

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRENDA MURRAY, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ACCOR NORTH AMERICA, INC.,
SOUTH 17th STREET LEASECO, LLC
d/b/a SOFITEL PHILADELPHIA, La
LIBERTE LLC, SOFITEL USA, LLC,
ACCOR BUSINESS AND LEISURE
NORTH AMERICA, INC., and ACCOR
LODGING NORTH AMERICA,

Defendants.

No. _____

**COLLECTIVE AND CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Brenda Murray (“Plaintiff”), individually and on behalf of all others similarly situated (“Class Members”), brings this complaint against Defendants Accor North America, Inc., South 17th Street Leaseco, LLC d/b/a Sofitel Philadelphia, La Liberte LLC, Sofitel USA, LLC, Accor Business and Leisure North America, Inc., and Accor Lodging North America (collectively referred to as “Defendants”), and alleges as follows.

Nature of Action

1. This class and collective action is brought on behalf of current and former employees of a nationwide chain of luxury hotels owned and operated by Defendants to recover unpaid gratuities and overtime wages and all available relief pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, Pennsylvania Minimum Wage Act of 1968 (“PMWA”), 43 P.S. § 333, *et seq.*, Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. §

260.1 *et seq.*, and Philadelphia's Gratuity Protection Bill ("GPB"), Philadelphia Administrative Code, § 9-614.

2. Collectively, Defendants own and operate a national chain of luxury hotels under the trade name "Sofitel" with locations in Chicago, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Washington, D.C. Each of these locations employs banquet house-person staff and banquet servers who are responsible for working at hotel events such as wedding receptions, meetings, and parties.

3. Despite Sofitel's claim that it is "the only French luxury hotel brand with a presence on five continents with 120 addresses", the Sofitel locations that are owned and operated by Defendants here in the United States have systematically and intentionally ignored the requirements of applicable federal and state laws by, among other things, improperly diverting gratuities belonging to the banquet staff and have failing to compensate their banquet staff for overtime.

4. Defendants' hotels charged and continue to charge customers a set fee in addition to the total charge for banquet events such as wedding receptions, meetings, and parties. This set fee is always a percentage, generally around 22%, of the total charge. At various times, this set fee has been referred to as a "gratuity fee" or "administrative fee" in Defendants' contracts with event customers. The nature of the set fee has not changed, however, despite any changes in how it has been referred to in Defendants' contracts.

5. A portion of the set fee charged to customers for banquet events is used by Defendants to pay banquet house-person staff and banquet servers a gratuity, which forms part of their compensation.

6. In violation of U.S. Department of Labor (“DOL”) and U.S. Internal Revenue Service (“IRS”) regulations, Defendants failed to include gratuities as part of the hourly wage paid to Plaintiff and Class Members for purposes of calculating overtime. As a result, Plaintiff’s and Class Members’ hourly wage is lower than it should be for purposes of calculating the time-and-a-half overtime rate due them under both state and federal law.

7. Defendants also regularly failed to pay Plaintiff and Class Members even their regularly hourly wage, much less time-and-a-half, for time worked in excess of 40 hours in a given week, in violation of both federal and state law.

8. Further, Defendants’ policy and practice of retaining a portion of the gratuity fees levied on customers violates the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 *et seq.* and the Philadelphia Administrative Code, § 9-614, which require that the entire amount of a gratuity be remitted to employees.

9. As a result of the foregoing intentional and wrongful conduct, Plaintiff brings this class and collective action seeking actual damages, liquidated damages, exemplary damages, statutory damages, attorneys’ fees, and costs for a class of similarly situated persons who, like her, have been subjected to Defendants’ illegal practices in violation of the FLSA, PMWA, WPCL, and GPB.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff raises a claim under the FLSA, a federal statute. The Court also has subject matter jurisdiction pursuant to the FLSA, 29 U.S.C. § 216(b).

