

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

William Owen and Christina Belgarde, on
behalf of themselves and the Putative
Class,

Plaintiffs,

Case No.

v.

Punch Bowl Minneapolis, LLC

**CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Defendant.

Plaintiffs William Owen and Christina Belgarde (“Plaintiffs”), on behalf of themselves and members of the Putative Class, by and through their attorneys, bring this action against Defendant Punch Bowl Minneapolis, LLC (“Defendant” or “Punch Bowl”) for damages and other relief relating to violations of the Minnesota Fair Labor Standards Act (“MFLSA”). Plaintiffs state as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this class action to challenge Defendant’s unlawful tip-pooling under the Minnesota Fair Labor Standards Act (“MFLSA”), Minn. Stat. § 177.21, *et seq.*

2. Under Minn. Stat. § 177.24, subd. 3, tips are the property of the individual who receives them. Employers are therefore prohibited from requiring their direct-service employees to pool and share tips. While the MFLSA allows employees to enter into

voluntary agreements to pool and share tips, such agreements must be made without any employer participation or coercion.

3. Defendant's tip-pool policies and practices violate the MFLSA.

PARTIES

4. Plaintiff William Owen ("Plaintiff Owen") is an adult resident of Minneapolis, Minnesota in Hennepin County, and has been employed as a bartender by Defendant since August of 2017. Owen is an "employee" within the meaning of the MFLSA, Minn. Stat. § 177.23, subd. 7.

5. Plaintiff Christina Belgrade ("Plaintiff Belgrade") is an adult resident of Coon Rapids, Minnesota in Anoka County, and was employed as a server by Defendant from approximately November 2016 to April 2017, and again from approximately May 2017 to July 2017. Belgrade was an "employee" within the meaning of the MFLSA, Minn. Stat. § 177.23, subd. 7.

6. Defendant Punch Bowl Minneapolis, LLC is a Delaware corporation with a principal place of business at 1621 West End Boulevard in Saint Louis Park, Minnesota in Hennepin County. Defendant is and was Plaintiffs' employer within the meaning of the MFLSA, Minn. Stat. § 177.23, subd. 6.

VENUE

7. Venue is proper in Hennepin County because Defendant resides in Hennepin County, and because a substantial portion of the events giving rise to this Complaint occurred in Hennepin County.

FACTUAL ALLEGATIONS

8. Plaintiffs re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

Restaurant and Staff

9. Punch Bowl is one of fifteen (15) Punch Bowl Social restaurant venues nationwide. In addition to food and beverage service, Punch Bowl offers entertainment options such as karaoke, bowling, and table and arcade games.

10. Defendant employs bartenders and servers. Bartenders, like Plaintiff Owen, are responsible for making drinks for servers to take to guests seated at tables, while also providing direct food and beverage service to guests at multiple bars located throughout Defendant's venue. Servers, like, Plaintiff Belgarde, wait on Defendant's guests seated at tables, which involves taking orders, delivering food, refilling drinks, and providing other direct food and beverage services.

11. Defendant assigns servers to work in a specific "zone" during their shift. Within each zone, Defendant assigns servers certain tables or "sections," that servers are responsible for throughout the duration of their shift. If a table located in a server's "section" within their "zone" is sat with guests, that server is responsible for waiting on those guests.

12. Defendant also employs wait-assist staff including barbacks and server assistants/food runners. Barbacks are responsible for assisting bartenders by juicing fruits, stocking and prepping bar inventory, rotating kegs, and cleaning/organizing bars and service stations. Server assistants/food runners are support staff whose primary

responsibilities include cleaning, wiping, bussing, and fetching ready order food from the kitchen.

13. Barbacks and server assistants/food runners do not perform server responsibilities and do not provide direct service to Defendant's guests. For example, barbacks and server assistants/food runners are not responsible for taking customer orders.

14. Defendant schedules its bartenders and servers in shifts. The morning/afternoon shift begins at 10:00 am and ends at 3:00 pm. The evening shift is from 3:00 pm to close.

15. Defendant staggers the shifts of its bartenders and servers to account for increased demand. For example, while only two or three bartenders and three or four servers may be on staff when Defendant opens at 11:00 am, additional bartenders and servers may begin their shifts closer to noon to account for the lunch rush. The same is true for the evening shift. More bartenders and servers are on staff at 7:00 pm than there are at 3:00 pm.

16. Defendant "cuts" bartenders and servers depending on demand. For example, a bartender who began a shift at 3:00 pm may be "cut" at 8:00 pm if Defendant is not busy.

Bartender and Server Transactions

17. Bartenders and servers use Defendant's point-of-sale ("POS") system to enter orders and complete transactions with guests. Barbacks and server assistants/food runners rarely, if ever, use the POS system to enter orders or complete transactions with guests.

18. Defendant tracks which servers served which guests through its POS system. Defendant tracks each server's total sales (food and liquor), credit-card sales, and credit-card tips earned each shift through its POS system.

