

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

LESTER A. WALSH, on behalf of himself and
all others similarly situated,)

) Civil Action No.:

Plaintiff,)

) **CLASS AND COLLECTIVE
ACTION COMPLAINT**

v.)

LOCAL AT VILLANOVA, LLC d/b/a)
AVENUE KITCHEN; LOCAL AT GLEN)
MILLS, LLC d/b/a AVENUE KITCHEN;)
DANA SMITH FARRELL and DOE)
DEFENDANTS 1-10,)

) **JURY TRIAL DEMANDED**

Defendants.)

Plaintiff Lester “Lance” Walsh (“Walsh” or “Plaintiff”), on behalf of himself and all
others similarly situated, alleges as follows:

INTRODUCTION

1. This is a class and collective action brought on behalf of “Tipped Employees” who work or have worked at restaurants operating under the trade name Avenue Kitchen (together, “Avenue Kitchen,” or the “Company”) and, and have been subject to the unlawful practices detailed herein.

2. Upon information and belief, the Avenue Kitchen restaurants that are the subject of this action are owned and operated by Defendant Dana Smith Farrell through a series of corporate shells in which Defendant Farrell is the principal and maintains full control of each individual company, effectively causing these entities to operate as Defendant Farrell’s alter-ego.

3. As such, upon information and belief, the employment practices complained of herein occurred at each of the Avenue Kitchen locations, as Defendants utilized common labor policies and practices at each of the locations. Accordingly, Defendants are responsible for the employment practices complained of herein.

4. Avenue Kitchen employs individuals as “bartenders,” “servers” (“waiters” and “waitresses”) and “bussers,” (collectively, “Tipped Employees”), who are and/or were subjected to Defendants’ unlawful pay practices.

5. As explained in detail below, Avenue Kitchen systematically and willfully deprived Plaintiff and Tipped Employees of minimum wages in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101, *et seq.*, by, among other things, failing to satisfy the notice requirements of the tip credit provisions of the FLSA and PMWA.

6. Due to Defendants’ unlawful failure to properly inform Tipped Employees of its intention to utilize a “tip credit”, Defendants have improperly applied a “tip credit” against the wages paid to Plaintiff and current and former Tipped Employees, thus paying them less than the mandated minimum wage.

7. Moreover, as detailed below, Avenue Kitchen violated the Pennsylvania Wage Payment and Collection Law, 43 Pa. S. § 260.1 *et seq.* (“WPCL”), and common law, by subjecting Tipped Employees to unlawful deductions from their wages to cover some of Defendants’ business expenses, such as customer walkouts and cash shortages.

8. As a result of the aforementioned pay practices, Plaintiff and the members of the Classes (defined below) were illegally under-compensated for their work.

SUMMARY OF CLAIMS

9. Plaintiff brings this action as a collective action to recover unpaid wages, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA” or the “Act”).

10. In particular, Plaintiff brings this suit on behalf of the following similarly situated persons:

All current and former Tipped Employees who have worked for Defendants in the United States within the statutory period covered by this Complaint, and elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b) (the “Collective Class”).

11. In addition, Plaintiff also brings this action as a state-wide class action to recover unpaid wages, and failing to pay the applicable minimum wage, pursuant to the Pennsylvania Minimum Wage Act of 1968 (“PMWA”).

12. Specifically, Plaintiff brings this suit on behalf of a class of similarly situated persons composed of:

All current and former Tipped Employees who have worked for Avenue Kitchen in the Commonwealth of Pennsylvania during the statutory period covered by this Complaint (the “PA Class”).

13. The Collective Class and the PA Class are hereafter collectively referred to as the “Classes.”

14. Plaintiff alleges on behalf of the Collective Class that they are: (i) entitled to unpaid minimum wages from Defendants for hours worked for which Defendants failed to comply with the notice provisions of the tip credit and pay the mandatory minimum wage, as required by law and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*

15. Plaintiff alleges on behalf of the PA Class that Avenue Kitchen violated the PMWA by failing to comply with the tip credit provisions, as required by law, consequently failing to pay them the appropriate minimum wages for all hours worked.

