

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
COLUMBUS DIVISION**

<b>CASSANDRA M. EBRIGHT, <i>et al.</i>,</b>	:	
	:	
	:	
	:	CASE NO. 2:24-cv-4165
	:	
<b><i>Plaintiffs,</i></b>	:	JUDGE MICHAEL H. WATSON
	:	
<b>v.</b>	:	
	:	<b>JURY DEMANDED</b>
<b>UNIVERSAL ENTERTAINMENT LLC</b>	:	
<b><i>dba THE KING OF CLUBS, <i>et al.</i>,</i></b>	:	
	:	
	:	
	:	
<b><i>Defendants.</i></b>	:	

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**FIRST AMENDED COMPLAINT**

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**I. INTRODUCTION**

1. Cassandra M. Ebright (“Plaintiff Ebright”) and Kenda R. Blanton (“Plaintiff Blanton”) (hereinafter “Named Plaintiffs”) bring this action against Defendants Universal Entertainment LLC *dba* The King of Clubs, and owner Richard Wolf, and owner Angela Wolf (collectively “Defendants”). Defendants are a single enterprise that does business under the name of The King of Clubs in Columbus, Ohio.

2. Named Plaintiffs bring these federal claims against Defendants, who were their employers, in order to recover compensation, liquidated damages, attorneys’ fees and costs, and other equitable relief pursuant to the Fair Labor Standard Act of 1939 (“FLSA”), as amended 29 U.S.C. § 201 et seq. Named Plaintiffs seek Court Supervised Notice pursuant to 29 U.S.C. § 216(b) to inform other similarly situated employees of their rights under the FLSA.

3. Named Plaintiffs bring these Ohio claims against Defendants, who were their employers, in order to recover compensation, liquidated damages, attorneys' fees and costs, and other equitable relief pursuant to the Ohio Minimum Fair Wage Standards Act, O.R.C. §§ 4111 et. seq., (the "Ohio Wage Act"), the Ohio Prompt Pay Act ("OPPA"), O.R.C. § 4113.15, the Ohio Constitution, Art. II Section 34a ("Ohio Constitution") (the Ohio Wage Act, the OPPA and the Ohio Constitution will be collectively referred to herein as the "Ohio Wage Laws") and O.R.C. § 2307.60. Named Plaintiffs bring their FLSA action on behalf of themselves and all similarly situated employees who file their written consent to join this action pursuant to 29 U.S.C. § 216(b). Named Plaintiffs bring their Ohio Acts and O.R.C. § 2307.60 claims individually and on behalf of similarly situated Ohio employees who join this lawsuit.

4. Named Plaintiffs and those similarly situated are current and former employees of Defendants who were not paid an hourly wage in compliance with the federal and Ohio statutory minimum wage for all hours worked in a workweek and for whom Defendants required to share tips with management and other back-of-house employees. ("Putative Plaintiffs").

5. Defendants violated the FLSA and the Ohio Wage Laws because they: (1) misclassified Named Plaintiffs and the Putative plaintiffs who are bartenders as "independent contractors," resulting in Defendants' failure to pay for all hours worked at the statutory federal and state minimum wage; (2) required Named Plaintiffs and the Putative Plaintiffs to share tips with management and back-of-house employees who have no or only *de minimis* interaction with customers; and (3) falsely classified Named Plaintiffs and the Putative Plaintiffs as "managers" when they were, in reality, working foreman under C.F.R. § 541.115.

6. Under the FLSA and Ohio Wage Laws, Defendants may not retain tips other than to contribute them pursuant to a lawful tip pool of employees who customarily and regularly

receive tips. By retaining these tips to pay non-regularly tipped employees, Defendants retained tips earned by Named Plaintiffs and the Putative Plaintiffs and is required to return the tips to the employees who earned them and pay liquidated damages.

7. In the alternative to the Ohio Wage Law claims that unlawfully retained tips must be returned to the Putative Plaintiffs who earned them, Plaintiff alleges that Defendants have been unjustly enriched at the expense of Plaintiff and other Putative Plaintiffs by retaining these tips and using them to subsidize the labor costs for non-regularly tipped employees. Plaintiff and other Putative Plaintiffs conferred this benefit, Defendants appreciated the benefit, and it would be inequitable for Defendants to retain the benefit without payment for its value. Accordingly, Defendants must repay the value of the tips unlawfully retained.

## **II. JURISDICTION AND VENUE**

8. This Court has jurisdiction over Named Plaintiffs' claims because they are brought pursuant to the FLSA, 29 U.S.C. § 216(b), and because they raise a federal question pursuant to 28 U.S.C. § 1331.

