

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ALISHA ROBBINS and AMBER
GRANDSTAFF, on behalf of themselves and
all others similarly situated, known and
unknown,

Plaintiffs,

v.

BLAZIN WINGS, INC. d/b/a BUFFALO
WILD WINGS

Defendant.

SECOND AMENDED
CLASS AND COLLECTIVE
ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

Civil Action No.
15-06340

Judge Siragusa

Plaintiffs Alisha Robbins and Amber Grandstaff (“Plaintiffs”), on behalf of themselves and all other persons similarly situated, known and unknown, through their attorneys, and for their Second Amended Complaint against Defendant Blazin Wings, Inc. d/b/a Buffalo Wild Wings (“Defendant”), state as follows:

NATURE OF PLAINTIFFS’ CLAIMS

1. This lawsuit arises under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, for Defendant’s failure to pay Plaintiffs and other similarly-situated tipped employees all earned minimum wages.

2. For Plaintiff Robbins, this lawsuit also arises under the New York Labor Law, Minimum Wage Act (“NYLL”), Article 19, § 650, *et seq.*, for Defendant’s failure to pay Plaintiff Robbins and other similarly-situated New York tipped employees all earned minimum wages.

3. Along with its parent company, Buffalo Wild Wings, Inc., and other affiliated companies, Defendant owns and operates hundreds of Buffalo Wild Wings restaurants throughout the United States.¹

4. Defendant has a policy and practice of paying certain employees, including servers and bartenders, sub-minimum hourly wages under the tip-credit provisions of federal and, where it exists, state law (“Tip-Credit Employees”).

5. Under the tip-credit provisions of the FLSA, an employer of tipped employees may, in limited circumstances, pay those employees less than the minimum hourly wage and take a “tip credit” against its minimum wage obligations. But an employer is not permitted to take a tip credit against its minimum wage obligations in either of the following circumstances: (1) when it requires its tipped employees to perform non-tipped work that is *unrelated* to the employee’s tipped occupation; or (2) when it requires its tipped employees to perform non-tipped work that, although *related* to the employee’s tipped occupation, exceeds 20 percent of the employees’ time worked during a shift. *See, e.g., Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) (Posner, J.) (explaining that when tipped employees perform “non-tipped duties” that “are *unrelated* to their tipped duties . . . such as, in the case of restaurant servers, washing dishes, preparing food, mopping the floor, or cleaning bathrooms, they are entitled to the full minimum wage for the time they spend at that work”) (emphasis added); *Fast v. Applebee's Int'l, Inc.*, 638 F.3d 872, 880 (8th Cir. 2011) (“employees who spend ‘substantial time’ (defined as more than 20 percent) performing *related* but nontipped duties should be paid at the full minimum wage for that time”).

¹ Defendant also franchises Buffalo Wild Wings restaurants. The franchised restaurants are not included in this lawsuit.

6. Defendant has a policy and practice of paying its Tip-Credit Employees sub-minimum, tip-credit wages even when it requires those employees to perform non-tipped work that is *unrelated* to their tipped occupation, such as sweeping, mopping, and vacuuming restaurant floors, preparing food, including slicing fruit, rolling silverware, and washing the restaurant's dishes.

7. Even if the non-tipped work Defendant requires its Tip-Credit Employees to perform were *related* to the employees' tipped occupation, Defendant has a policy and practice of requiring its Tip-Credit Employees to perform this non-tipped work for more than 20 percent of their time worked each shift.

8. Defendant's policy and practice of requiring its Tip-Credit Employees to perform non-tipped work while paying them sub-minimum, tip-credit wages violates the FLSA.