PARTIES

16. Plaintiff Lance Walsh (“Plaintiff”) is a resident of the Commonwealth of Pennsylvania who was employed by Avenue Kitchen as a “bartender” and “server” in their Villanova location (located at 789 Lancaster Ave, Villanova, PA.) in the Commonwealth of Pennsylvania. While employed as a Tipped Employee, Defendant failed to compensate Plaintiff properly for all hours worked.

17. Pursuant to Section 216(b) of the FLSA, Plaintiff has consented in writing to be a plaintiff in this action. His executed Consent To Sue form is attached hereto as Exhibit A.

18. Defendant Dana Smith Farrell owns and operates restaurants employing Tipped Employees under the trade name Avenue Kitchen at the following locations: (i) 789 Lancaster Ave, Villanova, Pa and (ii) Glen Eagle Square 509 Wilmington Pike, Glen Mills, PA. Defendant Dana Smith Farrell is a resident of the Commonwealth of Pennsylvania. In her capacity as owner and operator of Avenue Kitchen, Defendant Farrell exercises sufficient control over the labor policies and practices of the Avenue Kitchen entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

19. Defendant Local at Villanova, LLC operates Avenue Kitchen in Villanova, PA, and employees Tipped Employees at this location. At all relevant times during the statutory period covered by this Complaint, Defendant has transacted business within the Commonwealth of Pennsylvania, including within this district.

20. Defendant Local at Glen Mills, LLC operates Avenue Kitchen in Glen Mills, PA, and employees Tipped Employees at this location. At all relevant times during the statutory period covered by this Complaint, Defendant has transacted business within the Commonwealth of Pennsylvania, including within this district

21. Upon information and belief, Defendants are a single and joint employer with a high degree of interrelated and unified operations. Each of these Defendants shares the common labor policies and practices complained of herein.

22. Upon information and belief the sole reason for separate corporate entities was to limit the liability of Defendants.

23. Plaintiff is unaware of the names and the capacities of those defendants sued as DOES 1 through 10 but will seek leave to amend this Complaint once their identities become known to Plaintiff. Plaintiff believes there are additional Avenue Kitchen entities employing Tipped Employees that have not been identified yet. Upon information and belief, Plaintiff alleges that at all relevant times each defendant was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the Defendants. In engaging in the alleged conduct herein, defendants acted in the course, scope of, and in furtherance of the aforementioned relationship.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201 *et seq.*

25. Further, this Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and Defendants are subject to personal jurisdiction in this district.

27. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

FACTUAL ALLEGATIONS

28. The crux of the FLSA and PA State Laws is, *inter alia*, that all employees are entitled to be paid mandated minimum wages for all hours worked.

29. Contrary to these basic protections, Plaintiff and the members of the Classes were deprived of the mandated minimum wage for all hours they worked.

30. Plaintiff and the members of the Classes are, or were, Tipped Employees employed by Defendants.

31. Upon information and belief, all of the Defendants' locations are/were operated under uniform policies/procedures applicable to all members of the Classes, including subjecting Tipped Employees to the unlawful pay practices complained of herein.

Plaintiff's Experience Working For Defendants

32. As set forth above, Plaintiff was employed by Avenue Kitchen as a "bartender" and "server" in its Villanova location in the Commonwealth of Pennsylvania. Plaintiff worked at this location from in or about May 2014 through the beginning of November 2016.

33. Plaintiff was paid an hourly cash wage rate from Avenue Kitchen and earned tips from customers who chose to leave him a gratuity.

34. Plaintiff's hourly wage rate from Avenue Kitchen was \$2.83.¹ Plaintiff does not ever recall his hourly wage being raised above \$2.83 for any day he worked for Avenue Kitchen, irrespective of how few tips he earned or the type of work he performed.

