

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**VANESSA CHAVEZ, AMY BERLAK,
BROOKE GRAHAM and MELISSA
VARNER on behalf of themselves and all
others similarly situated**

Plaintiffs,

vs.

**T & B MANAGEMENT, LLC and T & B
CONCEPTS OF HICKORY, LLC, each
d/b/a HICKORY TAVERN,**

Defendants.

Case No. 1:16-CV-1019

**FIRST AMENDED
COMPLAINT - CLASS ACTION
(Jury Trial Demanded)**

NOW COME plaintiffs, Vanessa Chavez (“Ms. Chavez”), Amy Berlak (“Ms. Berlak”), Brooke Graham (“Ms. Graham”) and Melissa Varner (“Ms. Varner”) (collectively the “Named Plaintiffs”), pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), as amended, in 29 U.S.C. §§ 201, *et seq.*, on behalf of themselves and all other similarly situated former and current tipped server and bartender employees at Hickory Tavern restaurants throughout North Carolina, South Carolina, Alabama, Tennessee, and any other state in which a Hickory Tavern restaurant is located, and bring this Collective Action against defendants T & B Management, LLC and T & B Concepts of Hickory, LLC, each individually and collectively d/b/a Hickory Tavern (collectively, “Defendants” and/or the “Hickory Tavern Defendants”) and allege as follows:

NATURE OF THE ACTION

1. The Named Plaintiffs bring this action against the Hickory Tavern Defendants, acting by and through their owners, managers, agents, and/or employees, for engaging in a systemic scheme of wage abuses against their tipped server and bartender employees at each restaurant it owned, operated and/or managed. Specifically, the Hickory Tavern Defendants required their tipped server and bartender employees to spend more than twenty percent (20%) of their workweek performing general preparation, maintenance, cleaning, food preparatory work, stocking, washing dishes, rolling silverware, and other non-tip generating duties and tasks (generally referred to as “sidework”). Defendants’ tipped servers and bartenders were not paid minimum wage for performing sidework. This practice is a violation of the FLSA. The Named Plaintiffs seek, on behalf of themselves and all others similarly situated, payment of unpaid wages for all sidework they performed, liquidated damages, attorney’s fees and expenses for all FLSA violations as alleged.

PARTIES

2. Ms. Chavez is a citizen and resident of Winston Salem, Forsyth County, North Carolina and is a former tipped server employee at a Hickory Tavern restaurant owned, operated and/or managed by the Hickory Tavern Defendants. Ms. Chavez has consented to be a plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). Ms. Chavez’ executed Consent to Join and Become Party Plaintiff form is attached hereto as Exhibit A.

3. Ms. Berlak is a citizen and resident of Clover, York County, South Carolina and is a former tipped server and bartender employee at a Hickory Tavern restaurant owned, operated and/or managed by the Hickory Tavern Defendants. Ms. Berlak has consented to be a plaintiff to

this lawsuit pursuant to 29 U.S.C. § 216(b). Ms. Berlak's executed Consent to Join and Become Party Plaintiff form is attached hereto as Exhibit B.

4. Ms. Graham is a citizen and resident of Mooresville, Iredell County, North Carolina and is a former tipped server employee at a Hickory Tavern restaurant owned, operated and/or managed by the Hickory Tavern Defendants. Ms. Graham has consented to be a plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). Ms. Graham's executed Consent to Join and Become Party Plaintiff form is attached hereto as Exhibit C.

5. Ms. Varner is a citizen and resident of Charlotte, Mecklenburg County, North Carolina and is a former tipped server and bartender employee at a Hickory Tavern restaurant owned, operated and/or managed by the Hickory Tavern Defendants. Ms. Varner has consented to be a plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). Ms. Varner's executed Consent to Join and Become Party Plaintiff form is attached hereto as Exhibit D.

6. The Named Plaintiffs were "employees" of Defendants as that term is defined in the FLSA.

7. Defendant T & B Management, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

8. Defendant T & B Concepts of Hickory, LLC is a North Carolina corporation doing business in Winston-Salem, Forsyth County, North Carolina.

