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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 **DYLAN FOURNIER, Individually and) CASE NO: _____**
20 **On Behalf of All Others Similarly)**
21 **Situated,)**
22 **Plaintiff,) PLAINTIFF’S ORIGINAL**
23 **V.) COLLECTIVE ACTION COMPLAINT**
24 **P.F. CHANG’S CHINA BISTRO, INC.)**
25 **and P.F. CHANG’S III, LLC)**
26 **Defendants.) (JURY TRIAL DEMANDED)**
27
28

SUMMARY

1
2 1. The case implicates Defendants P.F. Chang’s China Bistro, Inc.’s and P.F.
3 Chang’s III, LLC’s (“Defendants” collectively) violations of the Fair Labor Standards Act’s
4 (“FLSA”) tip credit and subsequent underpayment of their employees at the federally
5 mandated minimum wage rate for Defendants’ failure to pay Plaintiff and all similarly
6 situated workers their earned minimum wages. Plaintiff brings this case as a collective
7 action under the FLSA, 29 U.S.C. 216(b).

8 2. Defendants pay their tipped employees, including servers and bartenders, below
9 the minimum wage rate by taking advantage of the tip-credit provisions of the FLSA.
10 Under the tip-credit provisions, an employer of tipped employees may, under certain
11 circumstances, pay those employees less than the minimum wage rate by taking a “tip
12 credit” against the employer’s minimum wage obligations from the tips received from
13 customers.

14 3. However, there are strict requirements for an employer to utilize the “tip credit.”
15 *See* 29 U.S.C. 203(m). An employer must advise an employee in advance of its use of the
16 tip credit pursuant to the provisions of section 3(m) of the FLSA. *See id.* stating (the tip
17 credit provision “shall not apply with respect to any tipped employee unless such employee
18 has been informed by the employer of the provisions of this subsection.”). That is, the
19 employer must inform the employee: (1) the amount of the cash wage that is to be paid to
20 the tipped employee; (2) the amount by which the wages of the tipped employee are
21 increased on account of the tip credit; (3) that all tips received by the employee must be
22 retained by the employee except for tips contributed to a valid tip pool; and (4) that the tip
23 credit shall not apply to any employee who does not receive the notice.

24 4. Further, it is illegal for employers to require tipped employees to give up a
25 portion of their tips to their employer or to ineligible employees, such as management staff.
26 *See Myers v. Copper Cellar Corp.*, 192 F.3d 546, 551 (6th Cir. 1999)(for “the work shifts
27 in which salad mixers were included within the tip pool, the pooling scheme was
28 illegal...”); *Portales v. MBA Inv. Co., LLC*, No. 3:13CV00001, 2014 WL 5795206, at *3

1 (N.D. Ohio Oct. 16, 2014)(“When an employer includes a non-customarily tipped
2 employee or another employer in a mandatory tip pool, the pool is invalid under FLSA.”
3 (citing 29 U.S.C. § 203)); *Bernal v. Vankar Enter., Inc.*, 579 F. Supp. 2d 804, 810 (W.D.
4 Tex. 2008) (employer not permitted to take the FLSA tip credit when it required waiters to
5 pay for shortages and unpaid tabs).

6 5. Additionally, an employer must pay the minimum statutory hourly rate (\$2.13
7 per hour under the FLSA). *See* 29 U.S.C. 203(m).

8 6. Moreover, an employer cannot pay below the minimum wage to tipped
9 employees and require those tipped employees to perform non-tipped work that is
10 unrelated to the tipped occupation. *See Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075
11 (7th Cir. 2014) (explaining that when tipped employees perform “non-tipped duties” that
12 “are unrelated to their tipped duties...such as, in the case of restaurant servers, washing
13 dishes, preparing food, mopping the floor, or cleaning bathrooms, they are entitled to the
14 full minimum wage for the time they spend at that work.”); *Romero v. Top-Tier Colorado*
15 *LLC*, 849 F.3d 1281, 1285 (10th Cir. 2017); *Osman v. Grube, Inc.*, No. 16-CV-802, 2017
16 WL 2908864, at *4 (N.D. Ohio July 7, 2017)(employer may not take a tip credit for the
17 time that a tipped employee spends on work that is not related to the tipped occupation);
18 *Roussell v. Brinker Intern., Inc.*, No. 05 Civ. 3733, 2008 WL 2714079, at *12 (S.D. Tex.
19 July 9, 2008) (“An employer may take a tip credit for an employee that works ‘dual jobs,’
20 but only for the time the employee spends working in his “tipped employee” capacity.”)
21 (quoting 29 C.F.R. 531.56(e)).

