

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, CHATTANOOGA DIVISION**

DORI BEASLEY, On Behalf of Herself
and All Others Similarly Situated,

Plaintiff,

v.

**OVER EASY, L.P., OVER EASY III,
L.P., OVER EASY MANAGEMENT,
INC., OVER EASY NUMBER II,
L.P., OVER EASY NUMBER IV,
L.P., OVER EASY NUMBER IX,
L.P., OVER EASY NUMBER V, L.P.,
OVER EASY NUMBER VI, L.P.,
OVER EASY NUMBER VII, L.P.,
OVER EASY NUMBER VIII, L.P.,
OVER EASY NUMBER X, L.P.,
OVER EASY NUMBER XI, LP, d/b/a
HUDDLE HOUSE**

Defendant.

Docket No.:

COMPLAINT AND JURY DEMAND

Plaintiff, DORI BEASLEY, on behalf of herself and other similarly situated employees, by and through her attorneys, JTB LAW GROUP, LLC, as and for her Complaint against OVER EASY, L.P., OVER EASY III, L.P., OVER EASY MANAGEMENT, INC., OVER EASY NUMBER II, L.P., OVER EASY NUMBER IV, L.P., OVER EASY NUMBER IX, L.P., OVER EASY NUMBER V, L.P., OVER EASY NUMBER VI, L.P., OVER EASY NUMBER VII, L.P., OVER EASY NUMBER VIII, L.P., OVER EASY NUMBER X, L.P., OVER EASY NUMBER XI, LP, d/b/a HUDDLE HOUSE (“Defendants”), alleges of her own knowledge and conduct and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on behalf of herself and similarly situated employees to recover monetary damages, liquidated damages, interest and costs, including reasonable attorney's fees as a result of Defendants' willful violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* ("FLSA").
2. Defendants willfully violated the FLSA in at least two ways:
 - a. First, there were weeks in which Plaintiff and other similarly situated employees did not receive enough tips in addition to her \$2.13 hourly wage to bring her total compensation from Defendants above the federal minimum wage of \$7.25 per hour. In these weeks, Defendants did not satisfy their obligation to make up the difference between Plaintiff's compensation and the federal minimum wage. Indeed, Defendants falsified Plaintiff's tip records in order to create the appearance that Plaintiff had received enough tips to bring her compensation above the minimum wage.
 - b. Second, Defendants maintained a common policy of deducting a half hour's worth of pay for days on which Defendants claimed that Plaintiff and other similarly situated employees were taking lunch breaks, even on days in which Plaintiff and other similarly situated employees did not receive bona fide meal breaks as defined in 29 C.F.R. § 785.19. As a result, Plaintiff's effective hourly rate in many weeks was below the \$2.13 per hour that Defendants purported to pay her, in violation of the FLSA minimum wage for tipped employees. Furthermore, since this policy extended to weeks in which Plaintiff and similarly situated employees worked in excess of forty (40) hours, Defendants failed to pay

Plaintiff and other similarly situated employees time and half their regular rate of pay for all hours worked in excess of forty (40).

3. The above-described FLSA violations have also affected other similarly situated employees of Defendant. Thus, Plaintiff will seek to certify a collective pursuant to 29 U.S.C. § 216(b) consisting of all persons who were employed as Servers by OVER EASY, L.P. at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343 at any time within three years prior to the filing of this Complaint.
4. Upon information and belief, for at least six (3) years prior to the filing this of Complaint, Defendant has willfully and intentionally committed systematic and widespread violations of the FLSA in the manner described herein.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, a Federal statute.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (c) and (d) because the Defendant is subject to personal jurisdiction in this District.

THE PARTIES

7. All of the Defendants are limited partnerships organized and existing under the laws of the State of Tennessee.
8. All of the Defendants have a principal business office located at 5601 Mountain Breeze Drive, Chattanooga, TN 37421.
9. All of the Defendants operate as a single integrated enterprise that does business as “Huddle House,” a chain restaurant.