35. During his employment with Avenue Kitchen, Plaintiff typically worked at least five (5) days per week. Plaintiff typically worked 3-4 lunches during the week, arriving around 9:30 and working till around 4:00. Plaintiff typically worked Friday and Saturday nights as a

¹ When Plaintiff first worked as a bartender he believes he earned \$5.00 / hr. for the morning shift (cut-off time 4:00 p.m.), but for at least the past year he earned \$2.83 / hr., the rate he was paid as a server.

server on one night, and a bartender on the other. For the night shift Plaintiff would begin around 4:00 and work until sometime between 10:00 and 11:00. Plaintiff also worked double shifts on some Sundays.

36. Plaintiff recorded his work time by logging into Avenue Kitchen's timekeeping system through the point-of-sale ("POS") system.

37. The precise amount of time Plaintiff recorded as working each week, upon information and belief, is maintained in Defendants' employment and/or payroll records.

38. Plaintiff recalls other Tipped Employees working shifts at both Avenue Kitchen locations, and does not recall anyone noting any material differences between the way the Villanova location and the Glen Mills Avenue Kitchen location operated.

The Tip Credit Provision & Requirements

FLSA Requirements

39. Rather than pay its Tipped Employees the applicable minimum wage (either the applicable state minimum wage or the federal minimum wage, whichever is higher), Defendants chose to take a tip credit and pay these employees less than the applicable minimum wage.

40. Under applicable law, in certain circumstances, it is permissible for an employer to take a tip credit and pay its employees less than the mandated minimum wage, provided that the employee's tips received from customers plus the tip credit wage paid by the employer equals at least the applicable minimum wage.²

² An employer is not relieved of their duty to pay an employee wages at least equal to the minimum wage by virtue of taking a tip credit or by virtue of the employee receiving tips from customers in an amount in excess of the applicable minimum wage. That is, an employer in the restaurant industry must pay the employee wages at least equal to the minimum wage or equal to the minimum wage less the tip credit, provided the tips claimed exceed the tip credit. Under no circumstances is the employer relieved of paying at least the minimum wage for all hours worked, regardless of how much an employee earns in tips.

41. According to the Department of Labor's ("DOL") Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA) ("Fact Sheet #15"):

the maximum tip credit that an employer can currently claim under the FLSA is \$5.12 per hour (the minimum wage of \$7.25 minus the minimum required cash wage of \$2.13).

42. As is made plain in Fact Sheet #15, in order to claim a tip credit, the employer must comply with five strict notification requirements.

43. First, the employer must notify the employee of the amount of the cash wage the employer is paying the Tipped Employee and that amount must equal at least \$2.13 per hour.

44. Second, the employer must notify the Tipped Employee of the amount the employer is claiming as a tip credit. In accordance with the FLSA, the tip credit claimed cannot exceed \$5.12 per hour.

45. Third, the employer must inform the Tipped Employee that the tip credit claimed cannot exceed the actual amount of tips received by the employee. In effect, the employer must inform the employee that the employee must still earn the mandated minimum of \$7.25 per hour between the amount of the tip credit taken by the employer and the amount of tips earned by the employee.

46. Fourth, the employer must notify the Tipped Employee that all tips received are to be retained by the employee except for a valid tip pooling arrangement.

47. Finally, the Tipped Employee must be informed by the employer that the tip credit will not apply unless the employee has been informed of these provisions.

48. An employer bears the burden of showing that it has satisfied all of the notification requirements before any tips can be credited against the employee's hourly wage.³ If

³ Courts have strictly construed this notification requirement. Accordingly, some courts have held that a generic governmental poster (which is required by the DOL) does not satisfy the tip credit notification requirement.

an employer cannot demonstrate its compliance with this notification requirement, no credit can be taken and the employer is liable for the full minimum wage.