11. This Court has personal jurisdiction over Defendants because a substantial portion of the wrongdoing alleged in this Complaint took place in this District, Defendants are

authorized to do business in this District, Defendants have sufficient minimum contacts with this District, and/or Defendants intentionally avail themselves of markets in this District through the promotion, marketing and sale of their products and services to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the named Plaintiff resides here, because Defendants have hundreds, if not thousands, of customers in this District, because Defendants receive substantial revenue from customers in this District, because Defendants maintain a hotel and offices in this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District. Venue is also proper pursuant to the FLSA, 29 U.S.C. § 216(b).

Parties

13. Plaintiff Brenda Murray is a resident of Philadelphia, Pennsylvania.

14. Defendant La Liberte LLC (“La Liberte”) is a Delaware Limited Liability Company with its registered agent listed at an address in Wilmington, Delaware. Upon information and belief, La Liberte has an ownership interest in and is an operator with management control over the Sofitel Philadelphia. Plaintiff’s paystubs from the Sofitel Philadelphia, attached hereto as Exhibits A-E, identify her employer as “La Liberte LLC.”

15. Defendant South 17th Street Leaseco, LLC d/b/a Sofitel Philadelphia (“Sofitel Philadelphia”) is a hotel located at 120 South 17th Street, Philadelphia, Pennsylvania. Upon information and belief, South 17th Street Leaseco, LLC d/b/a Sofitel Philadelphia has an ownership interest in and is an operator with management control over the Sofitel Philadelphia. Plaintiff worked at the Sofitel Philadelphia from 2003 to on or about June 3, 2015.

16. Defendant Accor North America, Inc., a subsidiary division of global hotel giant Accor, S.A., is a Minnesota corporation with a principle place of business in Addison, Texas and, upon information and belief, has an ownership interest in Sofitel Philadelphia. Upon information and belief, Accor North America, Inc. is a parent corporation of Sofitel hotels in the United States and, accordingly, has an ownership interest in and management control over all U.S. Sofitel hotels. Plaintiff's paystubs from the Sofitel Philadelphia, attached hereto as Exhibits A-E, were issued by "Accor."

17. Defendant Accor Business and Leisure North America, Inc. is a Florida corporation, which is a parent corporation of all Sofitel hotels in the United States and, accordingly, has an ownership interest in and management control over all U.S. Sofitel hotels. Plaintiff's paystubs from the Sofitel Philadelphia, attached hereto as Exhibits A-E, were issued by "Accor."

18. Defendant Accor Lodging North America is a holding company for all of Accor's hotel business in the United States. Upon information and belief, Accor Lodging North America, Inc. is a parent corporation of Sofitel hotels in the United States and, accordingly, has an ownership interest in all U.S. Sofitel hotels.¹

19. Defendant Sofitel USA, LLC is a Florida Limited Liability company with its principal place of business in Doral, Florida, which has an ownership interest in and management control over all Sofitel Hotels in the United States.

¹ Defendants Accor North America, Inc., Accor Business and Leisure North America, Inc., and Accor Lodging North America are collectively referred to hereafter as "Accor."

Factual Allegations

A. Plaintiff's Work at the Sofitel Philadelphia

20. Plaintiff was an employee of the Sofitel Philadelphia from 2003 to on or about June 3, 2015.

21. During her employment, Plaintiff was a member of the Sofitel Philadelphia's banquet house-person staff.

22. Generally, Plaintiff's job duties as a banquet house-person were to prepare the Sofitel Philadelphia's venues for banquet events such as wedding receptions, parties, and meetings.

23. In addition to banquet house-person staff, the Sofitel Philadelphia employed banquet servers who were responsible for serving food and drinks during events at the hotel.

24. Hereafter, banquet house-person staff and banquet servers will collectively be referred to as "Banquet Staff."

25. Customers who booked events at the Sofitel Philadelphia entered into contracts governing, among other issues, the hotel's charges for hosting banquet events.

