JUDGE CARTER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 1352

SUZANNE PARRATT, on behalf of herself and all others similarly situated,

Plaintiff,

-against-

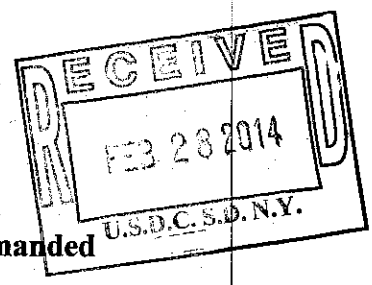
MAGEE-MAHON CAFÉ, INC., JOHN MAHON, EUGENE WILSON, and JOHN DOES #1-100,

Defendants

COMPLAINT

Class Action

Jury Trial Demanded



Plaintiff, by her attorneys, Giles Law Firm LLC, complaining of defendants, alleges:

NATURE OF ACTION

1. Plaintiff brings this action, on behalf of herself and other similarly situated employees to remedy violations of the Fair Labor Standards Act, as amended 29 U.S.C. §201, et seq. ("FLSA"). Plaintiff seeks, for herself and similarly situated employees, declaratory and injunctive relief, unpaid wages, liquidated damages, reasonable attorneys fees, and all other appropriate relief pursuant to 29 U.S.C. §§216 and 217, and other applicable federal law.

2. Plaintiff also brings this action, on behalf of herself and other similarly situated employees to remedy violations of the New York State Labor Law §§ 190 et seq., and §§650 et seq ("NYSLL"). Plaintiff seeks for herself and other similarly situated employees declaratory and injunctive relief, unpaid wages, liquidated damages, reasonable attorneys fees, and all other appropriate legal and equitable relief pursuant to NYSLL §§ 198, 663 and New York State common law.

3. Plaintiff seeks to bring this action on behalf of herself and other similarly situated employees as a collective action pursuant to 29 U.S.C. §216(b) and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

4. Jurisdiction of the Court over plaintiff's FLSA claims is invoked pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §§1331.

5. Jurisdiction of this Court over plaintiff's state law claims is invoked pursuant to NYSLL §§198, 663 and 28 U.SC. §1367(a), in that the state law claims are so related to plaintiff's FLSA claims as to form the same case or controversy under Article III of the United States Constitution.

6. Venue is proper within this District pursuant to 28 U.S.C. §1391 because defendants' primary place of business is in this district and defendants maintain an address for service of process in this district and, therefore reside in this district. Venue is further proper within this District pursuant to 28 U.S.C. §1391 because a substantial part of the events and omissions giving rise to the claim occurred within this district.

PARTIES

7. Plaintiff currently resides in Philadelphia, Pennsylvania. At all relevant times, plaintiff was employed by defendants.

8. Defendant Magee-Mahon Café, Inc. ("Magee-Mahon") is a New York Corporation with an address for service of process at 58 West 48th Street, New York, New York 10036.

9. Defendant John Mahon ("Mahon") is an individual doing business in New York, New York and, upon information and belief, is a shareholder, officer, and/or agent of Magee-Mahon.

10. Defendant Eugene Wilson ("Wilson") is an individual doing business in New York, New York and, upon information and belief, is a shareholder, officer, and/or agent of Magee-Mahon.

11. Defendants John Does 1-100 are other individuals or entities affiliated with Magee-Mahon. Plaintiff reserves the right to name additional parties as their identities becomes known to plaintiff.

FACTUAL ALLEGATIONS

12. Defendant Magee-Mahon is a New York Corporation that operates several Irish themed restaurants in Manhattan, including four restaurants called PJ Moran's, Langan's, Eamonn's, and four restaurants called the Pig N' Whistle.

13. Plaintiff worked for Magee-Mahon as a server at the Pig N' Whistle Times Square from August 1st, 2013 until November 19th, 2013. Plaintiff is therefore an "employee" within the meaning of 29 U.S.C. §203(d) and NYSLL §§190, 651 and Magee-Mahon is an "employer" within the meaning of 29 U.S.C. §203(d) and NYSLL §§190, 651.

14. At all relevant times, defendant Mahon had control over the employment practices of Magee-Mahon and was responsible for the wage and hour practices complained of herein. Therefore, Mahon is an "employer" within the definition of 29 U.S.C. §203(d) and NYSLL §§190, 651.

