

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

**CHARLENE CRAIG, on behalf
of herself and all others similarly
situated,**

Plaintiff,

v.

Ruby Tuesday, Inc.,

Defendant.

Civil Action File

No. _____

COLLECTIVE CLASS ACTION

COMPLAINT

Plaintiff Charlene Craig (“Plaintiff”), on her own behalf and on behalf of others similarly situated, brings this suit against Ruby Tuesday, Inc. (“Ruby Tuesday”), alleging that Ruby Tuesday violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, by failing to pay wages for all hours worked, and minimum wages for non-tipped work. In support of these claims, Plaintiff alleges as follows:

NATURE OF THE ACTION

1. This lawsuit arises under the FLSA as a result of Ruby Tuesday’s failure to pay earned wages to Plaintiff and other similarly situated employees.
2. Plaintiff and putative collective class members (“Class Members”) are current and former servers and bartenders at Ruby Tuesday’s 658 company-owned

and operated restaurants in the United States. Plaintiff alleges that Ruby Tuesday violated the FLSA by: (i) failing to pay Plaintiff and Class Members wages for all hours worked and (ii) failing to pay minimum wages for non-tipped work in violation of the FLSA tip credit provisions.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

CLASS DEFINITION

5. Plaintiff brings this suit on behalf of the following similarly situated persons:

All current and former servers and bartenders who worked at a Ruby Tuesday-owned domestic Ruby Tuesday restaurant at any time during the applicable limitations period covered by this Complaint (*i.e.*, two years for FLSA violations, and three years for willful FLSA violations) up to and including the date of final judgment in this matter.

THE PARTIES

6. Plaintiff Charlene Craig is a citizen of the State of Tennessee who was employed as a server by Ruby Tuesday at the Ruby Tuesday restaurant at 5595

Highway 153, Hixson, Tennessee 37343, in this district and division during the statutory period covered by this Complaint.

7. Defendant Ruby Tuesday is a Georgia corporation headquartered in this judicial district.

8. Ruby Tuesday owns and operates the Ruby Tuesday casual dining restaurant chain.

9. As of June 2, 2015, Ruby Tuesday owned and operated 658 domestic Ruby Tuesday restaurants (“Ruby Tuesday restaurants”).¹

10. Ruby Tuesday restaurants can be found in 44 states, with company-owned and operated restaurants concentrated primarily in the Southeast, Northeast, Mid-Atlantic, and Midwest of the United States.

COVERAGE UNDER THE FLSA

11. At all relevant times, Ruby Tuesday and each Ruby Tuesday restaurant have continuously been an employer of multiple employees engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

¹ Excluded from this lawsuit and the definition of Ruby Tuesday restaurants are the approximately 29 Ruby Tuesday franchise locations that are not company-owned and operated.

12. At all relevant times, Ruby Tuesday and each Ruby Tuesday restaurant together constituted an enterprise covered by the FLSA and as defined by 29 U.S.C. §§ 203(r) and 203(s).

13. At all relevant times, Ruby Tuesday and each Ruby Tuesday restaurant had annual gross volume of sales made or business done of over \$500,000 for each year in the relevant period.

14. At all relevant times, Ruby Tuesday and each Ruby Tuesday restaurant had multiple employees including Plaintiff and Class Members engaged in commerce or in the production of goods for commerce, or had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

15. At all relevant times, Plaintiff and Class Members were “employees” of Ruby Tuesday and a Ruby Tuesday restaurant as that term is used in 29 U.S.C. § 203(e)(1).

16. At all relevant times, Ruby Tuesday employed, and/or continues to employ, Plaintiff and Class Members within the meaning of the FLSA.

17. Ruby Tuesday is an employer and/or a joint employer of Plaintiff and Class Members within the meaning of the FLSA.

FACTS

I. Ruby Tuesday Restaurants are Centrally Controlled and Subject to Uniform Policies, Practices, and Standards.

18. Ruby Tuesday operates a centralized Restaurant Support Center located in Tennessee in this district.

19. Through this Support Center, Ruby Tuesday maintains control, oversight, and direction over the operation of the Ruby Tuesday restaurants, including their employment and labor practices.