9. This Court has jurisdiction over Named Plaintiffs' supplemental Ohio state law claims pursuant to 28 U.S.C. § 1367.

10. Venue for this action properly lies in the Southern District of Ohio, pursuant to 28 U.S.C. § 1391, because Defendants reside in this judicial district and because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

## **III. PARTIES**

### **A. Plaintiffs**

11. Plaintiff Ebright is an adult individual residing in Newark, Ohio at 506 Ballard Ave. Newark, OH 43055. Plaintiff Ebright began her employment with Defendants as a bartender in

approximately October 2022 and continues to be employed as of the filing of this Complaint . In addition to bartending, Defendant required Plaintiff Ebright to help with coordinating with bands or performers who perform at Defendants' venue. She filed her Notice of Consent to Join this Lawsuit on November 15, 2024. (ECF No. 1-1)

12. Plaintiff Blanton is an adult individual residing in Pickerington, Ohio at 3258 Tumwater Valley Drive Pickerington, OH 43147. Plaintiff Blanton began her employment with Defendants as kitchen staff in approximately March 2021. In approximately November 2021, Plaintiff Blanton switched roles to become a bartender and is still currently employed with Defendants as a bartender as of the filing of this Complaint. She filed her Notice of Consent to Join this Lawsuit on November 15, 2024. (ECF No. 1-2).

13. On November 15, 2024, Hannah Clayton, Brooke Harris, Dayle Kotarba, Madison Kwiatkowski, Oceana Keys, Felicity Schneider, Brittany Vacca, Aeron A. Wade ("Opt-in Plaintiffs"). (ECF No. 2-1)

14. As will be discussed below, Oceana Keys withdrew from this lawsuit on November 25, 2024. (ECF No. 5)

15. The Named Plaintiffs and the Opt-in Plaintiffs will be collectively referred to as "Plaintiffs."

16. The Putative Plaintiffs are Defendants' non-exempt employees employed by Defendants at any time within three (3) years preceding the commencement of this action who were not paid the statutory federal and Ohio minimum wage and/or subject to Defendants' tip pooling policies. ("Putative Plaintiffs").

17. Throughout their employment, Defendants misclassified Plaintiffs and the Putative Plaintiffs as independent contractors, failed to pay them federal and Ohio statutory wages; instead

relied on customer tips to satisfy their minimum wage obligations in violation of the FLSA and Ohio Wage Laws.

**B. Defendants**

18. Defendant Universal Entertainment LLC *dba* The King of Clubs (“Defendant” or “King of Clubs”) is a domestic limited liability company and is registered to do business in the state of Ohio. Process may be served upon its Registered Agent, Richard Wolf, at 8032 Kennedy Rd. Blacklick, OH 43004.

19. Defendant Richard Wolf (“Mr. Wolf”) is an adult individual who does business throughout the state of Ohio and is an owner of Defendant King of Clubs. Process may be served at his residence at 8032 Kennedy Rd. Blacklick, OH 43004.

20. Defendant Angela Wolf (“Ms. Wolf”) is an adult individual who does business throughout the state of Ohio and is an owner of Defendant King of Clubs. Process may be served at her residence at 8032 Kennedy Rd. Blacklick, OH 43004.

21. King of Clubs, Mr. Wolf, and Ms. Wolf will be collectively referred to as “Defendants.”

22. Defendants share a common location, 6252 Busch Blvd. Columbus, OH 43229.

23. Defendants hold themselves out as, act as, and in fact comprise a single enterprise.

24. Defendants centrally control employment policies and practices for all of their employees.

25. Defendants regularly oversee business operations, address employment issues, and specifically implement pay and other employment practices and policies.

26. Defendants share a common purpose of operating a bar and music venue.

27. Defendants’ enterprise acts through each of the Defendants.

28. Furthermore, each of the Defendants acts directly in the interest of themselves and of the other entities comprising the enterprise as an employer in relation to Plaintiffs and the Putative Plaintiffs.

29. Thus, each Defendant is a “person” (within the meaning of the FLSA and the Ohio Wage Laws) “acting directly or indirectly in the interest of an employer in relation to an employee.” *See* 29 U.S.C. §§ 203(a),

30. As a result, Defendants, both individually and collectively, employ the Plaintiffs and the Putative Plaintiffs within the meaning of the FLSA and Ohio Wage Laws.

#### **IV. FACTUAL ALLEGATIONS**

31. At all times material to this Complaint, Defendants were joint employers within the meaning of the FLSA, Ohio Wage Laws, and O.R.C. § 2307.60.