9. The Hickory Tavern Defendants individually and/or collectively own, operate and/or manage approximately twenty-three (23) casual dining "sports bar" restaurants under the name Hickory Tavern in North Carolina, South Carolina, Tennessee and Alabama, including a location in Winston Salem, Forsyth County, North Carolina.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

10. The original Complaint (D.E. 1) in this matter was filed on August 1, 2016. This First Amended Complaint is filed pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure.

11. Jurisdiction is proper in this Court pursuant to the FLSA which authorizes court actions by private citizens to recover damages for violations of the FLSA's wage and hour provisions. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

12. The Hickory Tavern Defendants manage and/or operate the restaurant where Ms. Chavez worked in Winston-Salem, Forsyth County, North Carolina. As alleged in the original Complaint, Ms. Chavez performed all of the work, and earned all of her wages in Winston-Salem, Forsyth County, North Carolina. As such, this cause of action for which Plaintiff seeks recovery arose in this District and is properly filed in this District.

13. Upon information and belief, Defendants employ more than two hundred fifty (250) tipped hourly employees among the approximately twenty-three (23) restaurants it manages and/or operates in North Carolina, South Carolina, Tennessee and Alabama.

14. Defendants have substantial contacts with and do business in this District, and are subject to personal jurisdiction of this Court.

15. Venue is proper in this Court because Defendants may be found in this District and much of the relevant information and witnesses for Defendants are located in this District.

16. Venue is also proper in this Court because the alleged acts and omissions of Defendants occurred in this District. Defendants manage, operate and/or maintain a restaurant business in this District, and thereby do significant business in this District.

17. All conditions precedent to the filing of this action have occurred or been performed.

CLASS DEFINITIONS

18. Ms. Chavez, Ms. Berlak, Ms. Graham and Ms. Varner, pursuant to 29 U.S.C. § 255(a), bring this action collectively on behalf of themselves and the class of similarly situated persons defined as follows:

All hourly tipped employees of Hickory Tavern who work, or worked, as servers at any of Defendants' Hickory Tavern restaurants from August 1, 2013 through the present, and who Defendants did not pay minimum wage when their non-tip generating work exceeded twenty percent (20%) of their workweek.

(Collectively, "Server Class").

19. Ms. Berlak and Ms. Varner, pursuant to 29 U.S.C. § 255(a), bring this action collectively on behalf of themselves and the class of similarly situated persons defined as follows:

All hourly tipped employees of Hickory Tavern who work, or worked, as bartenders at any of Defendants' Hickory Tavern restaurants from August 1, 2013 through the present, and who Defendants did not pay minimum wage when their non-tip generating work exceeded twenty percent (20%) of their workweek.

(Collectively, "Bartender Class") (Server Class and Bartender Class, collectively, "Class Members").

19. The proposed Class Members exclude Defendants' officers, directors, members and managers. The proposed Class Members also exclude all judicial officers presiding over this action and their immediate family members and staff, and any jury assigned to this action.

FACTUAL ALLEGATIONS

20. Ms. Chavez was employed as a server for approximately four months at Defendants' restaurant located at 206 Harvey Street, Winston Salem, North Carolina.

21. Ms. Berlak was employed as both a server and a bartender for over five years at Defendants' restaurant located at 12210 Copper Way, Suite 212, Charlotte, North Carolina.

22. Ms. Graham was employed as a server for over a year at Defendants' restaurant located at 115 Morrison Plantation Parkway, Mooresville, North Carolina.

23. Ms. Varner was employed as both a server and bartender for over two years at Defendants' restaurant located at 1925 Hoffman Road, Gastonia, North Carolina.

24. Upon information and belief, Defendants maintain control, oversight, direction and management of the operations at their Hickory Tavern restaurants, including employment and/or labor practices, throughout North Carolina, South Carolina, Tennessee, Alabama, and other states in which Defendants operate restaurant facilities.

25. Upon information and belief, Defendants provide written instructions, manuals, handbooks and training materials for its tipped servers and bartenders at each of its Hickory Tavern restaurants.

26. Upon information and belief, Defendants' tipped server employees do not pool their tips to share among other servers. As such, work done by members of the Server Class for other servers does not generate tips for themselves.

27. Upon information and belief, Defendants' tipped bartender employees do not pool their tips to share among other bartenders or servers. As such, work done by members of the Bartender Class for other bartenders or servers does not generate tips for themselves.