49. Further, where a tipped employee earns less in tips than the tip credit claimed, the employer is required to make up the difference. Stated another way, if a tipped employee earns less than \$5.12 per hour in tips (the maximum tip credit permissible where the employer pays the employee \$2.13 per hour), the employer must raise that tipped employee's hourly cash component the necessary amount above \$2.13 per hour so as to ensure that the employee earns at least \$7.25 per hour – the mandated minimum wage.

50. As set forth herein, Defendants failed to comply with certain of the FLSA's provisions regarding the claiming of a tip credit.

Pennsylvania's Requirements

51. Pennsylvania state law has a substantially similar requirement to the FLSA's tip notification requirements. *See* 43 P.S. § 333.103(d).

52. Importantly, however, Pennsylvania mandates a higher minimum cash wage and requires employers to pay at least \$2.83 per hour. Thus, under Pennsylvania law, the maximum tip credit is \$4.42 per hour.⁴

53. As such, an employer cannot be said to have complied with Pennsylvania's tip credit notification requirements where the employer simply relies on United States Department of Labor mandated posters, as said posters do not explicitly identify the tip credit amount in Pennsylvania (as it differs from the FLSA tip credit amount).

54. In addition, 34 Pa. Code § 231.34 also requires employers to maintain payroll records that contain the following information:

⁴ Like the FLSA, Pennsylvania law states that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the employee. *See* 43 P.S. § 333.103(d).

(1) A symbol or letter placed on the pay records identifying each employee whose wage is determined in part by tips;

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received. This may consist of reports made by the employees to the employer on IRS Form 4070;

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips, as determined by the employer, not in excess of 45% of the applicable statutory minimum wage until January 1, 1980 and thereafter 40% of the applicable statutory minimum wage. The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;

(4) Hours worked each workday in any occupation in which the tipped employee does not receive tips and total daily or weekly straight-time payment made by the employer for such hours; and

(5) Hours worked each workday in occupations in which the employee received tips and total daily or weekly straight-time earnings for the hours.

Defendants' Failure to Notify Tipped Employees

55. As explained above, the DOL has very specific requirements regarding what an employer must notify his/her employee of if that employer intends to claim a tip credit.

56. Rather than comply with the notification requirements set forth in Fact Sheet #15, Defendants chose to simply pay their Tipped Employees \$2.83 per hour. In short, Defendants failed to inform their Tipped Employees of (i) their intention to take the tip credit, and (ii) the amount Defendants intended to claim as a tip credit.

57. The Third Circuit and district courts across the country have held that where an employer fails to satisfy any one of the notification requirements, including paying employees for all hours worked, that employer forfeits the tip credit and must pay the employee the full minimum wage.

58. Indeed, Plaintiff does not ever recall being notified by Avenue Kitchen that it intended to take a “tip credit,” nor how much that amount would be. Evincing the magnitude of Defendants’ abject failure to notify Tipped Employees of their intention to take a tip credit, until recently, Plaintiff never even heard the term “tip credit.”

59. Avenue Kitchen also failed to comply with 43 P.S. 231.34 insofar as it failed to notify employees in writing whenever the tip credit claimed by Defendants changed. Rather, Defendants took the maximum tip credit permissible irrespective of whether its Tipped Employee actually earned sufficient tips to substantiate the tip credit claimed.

60. Plaintiff worked several shifts, particularly during the summer, where he earned less than \$30 for a 6 hour shift. Defendants failed to adjust the amount of the tip credit claimed to ensure that Plaintiff made the full minimum wage.

61. Avenue Kitchen also failed to comply with 43 P.S. 231.34 insofar as it failed to notify employees in writing of the hours worked where the Tipped Employee did not receive tips. Rather, Defendants took the maximum tip credit permissible for every hour worked by its Tipped Employees, including Plaintiff, irrespective of whether its Tipped Employees (i) actually earned sufficient tips to substantiate the tip credit claimed or (ii) whether the employees were engaged in tip generating work.