32. During all times material to this Complaint, Defendants jointly employed Plaintiffs and the Putative Plaintiffs within the meaning of the FLSA, Ohio Wage Laws, and O.R.C. § 2307.60.

33. During all times material to this Complaint, Plaintiffs and the Putative Plaintiffs were Defendants’ employees pursuant to the FLSA, Ohio Wage Laws, and O.R.C. § 2307.60.

34. During all times material to this Complaint, Defendants were an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or has had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 per year (exclusive of excise taxes at the retail level).

35. During all times material to this Complaint, Plaintiffs and the Putative Plaintiffs were non-exempt employees as that term is defined by the FLSA and the Ohio Wage Laws.

36. Defendants jointly employed Plaintiffs and the Putative Plaintiffs to provide services to their music venue patrons at a single location in Columbus.

37. Defendants and owners Mr. Wolf and Ms. Wolf often performed bartending duties with Plaintiffs and the Putative Plaintiffs and retained a portion of the tip pool at the end of each shift.

**A. Defendants Purposefully Misclassify Plaintiffs and the Putative Plaintiffs as “Independent Contractors” to Avoid Paying Federal and State Minimum Wages.**

38. Defendants do not pay Plaintiffs and the Putative Plaintiffs hourly wages in violation of federal and Ohio Wage Laws..

39. Instead, Defendants rely on the notion that the Plaintiffs and the Putative Plaintiffs receive tips from patrons to justify their decision of not paying tipped employees the minimum wage.

40. In addition, Defendants jointly created a scheme to misclassify their employees as “independent contractors” to avoid paying them the federal and Ohio minimum wages.

41. However, the significant control Defendants exert over Plaintiffs and the Putative Plaintiffs clearly indicates the existence of an employer-employee relationship.

42. This control is evident in Defendants’ management of Plaintiffs’ and the Putative Plaintiffs’ work schedules, the requirement for clocking in and out, and the prohibition against shift swapping amongst employees.

43. For example, Defendants have a large sign taped to both the wall in the staff area and the door to go inside that states “Don’t forget! Clock-in / clock-out before AND after each shift.” Photographs of this sign are attached as ECF No. 1-3.

44. When Plaintiff Ebright asked Mr. Wolf if she was able to switch shifts, Mr. Wolf took the shift away from her and told her she would have other opportunities to make money that month.

45. Further, Mr. Wolf texted Named Plaintiffs and the Putative Plaintiffs in a group text message that said, “NO bar staff leaves until they’re released by the shift mgr.” Attached to this Complaint is a copy of the text message. See ECF No. 1-4.

46. Plaintiffs and the Putative Plaintiffs are also provided with the equipment and materials needed to perform the job, such as uniforms, glassware, and the ingredients for the food and beverages being served.

47. Defendants are the ones responsible for setting the price point at which Defendants’ food and beverages will be sold.

48. In addition, Plaintiffs and the Putative Plaintiffs are required to attend a mandatory “pre-production meeting” before every shift in addition to quarterly staff meetings. However, Defendants refuse to compensate Plaintiffs and the Putative Plaintiffs for their time spent at these meetings.

49. Indeed, Defendants direct when, where, and how Plaintiffs’ and the Putative Plaintiffs’ work is to be completed.

50. By failing to properly classify Plaintiffs and the Putative Plaintiffs, Defendants have created a scheme that allows them to avoid withholding or paying employment taxes.

51. Plaintiffs’ and the Putative Plaintiffs’ economic reality was that they are and/or were Defendants’ employees since:

- a. They did not have an opportunity for profit or loss depending on their managerial skill;
- b. Lacked any investment into Defendants’ operations;

- c. Their work relationship with Defendants was permanent;
- d. Defendants' exercised control of their work conditions;
- e. Their work was an integral part of Defendants' business; and,
- f. Defendants did not rely on their skill or initiative.

52. By illegally misclassifying Plaintiffs and the Putative Plaintiffs as independent contractors and relying on patron tips as a justification for not paying wages, Defendants have unfairly benefited from the work of these employees.

53. Indeed, because of Defendants' illegal misclassification, there were workweeks where Defendants did not pay the required minimum wages and/or overtime at 1.5 times their regular rate for all hours worked over 40 in a workweek.

54. Upon information and belief, to the extent that Defendants paid themselves benefits, by illegally misclassifying Plaintiffs and the Putative Plaintiffs as independent contractors while treating them as employees, Defendants have avoided paying Plaintiffs and the Putative Plaintiffs benefits in compliance with the Employee Retirement Income Security Act of 1974 ("ERISA").