26. The customer agreements drafted and used by Sofitel Philadelphia for such banquet events included a percentage charge which was referred to alternatively as either a "gratuity fee" or "administrative fee" (hereinafter referred to collectively as a "Banquet Fee").

27. The additional amount charged to the customer as a Banquet Fee would vary depending on the size and type of event but such fees were customarily 22% of the total charge for the event. The payment of these Banquet Fees by event customers was a mandatory condition of Sofitel Philadelphia's banquet agreements.

28. Banquet Staff were not paid any gratuities separate and apart from those received from the Banquet Fees charged by Sofitel Philadelphia for banquet events.

B. Banquet Staff Pay at the Sofitel Philadelphia

29. Following banquet events, Sofitel Philadelphia would distribute a portion of the Banquet Fees to Banquet Staff as a gratuity for the employees' work related to the banquet event.

30. Sofitel Philadelphia would not remit to the Banquet Staff the entirety of the Banquet Fees it collected but, rather, would retain a portion of every Banquet Fee it collected.

31. Despite employee requests for information regarding pay practices and the lack of transparency with regard to the distribution of Banquet Fees, Sofitel Philadelphia would not post for the Banquet Staff any details of banquet event costs or otherwise notify the Banquet Staff the amount of the Banquet Fee paid by the customer.

32. In addition to a portion of the Banquet Fees, Banquet Staff received hourly wages.

33. The amounts paid to Banquet Staff as gratuities from Banquet Fees appeared on their paychecks under the heading "BQT" or "Banquet Tips." See Plaintiff's March 7, 2014 Paystub, attached hereto as Exhibit A (identifying banquet gratuities as a separate line item "BQT").

34. The BQT gratuities were not included as part of Banquet Staff hourly wages but were instead listed and paid as a separate category of compensation. *See* Ex. A.

35. Because the BQT gratuities received by Banquet Staff were not included as part of their hourly wages, such gratuities were also not included for purposes of calculating overtime, as required by DOL regulations. *See* 29 C.F.R. § 531.55(a) (as discussed in more detail *infra*).

36. As a result, Banquet Staff employees were underpaid for overtime because their time-and-a-half overtime pay rate was based on an improperly calculated hourly rate, which was lower than it should have been.

37. Moreover, Sofitel Philadelphia regularly failed to pay Banquet Staff even at their regular hourly rate for overtime hours, much less the proper time-and-a-half rate. For example, Plaintiff's April 4, 2014 paystub shows 91.92 hours worked, including 10.02 overtime hours. *See* Plaintiff's April 4, 2014 Paystub, attached hereto as Exhibit B.

38. The April 4, 2014 paystub makes clear that the 10.02 overtime hours were not paid at a rate of 1.5 times Plaintiff's hourly rate of \$13.96. *Id.* Indeed, rather than being paid 1.5 times her regular hourly rate, Plaintiff was merely paid for her overtime hours at a rate that was half that of her regular hourly rate. *Id.*

39. By way of further example, the same miscalculation and underpayment of overtime wages is evident on Plaintiff's paystubs for work during the months of April 2013, February 2014, March 2014, April 2014, and May 2014. *See* Exhibits A-E.

C. Defendants Engage in Improper Banquet Staff Compensation Practices Nationwide

40. Defendants operate seven Sofitel hotels in the United States, located in Chicago, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Washington, D.C.

41. Defendants operate all of their U.S. hotels in a substantially similar fashion.

42. Specifically, they employ the same practices regarding the imposition of Banquet Fees for events, as well as the payment of gratuities and overtime to Banquet Staff in all of their hotels.

43. Accordingly, none of Defendants' hotels include gratuities paid to Banquet Staff from Banquet Fees, in the calculation of hourly wages. As a result, Banquet Staff employees are

underpaid for overtime because their time-and-half-pay rate is based on an hourly rate that is lower than it should be under DOL regulations. *See* 29 C.F.R. § 531.55(a) (as discussed in more detail *infra*).