15. At all relevant times, defendant Wilson had control over the employment practices of Magee-Mahon and was responsible for the wage and hour practices complained of

herein. Therefore, Wilson is an "employer" within the definition of 29 U.S.C. §203(d) and NYSLL §§190, 651.

16. Upon information and belief, at all relevant times, John Does 1-100 are additional corporate entities under which certain of the restaurants are operated and other individuals who had control over the employment practices of Magee-Mahon and were responsible for the wage and hour practices complained of herein. Therefore, John Does 1-100 constitute an "employer" within the definition of 29 U.S.C. §2039d) and NYSLL §§190 and 651.

17. Defendants employ employees who handle, sell, or otherwise work on goods or material that have been moved in or produced by commerce by any person. Upon information and belief, the food and beverages served by defendants' restaurants have moved in interstate commerce. Upon information and belief, the other supplies used by defendants' restaurants have moved in interstate commerce.

18. Defendants employee more than two employees at their restaurants. Defendants' operations, individually and collectively, constitute an "enterprise" as defined in 29 U.S.C. §203(r). The annual gross volume of sales made or business done by defendants' operations, both individually and collectively, is in excess of $500,000. Accordingly, defendants are an "enterprise engaged in commerce" within the meaning of 29 U.S.C. §203(s)(1).

19. Plaintiff commenced working for defendants on or about August 1, 2013. For the first three days of her employment, plaintiff was a "trainee." During this period, plaintiff worked alongside another experienced server, assisting in the serving of food and beverages to customers.

20. For her three day training period, plaintiff did not receive any hourly wages or any tips left by customers.

21. After plaintiff's training period, plaintiff continued to work as a server. Plaintiff received $5.00 per hour plus any tips that customers left for her.

22. Defendants, however, required plaintiff and her other co-workers to pay tips back to defendants for certain losses incurred by the defendants. For example, if a customer or group of customers walked out of the restaurant without paying their bill, the server was required to pay the tab to defendants out of his or her tips.

23. Defendants also required employees to pay back tips when a customer complained about the meal and received a refund for that meal or if a server made an erroneous entry in the register resulting in an undercharge to a patron.

24. On November 19, 2013, a group of four customers being served by plaintiff left the restaurant without paying their bill of approximately $96.00.

25. Plaintiff informed Rosie Ortiz, the hostess and acting manager, that the customers had left without paying. Ortiz told plaintiff that she would have to pay the customer's tab out of her tips. Ortiz informed plaintiff that if she did not cover the unpaid bill that "it would be her last night in the building."

26. Plaintiff then asked defendant Wilson if she was required to pay the unpaid bill. Defendant Wilson informed plaintiff that the bill would have to be paid either by plaintiff or "the three of yous" referring to plaintiff and the two other servers working her shift.

27. Plaintiff refused to pay the unpaid bill, and was terminated by defendants that night in retaliation for refusing to allow defendants to take that portion of her tips for the night. In addition, defendants never gave plaintiff her paycheck for her last week of work.

COLLECTIVE ACTION ALLEGATIONS

28. Upon information and belief, over the past three years, the defendants have employed over 100 servers at their three restaurants.

29. Upon information and belief, the defendants have failed to pay each of these employees any wages for training periods.

30. Upon information and belief, the defendants have required each of these employees to pay back various losses incurred by the restaurant out of their tips.

31. The unlawful employment practices at issue with respect to the other similarly situated employees of the defendants are identical to the unlawful employment practices with respect to plaintiff. In all cases, defendants have failed to pay any wages during the employee's training period, have required employees to pay for certain losses incurred by the restaurant out of the employees' tips, and have known of and/or show reckless disregard for whether these and other practices violate the FLSA.

32. Other employees currently or formerly employed by the defendants should have the opportunity to have their claims for violations of the FLSA heard. Certifying this action as a collective action will afford other employees the opportunity to receive notice of the action and allow them to opt in to such an action if they so choose.

33. Plaintiff has annexed a form to this Complaint as Exhibit A consenting to her participation in such a collective action.

CLASS ACTION ALLEGATIONS

34. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 33 as set forth above.