10. Upon information and belief, the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343 is owned and operated by Defendant OVER EASY, L.P.
11. Because the violations alleged herein took place at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343, Plaintiff levels the allegations herein particularly against OVER EASY, L.P.
12. Inasmuch as the allegations herein concern violations that occurred at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343, whichever Defendant owns and operates this location—should discovery reveal that it is a different Defendant than OVER EASY, L.P.— is hereby on notice of Plaintiff’s intention to seek FLSA liability against such Defendant for the facts alleged herein. Defendants were and continue to be an “enterprise engaged in commerce or in the production of goods for commerce” within the meaning of 29 U.S.C. §§ 203(s)(1) and 207(a)(1).
 - a. Defendants collectively have a gross annual revenue that exceeds \$500,000.
 - b. Defendants employ persons who handle, sell, or work on goods or materials, such as food and beverage products, that have moved in or been produced for commerce.
13. OVER EASY, L.P. was the employer of Plaintiff with respect to her position as a Server at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343.
 - a. OVER EASY, L.P. determined Plaintiff’s work schedule.
 - b. OVER EASY, L.P. determined Plaintiff’s compensation.
 - c. OVER EASY, L.P. supervised Plaintiff.
 - d. OVER EASY, L.P. maintained time and payroll records pertaining to Plaintiff.
14. Plaintiff DORI BEASLEY was and is a resident of Hamilton County, State of Tennessee.

FACTUAL ALLEGATIONS

15. Plaintiff repeats and realleges all preceding paragraphs of the Complaint inclusive, as if fully set forth herein.

16. Plaintiff worked as a Server at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343 from approximately March 2014 through August 2014.

17. As a Server, Plaintiff's job duties included taking and placing customers' food orders, delivering food and beverages to customers, processing customer payments, and assisting with sidework and cleaning the restaurant.

18. OVER EASY, L.P. classified Plaintiff as non-exempt from the FLSA.

19. Plaintiff received an hourly wage of approximately \$2.13 for every hour she worked on the clock.

20. Plaintiff also received tips from customers.

21. In many weeks, OVER EASY, L.P. required Plaintiff to work over forty (40) hours.

22. In many weeks, Plaintiff worked over forty (40) hours.

23. Plaintiff frequently worked off the clock.

24. Plaintiff frequently worked off the clock during weeks in which she worked over forty (40) hours.

25. Plaintiff's frequent off-the-clock work was the result of policies maintained and enforced by

OVER EASY, L.P., including, but not limited to:

- a. Requiring Plaintiff and other similarly situated employees to perform duties such as sidework and cleaning during times that were designated as meal breaks; and
- b. Deducting thirty minutes of pay from Plaintiff based on the premise that she had in fact taken a bona fide meal break during such periods.

26. There were many weeks in which Plaintiff worked over forty (40) hours and had thirty-minute periods deducted from her pay for meal-breaks that she was required to work through.
27. As a result of Plaintiff's off-the-clock work, there were many weeks in which her total compensation attributable to her hourly wage, divided by her total number of hours actually worked, was below \$2.13.
28. As a result of Plaintiff's off-the-clock work, there were many weeks in which Plaintiff worked over forty (40) hours and did not receive overtime compensation for all hours worked.
29. In many weeks, Plaintiff did not receive enough money in tips to bring her total compensation above \$7.25 per hour.
30. In these weeks, OVER EASY, L.P. did not sufficiently make up the difference between Plaintiff's total compensation and \$7.25 per hour.
31. The violations alleged herein are exemplified by the two-week period beginning July 6th, 2014 and ending July 19, 2014.
- a. In at least one of these weeks, Plaintiff worked over forty (40) hours.
 - b. OVER EASY, L.P. paid Plaintiff overtime pay for 6.69 hours in this two-week pay period.
 - c. In each of these two weeks, OVER EASY, L.P. deducted approximately one (1) hour of pay from Plaintiff's paycheck on account of meal breaks.
 - d. The meal breaks for which OVER EASY, L.P. deducted hours were not bona fide meal periods because during the supposed meal breaks, OVER EASY, L.P. required Plaintiff to continue performing sidework and cleaning.
 - e. In these two weeks, Plaintiff received approximately \$238 in tips.