28. As part of their employment with the Hickory Tavern Defendants, the Named Plaintiffs and Class Members were required to perform non-tip generating sidework such as maintenance, food preparatory work, stocking, cleaning, washing dishes, rolling silverware and

other, non-tip generating duties, including running orders to tables for other servers and bartenders. These tasks are required duties of servers and bartenders at all Hickory Tavern locations. These tasks do not generate tips for the person performing these tasks.

29. As tipped employees, the Named Plaintiffs were paid an hourly rate of \$2.13, well below the Federal minimum wage of \$7.25 per hour. The FLSA does, however allow a “tip credit” to be taken by the employer of tipped employees. A tip credit allows for a tipped employee’s earned tips to make up the difference between \$2.13 and \$7.25 per hour.

30. Despite the allowed tip credit, the U.S. Department of Labor’s Wage and Hour Division’s Fact Sheet #15: “Tipped Employees Under the Fair Labor Standards Act (FLSA)” (“Fact Sheet #15”) states on page 2 under “Dual Jobs,” that “where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties [such as sidework], no tip credit may be taken for the time spent in such duties.” A copy of Fact Sheet #15 is attached hereto as Exhibit E.

31. When sidework is performed by the Named Plaintiffs and Class Members that exceeds twenty percent (20%) of all time worked during a workweek, the Named Plaintiffs and Class Members are required to be paid minimum wage for all of the sidework performed.

32. Sidework is performed by the Named Plaintiffs and Class Members both before and after they serve patrons and work for tips. The pre-shift duties typically involve preparation tasks while post-shift duties typically involve cleaning tasks and preparation for the next shift. The Named Plaintiffs and Class Members also perform non-tip generating sidework duties while they serve patrons.

33. Typical pre-shift duties include, but are not limited to:

- pre-shift meetings
- cutting and preparing garnishes
- making tea
- portioning sugar for tea
- preparing condiment cups
- rolling silverware into napkins
- making coffee
- stocking cups
- filling ice bins
- stocking straws
- distributing trash cans

These pre-shift duties do not generate tips for the servers and bartenders that perform them.

34. Servers and bartenders were paid \$2.13 per hour to perform pre-shift duties.

35. Typical post-shift duties include, but are not limited to:

- emptying trash
- rolling silverware
- sweeping floors
- stocking condiment shelves
- cleaning coolers
- washing mats
- cleaning shelves
- filling condiment cups
- cleaning tables
- cleaning tea urns
- cleaning coffee makers/pots
- cleaning counters
- cleaning stainless surfaces
- taking inventory
- cleaning wood surfaces
- cleaning parking lots
- picking up cigarette butts from parking lots

These post-shift duties do not generate tips for the servers and bartenders that perform them.

36. Servers and bartenders were paid \$2.13 per hour to perform post-shift duties.

37. In addition to the typical post-shift duties, the Hickory Tavern Defendants required their tipped server and bartenders to perform certain weekly tasks at the ends of their respective shifts. These weekly tasks include, but are not limited to:

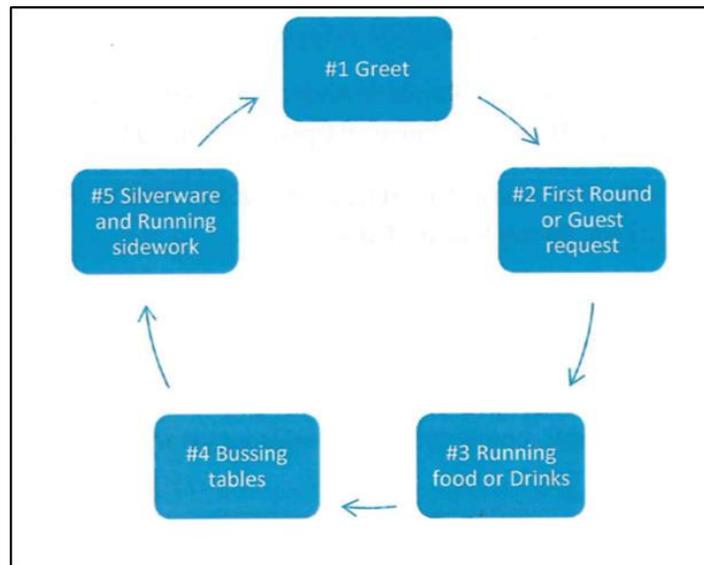
- cleaning and replacing all salt shakers
- cleaning and replacing all pepper shakers
- cleaning and replacing all sugar caddies
- pulling out booths to clean behind them
- cleaning wood surfaces
- cleaning out all storage areas
- cleaning out all walk-in areas
- cleaning soda gun nozzles
- cleaning ice bins

These weekly tasks do not generate tips for the servers and bartenders that perform them.

