

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**FADOICE TUNSTLE, Individually and  
On Behalf of All Others Similarly  
Situating,**

**Plaintiff,**

v.

**HIDE-A-WAY LAKE CLUB, INC.**

**Defendant.**

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**Civil Action No. 2:15-cv-808**

**Jury Demanded**

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff FaDoice Tunstle, on behalf of herself and all others similarly situated (“Plaintiff” and “Class Members” herein) brings this Fair Labor Standards Act (“FLSA”) suit against the above-named Defendant and shows as follows:

**I. NATURE OF SUIT**

1. The FLSA was passed by Congress in 1938 in an attempt to eliminate low wages and long hours and to correct conditions that were detrimental to the health and well-being of workers. To achieve its humanitarian goals, the FLSA establishes standards of minimum wages and “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less that one and one-half times the regular rate at which he is employed.” *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 (1945) (discussing the FLSA’s minimum wage and maximum hour protections generally); *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).

2. The FLSA does allow employers to pay less than minimum wage to employees who receive tips. 29 U.S.C. § 203(m). In doing so, employers may take a “tip credit,” which allows employers to include in their calculation of “wages” the amount that an employee receives in tips. *Id.* In order to lawfully apply a tip credit toward an employee’s minimum wage, an employer must satisfy two conditions: 1) The employer must inform the employee that it will take a tip credit; and 2) tipped employees must retain all the tips they receive, except those tips included in a tipping pool among employees who customarily and regularly receive tips. *Id.*

3. Defendant failed to pay Plaintiff in accordance with the FLSA in that they failed to lawfully administer a “tip credit” system and failed to pay Plaintiff at least minimum wage. Instead, Plaintiff was paid a sub-minimum wage hourly basis plus tips, which were improperly shared among other employees that may not lawfully participate in a tip pool. Plaintiff brings this action as a collective action pursuant to 29 U.S.C. § 216(b).

## **II. PARTIES**

4. Plaintiff FaDoice Tunstle (“Plaintiff”) is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. She hereby consents to be a party in this action and her consent form is attached as “Exhibit A.”

5. The Plaintiff and “Class Members” are Defendant’s current and former employees who served food and beverages to Defendant’s clients and participated in the invalid tip pooling arrangement. At all times hereinafter mentioned, Plaintiff and Class Members were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

6. Defendant Hide-A-Way Lake Club, Inc. does business in Texas and may be served with process through its registered agent, Joan A Hayes at 101 Hide-A-Way Lane Central, Hideaway, TX 75771 or wherever she may be found.

### **III. JURISDICTION AND VENUE**

7. This Court has jurisdiction over the claim because Plaintiff has asserted a claim arising under federal law under the Fair Labor Standards Act. 29 U.S.C. § 201 et seq. Accordingly, this Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

8. Venue is proper in the Eastern District of Texas because the events forming the basis of the suit occurred in this District, and one or more parties reside in this District.

### **IV. COVERAGE**

9. At all material times, Defendant acted, directly or indirectly, in the interest of an employer or joint employer with respect to Plaintiff and the Class Members.

10. At all times hereinafter mentioned, Defendant has been an employer or joint employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

11. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

12. At all times hereinafter mentioned, Defendant has been enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprises have had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

13. At all times hereinafter mentioned, Plaintiff and Class Members were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

#### **V. FACTUAL ALLEGATIONS**

14. Defendant does over \$500,000.00 per year in business.

15. As part of its business operations, Defendant provides food and beverage services to its clients through an on-site restaurant and bar. Defendant employs individuals paid on an hourly basis that provides a sub-minimum hourly wage and requires that they also be paid a certain portion of their wages in tips. For example, Plaintiff was guaranteed only approximately \$5.25 per hour in wages prior to receipt of her earned tips during the course of her employment with Defendant.

16. Plaintiff was employed by Defendant during the three years prior to the filing of this suit and from approximately September 14, 2008 through April 14, 2014.

17. Defendant charges its customers a 20% gratuity and otherwise receives tips from its customers on certain food and beverage purchases but does not distribute these funds directly to the employee that served its clients or properly limit the distribution of these funds to Plaintiff and the Class Members, who are its employees that may lawfully be paid on a tipped basis.

18. Instead, Defendant distributes gratuity charges or earned tips among its kitchen staff, who may not properly participate in a tip pool.

19. Moreover, when Plaintiff's employment began, she was not properly informed about the nature of her wages in that she was not notified about her right to keep her tips unless she was part of a valid tip pooling arrangement.

20. Because Defendant retained tips for its own purposes and included improper participants in the tip pool, Defendant failed to pay Plaintiff and the Class Members the required minimum wage for the hours they worked.

21. During the three year period prior to this suit, Defendant has employed individuals who performed similar job duties under similar pay provisions as Plaintiff, who were not paid minimum wage or overtime compensation as required by the FLSA.

22. Defendant knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay minimum wage and overtime compensation with respect to Plaintiff and the Class Members.

## **VI. COLLECTIVE ACTION ALLEGATIONS**

23. Other employees have been victimized by this pattern, practice, and policy which is in willful violation of the FLSA. Many of these employees worked with Plaintiff and were paid in the same manner as Plaintiff without being paid minimum wage for all hours worked. Plaintiff is aware that the illegal practices or policies of Defendant have been uniformly imposed on the Class Members.

24. The Class Members performed the same or similar duties as Plaintiff or otherwise worked under the same illegal pay scheme. Accordingly, the employees victimized by Defendant' unlawful pattern and practices are similarly situated to Plaintiff in terms of job duties and pay provisions.

25. Defendant' failure to pay minimum wage and/or overtime compensation at the rates required by the FLSA results from generally applicable policies or practices and do not depend on the personal circumstances of the Class Members. Thus, Plaintiff's experience is typical of the experience of the Class Members.

26. The specific job titles or precise job requirements of the various Class Members do not prevent collective treatment. All Class Members, regardless of their precise job requirements or rates of pay, are entitled to overtime compensation for hours worked in excess of forty (40) hours per week and minimum wage for all hours of work. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The questions of law and facts are common to Plaintiff and the Class Members.

**VII. CAUSE OF ACTION: FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT**

27. During the relevant period, and by way of the facts set forth above, Defendant violated and is violating the provisions of Sections 6 and 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for workweeks longer than forty hours without compensating such employees for their employment in excess of forty hours per week at rates no less than one-and-one-half times the regular rates for which they were employed and failing to pay them minimum wages and earned tips. Defendant has acted willfully in failing to pay Plaintiff and the Class Members in accordance with the law.

**VIII. RELIEF SOUGHT**

28. WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendant as follows:

a. For an Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid back wages due to Plaintiff, including the amount of tips she was required to give management (and those who may join in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those who may join the suit); and

- b. For an Order awarding Plaintiff (and those who may join in the suit) the costs of this action;
- c. For an Order awarding Plaintiff (and those who may join in the suit) attorneys fees; and
- d. For and Order awarding Plaintiff (and those who may join in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law; and
- e. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

/s/ J. Derek Braziel

**J. DEREK BRAZIEL**

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