35. Pursuant to Rule 23 of the Federal Rules of Civil Procedures, plaintiff brings this action individually and on behalf of the following class of persons (the "Class"): All persons who have been employed as servers at any restaurants operated by defendants for the past six years.

36. The individuals in the Class identified above are so numerous that joinder of all members of the class is impracticable. Upon information and belief, for the past six years, well over 200 individuals have worked as servers for defendants.

37. Questions of law and fact common to the class include, but are not limited to, the following:

a. Whether plaintiff and other similarly situated individuals failed to receive any pay for training;

b. Whether plaintiff and other similarly situated individuals have had wages unlawfully deducted from their paychecks;

c. Whether plaintiff and other similarly situated individuals have been unlawfully required to pay tips back to management;

d. Whether plaintiff and other similarly situated individuals have received all wages when due;

e. Whether defendants, through their policy of requiring payback of tips, have forfeited the right to take a tip credit against the minimum rate of wage;

f. Whether plaintiff and other similarly situated workers have received the notification of their rate of pay as required by the NYSLL;

g. Whether plaintiff and other similarly situated workers have received accurate wage statements as required by the NYSLL;

h. Whether defendants had any good faith and reasonable basis for engaging in any conduct found as unlawful; and

i. Whether members of the Class have sustained damages and, if so, the proper measure of damages.

38. Plaintiff's claims are typical of the claims of the Class in that plaintiff and other similar situated individuals have been subjected to the unlawful practices described above and have suffered damages due to those unlawful policies and practices.

39. Plaintiff will fairly and adequately protect the interests of the Class. The interests of plaintiff are aligned with those of the Class, and plaintiff has no conflicts of interest with any members of the Class. In addition, plaintiff is represented by qualified and experienced counsel.

40. By engaging in the policies and practices described above, defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive, declaratory, and monetary relief with respect to the Class as a whole appropriate.

41. Questions of law or fact common to the members of the Class, including but not limited to, the common questions of law or fact enumerated in paragraph 37 predominate over any questions affecting only plaintiff, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

42. For these reasons, the Class should be certified under Rule 23(b) of the Federal Rules of Civil Procedure.

AS AND FOR A FIRST CLAIM

(Failure to Pay Minimum Wage – FLSA)

43. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "42" as if recited at length herein.

44. Pursuant to Section 206 of the Fair Labor Standards Act, 29 U.S.C. §206, the minimum rate of wage for the period plaintiff worked for defendants was $7.25 per hour.

45. Section 203(m) of the Fair Labor Standards Act, 29 U.S.C. §203(m), allows an employer, in calculating the minimum wage paid to tipped employees to take a "tip credit" to offset a portion of the minimum wage owed, provided that the employee receives at least $2.13 per hour in cash wages, the employer informs the employee of the relevant provisions of 29 U.S.C. §203(m), and the employee retains all tips received by the employee.

46. Defendants failed to inform plaintiff of the provisions of 29 U.S.C. §203(m).

47. Upon information and belief, defendants failed to inform all of their servers of the provisions of 29 U.S.C. §203(m).

48. Defendants, by requiring plaintiff to pay for losses incurred by the restaurant out of her tips, did not allow plaintiff to retain all tips received by her.

49. Upon information and belief, defendants required all of their servers to pay for losses incurred by the restaurant out of tips, and thereby did not allow them to retain all tips received by them.

50. Defendants therefore forfeited their right to take a tip credit and were required to pay plaintiff and all similarly situated workers the full amount of the minimum wage in cash.

51. For plaintiff's training period, defendants failed to pay plaintiff any cash wage and did not allow her to retain any tips received by her during the training period.

52. Upon information and belief, defendants failed to pay any servers any cash wage and did not allow them to retain any tips they received during their training periods.

53. Defendants, by the above actions, have violated 29 U.S.C §206.

54. Upon information and belief, said violations are willful within the meaning of 29 U.S.C. §255(a).

AS AND FOR A SECOND CLAIM

(Failure to Pay Minimum Wage – NYSLL)

55. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "54" as if recited at length herein.

56. Pursuant to Section 652 of the NYSLL, N.Y Labor Law §652, the minimum rate of wage for the period plaintiff worked for defendants was $7.25 per hour.