19. Throughout the duration of their visit and/or at the conclusion of their visits, guests leave gratuities for Defendant's bartenders and servers in the form of cash or credit-card tips.

Unlawful Tip-Pooling

20. Defendant requires its bartenders and servers to share tips with other employees.

21. Defendant informed Plaintiffs during training, and on numerous occasions throughout their employment, that it requires bartenders and servers to pool tips with other employees.

22. Defendant's employee handbook, which it disseminates to new employees upon hiring, outlines its tip-pooling policies. Specifically, it requires that bartenders and servers tip out certain percentages of sales (total sales, food sales, liquor sales) to wait-assist staff members including barbacks and/or server assistants/food runners.

23. Under Defendant's policy, at the end of each shift, bartenders print a receipt from Defendant's POS system that details the total sales for the bar they were assigned to work, based on the transactions completed at the bar throughout the shift.

24. The POS system calculates the total amount of gratuities left by guests for bartenders at each bar via credit cards throughout the duration of each shift. Bartenders may also earn tips in the form of cash, which they are required to place in a "tip bucket"

throughout each shift. Defendant requires bartenders to total the cash left in the tip bucket and give it to management during the “check-out” process at the end of a shift. Defendant then combines the credit card and cash tips from all bars to determine the total amount of gratuities earned from all the bars. Defendant then, applying a formula it created, calculates a percentage of the total beverage sales, a percentage of food sales at each bar, collects those amounts from the total gratuities, and redistributes those diverted tips to non-direct service employees—specifically, barbacks and server assistants/food runners. Defendant electronically tracks the amount each bartender contributes to the tip-pool.

25. Servers are required to participate in a “check-out” process similar to that of bartenders. Defendant uses its POS system to track and determine the total amount of credit card tips earned by each server throughout a shift. Defendant requires servers to give management all cash tips they earn throughout a shift, which it combines with the credit card tips, to determine the total amount of gratuities earned by each server. Defendant then, applying a formula it created, calculates a percentage of all sales, which it collects from servers and distributes to non-direct service employees—specifically, server assistants/food runners. Defendant also calculates a percentage of beverage sales, which it collects from servers and distributes to bartenders. Defendant electronically tracks the amount each server contributes to the tip-pool.

26. To determine the amount of gratuities bartenders and servers are allowed to keep at the end of each shift, Defendant performs yet another calculation prior to distributing gratuities to bartenders and servers. This calculation includes dividing the total tips earned by all bartenders (across the entire venue) and all servers (specific to each

“zone”) during a shift, by the total number of hours worked by all bartenders throughout the restaurant and servers for each zone respectively.

27. The result is what Defendant has termed an “hourly pool” for each group of workers. Bartenders and servers receive gratuities payments based on a calculated hourly rate (using the formula described above) and the number of hours they work during a shift, rather than on services they provided and/or gratuities they earned individually. For example, assuming two bartenders were scheduled for the same shift, one bartender worked ten hours, and the other was “cut” at some point and worked six hours. If the two bartenders, for the purposes of this example, were the only bartenders working and they collected \$200 in total tips after tipping out the indirect service employees, the “hourly pool” would be \$12.50 ($\$200 / 16$ hours). Thus, the bartender who worked for ten hours would receive \$125 ($\12.5×10 hours) and the bartender that worked for six hours would receive \$74 ($\12.5×6 hours).

28. As a result of Defendant’s illegal tip-pooling arrangement, bartenders and servers receive less in tips than they were directly given by guests as gratuities for their service.

29. Defendant oversees and administers the process of collecting bartenders and servers’ tips and redistributing them to other employees.

30. Defendant designed and imposed the foregoing tip-pool policies and practices.

31. Bartenders and servers did not request that Defendant do so on their behalf.

32. Through its unlawful tip-related policies and practices, Defendant has benefitted by shifting some of its labor costs associated with barbacks and server assistants/food runners, onto bartenders and servers.

33. Plaintiffs, as well as other bartenders and servers, have complained to Defendant about its tip-pool policies and practices. Defendant's management has responded with statements such as: "It's the policy" and "This is just the way we do things."

34. Defendant does not post in a conspicuous and an accessible place in the restaurant a summary of the MFLSA's tip-pooling prohibitions and related rules as required by law.

35. As a result of Defendant's tip-related policies and practices, Plaintiffs, along with the members of the Putative Class, have been unlawfully denied the full value of their property, the gratuities they received from the guests they served.

CLASS ACTION ALLEGATIONS

36. Plaintiffs re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

37. Plaintiffs bring this action individually and as a class action under Rule 23 of the Minnesota Rules of Civil Procedure.

38. The Putative Class is defined as:

All individuals employed by Defendant as bartenders or servers at the St. Louis Park, MN location at any time since three years prior to the filing of this Complaint until the date of final judgment in this matter.

39. The persons in the Putative Class are so numerous that joinder of all members of the proposed Putative Class is impracticable. While the precise number of class

members has not been determined at this time, upon information and belief, Defendant has employed in excess of two hundred (200) individuals as bartenders and/or servers during the applicable limitations period.

