

**STATE OF CONNECTICUT
SUPERIOR COURT**

RETURN DATE: AUGUST 11, 2020	:	SUPERIOR COURT
	:	
ANTHONY BARBERA, for himself and other similarly situated employees	:	JUDICIAL DISTRICT OF HARTFORD
Plaintiffs,	:	
	:	AT HARTFORD
	:	
v.	:	
	:	
SLIDER’S, INC.; SLIDERS RESTAURANT GROUP, LLC; SLIDERS MIDDLETOWN, LLC; SLIDERS TORRINGTON, LLC; SLIDERS WALLINGFORD, LLC; and FRED MARCANTONIO	:	
Defendants.	:	JUNE 29, 2020

CLASS ACTION COMPLAINT

1. Restaurants in Connecticut must pay their servers the full minimum wage unless they (a) obtain signed weekly tip statements confirming that they’ve received sufficient tips to cover the tip credit, and (b) limit their work to service and closely related duties. If they follow these rules, 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.”

2. If restaurants fail to obey any one of these rules, 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.”); *Martin v. United Capital Corp.*, 2019 Conn. Super. LEXIS 3452 (Conn. Super., Dec. 27, 2019) at *13 (“Clearly the pertinent regulation [Sec. 31-62-E4] provides that an employer may not take the tip credit—even for service hours—if it fails to segregate service work from non-service work and record as much.”).

3. These rules prevent employers from taking advantage of servers by taking a tip credit when they haven’t received sufficient tips and by assigning them extensive non-service work like general cleaning and stocking, and paying for that work at less than the full fair minimum wage.
4. In this case, Defendants regularly assigned non-service work – “sidework” - to their Connecticut servers, including Plaintiff, Anthony Barbera, but did not segregate that time and pay it at the full minimum wage.
5. Defendants also failed to obtain signed weekly tip statements as required for their Connecticut servers, including the Plaintiff.
6. Accordingly, Defendants should have paid Plaintiff and all Connecticut servers the full minimum wage for all of their server hours. Instead, Defendants paid their Connecticut servers the lower server minimum wage for all their time in violation of this law. By this illegal practice, Defendants underpaid Plaintiff and the class of Connecticut servers by hundreds of thousands of dollars during the period of the claim.
7. Accordingly, Defendants are liable to Plaintiff and the class of Connecticut servers for all of their back pay, interest, penalty damages, attorneys’ fees and costs.

I. The Parties

8. Plaintiff, Anthony Barbera, is an individual presently residing in Westport, Connecticut. Barbera began working for Defendants as a Server in September 2018, at its Southington, Connecticut restaurant.
9. Defendant, Sliders, Inc., is a Corporation organized under the laws of the State of Connecticut and having its corporate headquarters in Southington, Connecticut.
10. Defendant, Sliders Restaurant Group, LLC, is a limited liability company organized under the laws of the State of Connecticut and having its headquarters in Southington, Connecticut.
11. Defendant, Sliders Middletown, LLC, is a limited liability company organized under the laws of the State of Connecticut and having its headquarters in Southington, Connecticut.
12. Defendant, Sliders Wallingford, LLC is a limited liability company organized under the laws of the State of Connecticut and having its headquarters in Southington, Connecticut.
13. Defendant, Sliders Torrington, LLC, is a limited liability company organized under the laws of the State of Connecticut and having its headquarters in Southington, Connecticut.
14. Defendant Marcantonio resides at 36 Portage Crossing, Farmington, CT 06032.
15. Defendant Fred Marcantonio is the “President” and “Secretary” of Defendant Sliders Inc, and the only “Managing Member” or “Manager” of all the other Defendant LLC’s according to the secretary of state filings.
16. Defendant Fred Marcantonio is the ultimate authority as to each Defendant organization with respect to the payment of wages for all employees.
17. Defendant Fred Marcantonio operates the other five Defendant organizations from one corporate headquarters at 200 Executive Blvd, Unit 4D, Southington, CT 06489.

18. The five Defendant organizations above (Sliders, Inc., Sliders Restaurant Group, LLC, Sliders Middletown, LLC, Sliders Wallingford, LLC, and Sliders Torrington, LLC) all operate under the control and ultimately the authority of Defendant Marcantonio.
19. The six Defendants (“Defendants”) are all responsible for ensuring their employees are paid properly, and are responsible for learning and complying with the wage and hour laws of the State of Connecticut.
20. Defendants collectively own and / or operate six restaurants which conduct business under the name of “Sliders” in the State of Connecticut.
21. Defendants operate restaurants in Torrington, Middletown, Wallingford, Berlin, Plainville and Southington, CT.
22. Plaintiff was employed by the Defendants in the “Sliders” restaurant located in Southington, CT.

II. Legal Claims

23. 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 restaurant, who customarily and regularly receive gratuities.”
24. Regs., Conn. State Agencies Sec.31-62-E3(c) states that “[e]ach employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall obtain weekly a statement signed by the employee attesting that he has received in gratuities the amount claimed as a 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.”

25. 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 allowances for gratuities may be applied as part of the minimum fair wage.”

III. Facts

26. Defendants hired Plaintiff, Anthony Barbera, in September 2018, as a server in their Southington, Connecticut restaurant. He worked there as a server until March, 2020 when the restaurant closed due to the COVID-19 pandemic. He is currently scheduled to resume employment in the near future.
27. Defendants routinely assigned Plaintiff 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.
28. 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.
29. Defendants did not segregate the time that Plaintiff performed “non-service” and “service” duties in their time records.
30. Defendants did not segregate the time that Plaintiff performed “non-service” and “service” duties in their wage records.
31. Defendants did not pay Plaintiff the full minimum wage for the time he spent performing non-service duties. For instance, for the week ending October 13, 2019, Defendant paid

Mr. Barbera \$6.38 per hour for 16.25 hours for a total amount paid of \$103.68.