55. Upon information and belief, Defendants did not retain a Worker's Compensation insurance policy in violation of O.R.C. § 4123 et seq.

56. It would be inequitable for Defendants to retain the benefit without properly compensating Plaintiffs and the Putative Plaintiffs for its value.

57. Defendants knew or should have known that their pay practices were in violation of the FLSA and Ohio Wage Laws.

58. When Plaintiff Ebright complained to owner Richard Wolf about not receiving minimum wage, Mr. Wolf replied "I don't want to pay taxes and you bartenders are already the highest paid employees we have here."

59. Indeed, Defendants willfully carried out their illegal scheme in violation of the FLSA and Ohio Wage Laws.

60. The unpaid wages to which Plaintiffs and the Putative Plaintiffs are entitled to have remained unpaid for more than thirty days beyond the regularly scheduled payday.

**B. Defendants' Illegal Tip Pool Scheme**

61. At all times relevant to this Complaint, Defendants were aware the federal and Ohio Wage laws consider tips to be wages earned by their employees and had an obligation to pay the Plaintiffs and the Putative Plaintiffs the tips they earned in addition to the federal and Ohio minimum wages.

62. At all times relevant to this Complaint, Defendants have a policy and practice of requiring Plaintiffs and the Putative Plaintiffs to contribute a portion of the tips they receive from customers to a tip pool that is distributed to other employees.

63. At all times relevant to this Complaint, the Defendants held jobs in which (i) their primary duty is to manage Defendants' enterprises or a customarily recognized department or subdivision of the enterprises, (ii) they customarily and regularly direct the work of at least two (2) or more other full-time employees, and (iii) they have the authority to hire or fire other employees, or at a minimum, their suggestions and recommendations as to the hiring or firing of other employees are given particular weight.

64. At all times relevant to this Complaint, Mr. Wolf and Ms. Wolf, as owners, illegally paid themselves out of the Tip Pool.

65. At all times relevant to this Complaint, Plaintiffs and the Putative Plaintiffs are required to give 3% of their tips made to the kitchen staff, and on some occasions, 5% of their tips made to employees working security.

66. Remitting tips to other employees, including management, is not voluntary; rather, it is a condition of employment and, therefore, mandatory.

67. Defendants jointly receive the benefit of these tips at the expense of Plaintiffs and the Putative Plaintiffs who earn tips.

**C. Plaintiff Ebright and the Putative Plaintiffs Who Defendants Falsely Considered “Managers” Were, in Reality, Working Foreman Under C.F.R. § 541.115.**

68. Plaintiff Ebright and the Putative Plaintiffs who Defendants deceptively considered “managers” (this subset will be hereinafter be referred to as “Foreman-Bartender Putative Plaintiffs”) were, in reality, Working Foreman who spent a substantial amount of time at work completing non-supervisory duties alongside fellow bartenders.

69. Indeed, Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs spent more than 20% of their time working alongside other bartenders and performing duties such as cleaning, taking customers’ orders, and serving food and beverages.

70. The only additional duties that Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs performed as “managers” involved scheduling and coordinating with outside bands or performers who play at Defendants’ venue.

71. However, Plaintiff Ebright and Foreman-Bartender Putative Plaintiffs had little discretion and acted no different than they did in their capacity as bartenders. Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs’ job duties included taking orders from those directly above them.

72. Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs did not have the authority to hire or fire other employees, nor did they ever regularly direct the work of two or more other salaried employees.

73. As such, to the degree that they performed any additional duties in their capacity as “managers,” they were nothing more than a Working Foreman. Because Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs spent substantial time performing the same tasks alongside bartenders, Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs are non-exempt employees under the Working Foreman exception C.F.R. §541.115, obligating Defendants to pay them minimum wage for all hours worked and 150% of their regular rate for all hours worked over forty (40) in a workweek.

74. By not paying Plaintiff Ebright and the Foreman-Bartender Putative Plaintiffs minimum wage for all hours worked and 150% of their regular rate for all hours worked over forty (4) in a workweek, Defendants willfully violated the FLSA and Ohio Wage Laws.

**D. Defendants Richard Wolf and Angela Wolf have Continuously Harassed and Retaliated Against Plaintiffs and the Opt-in Plaintiffs Since the Filing of their Complaint.**

75. Since the Complaint was filed, Defendants Richard Wolf and Angela Wolf have persistently contacted Plaintiffs through repeated phone calls and text messages, engaging in retaliatory and harassing behavior. *See Attachment 1.*

76. Defendants’ text messages to Plaintiffs refer to them as “two-faced” (*See Attachment 2*) and ask why they are a part of the “scheme” that Plaintiff Ebright has created by filing this lawsuit. (*See Attachment 3*).