20. This Support Center houses its company-wide Training and Culinary Facility.

21. Legal, Finance, Accounting, Supply Systems, Human Resources, Marketing, and Information Technology are all centrally headquartered at the Support Center. *See* www.rubytuesday.com/careers/.

22. All Ruby Tuesday restaurants are directly managed and controlled by Ruby Tuesday to make sure that they conform to Ruby Tuesday's policies and practices.

23. All Ruby Tuesday restaurants are visited regularly by all levels of supervision of Ruby Tuesday to help ensure that the Ruby Tuesday restaurants adhere to all aspects of Ruby Tuesday's standards.

24. All Ruby Tuesday restaurants are operated pursuant to operations

manuals issued by Ruby Tuesday that cover all aspects of restaurant operations.

25. Plaintiff and Class Members received substantially similar training.

26. Plaintiff and Class Members were required to review the same or substantially similar employment training pamphlets and training videos.

27. Ruby Tuesday implements centralized training for the managers of each of the Ruby Tuesday restaurants.

28. Ruby Tuesday promotes a “One Team One Dream” slogan and philosophy with the idea and understanding that all Ruby Tuesday restaurant managers throughout the country are part of a single team. *See* www.rubytuesday.com/careers/.

29. Ruby Tuesday maintains uniform job descriptions for servers and bartenders.

30. Ruby Tuesday maintains uniform task checklists for servers and bartenders at all Ruby Tuesday restaurants.

31. Ruby Tuesday has a companywide policy of limiting overtime work.

32. Ruby Tuesday has a centralized timekeeping system that allows Ruby Tuesday to track each restaurant’s overtime record.

33. Ruby Tuesday has a uniform bonus policy that applies to all restaurant managers.

34. The restaurant manager bonus policy takes into account the

restaurant's labor costs.

35. Ruby Tuesday utilizes a centralized system of staffing all of its restaurants using the same software program.

36. Ruby Tuesday updates the Ruby Tuesday restaurants' staffing plans on a quarterly basis at the level of its regional directors, rather than at the level of individual restaurants.

37. Plaintiff and Class Member servers and bartenders are similarly situated at all Ruby Tuesday restaurants: they perform similar job functions pursuant to national employment standards set by Ruby Tuesday.

II. Ruby Tuesday Violates the FLSA by Requiring Plaintiff and Class Members To Perform Substantial Non-Tip-Producing Tasks Without Being Paid Minimum Wage.

38. Under the FLSA, as interpreted by the Department of Labor (the "DOL"), employers may not take the tip credit for time the employee is engaged in a non-tipped job and instead must be paid at the minimum wage. The DOL has formalized this concept under the "Dual Jobs" regulation:

Dual jobs. In some situations an employee is employed in a dual job, as for example, where a maintenance man in a hotel also serves as a waiter. In such a situation the employee . . . is a tipped employee only with respect to his employment as a waiter. He is employed in two occupations, and no tip credit can be taken for his hours of employment in his occupation of maintenance man. Such a situation is distinguishable from that of a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. . . . Such related duties in an occupation that is a tipped occupation need not by themselves be

directed toward producing tips.

29 CFR 541.56(e)

39. The Dual Jobs regulation imposes both quantitative and qualitative restrictions on the employer's ability to take the tip credit for non-tip-producing tasks, as explained in the DOL's Field Operations Handbook (the "Handbook" or "FOH").

40. The quantitative restriction limits the amount of time an employee can spend on tasks related to the tipped occupation, as follows:

29 CFR 531.56(e) permits the employer to take a tip credit for time spent in duties related to the tipped occupation of an employee, even though such duties, are not by themselves directed toward producing tips, provided such related duties are incidental to the regular duties of the tipped employees and are generally assigned to the tipped employee. For example, duties related to the tipped occupation may include a server who does preparatory or closing activities, rolls silverware and fills salt and pepper shakers while the restaurant is open, cleans and sets tables, makes coffee, and occasionally washes dishes or glasses.