Additional Evidence of Defendants' Failure To Comply With The Tip Credit Provisions

62. Defendants required Tipped Employees, including Plaintiff, to cover customer walk-outs and cash shortages. To pay for these items, Tipped Employees are required to forfeit a portion of their tips to cover these costs. The Department of Labor considers such conduct to be a clear violation of the FLSA. *See* Fact Sheet 16 (“Typical Problems”).

63. Plaintiff alleges that each of the above actions was done willfully by Defendants. Indeed, it was commonly known that Tipped Employees were required to pay for customer walk-outs and cash shortages as such incidents were considered the Tipped Employee’s fault by Defendants.

64. Further, Defendants required Tipped Employees to wear aprons, for which Tipped Employees bore the cost. The cost of the apron was taken out of the Tipped Employees paycheck. The result of this practice was that the employees pay fell below minimum wage.

CLASS & COLLECTIVE ACTION ALLEGATIONS

65. Plaintiff brings this action on behalf of the Collective Class as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 207 and 216(b). Plaintiff also brings this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the PA Class for claims under the PA State Laws.

66. The claims under the FLSA may be pursued by those who opt-in to this case pursuant to 29 U.S.C. §216(b). The claims brought pursuant to the PA State Laws may be pursued by all similarly-situated persons who do not opt-out of the PA Class pursuant to Fed.R.Civ.P. 23.

67. Upon information and belief, the members of each of the Classes are so numerous that joinder of all members is impracticable. While the exact number of the members of these

Classes is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are over 30 individuals in each of the Classes.

68. Defendants have acted or have refused to act on grounds generally applicable to the Classes, thereby making final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole, appropriate.

69. The claims of Plaintiff are typical of the claims of the Classes he seeks to represent. Plaintiff and the members of the Classes work or have worked for Defendants and were subject to the same compensation policies and practices.

70. Common questions of law and fact exist as to the Classes that predominate over any questions only affecting them individually and include, but are not limited to, the following:

(a) whether Defendants have failed to pay the full minimum wage for each hour worked;

(b) whether Defendants satisfied each of the requirements in order to claim a tip credit against each hour worked;

(c) whether Defendants were precluded from claiming the tip credit during the period encompassed by this Complaint; and

(d) whether Plaintiff and members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages.

71. Plaintiff will fairly and adequately protect the interests of the Classes as his interests are aligned with those of the members of the Classes. Plaintiff has no interests adverse to the Classes he seeks to represent, and has retained competent and experienced counsel.

72. The class action/collective action mechanism is superior to other available methods for a fair and efficient adjudication of the controversy. The damages suffered by

individual members of the Classes may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Classes to individually seek redress for the wrongs done to them.

73. Plaintiff and the Classes he seeks to represent have suffered and will continue to suffer irreparable damage from the illegal policy, practice and custom regarding Defendants' pay practices.

74. Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) and willful violation of the PMWA.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(On Behalf of the Collective Class)

75. Plaintiff, on behalf of himself and the Collective Class, re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

76. At all relevant times, Avenue Kitchen has had gross revenues in excess of \$500,000.

77. At all relevant times, Avenue Kitchen has been and continues to be, an employer engaged in interstate commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

78. At all relevant times, Avenue Kitchen has employed, and/or continues to employ, Plaintiff and each of the Collective Class Members within the meaning of the FLSA.

79. Pursuant to Avenue Kitchen compensation policies, rather than pay Tipped Employees the federally-mandated minimum wage, Defendants took a tip credit and paid Tipped Employees only the tip-credit wage.

80. Avenue Kitchen has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

81. Due to Avenue Kitchen's FLSA violations, Plaintiff, on behalf of himself and the members of the Collective Class, are entitled to recover from the Defendants, compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
PENNSYLVANIA MINIMUM WAGE ACT- MINIMUM WAGE VIOLATIONS
(On Behalf of the PA Class)

82. Plaintiff, on behalf of himself and the members of the PA Class, re-alleges and incorporates by reference the paragraphs above as if they were set forth again herein.