9. Under the tip-credit provisions of the NYLL and accompanying regulations, an employer may, in limited circumstances pay a "food service worker" – which includes wait staff, bartenders, captains, and bussers – a sub-minimum, tip-credit hourly wage, provided the employee works in a non-tipped occupation for less than two (2) hours or twenty (20) percent of a shift, whichever is shorter. *See* NYCRR §§ 146-2.9, 146-3.4. If a "food service worker" works for more than two (2) hours or twenty (20) percent of a shift in a non-tipped occupation, the employer forfeits the right to take a tip-credit for that shift. *Id.*

10. Defendant has a policy and practice of requiring its New York Tip-Credit Employees to perform work in a non-tipped occupation – such as sweeping, mopping, and vacuuming restaurant floors, preparing food, and washing the restaurant's dishes – for more than two (2) hours or twenty (20) percent of their shifts, while paying these employees sub-minimum, tip-credit hourly wages.

11. Defendant's policy and practice of requiring its New York Tip-Credit Employees to perform work in a non-tipped occupation for in excess of the legal limit, while paying them sub-minimum, tip-credit hourly wages, violates the NYLL.

JURISDICTION AND VENUE

12. This Court has federal question jurisdiction over Plaintiffs' FLSA claims, which arise under 29 U.S.C. § 216(b), pursuant to 28 U.S.C. § 1331.

13. This Court has supplemental jurisdiction over Plaintiff Robbins' NYLL claims pursuant to 28 U.S.C. § 1367.

14. Venue is proper in this judicial district because the facts and events giving rise to Plaintiff Robbins' claims occurred in this judicial district. 28 U.S.C. § 1391.

COLLECTIVE ACTION ALLEGATIONS

15. Plaintiffs bring this action on behalf of themselves and all other similarly-situated employees. *See* 29 U.S.C. § 216(b). The other similarly-situated employees are defined as follows:

All current and former employees of Defendant who worked at Defendant's Buffalo Wild Wings restaurants in the last three (3) years and were paid sub-minimum, tip-credit hourly wages.²

16. Since Plaintiffs filed this lawsuit, twenty-one (21) current and former employees of Defendant have filed notices of consent to opt in to this collective action.

17. Defendant is aware or should have been aware that federal law requires it to pay Tip-Credit Employees full minimum wage when it requires them to perform non-tipped work that (a) is

² Plaintiffs reserve the right to amend this definition based on discovery or legal developments.

unrelated to their tipped occupation or (b) exceeds 20 percent of their time worked during individual work weeks.

18. Plaintiffs are similarly situated to Defendant's other Tip-Credit Employees because those employees were also paid sub-minimum hourly wages while they were subject to Defendant's illegal policy of requiring them to perform non-tipped work – such as washing dishes, preparing food, and cleaning the restaurants – that (a) is *unrelated* to their tipped occupation or (b) exceeds 20 percent of their time worked each shift as a Tip-Credit Employee.

19. There are numerous similarly-situated current and former Tip-Credit Employees who worked at Defendant's Buffalo Wild Wings restaurants who would benefit from the Court authorizing issuance of notice of this lawsuit so that these employees may opt in to this lawsuit.

20. Similarly-situated Tip-Credit Employees are known to Defendant and are identifiable in Defendant's payroll records.

CLASS ACTION ALLEGATIONS

21. Plaintiff Robbins seeks to represent a class of New York Tip-Credit Employees pursuing minimum wages due under the NYLL. The proposed Rule 23 class Plaintiff Robbins seeks to represent is defined as follows:

All current and former employees of Defendant who worked at Defendant's New York Buffalo Wild Wings restaurants in the last six (6) years and were paid sub-minimum, tip-credit hourly wages (the "Class").³

22. On information and belief, the Class includes over 1,000 members.

³ Plaintiff reserves the right to amend this definition based on discovery or legal developments.

23. Plaintiff Robbins adequately represents the Class because she asserts the same claims as the members of the purported class: she worked as a server and bartender at Defendant's New York Buffalo Wild Wings restaurants and was required to perform work in a non-tipped occupation – such as washing dishes, preparing food, and cleaning Defendant's restaurants – for more than twenty (20) percent of her time worked each shift while being paid sub-minimum, tip-credit hourly wages. In addition, Plaintiff Robbins' counsel is experienced in wage and hour class actions like this one and is able to represent the interests of the Class.