38. Servers and bartenders were paid \$2.13 per hour to perform these weekly tasks.

39. In addition to the pre-shift and post-shift sidework duties, the Named Plaintiffs and Class Members have been trained by the Hickory Tavern Defendants to work while serving patrons in “a team oriented system” that is designed to cover the whole restaurant. This system is called “The Loop.” The Loop is a system by which each tipped employee is taught to work in five priorities when serving patrons. The Loop was taught to both servers and bartenders at each Hickory Tavern restaurant “to be a continuous cycle.” The Hickory Tavern Defendants trained its tipped servers and bartenders that “once you’ve completed the final step [of The Loop], it starts over.”

40. The Loop entails five priorities that are taught to each server and bartender at each restaurant owned, operated and/or managed by the Hickory Tavern Defendants. The Loop is included in training manuals for both servers and bartenders as follows:



41. The Loop system also instructs the tipped employees of Hickory Tavern that “whenever you’re not engaged with your own tables you should be assisting others.” Assisting others does not generate tips for the person doing the assisting.

42. The Loop specifically instructs the tipped employees to spend more than twenty percent (20%) of their time doing work that does not generate tips for themselves.

43. The Loop is a system and concept that is taught to tipped employee members of both the Server Class and Bartender Class at each Hickory Tavern restaurant.

44. Within The Loop, step #3, “Running food or Drinks” involves not only running food and drinks for their own tables, but also for tables of other servers and/or bartenders.

Servers and bartenders who run food or drinks for other servers and/or bartenders do not earn tips for themselves.

45. Within The Loop, step #4 “Bussing tables” involves not only bussing their own tables, but also for tables of other servers and/or bartenders. Servers and bartenders who bus tables for other servers and/or bartenders do not earn tips for themselves.

46. Within The Loop, step #5 “Silverware and Running sidework” involves duties such as rolling silverware into napkins (“rolling silverware”), filling ice containers, cutting lemons, making tea, delivering to-go orders, and other such tasks that are not related to generating tips.

47. The Loop describes a system of non-tip generating work required to be performed by the Named Plaintiffs and Class Members that exceeds twenty percent (20%) of the employees’ workweek – exclusive of all pre-shift and post-shift duties and tasks.

48. The work requirements of The Loop violates the FLSA for tipped employees.

49. In addition to non-tip generating duties within The Loop, servers and bartenders perform pre-shift and post-shift duties as previously described. These pre-shift and post-shift duties are not related to generating tips.

50. The total of all non-tip generating sidework performed by the Named Plaintiffs and each Class Member habitually and regularly exceeds twenty percent (20%) of their workweek.

51. It is a violation of the FLSA for Defendants to not pay the Named Plaintiffs and Class Members minimum wage for all of the time they perform sidework – when such work exceeds twenty percent (20%) of their workweek.

52. The Hickory Tavern Defendants failed to pay the Named Plaintiffs and Class Members a wage differential to meet the requirements of the FLSA. In other words, the Named Plaintiffs and Class Members were paid only \$2.13 per hour for doing work for which they should have been paid \$7.25.

53. The pay differential between \$2.13 and \$7.25 per hour – \$5.12 per hour – is owed to the Named Plaintiffs and Class Members for each hour of non-tip generating work they performed. These unpaid wages violate the FLSA.

54. The Hickory Tavern Defendants knowingly, continually and willfully violated the FLSA by not paying the Class Members proper wages.

55. Upon information and belief, the Hickory Tavern Defendants recently changed their practice of not paying servers and bartenders minimum wage for pre-shift and post-shift duties.

56. Upon information and belief, in approximately June, 2016, Defendants began to pay their servers and bartenders \$7.25 per hour to perform pre-shift and post-shift duties.