83. At all relevant times, Avenue Kitchen has employed, and/or continues to employ, Plaintiff and each of the PA Class Members within the meaning of the PMWA.

84. Pursuant to Avenue Kitchen's compensation policies, rather than pay Tipped Employees the Pennsylvania mandated minimum wage, Avenue Kitchen improperly took a tip credit and paid Tipped Employees at a rate well below the Pennsylvania minimum wage.

85. Pursuant to Avenue Kitchen's compensation policies, rather than pay Tipped Employees the required minimum wage in Pennsylvania, Avenue Kitchen took a tip credit and paid Tipped Employees only the tip-credit wage.

86. At relevant times in the period encompassed by this Complaint, Avenue Kitchen had a willful policy and practice of failing to satisfy the notification requirements in order for Avenue Kitchen to claim the tip credit.

87. As a result of Avenue Kitchen's willful practices, Avenue Kitchen was not entitled to claim the tip credit and pay Plaintiff and the members of the PA Class less than the Pennsylvania minimum wage for all hours worked.

88. Defendants have violated and, continue to violate, the PMWA, 43 Pa. C.S.C. § 333.101 *et seq.*

89. Due to the Defendants' violations, Plaintiff, on behalf of himself and the members of the PA Class, are entitled to recover from Defendants the amount of unpaid minimum wages, attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
PENNSYLVANIA WAGE PAYMENT COLLECTION LAW
(On Behalf of the PA Class)

90. Plaintiff, on behalf of himself and the members of the PA Class, re-alleges and incorporate by reference the paragraphs above as if they were set forth again herein.

91. At all relevant times, Avenue Kitchen has employed, and/or continues to employ, Plaintiff and each of the PA Class Members within the meaning of the WPCL.

92. Pursuant to the WPCL, 43 Pa. S. § 260.1 *et seq.* Plaintiff and the members of the PA Class were entitled to receive all compensation due and owing to them on their regular payday.

93. As a result of Avenue Kitchen's unlawful policies, Plaintiff and the members of the PA Class have been deprived of compensation due and owing.

94. Further, due to Defendants' policy of deducting amounts from the tips of Plaintiff and the PA Class to offset business losses/expenses, Plaintiff and the PA Class were subject to improper deductions from their compensation.

95. Plaintiff, on behalf of himself and the members of the PA Class, are entitled to recover from Avenue Kitchen the amount of unpaid compensation, and an additional amount of 25% of the unpaid compensation as liquidated damages.

FOURTH CLAIM FOR RELIEF
PENNSYLVANIA COMMON LAW - UNJUST ENRICHMENT
(On Behalf of the PA Class)

96. Plaintiff, on behalf of himself and the PA Class Members, re-alleges and incorporate by reference the paragraphs above as if they were set forth again herein.

97. Plaintiff and the members of the PA Class were employed by Avenue Kitchen within the meaning of the PA State Laws.

98. At all relevant times, Defendants had a willful policy and practice of denying Tipped Employees their full share of gratuities.

99. During the class period covered by this Complaint, Plaintiff and Tipped Employees were subjected to unlawful deductions from their gratuities.

100. Avenue Kitchen retained the benefits of its unlawful deductions from the gratuities from Plaintiff and Tipped Employees under circumstances which rendered it inequitable and unjust for Defendant to retain such benefits.