22 7. Finally, an employer cannot require its tipped employees to perform non-tipped
23 work that is related to the employees’ tipped occupation but exceeds 20 percent of the
24 employees’ time worked during a workweek. *See Marsh v. J. Alexander’s, LLC*, 905 F.3d
25 610, 626-28 (9th Cir. 2018) (adopting 20% standard for dual jobs regulation and finding the
26 DOL’s opinion on dual jobs for tipped workers to be entitled to deference); *Fast v.*
27 *Applebee’s Intern., Inc.*, 638 F.3d 872, 881 (8th Cir. 2011) (granting the DOL’s 20%
28 standard deference); *Driver v. AppleIllinois, LLC*, No. 06 Civ. 6149, 2012 WL 3716482,

1 at *2 (N.D. Ill. Aug. 27, 2012) (“An employer may take a tip credit only for hours worked
 2 by [an] employee in an occupation in which [he] qualifies as a tipped employee.”); *Driver*
 3 *v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) (the court indirectly cast its
 4 imprimatur on the DOL’s aforementioned dual-jobs regulation and Field Operations
 5 Handbook, citing both the “related to” standard in 29 C.F.R. § 531.56(e) and the 20%
 6 standard in § 30d00(e)); *Flood v. Carlson Restaurants, Inc.*, No. 13 Civ. 6458 (AT), 2015
 7 WL 1396257 (S.D.N.Y. Mar. 27, 2015) (denying defendant’s motion to dismiss explaining
 8 that the 20% standard is a reasonable interpretation of the FLSA and ultimately granting
 9 216(b) notice); *Ide v. Neighborhood Restaurant Partners, LLC*, No. 13 Civ. 509 (MHC),
 10 2015 WL 11899143, at *6 (N.D. Ga., 2015) (“... a reasonable interpretation of § 531.56(e)
 11 is that [plaintiff] would be entitled to minimum wage if she spends more than twenty
 12 percent of her time performing related but non-tipped duties.”); *Crate v. Q’s Restaurant*
 13 *Group LLC*, 2014 WL 10556347, at *4 (M.D. Fla., 2014) (“[T]he Court concludes that the
 14 20% rule clarifies the ambiguity contained in 29 C.F.R. § 531.56(e) by delineating how
 15 much time a tipped employee can engage in related, non-tip-producing activity before such
 16 time must be compensated directly by the employer at the full minimum wage rate.”).

17 8. Defendants violated the FLSA in the following respects:

- 18 a. **Violation for failure to inform:** Defendants failed to correctly inform
 19 Plaintiff of the desire to rely on the tip credit to meet its minimum wage
 20 obligations. In fact, Defendants failed to inform Plaintiff of the following:
 21 (1) the amount of the cash wage that is to be paid to the tipped employee;
 22 (2) the amount by which the wages of the tipped employee are increased
 23 on account of the tip credit; (3) that all tips received by the employee must
 24 be retained by the employee except for tips contributed to a valid tip pool;
 25 and (4) that the tip credit shall not apply to any employee who does not
 26 receive the notice.
- 27 b. **Violation for making illegal deductions that reduced the direct wage of**
 28 **Plaintiff below the minimum required hourly wage for tipped**

1 **employees:** Plaintiff was required to purchase certain clothing to work for
2 Defendants, which reduced his wages below the minimum hourly wage
3 required for tipped employees.

4 **c. Violation for performing work unrelated to tipped occupation:** Plaintiff
5 was required to perform improper types, and excessive amounts, of non-
6 tipped work, including, but not limited to, cutting limes, cutting fruit,
7 making juices, making drinks, labeling bottles, setting up soups, setting up
8 sauces, cleaning bar mats, pumping wine, tossing trash, and cleaning tables,
9 windows, and bar tops.

10 **d. Violation for performing non-tipped side work in excess of 20% of the**
11 **time spent working in the week:** Plaintiff was required to perform greater
12 than 20% of his time in performing non-tip producing side work, including,
13 but not limited to, setting up tables, placing wine glasses on tables, brewing
14 coffee, cleaning and rolling silverware, cleaning bottles, and refilling
15 condiments.