Defendant did not segregate any non-service time and pay it at the full minimum wage.

32. Defendants did not obtain weekly a statement signed by their servers attesting that they have received in gratuities the amount claimed as credit for part of the minimum fair wage, containing the week ending date for the payroll week for which credit is claimed.
33. Defendants took the tip credit for all the hours that Plaintiff was classified a server.
34. Defendants paid Plaintiff the server minimum wage for every hour he was classified as a server.
35. Defendants took the tip credit for all the hours Plaintiff spent performing service work and the hours he spent performing non-service work.
36. During a typical week, Defendants assigned Plaintiff to work closing shifts. Each day, it assigned him, approximately an hour of side-work which was in the nature of general cleaning and stocking and did not occur at their tables or booths. Defendants paid Plaintiff \$6.38 per hour – the server rate in 2018 - 2020. Defendants failed to segregate Plaintiff's side-work and pay it at the full minimum wage for those years. Accordingly, Defendants should have paid Plaintiff \$10.10 or \$11.00 respectively for all his server hours.
37. Defendants failed to make any good faith effort to learn and comply with this law.
38. Defendants post "Mandatory Order No.8" in each of their restaurants in Connecticut.
39. "Mandatory Order No. 8" explains these rules, including Regs., Conn. State Agencies Sec. 31-62-E4, which requires the "segregation" of "service" and "nonservice" duties.
40. Defendants nevertheless violated these rules despite being on actual notice of them.

41. Defendants' conduct in failing to pay Plaintiff the full fair minimum wage for each shift in which he 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.
42. Defendants' violation of Connecticut's tip credit law, as set forth above, entitles Plaintiff to payment for all hours worked as a "server" 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." Conn. Gen. Stat. Sec. 31-68.

IV. CLASS ALLEGATIONS

43. Plaintiff brings this action for himself and on behalf of a class of similarly situated servers defined as:

All current and former servers at Defendants' Connecticut restaurants from two years before the filing of this complaint until the date of final judgment in this action.

44. 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 approximately 6 restaurants in Connecticut during the applicable time period. The Defendants have, 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 Plaintiff is informed and believes that hundreds of putative class members, if not more, worked for the Defendants 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 Defendants assigned non-service work to their servers and failed to pay them the full minimum wage as required by Connecticut law and whether they failed to obtain weekly signed tip statements.

9-7(3). The named Plaintiff's claims are typical of those of the class members. The named Plaintiff's claims encompass 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 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 Plaintiffs 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.

In addition, as to class of individuals who suffered from Defendants' violations of section 31-62-E4 of the regulations of Connecticut state agencies, the Defendants are "liable to all individual proposed class members because all such members (A) performed nonservice duties while employed by the defendant, for more than a de minimis amount of time, that were not incidental to service duties, and (B) were not properly compensated by the defendant for some portion of their nonservice duties in accordance with section 31-62-E4 of the regulations of Connecticut state agencies." C.G.S. Sec. 31-68(a)(3).

COUNT ONE: *Violation of Connecticut Minimum Wage Act, Conn. Gen. Stat. Sec. 31-58 et. seq.: Failure to "segregate" "service" and "non-service" duties in accordance with Regs., Conn. State Agencies Sec. 31-62-E4.*

45. Defendants' conduct in failing to pay Plaintiff and other Connecticut 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.

46. Defendants' violation of Regs., Conn. State Agencies Sec. 31-62-E4 and the CMWA, as set forth above, entitles Plaintiff and all other Connecticut servers in the class, 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 attorneys' fees as may be allowed by the court." Conn. Gen. Stat. Sec. 31-68.

COUNT TWO: *Violation of Connecticut Minimum Wage Act, Conn. Gen. Stat. Sec. 31-58 et seq.: failure to obtain weekly signed tip statements in accordance with Regs., Conn. State Agencies Sec. 31-62-E3(c).*

47. Defendants' conduct in failing to obtain tip statements on a weekly basis from Plaintiff and other Connecticut servers confirming they received sufficient tips to satisfy the tip credit Defendants took each week violates Regs., Conn. State Agencies Sec. 31-62-E3(c) and the CMWA.

48. Defendants' violation of Regs., Conn. State Agencies Sec. 31-62-E3(c) and the CMWA, as set forth above, entitles Plaintiff and all other Connecticut servers in the class, 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 attorneys' fees as may be allowed by the court." Conn. Gen. Stat. Sec. 31-68.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiff claims:

1. Certification of this action as a class action pursuant to Connecticut Practice Book Section 9-7 and 9-8;
2. Designation of Plaintiff as class representative and Plaintiff's counsel as class counsel;
3. Damages in the amount of unpaid wages and liquidated damages calculated at "twice the full amount of such minimum wage less any amount actually paid [...] by the employer." C.G.S. Sec. 31-68.
4. Interest pursuant to C.G.S. Sec. 37-3a;
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.

PLAINTIFF, ANTHONY BARBERA, for himself
and other similarly situated employees

By: 

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STATEMENT OF AMOUNT IN DEMAND

WHEREFORE, the 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.

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and other similarly situated employees

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