40. There are questions of law and fact common to the proposed Putative Class that predominate over any questions solely affecting individual members of the Putative Class, including but not limited to the following:

- a) The nature and scope of Defendant's policies with regard to bartenders' and servers' tips;
- b) Whether Defendant unlawfully required class members to contribute their tips to a fund or pool, which benefitted other employees and/or Defendant;
- c) Whether Defendant had any agreement by class members to contribute their tips to a fund or pool, which benefitted other employees and/or Defendant, made with unlawful participation by Defendant;
- d) Whether Defendant had any agreement by class members to contribute their tips to a fund or pool, which benefitted other employees and/or Defendant, made with unlawful coercion by Defendant; and
- e) The proper measure of damages sustained by the Putative Class.

41. Plaintiffs' claims are typical of those of the members of the Putative Class. Plaintiffs, like the other members of the proposed Putative Class, were bartenders and/or servers equally subject to Defendant's tip-related policies and practices.

42. Plaintiffs will fairly and adequately protect the interests of the Putative Class and have retained counsel experienced in complex wage and hour class and collective

action litigation. There are no relevant conflicts between Plaintiffs and the class they seek to represent.

43. This action is properly maintainable as a class action under Minnesota Rule of Civil Procedure 23 because questions of law or fact predominate over any questions affecting individual class members and because a class action is superior to other methods adjudicating the claims of individual class members.

44. By comparison, a class action is superior to separate actions by individuals because:

- a) Separate actions risk inconsistent adjudications with respect to individual class members, and, thus, likewise risk incompatible standards of conduct for Defendant;
- b) Individuals lack the financial resources and incentives to vigorously prosecute separate lawsuits against corporate defendants; and
- c) There do not appear to be any difficulties in managing this case as a class action.

45. The Putative Class Members are known to Defendant, and should be readily identifiable through Defendant's records.

46. Plaintiffs intend to send notice to all members of the Putative Class to the extent required by Rule 23 of the Minnesota Rules of Civil Procedure.

FIRST CAUSE OF ACTION

DIVERSION OF TIPS

(Minnesota Fair Labor Standards Act, Minn. Stat § 177.24)

On Behalf of Plaintiffs and the Proposed Minnesota Putative Class

47. Plaintiffs re-allege and incorporate by reference the proceeding paragraphs as if fully set forth herein.

48. The MFLSA states that “No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage” Minn. Stat. § 177.24, subd. 2.

49. The MFLSA makes clear that the gratuities received by employees for personal services rendered by the employee are the sole property of the employee. *Id.* at § 177.24, subd. 3.

50. The MFLSA forbids employers from requiring an employee to contribute to or share gratuities in a pool operated to the benefit of the employer or employees. *Id.*

51. Any agreement among employees to share gratuities must be voluntarily made by the employees without employer coercion or participation. *Id.*

52. Plaintiffs and Putative Class are covered employees entitled to protections under the MFLSA.

53. Plaintiffs and the Putative Class received gratuities from customers for personal services rendered within the meaning of Minn. Stat. § 177.23, subd. 9.

54. Defendant unlawfully required Plaintiffs and the Putative Class to share tips with other employees.

55. Any agreement by bartenders and servers to pool or share tips with other employees was made with Defendant’s unlawful participation.

56. Any agreement by servers to pool or share tips with other employees was made with Defendant’s unlawful coercion.

57. Defendant’s conduct in violation of Minn. Stat § 177.24 was willful and repeated.

58. As a direct result of Defendant's unlawful conduct, Plaintiffs and the Putative Class were unlawfully denied the full value their property rights under the MFLSA and have suffered damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, as Class Representatives, on behalf of themselves and the proposed Putative Class request relief as follows:

- A. Certification of this action as a class action pursuant to Minn. R. Civ. P. 23 on behalf of the Putative Class, appointment of Plaintiffs as Class Representatives, and appointment of the undersigned as Class Counsel;
- B. Judgment declaring Defendant's conduct in violation of Section 177.24 of the MFLSA;
- C. An award in an amount equal to Plaintiffs' and the Putative Class's diverted tips or gratuities;
- D. An award in an amount equal to Plaintiffs' and the Putative Class's diverted tips as liquidated damages;
- E. An award in an amount up to \$1,000 per violation in civil penalties;
- F. An award of all reasonable costs, disbursements, and attorneys' fees incurred prosecuting this case;
- G. Leave to add additional plaintiffs or claims by motion or any other method approved by the Court;
- H. All other and further relief available under applicable law, including but not limited to prejudgment interest; and
- I. All other and further relief the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on the causes of action alleged herein.

Dated: March 26, 2019

NICHOLS KASTER, PLLP

s/ Reena I. Desai

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PUTATIVE CLASS

**ACKNOWLEDGEMENT REQUIRED BY
MINN.STAT. § 549.211**

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find I acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings, or to harass, or committed a fraud upon the Court.

s/ Reena I. Desai
Reena I. Desai