16 9. As a result of these violations, Defendants have lost the ability to use the tip
17 credit and therefore must compensate Plaintiff and all similarly situated workers at the full
18 minimum wage rate, unencumbered by the tip credit, and for all hours worked. In other
19 words, Defendants must account for the difference between the wages paid to Plaintiff and
20 all similarly situated workers and the minimum wage rate.

21 **SUBJECT MATTER JURISDICTION AND VENUE**

22 10. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 as
23 this case is brought under the laws of the United States, specifically the FLSA, 29 U.S.C.
24 § 216(b), *et. seq.*

25 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
26 substantial part of the events and omissions giving rise to this claim occurred in this district,
27 including many of the wrongs herein alleged.

PARTIES AND PERSONAL JURISDICTION

1
2 12. Plaintiff Dylan Fournier is an individual residing in Texas. His written consent
3 to this action is attached hereto as Exhibit “A.”

4 13. The Class Members are all current and former tipped employees who worked
5 for Defendants for at least one week during the three year period prior to the filing of this
6 action to the present.

7 14. Defendant P.F. Chang’s China Bistro, Inc. is a foreign for-profit company
8 doing business in Arizona. Said Defendant may be served with process by serving its
9 registered agent: National Registered Agents, Inc., 3800 N. Central Avenue, Suite 460,
10 Phoenix, AZ 85012.

11 15. Defendant P.F. Chang’s III, LLC is a domestic limited liability company. Said
12 Defendant may be served with process by serving its registered agent: National Registered
13 Agents, Inc., 3800 N. Central Avenue, Suite 460, Phoenix, AZ 85012.

14 16. Defendant P.F. Chang’s China Bistro, Inc. at all times relevant to this action
15 have had sufficient minimum contacts with the State of Arizona to confer personal
16 jurisdiction. Said Defendant conduct business throughout Arizona and maintains its
17 headquarters in Arizona. Additionally, said Defendant has contracted with and employed
18 Arizona residents, has Arizona customers, markets to residents of Arizona, and owns
19 property in Arizona.

20 **COVERAGE**

21 17. At all material times, Defendants have been employers within the meaning of
22 the FLSA. 29 U.S.C. § 203(d).

23 18. At all material times, Defendant have been enterprises in commerce or in the
24 production of goods for commerce within the meaning of the FLSA. 29 U.S.C. § 203(s)(1).

25 19. At all material times, Defendants have enjoyed yearly gross revenue in excess
26 of \$500,000.

27 20. At all material times, Plaintiff was an employee engaged in the commerce or
28 the production of goods for commerce.

1 32. Plaintiff worked for Defendants at the P.F. Chang’s location in Allen, Texas.
2 He worked as a bartender and waiter and was paid less than the federal minimum wage.
3 He worked for Defendants from December 2018 to June 2019.

4 33. The tip credit has a harmful effect on workers that threatens the health of the
5 economy. Adasina Social Capital, a company representing investors with more than \$538
6 billion in assets, has issued a letter large corporations operating restaurants advising of the
7 ills of using the tip credit. (See [https://adasina.com/investor-statement-in-support-of-](https://adasina.com/investor-statement-in-support-of-ending-the-subminimum-wage/)
8 [ending-the-subminimum-wage/](https://adasina.com/investor-statement-in-support-of-ending-the-subminimum-wage/), last visited January 11, 2021). The letter states as follows:

9 Tipped workers are the largest group paid a subminimum wage and
10 represent approximately six million people in the United States. The
11 restaurant industry by far employs the largest number of tipped
workers, representing 13.6 million people.

12 **Frozen at \$2.13 per hour, a tipped subminimum wage worker can**
13 **be paid as little as \$4,430 per year for full-time work.** As a result,
14 in the 42 states that allow payment of a subminimum wage, tipped
workers are more than twice as likely to live in poverty, and the rates
15 are even higher for women and people of color. The subminimum
16 wage for tipped workers has risen little since it was enacted following
the emancipation of slavery, a time when employer trade associations
17 pushed to recoup the costs of free, exploited labor.

18 (*Id.*) (emphasis in original)

19 34. Given the harmful effects of the tip credit, there are strict requirements that
20 must be met by an employer how seeks to utilize the trip credit to meet their minimum
21 wage obligations.