FOH § 30d00(e)(2) (rev. 668, June 20, 2012).

41. The Handbook continues:

[W]here the facts indicate that tipped employees spend a substantial amount of time (in excess of 20 percent of the hours worked in the tipped occupation in the workweek) performing such related duties, no tip credit may be taken for the time spent in those duties. All related duties count toward the 20 percent tolerance.

FOH § 30d00(e)(3).

42. This “20 percent tolerance,” which is one method of determining whether an employee is effectively engaged in a dual jobs position, is referred to as the “20 Percent Rule.” Courts have routinely utilized this quantitative standard.²

43. The qualitative aspect of the Dual Jobs regulation prohibits taking the tip credit for work that is “not related to the tipped occupation. For example, maintenance work (e.g., cleaning bathrooms and washing windows) are not related to the tipped occupation of a server; such jobs are non-tipped occupations.” FOH § 30d00(e)(4).

44. Ruby Tuesday instituted a national policy requiring Plaintiff and Class Members to work dual jobs that included tipped tasks (directed toward producing tips) and substantial non-tip-producing tasks (“Non-Tipped Work”), exceeding 20 percent of their time, for which they were not paid the applicable minimum wage.

45. Such Non-Tipped Work for servers includes but is not limited to: setting up the dining room areas, brewing beverages, cutting lemons, filling ice bins, baking bread, restocking and cleaning the salad bar, polishing and stocking glassware, helping pack to-go orders, restocking salt/pepper and sugar caddies, pulling away tables to clean under booths, cleaning the server alley, sweeping floors, placing and removing silverware from dishwashing machine, polishing and

² See e.g., *Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014); *Fast v. Applebee’s Int’l, Inc.*, 638 F.3d 872, 881 (8th Cir. 2011); *Ash v. Sambodromo, LLC*, 676 F. Supp. 2d 1360, 1366-67 (S.D. Fla. 2009); *Flood v. Carlson Restaurants Inc.*, 94 F. Supp. 3d 572, 581-84 (S.D.N.Y. 2015) (collecting cases).

rolling silverware, wiping wood, starting and warming the oven, maintaining and cleaning sanitation buckets, and cleaning and setting floor mats.

46. Such Non-Tipped Work for bartenders includes but is not limited to: setting up and cleaning the bar area (front and back), stocking glassware, wiping and washing glassware; cleaning sinks, keg coolers, gaskets, and ice baths; handling to-go orders for the restaurant; cashing out servers; and performing server side work.

47. Ruby Tuesday has a policy and practice of paying Plaintiff and Class Members, sub-minimum, tip-credit wages, even when Ruby Tuesday requires them to perform Non-Tipped Work that is not related to their tipped occupation, such as baking bread and performing other tasks, including but not limited to those previously set forth in this Complaint, not related to their tipped occupation.

48. Even if the Non-Tipped Work Ruby Tuesday requires Plaintiff and Class Members to perform was related to their tipped occupation, Ruby Tuesday violates the FLSA by its policy and practice of requiring Plaintiff and Class Members to perform such work for more than 20 percent of their time worked during the workweek.

49. Plaintiff was required to perform substantial non-tip-producing tasks for more than 20 percent of her hours in the workweek without being paid a minimum wage.

50. Plaintiff also was required to perform tasks that were unrelated to and not incidental to her tip-producing occupation without being paid a minimum wage.

51. Ruby Tuesday's policy and practice of requiring Plaintiff and Class Members to perform excessive and/or unrelated Non-Tipped Work while paying them sub-minimum, tip-credit wages violates the FLSA.

III. Ruby Tuesday Violates the FLSA by Failing to Pay Plaintiff and Class Members for Off-the-clock Work.

52. Ruby Tuesday encourages Plaintiff and Class Members to work off the clock by limiting the hours that they are permitted to be clocked in.

53. Ruby Tuesday requires Plaintiff and Class Members to perform substantial non-tip-producing work when they are clocked in.

54. Ruby Tuesday refuses to pay Plaintiff and Class Members minimum wage for non-tip-producing work that exceeds 20 percent of the hours in a workweek.