- f. In these two weeks, OVER EASY, L.P. paid Plaintiff an additional \$235.19.
- g. In these two weeks, Plaintiff's total compensation was \$473.19.
- h. In these two weeks, Plaintiff worked approximately 79 hours.
- i. Thus, in these two weeks, when factoring in all of Plaintiff's wages and tips, her effective hourly rate was only \$5.98 per hour.
- j. In each of these two weeks, Plaintiff did not receive a sufficient amount of tips to bring her compensation above the minimum wage.

32. OVER EASY, L.P.'s violations of the FLSA, as described herein, were willful.

33. OVER EASY, L.P.'s violations of the FLSA, as described herein, were not in good faith.

34. OVER EASY, L.P. was aware of its obligation to make up the difference between Plaintiff's tips and the minimum wage because it did in fact make up some of the difference between her total weekly compensation and the minimum wage.

35. In many weeks, OVER EASY, L.P. paid Plaintiff an amount of money that was designated on her paystub as "Minimum Wage Makeup."

36. However, in many weeks OVER EASY, L.P. failed to fully make up all of the difference between Plaintiff's total weekly compensation and the minimum wage.

37. OVER EASY, L.P. indicated on Plaintiff's paystubs that she had received an amount of tips that was significantly greater than the amount she had actually received.

38. OVER EASY, L.P. knew or should have known how much Plaintiff had received in tips because she reported the amount of tips she made on a nightly basis to OVER EASY, L.P.

39. For example, in the two-week period beginning July 6th, 2014 and ending July 19, 2014, OVER EASY, L.P. indicated that Plaintiff received approximately \$80 more in tips than she had actually received.

40. OVER EASY, L.P. knew or should have known that it was requiring Plaintiff to work off the clock in workweeks of excess of forty (40) hours because OVER EASY, L.P. deducted time for designated meal periods despite the fact that it had:

- a. Required Plaintiff perform duties such as sidework and cleaning during such designated meal periods; and
- b. Failed to take any measures to confirm that Plaintiff received a bona fide meal period on days for which it deducted time from her pay.

FLSA COLLECTIVE ALLEGATIONS

41. Plaintiff repeats and realleges all preceding paragraphs of the Complaint inclusive, as if fully set forth herein.

42. Plaintiff and other similarly situated employees were non-exempt employees of Defendants within the three years preceding this Complaint.

43. Plaintiff and other similarly situated employees received an hourly wage based on the number of hours they were on the clock.

44. Plaintiff and other similarly situated employees received an hourly wage of approximately \$2.13 for every hour on the clock.

45. Defendants maintained and enforced a common policy of requiring Plaintiff and other similarly situated employees to work off the clock.

46. Defendants maintained and enforced a common policy of paying Plaintiff and other similarly situated employees a total weekly amount of compensation which, divided by the total number of hours actually worked, was below \$7.25.

47. Defendants maintained and enforced a common policy of requiring Plaintiff and other similarly situated employees to work over forty (40) hours in some weeks.

48. Defendants maintained and enforced a common policy of paying Plaintiff and other similarly situated employees a total weekly amount of compensation for hours over forty (40) which, divided by the total number of hours actually worked over forty (40), was below time and a half of such employees' regular rate of pay.
49. Defendants maintained and enforced a common policy of paying Plaintiff and other similarly situated employees an amount attributable to hourly wages which, when divided by the total number of hours actually worked, was below \$2.13.
50. Defendants maintained and enforced a common policy of failing to make up the difference between the total weekly compensation received by individuals including Plaintiff and other similarly situated employees, and \$7.25 per hour.
51. Plaintiff brings this claim for relief for Defendants' willful violation of the FLSA, as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).
52. The Collective is defined as follows: **All persons who were employed as Servers by OVER EASY, L.P. at the Huddle House located at 5229 Hixson Pike, Hixson, TN 37343 at any time within three years prior to the filing of this Complaint.**

FIRST CLAIM FOR RELIEF

(Individual Claims for Violation of FLSA)

53. Plaintiff repeats and realleges all the preceding paragraphs of this Complaint, as if fully set forth herein.
54. At all relevant times, Defendants were and continue to be an "enterprise engaged in commerce or in the production of goods for commerce" within the meaning of 29 U.S.C. §§ 203(s)(1) and 207(a)(1).
55. At all relevant times, Defendants employed Plaintiff within the meaning of the FLSA.