77. Defendants’ text messages are meant to harass, intimidate, and retaliate against Plaintiffs for exercising their rights under the FLSA and the Ohio Wage Laws.

78. Defendants’ text messages are meant to harass and intimidate Putative Plaintiffs not to exercise their rights under the FLSA and the Ohio Wage Laws.

79. Defendant Richard Wolf has also made numerous calls and sent texts to the family members, friends, and significant others of Plaintiffs to further harass and intimidate them. *See Attachment 4.*

80. Defendants have approached various music venues and vendors to tarnish the reputations of the Plaintiffs in retaliation for exercising their rights under the FLSA and the Ohio Wage Laws. *See Attachment 5.*

81. On November 20, 2024, Plaintiffs' Counsel sent a Cease-and-Desist letter to Defendants Richard Wolf and Angela Wolf, warning them that any further acts of intimidation and retaliation would result in amending the Complaint. *See Attachment 6.*

82. On upon information and belief, November 23, 2024, after receiving the Cease-and-Desist letter, the Defendants pulled former Plaintiff Oceana Keys to their office with the intent to intimidate and harass her. During the meeting, they offered Ms. Keys \$200 in cash to convince her to withdraw from the lawsuit, which she ultimately agreed to do.

83. After the meeting, Defendants Richard Wolf and Angela Wolf publicly commended Ms. Keys at a pre-production staff meeting, praising her for resisting what they described as Ms. Ebright's "manipulation" and for agreeing to withdraw from the lawsuit.

84. Defendants' actions are a clear attempt to intimidate and retaliate against Plaintiffs for exercising their federal and Ohio wage law rights.

85. As of the filing of this Amended Complaint, Defendants continue to harass and retaliate against Putative Plaintiffs with the intent interfere with them exercising their federal and Ohio wage law rights.

**V. COURT SUPERVISED NOTICE**

86. Plaintiffs re-allege, and incorporate by reference, the allegation set forth in the preceding paragraphs.

87. Plaintiffs request that the Court issue Court Supervised Notice to the following group of current and former employees defined as:

**All current and former individuals who Defendant paid tips instead of wages at any time between three (3) years preceding the commencement of this action and the present. (“Employees Entitled to Notice”)**

88. Plaintiffs reserve the right to amend and refine the definition of the Employees Entitled to Notice they seek to have the Court serve notice based upon further investigation and discovery.

89. The precise size and identity of the proposed Employees Entitled to Notice should be ascertainable from the business records, tax records, and/or employee and personnel records of Defendants.

90. Court Supervised Notice pursuant to 29 U.S.C. § 216(b) and Ohio Revised Code § 4111.14 (k) to the Employees Entitled to Notice is appropriate because there exists at least a strong likelihood that they are similarly situated to the Plaintiffs.

91. Sending Court Supervised Notice to the Employees Entitled to Notice is appropriate because they have been subjected to single companywide policies and common business practices referenced in the paragraphs above, and the success of their claims depends upon the resolution of common issues of law and fact, including *inter alia*, whether Defendants misclassified them as independent contractors, failed to pay them at least the minimum federal and/or the Ohio minimum wage rate for all hours worked and 1.5 times their regular rate for all hours worked in excess of 40 in a workweek.

92. Plaintiffs and the Employees Entitled to Notice, having willfully been not paid their entitled compensation for work they performed pursuant to the common policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b), Ohio Constitution, and Ohio Revised Code § 4111.14 (k), and the associated decisional law.

93. Plaintiffs and the Employees Entitled to Notice have been similarly affected by the violations of Defendants in workweeks during the relevant time period, which amount to a single decision, policy, or plan to willfully avoid paying all earned FLSA, Ohio Constitution and Ohio Wage Law compliant wages.

94. Plaintiffs seek to have the Court send supervised notice to the proposed group of similarly situated current and former employees, i.e., Employees Entitled to Notice.

95. Plaintiffs are similarly situated to the Employees Entitled to Notice and will prosecute this action vigorously on their behalf.

96. The names and addresses of the Employees Entitled to Notice are available from Defendants’ records. For the purpose of notice and other purposes related to this action, their names, addresses, email addresses, and phone numbers are readily available from Defendants. Notice can be provided by means permissible under the FLSA, Ohio Constitution and Ohio Wage Laws.

97. Plaintiffs and the Employees Entitled to Notice have been damaged by Defendants’ willful misclassification and refusal to pay the appropriate wages for all hours worked.