57. Prior to June, 2016, Defendants did not pay their servers and bartenders \$7.25 per hour to perform pre-shift and post-shift duties.

58. Prior to June, 2016, the Hickory Tavern Defendants, individually, and/or through an enterprise, also willfully engaged in a pattern and/or practice of unlawful conduct by failing to record, credit and/or compensate by the Class Members for all sidework done in excess of twenty percent (20%) of their workweek.

59. The Named Plaintiffs bring this action on behalf of themselves and the Class Members pursuant to the collective action provision of 29 U.S.C. § 216(b) to remedy

Defendants' knowing and intentional violations of the FLSA that deprived the Named Plaintiffs and Class Members of proper pay.

60. The Named Plaintiffs and Class Members were/are tipped employees as defined by the FLSA 29 U.S.C. § 203(t).

61. The Hickory Tavern Defendants individually and/or through an enterprise, directed, managed and/or exercised control over the Named Plaintiffs and Class Members at all relevant times.

62. The Named Plaintiffs and Class Members' work were, and are, performed pursuant to Defendants' policies, procedures, and guidelines.

63. During the Named Plaintiffs and Class Member's employment as tipped server and bartender employees, they were not paid proper wages for all time worked.

COUNT ONE
FLSA Wage and Hour Violations

64. The Named Plaintiffs incorporate the allegations contained in each prior paragraph as if fully set forth herein.

65. The Named Plaintiffs bring this action on behalf of themselves and all other similarly situated Class Members of Hickory Tavern, and/or its subsidiaries, that perform general preparation, maintenance, sidework, and/or other non-tipped work in excess of twenty percent (20%) of their workweek, and who are not paid at least the full hourly minimum wage while performing such duties – as required by 29 U.S.C. §201, et. seq.

66. The Named Plaintiffs and Class Members were all trained and expected to follow the Hickory Tavern server and bartender training manuals that describe The Loop, plus perform all pre-shift, post-shift and weekly duties and tasks as described herein.

67. The Hickory Tavern Defendants paid the Named Plaintiffs and Class Members only \$2.13 per hour for performing the described non-tip generating duties and tasks in violation of the FLSA.

68. The Hickory Tavern Defendants also failed to properly record all time the Named Plaintiffs and Class Members performed sidework in excess of twenty percent (20%) of their workweek.

69. The work of the Class Members is essentially the same as the work of the Named Plaintiffs as described above. At all times during the FLSA class period, all of the Class Members were paid in substantially the same manner and under substantially the same employment guidelines and practices as the Named Plaintiffs.

70. The Class Members, like the Named Plaintiffs, were all subject to the same policy and/or practice whereby Defendants willfully failed to record, credit, and compensate work performed by the Class Members for all sidework in excess of twenty percent (20%) of their workweek.

71. Defendants' refusal to pay the Named Plaintiff and Class Members the required minimum wage when the Class Members spent in excess of twenty percent (20%) of their workweek performing sidework, was willful and intentional.

72. The Named Plaintiffs and Class Members have been damaged in the amount of the difference between the wages they were actually paid and the amount of the wages they should have been paid pursuant to the FLSA and regulations adopted thereunder.

73. Defendants' refusal to pay Plaintiff and the Class Members the required minimum wage is a violation of 29 U.S.C. §§ 201, et. seq.

74. Defendants' violations of 29 U.S.C. §§ 201, et. seq. were repeated, willful and intentional.

75. The Named Plaintiffs and Class Members are entitled to liquidated damages in an amount equal to the amount of lost wages as set forth in 29 U.S.C. §201 et. seq.

76. The Named Plaintiffs and Class Members are also entitled to reasonable attorney's fees and costs of this action as set forth in 29 U.S.C. §201 et. seq.

WHEREFORE, the Named Plaintiffs, Vanessa Chavez, Amy Berlak, Brooke Graham and Melissa Varner, pray this Court enter Judgment against the Defendants T & B Management, LLC and T & B Concepts of Hickory, LLC, for themselves and the Class Members, in an amount that is fair and reasonable under the circumstances, for all unpaid wages, for the costs of this action, attorney's fees, liquidated damages and prejudgment interest thereon from the date the employee was owed the wages, and for such other and further relief as is necessary and proper.

This the 19th day of August, 2016.

/s/ Paul R. Dickinson, Jr.

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