101. Avenue Kitchen was unjustly enriched by subjecting Plaintiff and Tipped Employees to such unlawful deductions.

102. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and the members of the PA Class have suffered injury and are entitled to reimbursement, restitution and disgorgement from Avenue Kitchen of the benefits conferred by Plaintiff and the PA Class. Plaintiff, on behalf of himself and the members of the PA Class, are entitled to reimbursement, restitution and disgorgement of monies received by Avenue Kitchen

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and/or on behalf of himself and all other similarly situated members of the Collective Class and members of the PA Class respectfully requests the Court grant the following relief:

A. Designation of this action as a collective action on behalf of the Collective Class, and prompt issuance of notice pursuant to 29 U.S.C. §216(b), apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b);

B. Designation of the action as a class action under F.R.C.P. 23 on behalf of the PA Class;

C. Designation of Plaintiff as representative of the Collective Class and the PA Class;

D. Designation of Plaintiff's counsel as class counsel for the Collective Class and the PA Class;

E. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and PMWA;

F. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

G. An award of unpaid minimum wages to Plaintiff and the members of the Classes;

H. An award of liquidated damages to Plaintiff and members of the Classes;

I. An award of costs and expenses of this action together with reasonable attorneys' and expert fees to Plaintiff and members of the Classes; and

J. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all questions of fact raised by the complaint.

Dated: December 22, 2016

Respectfully submitted,

CONNOLLY WELLS & GRAY, LLP

By: /s/ Robert J. Gray
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Attorneys for the Plaintiff


EXHIBIT A

CONSENT TO BECOME A PARTY PLAINTIFF

1. I, Lance Walsh, consent to sue as a Plaintiff in this action, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*
2. During the applicable period, I was an employee of Defendants and was not paid properly for all hours worked.
3. By my signature below, I hereby authorize counsel to prosecute the claims in my name and on my behalf, in this action, for Defendants' failure to pay all wages due and owing in accordance with federal law.

12/8/2016
Date

Lance Walsh
Print Name


Signature

16-cv-6563

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

This JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of maintaining the docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. PLAINTIFFS
 Lester W. Walsh

(b) County of Residence of First Listed Plaintiff Delaware
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Connolly Wells & Gray, L.L.P.
 2200 Renaissance Blvd, Suite 275
 King of Prussia, PA 19406

DEFENDANTS
 LOCAL AT VILLANOVA, LLC d/b/a AVENUE KITCHEN, et al

County of Residence of First Listed Defendant Delaware
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. 201 et. seq.

Brief description of cause:
 Claim for unpaid wages brought pursuant to the Fair Labor Standards Act, 29 U.S.C. 201, et. seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 12/22/2016 SIGNATURE OF ATTORNEY OF RECORD *Lester W. Walsh*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEC 22 2016



UNITED STATES DISTRICT COURT

16 6563

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: C/O Connolly Wells & Gray, LLP 2200 Renaissance Blvd., Suite 275, King of Prussia, PA 19406

Address of Defendant: 789 Lancaster Ave. Villanova, Pa

Place of Accident, Incident or Transaction: Villanova, PA / Glen Mills, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes D No X

Does this case involve multidistrict litigation possibilities? RELATED CASE, IF ANY:

Yes No X

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes D No X
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes D No X
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes D No X
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No X

CIVIL: (Place 'v' in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. X All other Federal Question Cases

(Please specify) Fair Labor Standards Act 29 U.S.C. §§ 201 et. seq.

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Robert J. Gray, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; X Relief other than monetary damages is sought.

DATE: December 22, 2016

Signature of Robert J. Gray, Attorney-at-Law

86251

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: December 22, 2016

Signature of Robert J. Gray, Attorney-at-Law

86251

Attorney I.D.#

DEC 22 2016



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Lester A. Walsh

CIVIL ACTION

v.

16 6563

LOCAL AT VILLANOVA, LLC
d/b/a AVENUE KITCHEN, et al

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

December 22, 2016

Date
(610) 822-6700

Telephone

Raf Gray
Attorney-at-law
(610) 822-3800

FAX Number

Plaintiff

Attorney for
rgray@cwglaw.com

E-Mail Address

(Civ. 660) 10/02

DEC 22 2016

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Avenue Kitchen Hit with Wage and Hour Class Action](#)