98. As a result of Defendants’ FLSA violations, Plaintiffs and the Employees Entitled to Notice are entitled to damages, including, but not limited to, unpaid wages, liquidated damages, costs, and attorneys’ fees.

**VI. CAUSES OF ACTION**

**COUNT I**

**VIOLATION OF THE MINIMUM WAGE AND OVERTIME REQUIREMENTS OF THE FLSA**

99. Plaintiffs re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

100. Plaintiffs assert this claim on behalf of themselves and the Employees Entitled to Notice who opt into this action by filing a consent form, pursuant to 29 U.S.C. § 216(b).

101. Plaintiffs and the Employees Entitled to Notice are employees entitled to the FLSA's protections as they were employees within the meaning of 29 U.S.C. § 203(e)(1) and the Defendants were employers within the meaning of 29 U.S.C. § 203 (d).

102. Here, through the companywide practice of misclassifying Plaintiffs and Employees Entitled to Notice as Independent Contractors and refusing to pay them any wages, Defendants have not satisfied their minimum wage obligations.

103. The FLSA entitles employees to a minimum hourly wage of \$7.25 for every hour worked. 29 U.S.C. § 206(a).

104. The FLSA entitles employees to an overtime rate “not less than one and one-half times” their regular rate of pay for hours worked over 40 hours in a workweek. 29 U.S.C. § 207.

105. The minimum overtime hourly wage is \$10.88 per hour (i.e., one and one-half times \$7.25 per hour). 29 U.S.C. §§ 206(a), 207.

106. The FLSA requires employers to pay employees the tips they earn in addition to federal minimum wages.

107. As such, Defendants have violated the FLSA by failing to pay Plaintiffs and the Employees Entitled to Notice for all time worked at \$7.25 per hour (and \$10.88 per hour for hours over 40 in a workweek) and the tips they earned.

108. Plaintiffs and the Employees Entitled to Notice are entitled to recover all unpaid minimum and overtime wages, an equal amount of liquidated damages, and attorneys' fees and expenses, pursuant to 29 U.S.C. § 216(b).

109. In violating the FLSA, Defendants have jointly acted willfully and with reckless disregard of clearly applicable FLSA provisions.

**COUNT II:**  
**UNLAWFUL RETENTION OF TIPS UNDER THE FLSA**

110. All previous paragraphs are incorporated as though fully set forth herein.

111. Plaintiffs assert this claim on behalf of themselves and all Employees Entitled to Notice who opt into this action by filing a consent form, pursuant to 29 U.S.C. § 216(b).

112. Plaintiffs and the Employees Entitled to Notice are employees entitled to the FLSA's protections.

113. Plaintiffs and the Employees Entitled to Notice are employees entitled to the FLSA's protections as they were employees within the meaning of 29 U.S.C. § 203(e)(1) and the Defendants were employers within the meaning of 29 U.S.C. § 203 (d).

114. Here, through the companywide practice of misclassifying Plaintiffs and the Employees Entitled to Notice as Independent Contractors and refusing to pay them any wages, Defendants have not satisfied their minimum wage obligations

115. Under the FLSA, "an employer may not keep tips received by its employees for any purposes." 29 U.S.C. §§ 203(m)(2)(B). This is true "regardless of whether or not the employer takes a tip credit." *Id.*

116. U.S. Department of Labor regulations concerning tip-sharing arrangements (or “tip pooling”) provide that an “employer may require an employee for whom the employer takes a tip credit to contribute tips to a tip pool only if it is limited to employees who customarily and regularly receive tips” and that the “employer may not retain any of the employees’ tips for any other purpose.” See 29 C.F.R. § 531.54(c).

117. Defendants unlawfully used and retained a portion of the tips earned by Plaintiffs and the Employees Entitled to Notice and shared those tips with employees who do not customarily and regularly receive tips and who have no or insufficient customer interaction.

118. Put differently, Defendants took these tips and used them to pay their non-customarily tipped employees’ wages.

119. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions

**COUNT III**  
**VIOLATION OF THE OHIO CONSTITUTION, ARTICLE II, SECTION 34a**

120. Plaintiffs re-allege and incorporate by reference the foregoing allegations as if fully rewritten herein.

121. Plaintiffs bring their Ohio Constitution, Ohio Wage Act and OPPA claims on behalf of themselves, and the Employees Entitled to Notice who join this lawsuit.

122. Plaintiffs and the Employees Entitled to Notice who join this lawsuit are employees within the meaning of O.R.C. §§ 4111.14(B) and Oh. Const. Art. II, § 34a protected by the mandates of the Ohio Constitution.