22 35. In this case, Defendants did not satisfy the strict requirements to use the tip
23 credit. Defendants maintained a policy and practice whereby they failed to provide the
24 Plaintiffs and the Class Members with the statutorily required notice regarding (1) the
25 amount of the cash wage that is to be paid to the tipped employee, (2) the amount by
26 which the wages of the tipped employee are increased on account of the tip credit, (3) that
27 all tips received by the employee must be retained by the employee except for tips
28

1 contributed to a valid tip pool, and (4) that the tip credit shall not apply to any employee
2 who does not receive the notice.

3 36. Defendants also maintained a policy and practice whereby tipped employees
4 were required to perform non-tip producing side work unrelated to the employees' tipped
5 occupation. As a result, Plaintiff and the Class Members were engaged in dual occupations
6 while being compensated at the tip credit rate. While performing these non-tip generating
7 duties, they did not interact with customers and could not earn tips.

8 37. These duties include but are not limited to the following: cutting limes, cutting
9 fruit, making juices, making drinks, labeling bottles, setting up soups, setting up sauces,
10 cleaning bar mats, pumping wine, cleaning tables, cleaning windows, cleaning dishes,
11 operating the dishwasher, taking out trash, amongst other activities, that were not related to
12 his tipped duties.

13 38. Defendants also maintained a policy and practice whereby tipped employees
14 were required to spend a substantial amount of time, in excess of 20 percent, performing
15 non-tip producing side work related to the employees' tipped occupation.

16 39. Specifically, Defendants maintained a policy and practice whereby tipped
17 employees, were required to spend a substantial amount of time performing non-tip
18 producing side work, including, but not limited to setting up tables, placing wine glasses on
19 tables, brewing coffee, cleaning and rolling silverware, cleaning bottles, and refilling
20 condiments.

21 40. Further, Defendants required Plaintiffs and the Class Members to perform non-
22 tipped producing work prior to the opening of the restaurant and after the restaurant closed.
23 Indeed, Defendants required the Plaintiffs and Class Members to arrive prior to the
24 restaurants opening for business when there were no customers and no opportunity to earn
25 tips, to perform manual labor cleaning and setup duties. Likewise, Defendants required
26 the Plaintiffs and Class Members to remain at the restaurant after it had closed for business
27 and there was no opportunity to earn tips, to perform manual labor cleaning duties. At
28 times, they spent 30 minutes to two hours performing work before the restaurant was open

1 and the same amount of time after the restaurant was closed performing non-tipped
2 producing work.

3 41. However, Defendants did not pay their tipped employees the full minimum
4 wage rate for this work. The duties that Defendants required Plaintiffs and the Class
5 Members to perform were duties that are customarily assigned to “back-of-the-house”
6 employees in other establishments, who typically receive at least the full minimum wage
7 rate.

8 42. During Plaintiffs’ and the Class Members’ employment, checklists were posted
9 in Defendants’ restaurants with numerous non-tipped duties that tipped employees were
10 required to perform, in addition to serving customers.

11 43. When the tipped employees performed these non-tipped duties, they usually
12 did not interact with customers and did not have an opportunity to earn tips.

13 44. Indeed, Defendants did not have a policy prohibiting tipped employees from
14 performing certain types, or excessive amounts, of non-tipped work.

15 45. Defendants did not track or record the amount of time their tipped employees
16 spent performing non-tipped work, even though Defendants were capable of doing so.
17 Defendants’ timekeeping system was capable of tracking multiple job codes for different
18 work assignments but Defendants failed to track to the specific tasks for Plaintiff.

19 46. Defendants use a point-of-sale system to record hours worked by their tipped
20 employees. Defendants then analyze the information collected by this system, including
21 the labor costs at each of the restaurants. Defendants’ timekeeping system was capable of
22 tracking multiple job codes for different work assignments, but Defendants failed to track
23 to the specific tasks for Plaintiffs and the Class Members.

24 47. In the point-of-sale system, Defendants can create different “clock in” codes
25 that would allow tipped employees to record their time at the full minimum wage when
26 performing non-tipped work.

27 48. However, Defendants did not allow their waiters and bartenders to clock-in at
28 the full minimum wage rate when performing non-tipped work described in this Complaint.