56. At all relevant times, Plaintiff is and continues to be a covered individual within the meaning of 29 U.S.C. § 207(a).
57. During the applicable statute of limitations, Plaintiff performed work for which she received less than the federal minimum wage.
58. Defendants regularly failed to make up the difference between Plaintiff's total weekly compensation and the federal minimum wage.
59. Defendants regularly required Plaintiff to work over forty (40) hours a week.
60. Defendants regularly required Plaintiff to work off the clock in weeks in which she worked over forty (40) hours.
61. Defendants failed to pay Plaintiff for time spent working off the clock.
62. Defendants failed to pay Plaintiff for time spent working off the clock in weeks in she worked over forty (40) hours.
63. Defendants' conduct and/or practice, as described above, was willful, intentional, unreasonable, arbitrary and in bad faith.
64. Because Defendants willfully violated the FLSA, as aforesaid, a three (3) year statute of limitations applies to such violation, pursuant to 29 U.S.C. § 255.
65. As a result of the foregoing, Plaintiff was illegally denied wages for hours worked off the clock in weeks during which she worked over forty (40) hours, in such amounts to be determined at trial, and is entitled to recovery of total unpaid amounts, liquidated damages, pre-judgment interest, costs, reasonable attorney's fees and other compensation pursuant to 29 U.S.C § 216(b).

SECOND CLAIM FOR RELIEF

(Collective Action Claim for Violation of FLSA)

66. Plaintiff repeats and realleges all the preceding paragraphs of this Complaint, as if fully set forth herein.
67. At all relevant times, Defendants employed Plaintiff and putative collective members within the meaning of the FLSA.
68. Plaintiff and putative collective members are covered individuals within the meaning of 29 U.S.C. § 207(a).
69. During the applicable statute of limitations, Defendants had a common policy of failing to pay minimum wage to Plaintiff and members of the proposed collective.
70. Defendants regularly required Plaintiff and the putative collective members to work over forty (40) hours in a week.
71. As a result of Defendants' requirement, Plaintiff and the putative collective members regularly worked over forty (40) hours in a week.
72. Defendants regularly required Plaintiff and the putative collective members to work off the clock during weeks in which they worked over forty (40) hours.
73. As a result of Defendants' requirement, Plaintiff and the putative collective members regularly worked off the clock during weeks in which they worked over forty (40) hours.
74. Defendants failed to pay Plaintiff and putative collective members for time spent working off the clock during weeks in which they worked over forty (40) hours.
75. Defendants' conduct and/or practice, as described above, was and/or is willful, intentional, unreasonable, arbitrary and in bad faith.
76. Because Defendants willfully violated the FLSA, as aforesaid, a three (3) year statute of limitations applies to such violation, pursuant to 29 U.S.C. § 255.

77. As a result of the foregoing, Plaintiff and the other similarly situated employees were illegally deprived of wages for hours worked off the clock in weeks during which they worked over forty (40) hours, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, pre-judgment interest, costs, reasonable attorney's fees and other compensation pursuant to 29 U.S.C § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for declaratory relief and damages as follows:

- A. A declaratory judgment that Defendants' wage practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*
- B. An order for injunctive relief ordering the Defendants to end all of the illegal wage practices alleged herein pursuant to the FLSA and related regulations.
- C. An order requiring Defendants, at their own expense, to investigate and account for the number of hours actually worked by the Plaintiff and all putative collective members.
- D. Judgment for damages for all unpaid compensation under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*
- E. Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 US.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*, in an amount equal to all unpaid compensation owed to Plaintiff and members of the collective during the applicable statutory period..
- F. Judgment for any and all civil penalties to which Plaintiff and all other similarly situated employees may be entitled.
- G. An order directing Defendants to pay Plaintiff and members of the putative class prejudgment interest, reasonable attorney's fees and all costs connected with this action.

- H. Incentive awards for the lead Plaintiff.
- I. Leave to add additional plaintiffs by motion, the filing of written consents, or any other method approved by the court.
- J. Equitably tolling for the Collective effective the date of the filing.
- K. Such other and further relief as to this Court may deem necessary, just and proper.

Dated: New York, New York

December 11, 2014~~November 20, 2014~~

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