123. Defendants are joint employers within the meaning of O.R.C. § 4111.14(B) and Oh. Const. Art. II, § 34a and therefore required to comply with the mandates of the Ohio Constitution.

124. Article II, Section 34a of the Ohio Constitution and O.R.C. § 4111.02 entitle employees to a minimum hourly wage that increases each year (2024 — \$10.45 per hour; 2023 — \$10.10 per hour; 2022 — \$9.30 per hour; 2021 — \$8.80 per hour).

125. Under the FLSA, “an employer may not keep tips received by its employees for any purposes.” 29 U.S.C. §§ 203(m)(2)(B).

126. In violation of Article II, Section 34(a) of the Ohio Constitution Defendants failed to pay the Plaintiffs, and the Employees Entitled to Notice any wages and thus did not pay them the required Ohio statutory wages for any hour they worked.

127. Thus, Defendants have violated O.R.C. § 4111.14(B) and Oh. Const. Art. II, § 34a by paying Plaintiffs and the Employees Entitled to Notice who join this lawsuit an hourly wage below the required minimum wage.

128. In violating the Ohio Wage Act, Defendants’ joint acts and omissions have been of a willful, intentional, and bad faith nature or otherwise in reckless disregard of the Ohio Wage Act.

129. Plaintiffs and the Employees Entitled to Notice who join this lawsuit are entitled to unpaid minimum wages and two times those wages as additional statutory damages, interest, and attorneys’ fees and expenses, and all other remedies available.

**COUNT IV**  
**VIOLATION OF THE OHIO PROMPT PAY ACT**

130. Plaintiffs re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

131. Plaintiffs assert this claim on behalf of themselves and the Employees Entitled to Notice who join this lawsuit.

132. The OPPA provides that employers shall pay covered employees all wages, on or before the first day of each month for wages earned during the first half of the preceding month

ending with the fifteenth day thereof, and, on or before the fifteenth day of each month, for wages earned during the preceding calendar month. *See O.R.C. § 4113.15(A).*

133. At all times relevant to this Complaint, Defendants have refused to pay Plaintiffs and the Employees Entitled to Notice who join this lawsuit all wages at the statutorily mandated minimum wage rate, within thirty (30) days beyond their regular scheduled payday.

134. Defendants' violations of the OPPA have been of a willful, intentional, or bad faith nature or Defendants have otherwise exhibited a reckless disregard of the OPPA's provisions.

135. Plaintiffs and the Employees Entitled to Notice who join this lawsuit are entitled to an additional six percent (6%) of the unpaid minimum wages as additional liquidated damages, and all other remedies available.

**COUNT V**  
**CIVIL PENALTIES FOR CRIMINAL ACTS**  
**O.R.C. § 2307.60**

136. Plaintiffs re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

137. Plaintiffs assert this claim on behalf of themselves and the Employees Entitled to Notice who join this lawsuit.

138. The Fair Labor Standards Act, 29 U.S.C. § 216(a), imposes criminal penalties for willful violations of the FLSA.

139. By their acts and omissions described herein, Defendants have willfully violated the FLSA, and Plaintiffs and the Employees Entitled to Notice who join this lawsuit have been injured as a result.

140. O.R.C. § 2307.60 permits anyone injured in one person or property by a criminal act to recover damages in a civil action, including exemplary and punitive damages.

141. As a result of Defendants' willful violations of the FLSA, Plaintiffs and the Employees Entitled to Notice who join this lawsuit are entitled to compensatory and punitive damages pursuant to O.R.C. § 2307.60.

**COUNT VI**  
**HARASSMENT AND RETALIATION UNDER THE FLSA**

142. Plaintiffs re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

143. Plaintiffs assert this claim on behalf of themselves and the Opt-in Plaintiffs who have already joined this lawsuit.

144. The Fair Labor Standards Act, 29 U.S.C. § 15(a)(3) states that it is a violation of federal law for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the FLSA.

145. Since the filing of the Complaint on November 15, 2024, Defendants have continuously engaged in harassment, retaliation, and intimidation of Plaintiffs and Opt-in Plaintiffs.

146. Defendants' actions are a clear attempt to harass and retaliate against Plaintiffs and opt-in Plaintiffs for exercising their federal rights under the FLSA.

147. As a result of Defendants' violation of 29 U.S.C. § 15(a)(3), Plaintiffs and Opt-in Plaintiffs are entitled to damages including, but not limited to compensatory and liquidated damages.