57. For plaintiff's training period, defendants failed to pay plaintiff any cash wage and did not allow her to retain any tips received by her during the training period.

58. Upon information and belief, defendants failed to pay any other servers any cash wage and did not allow them to retain any tips they received during their training periods.

59. Defendants, by the above acts, have violated NYSLL §652 and NYSLL §146-1.2.

60. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §663.

AS AND FOR A THIRD CLAIM

(Unlawful Kick Back of Gratuities – NYSLL)

61. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "60" as if recited at length herein.

62. Pursuant to NYSLL §196-d, "No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee."

63. Defendants violated NYSLL §196-d by demanding that plaintiff pay her gratuities to defendants for losses incurred at defendants' restaurants.

64. Upon information and belief, defendants required all of their servers to pay their gratuities to defendants for losses incurred at defendants' restaurants.

65. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §198.

AS AND FOR A FOURTH CLAIM

(Unlawful Deductions From Wages – NYSLL)

66. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "65" as if recited at length herein.

67. Pursuant to NYSLL §193, defendants were prohibited from deducting any amounts of plaintiff's wages from his paycheck.

68. By demanding that plaintiff reimburse defendants for losses incurred at defendants' restaurants, and terminating her for refusing to do so, defendants have violated NYSLL §193.

69. Upon information and belief, defendants unlawfully deducted from all of their servers' wages by demanding reimbursement for losses incurred at defendants' restaurants.

70. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §198.

AS AND FOR A FIFTH CLAIM

(Failure to Pay Wages When Due – NYSLL)

71. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "70" as if recited at length herein.

72. Plaintiff was a "manual worker" as defined in NYSLL §190(4).

73. Pursuant to NYSLL §191(1)(a), defendants were obligated to pay plaintiff her earned wages no less frequently than weekly.

74. By failing to pay plaintiff her earned wages, defendants have violated NYSLL §191.

75. Upon information and belief, defendants have failed to pay their other servers all earned wages when due.

76. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §198.

AS AND FOR A SIXTH CLAIM

(Spread of Hours – NYSLL)

77. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "76" as if recited at length herein.

78. Approximately three times per month, plaintiff was required to work double shifts, resulting in a workday in excess of 10 hours.

79. Pursuant to NYSLL §652 and 12 NYCRR §146-1.6, defendants were required to pay plaintiff an additional hour's pay at the minimum rate of wage for all days in which the spread of hours of the workday exceeded ten hours.

80. Defendants failed to pay plaintiff an additional hour's pay at the minimum rate of wage for all days in which the spread of hours of the workday exceeded ten hours.

81. By failing to pay spread of hours pay, defendants have violated NYSLL §652 and 12 NYCRR §146-1.6.

82. Upon information and belief, defendants have failed to pay all of their servers an additional hour's pay at the minimum rate of wage when their spread of hours exceeded 10 hours in a day.

83. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §663.

AS AND FOR A SEVENTN CLAIM

(Notice and Recordkeeping Requirements – NYSLL)

84. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "83" as if recited at length herein.

85. Pursuant to NYSLL §195, defendants were required to furnish plaintiff, upon hiring, with a notice containing the rate or rates of pay and the basis thereof, whether paid by hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section 191 of the NYSLL; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; and such other information as the commissioner deems material and necessary.

86. Defendants failed to provide plaintiff with any such notice upon her hire, or at any time during her employment.

87 Upon information and belief, defendants failed to provide any of their servers such notice upon their hire, or at any time during their employment.

88. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §198.

AS AND FOR A SEVENTH CLAIM

(Failure To Provide Accurate Wage Statements – NYSLL)

89. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "88" as if recited at length herein.

90. Pursuant to NYSLL §195, defendants were required to provide plaintiff with accurate wage statements setting forth, the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

91. Defendants did not provide accurate wage statements to plaintiff for all weeks worked.

92. Upon information and belief, defendants did not provide any of their servers accurate wages for all weeks worked.

93. Defendants had no good faith basis to believe that their actions were in compliance with the law, within the meaning of NYSLL §198.

AS AND FOR AN EIGHTH CLAIM

(Retaliation – NYSLL)

94. Plaintiff repeats and re-alleges each and every allegation in paragraphs "1" through "93" as if recited at length herein.