24. The issues involved in this lawsuit present common questions of law and fact, including whether Defendant required members of the Class to perform work in a non-tipped occupation (such as dishwashing, food preparation, and restaurant cleaning), whether members of the Class were required to perform work in a non-tipped occupation in excess of two (2) hours or twenty (20) percent of their time worked during a shift, whether Defendant paid members of the Class sub-minimum, tip-credit wage rates while they were required to perform work in a non-tipped occupation, and whether Defendant's policy of requiring members of the Class to perform work in a non-tipped occupation while paying them sub-minimum, tip-credit wages violated the NYLL.

25. The common questions of law and fact in this lawsuit predominate over the variations which may exist between members of the Class, if any.

26. Plaintiff Robbins and the members of the Class on one hand, and Defendant on the other, have a commonality of interest in the subject matter and remedy sought, namely back wages plus additional damages, interest, attorneys' fees and the cost of this lawsuit.

27. If individual actions were required to be brought by each member of the Class injured or affected, it would necessarily result in multiplicity of lawsuits, creating a hardship to the

individuals and to the Court, as well as to Defendant. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class is entitled.

28. The books and records of Defendant are material to Plaintiff Robbins' action as they disclose the hours worked by each member of the Class and the rate of pay for that work.

THE PARTIES

29. Defendant is a Minnesota corporation.

30. Defendant's principal place of business is located at 5500 Wayzata Blvd., Suite 1600, Minneapolis, Minnesota 55416.

31. Defendant is a wholly-owned subsidiary of Buffalo Wild Wings, Inc., a publicly traded company on the NASDAQ stock exchange.

32. As of December 28, 2014, Defendant owned and operated approximately 473 Buffalo Wild Wings restaurants in the United States.

33. As of December 28, 2014, Defendant employed Tip-Credit Employees at approximately 390 of the Buffalo Wild Wings restaurants that Defendant owns and operates.

34. As of December 28, 2014, Defendant employed Tip-Credit Employees in the following states: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

35. Plaintiff Robbins resides in and is domiciled in Chemung County, New York, located in this judicial district.

36. Defendant employed Plaintiff Robbins as a server, cook, hostess, and “Wing Certified Trainer” at its Buffalo Wild Wings restaurant in Horseheads, New York, from approximately February 2012 to November 2013. Defendant also employed Plaintiff Robbins as a server, cook, and bartender at its Buffalo Wild Wings restaurant in Ithaca, New York, from approximately the fall of 2012 through June 2013.

37. Defendant paid Plaintiff Robbins for straight-time hours (i.e., 40 or fewer hours each week) at a sub-minimum, tip-credit wage of \$5.00 per hour to work as a server and bartender and \$6.00 per hour to work as a Wing Certified Trainer at Defendant’s Buffalo Wild Wings restaurants in Horseheads and Ithaca, New York.⁴ *See* Ex. A, representative Earnings Statements for Plaintiff Robbins. Defendant paid Plaintiff at least the full applicable minimum wage to work as a hostess and cook and none of the allegations in this lawsuit apply to Plaintiff’s employment in those capacities.

38. Plaintiff Robbins’ average pay (i.e., total weekly compensation divided by total weekly hours) in every workweek of her employment (or virtually every workweek), exclusive of tips, fell below the federal minimum wage.⁵

⁴ When Plaintiff Robbins worked over forty (40) hours in one work week as a server, bartender, and Wing Certified Trainer, Defendant also took a tip credit against her overtime wages.

⁵ Plaintiffs are filing this Second Amended Complaint to add the allegation in this Paragraph 38 and the parallel allegation in Paragraph 52 based on the Court’s guidance during the motion hearing on December 10, 2015. During that motion hearing, Defendant’s counsel represented to the Court that such amendments would satisfy the concerns raised by Defendant in its Motion to Dismiss the First Amended Complaint. The Court then instructed Plaintiffs to file a Second Amended Complaint to make the amendments. However, Plaintiffs believe that such amendments are unnecessary because alleging minimum wage violations in one or more individual workweeks, which Plaintiffs have done, is sufficient to state a claim for relief. *See, e.g., Mendoza v. Little Luke, Inc.*, No. 14-CV-3416, 2015 WL 998215, at *5 (E.D.N.Y. Mary. 6, 2015); *Estrella v. P..R. Painting Corp.*, 356 F. App’x 495, at *497 (2d Cir. Dec. 15, 2009).