**COUNT VII**  
**HARASSMENT AND RETALIATION UNDER OHIO CONSTITUTION,  
ARTICLE II, SECTION 34a**

148. Plaintiffs re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

149. Plaintiffs assert this claim on behalf of themselves and the Opt-in Plaintiffs who have already joined this lawsuit.

150. The anti-retaliation provision in Section 34a of Article II of the Ohio Constitution states that employers cannot retaliate against employees for exercising their rights under the minimum wage law.

151. This includes retaliating against an employee for participating in a wage-related proceeding.

152. Since the filing of the Complaint on November 15, 2024, Defendants have continuously engaged in harassment, retaliation, and intimidation of Plaintiffs and Opt-in Plaintiffs.

153. Defendants' actions are a clear attempt to intimidate and retaliate against Plaintiffs and opt-in Plaintiffs for exercising their rights under Ohio state law.

154. As a result of Defendants' violations of the anti-retaliation provision, damages shall be calculated as an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and the Employees Entitled to Notice pray that this Court enter the following relief:

A. For an Order sending Court Supervised Notice to the Employees Entitled to Notice as defined herein and requiring Defendants to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative collective action members.

B. For an Order requiring Defendants to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all Employees Entitled to Notice.

C. In the event the Defendants seek to have discovery on the issues of whether the Employees Entitled to Notice are similarly situated to the Plaintiffs, that the Court issue an order tolling the FLSA statute of limitations for the Employees Entitled to Notice as of the filing of this Complaint through the end of the notice discovery period.

D. Issuing proper notice to the Employees Entitled to Notice at Defendants' expense.

E. Unpaid minimum wages and an equal amount as liquidated damages pursuant to the FLSA and the supporting regulations for the Plaintiffs and the Employees Entitled to Notice that join the lawsuit.

F. An order equitably tolling the statute of limitations as of the Plaintiffs and Employees Entitled to Notice.

G. Damages for all missed payments taken from or applied to the Plaintiffs' and the Employees Entitled to Notice employees' pay;

H. An order awarding the Plaintiffs and the Employees Entitled to Notice who join this case back pay equal Ohio minimum wages for all hours worked for three (3) years preceding the filing of this Complaint to the present, plus an additional two times that amount in liquidated damages.

I. Repayment of all tips earned to the Plaintiffs and the Employees Entitled to Notice who join this case.

J. Designation of the Named Plaintiffs as representative of the Employees Entitled to Notice who join this lawsuit and counsel of record as their counsel.

K. A declaratory judgment that the practices complained of herein are unlawful under the Ohio Wage Laws.

L. Awarding Plaintiffs and the Employees Entitled to Notice who join this lawsuit the sum of 6% of the total unpaid wages or \$200.00 for each instance of failure to pay wages owed within thirty days, whichever is greater, pursuant to the OPPA.

M. A finding that Defendants acted willfully and without a good faith basis for their violations of the FLSA and the Ohio Wage Laws.

N. A finding that Defendants have violated the FLSA and the Ohio Wage Laws, and that Defendants have been unjustly enriched with the repayment of tips illegally retained.

O. A finding that Defendants have violated the anti-retaliation provisions for the FLSA and Ohio Wage Laws.

P. As a result of Defendants' violations of the anti-retaliation provision of the Ohio Wage Laws, an awarding of damages at an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued.

Q. A finding that Defendants Plaintiffs and the Employees Entitled to Notice who join this lawsuit should have been classified as "employees."

R. Compensatory and punitive damages under O.R.C. § 2307.60.

S. Awarding pre-judgment and post-judgment interest.

T. An award of prejudgment and post-judgment interest.

U. An award of costs and expenses of this action, together with reasonable attorney' fess and expert fees; and,

V. Any other relief to which the Plaintiffs and the Employees Entitled to Notice who join this lawsuit may be entitled.

Dated: December 2, 2024

Respectfully submitted,

**BARKAN MEIZLISH DEROSE Cox, LLP**

/s/ Robert E. DeRose

Robert E. DeRose (OH Bar No. 0055214)  
Anna Caplan (OH Bar No. 0104562) (*Admission Pending*)  
4200 Regent Street, Suite 210  
Columbus, OH 43219  
Phone: (614) 221-4221  
Facsimile: (614) 744-2300  
[bderose@barkanmeizlish.com](mailto:bderose@barkanmeizlish.com)  
[acaplan@barkanmeizlish.com](mailto:acaplan@barkanmeizlish.com)

*Attorneys for Plaintiffs*

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable.

/s/ Robert E. DeRose

Robert E. DeRose  
*Attorney for Plaintiffs*