55. Plaintiff and Class Members worked off the clock without pay, with the knowledge, expectation, and acquiescence of Ruby Tuesday.

56. The willful refusal to pay wages for off-the-clock work constitutes a violation of the FLSA.

COUNT I
FAIR LABOR STANDARDS ACT VIOLATIONS
FAILURE TO PAY MINIMUM WAGE
(On Behalf of Plaintiff and the Class)

57. Plaintiff, on behalf of herself and the Class, repeats and realleges each paragraph above as though it were fully set forth herein.

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

59. At all relevant times, Ruby Tuesday employed, and/or continues to employ, Plaintiff and each of the Class Members within the meaning of the FLSA.

60. At all relevant times, Ruby Tuesday failed to compensate its employees, including Plaintiff and the Class Members, at the applicable federal minimum wage for Non-Tipped Work exceeding 20 percent of hours worked in the workweek in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*

61. At all relevant times, Ruby Tuesday failed to compensate its employees, including Plaintiff and Class Members, at the applicable federal minimum wage for tasks that were unrelated to and non-incidental to a tip-producing occupation.

62. Ruby Tuesday's conduct constitutes a willful violation of the FLSA

within the meaning of 29 U.S.C. § 255(a).

63. Due to Ruby Tuesday's FLSA violations, Plaintiff and the Class Members were damaged and are entitled to recover from Ruby Tuesday compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees, costs, and expenses of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II
FAIR LABOR STANDARDS ACT VIOLATIONS
UNPAID WAGES
(On Behalf of Plaintiff and the Class)

64. Plaintiff, on behalf of herself and the Class, repeats and realleges paragraphs Nos. 1 through 56 above as though they are fully set forth herein.

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

66. At all relevant times, Ruby Tuesday employed, and/or continues to employ, Plaintiff and each of the Class Members within the meaning of the FLSA.

67. At all relevant times, Ruby Tuesday had a uniform policy and practice of knowingly permitting Plaintiff and Class Members to work off the clock without compensation.

68. While purporting to prohibit off-the-clock work, Ruby Tuesday's

policies and practices of limiting hours worked, and not paying minimum wage for non-tip-producing work actually encouraged Plaintiff and Class Members to work off the clock without compensation.

69. Ruby Tuesday failed to pay Plaintiff and Class Members wages for off-the-clock work.

70. Ruby Tuesday's conduct constitutes willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).

71. Due to Ruby Tuesday's FLSA violations, Plaintiff and the Class Members were damaged and are entitled to recover from Ruby Tuesday compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees, costs and expenses of this action, pursuant to 29 U.S.C. § 216(b).

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated Class Members, requests that this Court grant the following relief against Ruby Tuesday:

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

B. On the first claim for relief, an award of compensation for unpaid minimum wages at the applicable minimum wage rate (either the applicable state minimum wage or the federal minimum wage, whichever is higher) to Plaintiff and Class Members;

C. On the second claim for relief, an award of compensation for unpaid wages to Plaintiff and the Class Members;

D. An award of liquidated damages to Plaintiff and the Class Members;

E. An award of prejudgment and post-judgment interest to Plaintiff and the Class Members;

F. An award of costs and expenses of this action together with reasonable attorneys' and expert fees, costs, and expenses of litigation to Plaintiff and Class Members; and

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

HALL & LAMPROS, LLP

/s/ Andrew Lampros
Andrew Lampros

-15-

Tenn. BPR # 020167
Christopher B. Hall
Georgia Bar No. 318380
1230 Peachtree St. N.E.
Suite 950
Atlanta, GA 30309
(404) 876-8100 telephone
(404) 876-3477 facsimile
alampros@hallandlampros.com
chall@hallandlampros.com

Ted E. Trief
Shelly L. Friedland
Caitlin Duffy
TRIEF & OLK
150 E 58th Street, 34th Floor
New York, NY 10155
(212) 486-6060 telephone
(212) 317-2946 facsimile
ttrief@triefandolk.com
sfriedland@triefandolk.com
cduffy@triefandolk.com

ATTORNEYS FOR THE PLAINTIFF