39. While paying her at the sub-minimum, tip-credit wage, Defendant required Plaintiff Robbins to spend over 20 percent of her work time during serving and bartending shifts performing work that had no customer interaction and that did not generate tips. Plaintiff Robbins typically spent approximately 40 percent of her work time performing such duties.

40. Plaintiff Robbins worked morning shifts as a server at Buffalo Wild Wings. She was required to arrive at the restaurant approximately 30 minutes before it opened and perform opening duties, such as: filling pans with celery, carrots, blue cheese, and ranch dressing in the kitchen; placing chocolate cake slices on plates, wrapping them in plastic, and putting them in the walk-in cooler; turning on approximately 50 televisions; screwing nozzles into the soda machines; filling ice buckets in the kitchen and dumping them in soda machines in different areas of the restaurant; filling buckets with sanitizer water and soapy water and carrying them to the server stations; brewing iced tea; stocking table caddies with salt and pepper shakers, ketchup, and wet napkins; bringing buckets of salt, pepper, wet napkins, and menus to the patio; and situating patio furniture in the correct locations on the patio.

41. At the end of her morning serving shifts, Plaintiff Robbins was required to perform shift change duties, such as: “rolling” silverware; restocking ice; sweeping floors; restocking pans of celery, carrots, blue cheese, and ranch dressing; restocking the server station with napkins, cups, to-go boxes, and other items; and wiping down items in the table caddies such as salt and pepper shakers, ketchup bottles, and menus.

42. During her employment, Plaintiff Robbins worked evening serving shifts at Buffalo Wild Wings. When she worked evening shifts as a closer, she was required to perform closing duties, such as: placing approximately 100 chairs on top of tables; vacuuming the dining room; mopping

floors; stocking ice; refilling salt and pepper shakers; carrying pans of celery, carrots, blue cheese, and ranch to the walk in cooler in the kitchen; refilling bottles of dressing; bringing buckets of salt and pepper and menus from the patio into the restaurant; sweeping the patio; emptying garbage; turning off televisions; removing nozzles from pop machines and placing them in soda water; and rolling silverware.

43. During serving shifts, Plaintiff was required to perform duties in addition to serving customers, such as: clearing and wiping down tables; discarding uneaten food in the garbage; placing dirty silverware and baskets on a tray, carrying them to the kitchen, dumping the silverware in a bin near the dishwasher and stacking the baskets by the dishwasher; and running the dishwasher.

44. Also as a server, Plaintiff Robbins was regularly required to perform deep cleaning duties, such as: scooping ice out of the soda machine into a bucket and pouring hot water into the ice bin; pulling booths away from the walls and cleaning the walls and floors behind the booths, scraping gum off of tables; cleaning chair and table legs; dusting televisions; cleaning windowsills; emptying table caddies and running them through the dishwasher; emptying salt and pepper shakers and washing them in the dishwasher; and wiping down booster seats and high chairs with a towel and cleaning solution.

45. When Plaintiff Robbins worked as a bartender, she worked evening shifts and was required to perform “closing” duties, such as: sweeping and mopping the floors in the bar and bar stool area; washing cups/glassware; plugging draft beer spouts; removing, cleaning, and replacing the grate over the drains; wiping down table caddies and removing them from the bar; and removing nozzles from pop guns and soaking them in soda water.

46. In between serving customers as a bartender, Plaintiff Robbins was required to wash all of the cups and glassware for the entire restaurant.

47. While working as a server and as a bartender, Plaintiff Robbins was required to attend pre-shift team meetings while being paid a sub-minimum hourly wage.