1 49. Defendants’ managers at the restaurants were eligible to receive bonuses, in
2 part, based on meeting or exceeding certain labor cost targets, which created an incentive
3 to keep the amount paid to tipped employees low.

4 50. Moreover, Defendants violated the FLSA by not even paying the minimum
5 “tipped” hourly rate. Defendants required their tipped employees to pay for items for their
6 uniform, including shirts, pants, belts, and shoes. These clothing items were required to
7 perform work for Defendants and were primarily for the benefit and convenience of
8 Defendants. The costs for these items were not reimbursed by Defendants.

9 51. Because Defendants paid their tipped employees at the minimum of \$2.13 per
10 hour (or the state’s respective tipped wage), any week in which a tipped employee was
11 required to pay for work related expenses for Defendants’ business, their compensation fell
12 below the minimum wage rate, thereby negating Defendants’ entitlement to claim the tip
13 credit.

14 52. In other words, by requiring Plaintiff and the Class Members to pay for these
15 work related expenses, their hourly rates of pay were reduced by the amount of these
16 uniform costs. As a result, they were not even paid the minimum hourly rate necessary for
17 Defendants to claim the tip credit.

18 53. Because Defendants violated the requirements to claim the tip credit,
19 Defendants lost the right to take a credit toward their minimum wage obligation to Plaintiffs
20 and the Class Members.

21 54. As such, Plaintiffs and the Class Members were not compensated at the
22 federally mandated minimum wage.

23 55. Defendants know or should have known that their policies and practices violate
24 the law, and Defendants have not made a good faith effort to comply with the FLSA.
25 Rather, Defendants knowingly, willfully, and/or with reckless disregard of the law carried
26 and continue to carry out their illegal pattern and practice regarding their tipped employees.
27 Defendants’ method of paying Plaintiffs was not based on a good faith and reasonable
28 belief that its conduct complied with the law.

**REVISED FIELD OPERATIONS HANDBOOK
AND PROPOSED DUAL JOBS REGULATION**

1
2
3 56. On November 8, 2018, the Department of Labor issued opinion letter
4 FLSA2018-27 which provided a standard for interpreting the dual jobs regulation that was
5 different than the “80/20” rule that had existed at the time. However, nearly every court to
6 have considered this opinion letter held that the opinion letter was not entitled to any
7 deference. *See, e.g., Callaway v. DenOne, LLC*, No. Civ. A. 1:18-cv-1981, 2019 WL
8 1090346 (N.D. Ohio Mar. 8, 2019); *Cope v. Let’s Eat Out, Inc.*, 354 F. Supp. 3d 976 (W.D.
9 Miss. 2019).

10 57. Therefore, the Department of Labor announced its intention to revise the dual
11 jobs regulation found in 29 C.F.R. § 531.56(e) and issued a notice of proposed rule-making
12 on October 8, 2019. (*See* [https://www.federalregister.gov/documents/2019/10/08/2019-
13 20868/tip-regulations-under-the-fair-labor-standards-act-flsa](https://www.federalregister.gov/documents/2019/10/08/2019-20868/tip-regulations-under-the-fair-labor-standards-act-flsa)). After soliciting comments,
14 the Department of Labor published its final rule on December 30, 2020, which had an
15 effective date of March 1, 2021.
16 ([https://www.federalregister.gov/documents/2020/12/30/2020-28555/tip-regulations-
17 under-the-fair-labor-standards-act-flsa](https://www.federalregister.gov/documents/2020/12/30/2020-28555/tip-regulations-under-the-fair-labor-standards-act-flsa)). However, the Department of Labor has since
18 delayed the effective date of the Final Rule to December 31, 2021 so that it can reconsider
19 whether to implement the Final Rule at all. (<https://www.dol.gov/agencies/whd/flsa/tips>).

20 58. Nevertheless, the proposed revised regulation, the Department of Labor made
21 clear that an employer may only take a tip credit under the following circumstances:

22 consistent with the Department’s current guidance, that an employer
23 may take a tip credit for all non-tipped duties an employee performs
24 that meet two requirements. First, the **duties must be related to the**
25 **employee’s tipped occupation**; second, the **employee must perform**
26 **the related duties contemporaneously with the tip-producing**
27 **activities or within a reasonable time immediately before or after**
28 **the tipped activities.**

(*Id.*) (emphasis added).