95. Defendants terminated plaintiff's employment because plaintiff objected to defendants' demand that she repay them from her gratuities for the customers who failed to pay their bill.

96. Defendants, by the above acts, have violated NYSLL §215 by retaliating against plaintiff for asserting her rights under the NYSLL.

97. Plaintiff has suffered, is now suffering, and will continue to suffer irreparable injury and monetary damages as a result of defendants' acts unless and until the Court grants the relief requested herein.

98. No previous application for relief has been made for the relief requested herein.

99. Notice of this action has been served upon the attorney general of the State of New York.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment:

a. declaring that the acts and practices complained of herein are in violation of the FLSA and NYSLL;

b. declaring that the acts and practices complained of herein are willful violations within the meaning of 29 U.S.C. §255(a);

c. enjoining and restraining permanently the violations alleged herein, pursuant to NYSLL §215;

d. certifying this action as a collective action under the FLSA and as a class action under Rule 23 of the Federal Rules of Civil Procedure;

e. awarding plaintiff and all similarly situated employees for all unpaid wages as a result of the defendants' violations of the minimum wage provisions of the FLSA and the NYSLL;

f. awarding plaintiff and all similarly situated employees liquidated damages as provided for in 29 U.S.C. §216(b);

g. awarding plaintiff and all similarly situated employees additional liquidated damages as provided for in NYSLL §663;

h. awarding plaintiff and all similarly situated employees all gratuities that have been retained by defendants;

i. awarding plaintiff and all similarly situated employees all wages that were deducted from their paychecks;

j. awarding plaintiff and all similarly situated employees all untimely paid wages;

k. awarding plaintiff and all similarly situated employees liquidated damages as provided for in NYSLL §198;

l. awarding plaintiff and all similarly situated employees an additional hour's pay at the minimum rate of wage as provided for in 12 NYCRR §146-1.6 and NYSLL §663.

m. awarding plaintiff and all similarly situated employees liquidated damages for all spread of hours pay pursuant to NYSLL §663.

n. awarding plaintiff and all similarly situated employees $50 per week for each week defendants failed to provide appropriate notification pursuant to NYSLL §195, to a maximum of $2,500.00 per employee;

o. awarding plaintiff and all similarly situated employees $100 per week for each week defendants furnished incorrect wage statements pursuant to NYSLL §195, to a maximum of $2,500.00 per employee;

p. awarding plaintiff all back pay for defendants' retaliatory termination of her employment pursuant to NYSLL §215;

q. awarding plaintiff compensatory and punitive damages for defendants' retaliatory termination of her employment pursuant to NYSLL §215;

r. directing defendant to reinstate plaintiff, or award front pay in lieu of reinstatement, pursuant to NYSLL §215;

s. awarding plaintiff liquidated damages in the amount of $10,000 pursuant to NYSLL §215;

t. awarding plaintiff and all similarly situated employees the costs of this action together with reasonable attorneys fees, as provided in 29 U.S.C. §216(b), and NYSLL §§198, 215 and 663; and

u. granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York
February 28, 2014

Respectfully submitted,
GILES LAW FIRM LLC
Attorneys for Plaintiff

By: _____

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JURY DEMAND

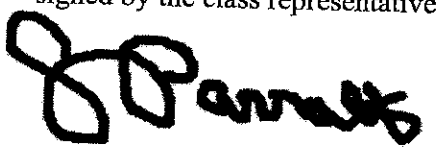
Plaintiff hereby demands, pursuant to Rule 38 of the Federal Rules of Civil Procedure, a trial by jury in the above captioned action.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUZANNE PARRATT, on behalf of herself and all others similarly situated, Plaintiff, -against- MAGEE-MAHON CAFÉ, INC., JOHN MAHON, EUGENE WILSON, and JOHN DOES #1-100, Defendants	**CONSENT TO SUE**

I consent to join the lawsuit captioned Parratt v. Magee-Magon Café, Inc. et al,in the United States District Court for the Southern District of New York. I authorize the class representative to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, including any settlement, and to be represented by counsel for the class representative in this lawsuit. I agree to be bound by the terms of the Retainer Agreement signed by the class representative in this case.



Signature

2/26/2014

Date

Suzanne Parratt

Print your name