48. Plaintiff Grandstaff resides in and is domiciled in Clermont County, Ohio.

49. Defendant employed Plaintiff Grandstaff at its Buffalo Wild Wings restaurant in Forest Park, Ohio, from approximately January 2005 to October 2014. For the first six months of her employment, she worked as a server. After that, she worked as a bartender. In addition, from approximately 2007 to 2012, Plaintiff Grandstaff worked as a Wing Certified Trainer.

50. In addition to working at the Forest Park restaurant, on many occasions during Plaintiff Grandstaff's employment she also worked as a bartender and occasionally as a server at Defendant's Buffalo Wild Wings restaurants in Norwood, Ohio, and Colerain, Ohio.

51. Defendant paid Plaintiff Grandstaff for straight-time hours (i.e., 40 or fewer hours each week) at a sub-minimum, tip-credit hourly wage to work as a bartender, server, and Wing Certified Trainer at its Buffalo Wild Wings restaurants.⁶ See Ex. B, representative Earnings Statements for Plaintiff Grandstaff.

52. Plaintiff Grandstaff's average pay (i.e., total weekly compensation divided by total weekly hours) in every workweek of her employment (or virtually every workweek), exclusive of tips, fell below the federal minimum wage.

⁶ When Plaintiff Grandstaff worked over forty (40) hours in one work week as a server, bartender, and Wing Certified Trainer, Defendant also took a tip credit against her overtime wages.

53. While paying her at the sub-minimum, tip-credit wage, Defendant required Plaintiff Grandstaff to spend over 20 percent of her time during bartending shifts performing work that had no customer interaction and that did not generate tips. Plaintiff Grandstaff typically spent approximately 40 percent of her work time performing such duties.

54. Plaintiff Grandstaff worked morning shifts as a bartender at Buffalo Wild Wings. She was required to arrive at the restaurant approximately 45 minutes before it opened and perform opening duties, such as: lifting chairs from on top of tables and placing them at the tables; sweeping the floor; turning on approximately 30 televisions and “scrambling” them so they were on different stations; cleaning and replenishing table caddies with salt and pepper and/or ketchup; filling the bar ice bin; filling triple sinks with water and adding soap and sanitizer; unpacking shipments of beer, mixes, napkins, and straws; removing cone cups from approximately 50 liquor bottles; and cutting lemons, limes, and oranges.

55. At the end of her morning bartending shifts, Plaintiff Grandstaff was required to perform what were referred to as “outs,” such as: slicing additional fruit; refilling ice; taking trash to bins outside the building and putting a new trash can liner in the trash can; draining the triple sinks and refilling them; restocking straws and napkins; and sweeping.

56. Plaintiff Grandstaff worked evening bartending shifts at Buffalo Wild Wings. When she worked evening shifts, she was required to perform closing duties, such as: putting cone cups on approximately 50 liquor bottles; removing spouts from beer taps; wiping down tables; putting approximately 50 stools on top of tables; moving kegs from the keg room to a storage area/dry stock; restocking beer; sweeping and mopping the bar floor; deck scrubbing the dry-stock room with a long handled brush and then mopping it; turning off approximately 30 televisions; taking garbage outside

of the restaurant; pouring hot water into bar ice bin and wiping down the inside of the ice bin; and on certain shifts, cleaning bathrooms.

57. During bartending shifts, Plaintiff Grandstaff was required to perform duties in addition to serving customers, such as: washing all cups and glassware for the entire restaurant; sweeping the floor; and taking trash outside of the restaurant. Plaintiff Grandstaff spent over 20 percent of her bartending shifts washing cups and glassware alone.

58. Also as a bartender, Plaintiff Grandstaff was required to complete cleaning duties based on the shift and day of the week, such as: deck scrubbing the tile floor behind the bar with a long-handled brush; cleaning the glass chiller by removing approximately 100 glasses from the chiller, removing any pieces of glass from broken glassware, removing any ice, and cleaning with a towel; removing pouring spouts from approximately 50 liquor bottles and soaking them overnight in a dishpan; dusting ledges and pictures with a high duster and swifter duster; emptying salt and pepper shakers and running them through the dishwasher; detailing the dishwasher, which required pulling out the catch drain in the back of the dishwasher, draining the dishwasher, rinsing out fruit seeds, cherry stems, and other items, cleaning the stainless steel, and, when needed, running a solution through the dishwasher to clean it.