1 59. The Department of Labor provided guidance in the Final Rule about when the
2 tip credit may be taken and provided the following hypothetical:

3 consider the following scenario: a hotel bellhop continuously performs
4 tipped duties such as carrying luggage to guests' rooms during a busy
5 8-hour shift and then works for an additional 2 hours performing related
6 non-tipped duties such as cleaning, organizing, and maintaining bag
7 carts in storage. The 2 hours of related nontipped duties would not be
8 "for a reasonable time" after the performance of tipped duties.
9 **Accordingly, the bellhop was engaged in a tipped occupation**
10 **(bellhop) for 8 hours and a non-tipped occupation (cleaner) for 2**
11 **hours.**

12 (*Id.*) (emphasis added).

13 60. The Department of Labor explained that there is no bright line rule as to when
14 an activity is considered performed within "a reasonable time" before or after the tipped
15 activities. Instead, the circumstances of the job determine the reasonableness.

16 the allowance for related duties performed "for a reasonable time
17 immediately before or after" a tipped duty creates a sufficiently
18 intelligible distinction between employees engaged in tipped
19 occupations and non-tipped occupations. It is true that this limit does
20 not create as bright a line as a firm cap on the amount of time an
21 employee may spend on particular duties (although the 80/20 approach
22 creates significantly greater uncertainty in other ways as discussed
23 below). But the concept of reasonableness is a cornerstone of modern
24 common law and is familiar to employers in a variety of contexts...
25 **Reasonableness balances a flexible accounting of circumstances**
26 **with a sufficiently definite limit on acceptable conduct in those**
27 **contexts.** This flexible approach is appropriate to apply to the question
28 of whether particular duties are a part of an employee's tipped
occupation.

(*Id.*) (emphasis added).

61. Under the proposed revised regulation, Defendants' pay policies violate the
law. First, Defendants illegally took a tip credit for the time spent performing tasks not
contained in the O*NET Task list, including but not limited to, the time spent by Plaintiffs

1 and the Class Members cutting limes, cutting fruit, making juices, making drinks, labeling
2 bottles, setting up soups, setting up sauces, cleaning bar mats, pumping wine, cleaning
3 tables, cleaning windows, cleaning dishes, operating the dishwasher, taking out trash.

4 62. Second, Defendants illegally required Plaintiffs and the Class Members to
5 perform non-tip producing work that was not contemporaneous with their duties involving
6 direct service to customers or for a reasonable time immediately before or after performing
7 such direct-service duties. That is because Defendants required Plaintiffs and the Class
8 Members to perform non-tipped work 30 minutes to two hours before the restaurants were
9 open for business or after they were closed, when the restaurants did not have customers
10 and there was no opportunity to earn tips. During this time, Defendants paid below the
11 minimum wage rate and forced the Plaintiffs and Class Members to perform non-tip
12 producing duties such as breaking down the lemonade machine, rolling silverware, sweeping
13 the dining room, wiping down tables and chairs, cleaning soy sauce, refilling condiments,
14 polishing wine glasses, doing dishes, amongst other activities.

15 63. Given that Defendants failed to comply with the requirements to take the tip
16 credit, Defendants have lost the ability to claim the tip credit and owe Plaintiffs and the
17 Class Members pay at the minimum wage rate of \$7.25 per hour for all hours they worked
18 for Defendants.

19 **COLLECTIVE ACTION ALLEGATIONS**

20 64. Plaintiff brings this action as an FLSA collective action pursuant to 29 U.S.C.
21 § 216(b) on behalf of all persons who were or are employed by Defendants as waitstaff,
22 including waiters, servers, and those in substantially similar positions, for at least one week
23 during the three year period prior to the commencement of this action to the present.

24 65. Plaintiff has actual knowledge, through conversations with his co-workers that
25 a class of similarly situated workers exists who have been subjected to the same policies
26 of Defendants with respect to the payment of the minimum wage.

27 66. The Class Members are similarly situated to Plaintiff in that they share the
28 same duties and were subject to the same violations of the FLSA.

1 67. Like Plaintiff, the Class Members were not given proper notice of the tip credit
2 provisions, were subject to the same illegal deductions from their wages and tips, and
3 performed substantial work that was unrelated to their tip producing duties.

