refer to different occupations, such as manager or trainer, rather than different tasks such as serving food or restocking condiments.

The court intimates no decision on these claims. It suffices to observe that it is not necessary or appropriate to resolve these claims at the class action certification stage. Again, "the [trial] court must take the substantive allegations in the complaint as true, and consider the remaining pleadings, discovery, including interrogatory answers, relevant documents, and depositions, and any other pertinent evidence in a light favorable to the plaintiff." (Internal quotation marks omitted.) *Standard Petroleum Co. v. Faugno Acquisition, LLC*, supra, 330 Conn 49. "In determining the propriety of a class action ... the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met ...." (Internal quotation marks omitted.) Id., 50.

It is true that the court must conduct a "rigorous analysis." "[A] 'rigorous analysis' ordinarily involves looking beyond the allegations of the plaintiff's complaint. The rigorous-analysis requirement means that a class is not maintainable merely because the complaint parrots the legal requirements of the class-action rule...." (Internal quotation marks omitted.) Id., 49. In this case, the court has not just accepted boiler plate allegations that the plaintiff has met the requirements for class certification. The court has in fact conducted a rigorous analysis and found evidence to support each of the plaintiff's claims.

IV

The final criterion is superiority. "If the predominance criterion is satisfied, courts

generally will find that the class action is a superior mechanism even if it presents management difficulties." (Internal quotation marks omitted.) Id., 74. This proposition is true here. The plaintiff has shown that the issues here affect all members of the putative class in a generalized way. It is thus far easier to try this case as a class action than to try numerous – perhaps hundreds – of individual suits.

V

The court grants the motion for class certification. The parties shall confer and propose a schedule for the summary judgment motions.

It is so ordered.

Schuman J.

Carl J. Schuman
Judge, Superior Court

Notice sent: 3/1/19
- DCR