59. As a bartender, Plaintiff Grandstaff attended pre-shift team meetings while being paid a sub-minimum hourly wage.

BACKGROUND FACTS

60. Defendant operates its Buffalo Wild Wings restaurants as a chain, so that customers can obtain essentially the same food and drink items and experience the same customer service at all of Defendant's Buffalo Wild Wings restaurants.

61. Defendant, or its affiliated companies, operates training programs for Buffalo Wild Wings store managers so that they are trained in the same policies and procedures.

62. Defendant's Buffalo Wild Wings restaurants use uniform, or substantially uniform, training modules to teach new Tip-Credit Employees how to perform their jobs.

63. Defendant requires its Tip-Credit Employees to perform non-tipped work each shift in addition to serving customers.

64. For example, Defendant requires its Tip-Credit Employees to wash dishes, slice fruit, roll silverware, clean the restaurants, and attend pre-shift team meetings.

65. Defendant requires its Tip-Credit Employees to perform non-tipped work before its restaurants are open to customers.

66. Defendant requires its Tip-Credit Employees to perform non-tipped work after its restaurants are closed to customers.

67. Defendant has no policies prohibiting Tip-Credit Employees from performing certain types, or excessive amounts, of non-tipped work.

68. Defendant does not track, or maintain records regarding, the amount of time Tip-Credit Employees spend performing non-tipped work.

69. Defendant uses a standard point-of-sale system in all of its Buffalo Wild Wings restaurants, which is integrated to its central offices through a secure, high-speed internet connection.

70. Defendant analyzes and evaluates information collected by its point-of-sale system, including labor cost information for each of its restaurants.

71. Information collected by Defendant's point-of-sale system is capable of showing the time that elapses between when a Tip-Credit Employee first "clocks in" for a shift and when that employee places his or her first customer order.

72. Likewise, information collected by Defendant's point-of-sale system is capable of showing the time that elapses between when a Tip-Credit Employee closes out his or her last customer check and when that employee "clocks out" for the shift.

73. In its point-of-sale system, Defendant can create different "clock in" codes that would allow its Tip-Credit Employees to clock in at the full minimum wage rate when performing non-tipped work, while clocking in at a sub-minimum, tip-credit wage rate when serving customers.

74. Defendant did not allow its Tip-Credit Employees to clock in at the full minimum wage rate when performing the non-tipped work described in this Second Amended Complaint, although Defendant had the capacity to do so.

COUNT I
Violation of the Fair Labor Standards Act – Minimum Wages
Collective Action

75. Plaintiffs reallege and incorporate the previous paragraphs of this Complaint as if fully set forth in this Count I.

76. This Count I arises from Defendant's violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, for its failure to pay minimum wages to Plaintiffs and similarly-situated Tip-Credit Employees.

77. Plaintiffs bring this Count I as a collective action under Section 16(b) of the FLSA.

78. Plaintiffs' consent forms to act as representative plaintiffs are attached hereto as Ex. C.

79. During the entire course of Plaintiffs' employment at Defendant's Buffalo Wild Wings restaurants, Defendant was Plaintiffs' "employer" as defined by the FLSA. 29 U.S.C. § 203(d).

80. During the entire course of Plaintiffs' employment at Defendant's Buffalo Wild Wings restaurants, Plaintiffs were Defendant's "employee[s]" as defined by the FLSA. 29 U.S.C. § 203(e)(1).

81. During the entire course of Plaintiffs' employment at Defendant's Buffalo Wild Wings restaurants, Plaintiffs were not exempt from the minimum wage provisions of the FLSA.

82. Defendant is an "enterprise" as defined by Section 3(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1).

83. Defendant is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the FLSA. 29 U.S.C. § 203(s)(1)(A).

84. Defendant's annual gross volume of sales made or business done has exceeded \$500,000 in each of the last three calendar years.