4 68. Further, the Class Members were, like Plaintiff, not properly informed of
5 Defendants' intent to utilize the tip credit.

6 69. Moreover, the Class Members were also subject to deductions and expenses
7 that either dropped their compensation below the minimum wage or resulted in their not
8 retaining all of their tips (i.e., walked tabs, uniform expenses, and errors in customer's
9 orders).

10 70. Plaintiff and the Class Members all labored under the same corporate structure,
11 the same corporate policies, the same corporate chain of command, and pursuant to the
12 rules in the same company handbook.

13 71. The names and address of the Class Members of the collective action are
14 available from Defendants' records. To the extent required by law, notice will be provided
15 to these individuals by first class mail, email, text message, or by the use of techniques and
16 a form of notice similar to those customarily used in representative actions.

17 72. Although the exact amount of damages may vary among the Class Members
18 in proportion to the number of hours they worked, damages for each individual can be
19 easily calculated using a simple formula.

20 73. As such, the class of similarly situated Class Members is properly defined as
21 follows:

22 **All current and former tipped employees who worked for Defendants**
23 **for at least one week during the three year period prior to the filing of**
24 **this action to the present.**

CAUSE OF ACTION

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS

FAILURE TO PAY THE MINIMUM WAGE

74. Plaintiff incorporates the preceding paragraphs by reference.

75. This count arises from Defendants' violation of the FLSA in connection with their failure to pay the minimum wages. *See* 29 U.S.C. § 206.

76. Plaintiff and the Class Members were paid hourly rates less than the minimum wage while working for Defendants.

77. Plaintiff and the Class Members were not exempt from the minimum wage requirements of the FLSA.

78. Defendants' failure to comply with the minimum wage requirements of the FLSA, and, in particular, the tip credit requirements, resulted in Plaintiff and the Class Members being paid less than the Federal minimum wage rate. Defendants' violation of the FLSA were willful.

79. Defendants' practice of failing to inform its employees of its intent to rely on the tip credit to meet its minimum wage obligations violates the FLSA. Likewise, Defendants' automatic meal deduction violates the FLSA because it results in Plaintiff and the Class Members receiving less than the minimum wage.

80. Defendants' failure to pay the minimum wage to Plaintiff and the Class Members, in violation of the FLSA was willful and not based on a good faith belief that their conduct did not violate the FLSA. To foregoing conduct, as alleged, constitutes a willful violation within the meaning of the FLSA. 29 U.S.C. § 255(a).

WAGE DAMAGES SOUGHT

81. Plaintiff and the Class Members are entitled to receive the difference between the Federal minimum wage of \$7.25 an hour and the tip credit adjusted minimum wage for each hour they worked.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Dylan Fournier, Individually and on
Behalf of all Others Similarly Situated**

Defendant(s): **P.F. Chang's China Bistro, Inc. ; P.F.
Chang's III, LLC**

County of Residence: Outside the State of Arizona

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Don J Foty (Dylan Fournier, Individually and on
Behalf of all Others Similarly Situated)**

Hodges & Foty, LLP

4409 Montrose Blvd., Suite 200

Houston, Texas 77006

713-523-0001

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

710 Fair Labor Standards Act

VI. Cause of Action:

**29 U.S.C § 206 (Fair Labor Standards Act of 1938); Failure to pay
minimum wage.**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Don J. Foty

Date: 05/24/2021

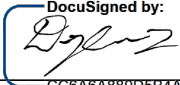
If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

**CONSENT TO PURSUE WAGE CLAIM AND BE
REPRESENTED BY HODGES & FOTY, LLP**

- I, Dylan Fournier (print name), consent and agree to pursue my claims for unpaid wages through a lawsuit brought under the Fair Labor Standards Act and any state wage and hour law.
- I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if I am selected by counsel.
- I authorize the named Plaintiff and Hodges & Foty, LLP to file and prosecute my claim for unpaid wages on my behalf, and designate the named Plaintiff and Hodges & Foty, LLP to make decisions on my behalf concerning the litigation, including negotiating a resolution of my claims, entering into an agreement with the lawyers in this case, and I understand I will be bound by such decisions.
- I agree to be represented by Hodges & Foty LLP.
- If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

Date 3/23/2021

Signature  _____
CC6A6A880D5B4A0...

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims P.F. Chang's Failed to Pay Tipped Workers Proper Wages](#)