85. Defendant violated the FLSA by requiring Plaintiffs and similarly-situated Tip-Credit Employees to perform non-tipped work that is *unrelated* to their tipped occupation, such as sweeping, mopping, and vacuuming restaurant floors, preparing food, including slicing fruit, rolling silverware, and washing cups and glassware, while paying these employees sub-minimum, tip-credit hourly wages.

86. Defendant also violated the FLSA by requiring Plaintiffs and similarly-situated Tip-Credit Employees to perform non-tipped work for more than twenty (20) percent of their time worked each shift.

87. Defendant's violations of the FLSA were willful.

WHEREFORE, Plaintiffs, on behalf of themselves and similarly-situated Tip-Credit Employees, pray for judgment against Defendant as follows:

- A. judgment in the amount of the owed minimum wages for all time worked by Plaintiffs and similarly-situated Tip-Credit Employees;
- B. liquidated damages in an amount equal to the amount of unpaid minimum wages;
- C. reasonable attorneys' fees and costs incurred in prosecuting this action; and
- D. such other and further relief as this Court deems just and proper.

COUNT II
Violation of the New York Labor Law – Minimum Wages
Class Action
New York Tip-Credit Employees Only

88. Plaintiff Robbins realleges and incorporates the paragraphs 1–72 of this Complaint as if fully set forth in this Count II.

89. This count arises from Defendant's willful violation of the NYLL for its failure to pay Plaintiff Robbins and the class of New York Tip-Credit Employees that she seeks to represent all their earned minimum wages.

90. Plaintiff Robbins brings this Count II as a class action under Rule 23 of the Federal Rules of Civil Procedure.

91. During the entire course of Plaintiff Robbins' employment at the Buffalo Wild Wings restaurants in Ithaca and Horseheads, New York, Defendant was Plaintiff Robbins' "employer" as defined by the NYLL, § 651.

92. During the entire course of Plaintiff Robbins' employment at the Buffalo Wild Wings restaurants in Ithaca and Horseheads, New York, Plaintiff Robbins was Defendant's "employee" as defined by the NYLL, § 651.

93. During the entire course of Plaintiff Robbins' employment at the Buffalo Wild Wings restaurants in Ithaca and Horseheads, New York, Plaintiff Robbins was not exempt from the minimum wage provisions of the NYLL.

94. Defendant has a policy of practice of paying members of the Class, as defined in Paragraph 21, sub-minimum, tip-credit wage rates, even though Defendant requires them to perform work in non-tipped occupations – such as general restaurant cleaning and maintenance – for more than two (2) hours or twenty (20) percent of their shifts.

95. Defendant's policy and practice of paying members of the Class sub-minimum, tip-credit wage rates, even though it requires them to work in non-tipped occupations in excess of the legal limit, violates the NYLL.

96. Defendant violated the NYLL by failing to compensate Plaintiff Robbins and members of the Class consistent with its minimum wage provisions.

WHEREFORE, Plaintiff Robbins and the Class pray for judgment against Defendant as follows:

- A judgment in the amount of all minimum wages due as provided by the NYLL;
- B. pre-judgment and post-judgment interest;
- C. liquidated damages equal to the amount of minimum wages due;
- D. reasonable attorneys' fees and costs incurred in prosecuting this action;
- E. such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of Civil Procedure 30(b).

Dated: December 18, 2015

Respectfully submitted,

/s/Douglas M. Werman
One of the Attorneys for Plaintiffs

Douglas M. Werman
Zachary C. Flowerree
Werman Salas P.C.
77 West Washington, Suite 1402
Chicago, Illinois 60602
(312) 419-1008
dwerman@flsalaw.com
zflowerree@flsalaw.com

J. Nelson Thomas Esq.
Thomas & Solomon LLP
693 East Avenue
Rochester, New York 14607
(585) 272-0540
nthomas@theemploymentattorneys.com

Jamie G. Sypulski
Law Office Jamie Golden Sypulski
150 North Michigan Avenue
Suite 1000
Chicago, Illinois 60601
(312) 332-6202
jsypulski@sbcglobal.net

Attorneys for Plaintiffs