44. In addition, Defendants regularly fail to pay Banquet Staff even at their full hourly wage amounts for overtime hours, as detailed *supra* ¶¶37-38, much less the proper time-and-a-half rate.

45. As additional evidence of the aforementioned national practices, Plaintiff's paystubs, which reflect the failure to properly pay overtime, were issued by Defendant Accor, which operates and manages all U.S. based Sofitel hotels.

Applicable DOL and IRS Regulations

46. Under DOL regulations implementing the FLSA, a "compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip received in applying the provisions" of the FLSA. 29 C.F.R. § 531.55(a).

47. Thus, under the FLSA, a mandatory service charge such as the Banquet Fee imposed by Defendants on customers booking banquet events at their hotels, cannot be deemed a "tip" for purposes of compliance with the FLSA's minimum wage and overtime provisions.

48. IRS regulations are entirely in accord with the tax treatment of such mandatory service charges. IRS Rev. Rulings 2012-18 and 59-252 hold "that the payment of a fixed charge imposed by a banquet hall that is distributed to the employees who render services (*e.g.*, waiter, busser, and bartender) is a service charge and not a tip. Thus, to the extent any portion of a service charge paid by a customer is distributed to an employee it is wages for FICA tax purposes."

FLSA Collective Action Allegations

49. Under Count I, Plaintiff seeks relief for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all members of the FLSA Collective Action Class defined below.

50. Plaintiff and the members of the FLSA Collective Action Class are similarly situated in that: (1) they had substantially similar job requirements and pay provisions; (2) were classified by Defendants as non-exempt employees who were entitled to receive overtime pay; and (3) were subject to Defendants' common practice, policy, or plan of willfully and unlawfully refusing to pay them at 1.5 times their regular hourly rate for overtime, in violation of the FLSA.

51. Count I, alleging violations of the FLSA, may be brought and maintained as an "opt-in" collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b), since the claims of the Plaintiffs are similar to the claims of the members of the FLSA Collective Action Class. The FLSA Collective Action Class is defined as follows:

All individuals currently or formerly employed in Banquet Staff (as defined herein) positions by Defendants at hotels in the United States of America, beginning three years from the date of filing of this Complaint through the date of final judgment in this case.

52. The names and addresses of the members of the FLSA Collective Action Class are available from Defendants, and notice should be provided to the members of the FLSA Collective Action Class via first class mail to the last address known to their employer as soon as possible.

Class Action Allegations

53. Plaintiff also brings this action, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, on behalf of herself and the following Class:

All individuals currently or formerly employed in Banquet Staff (as defined herein) positions by Defendants at hotels in Pennsylvania, beginning six years from the date of filing of this Complaint through the date of final judgment in this case.

54. Defendants paid all of the Class Members in the same manner and under the same standard employment policies, procedures and practices.

55. Defendants have been aware of the hours worked by the Class Members, but have failed to pay the Class Members the full amount of wages to which they are entitled for this work time.

56. Plaintiff is currently unaware of the identities of all Class Members. However, upon information and belief, there are over 40 persons who have worked for Defendants as Banquet Staff in Pennsylvania during the Class Period and would, therefore, be Class Members. These individuals would likely not file individual suits because they lack adequate financial resources, access to attorneys, or knowledge of their claims. For this reason, the Class is so numerous that joinder of all Class Members would be impracticable and a class action would be an efficient mechanism for resolution of the claims of the Class.

57. There exist numerous questions of both law and/or fact that are common to all Class Members and predominate over any questions solely affecting individual Class Members. The questions of law or fact common to Plaintiff and the Class include, but are not limited to:

- a. whether Plaintiff and the Class were entitled to be paid the full amount of all Banquet Fees imposed on customers by Defendants for events;
- b. whether Defendants have engaged in a pattern and/or practice in Pennsylvania of not paying Plaintiff and the Class one-and-a-half times their regularly hourly wages for overtime hours worked;

- c. whether Defendants violated the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 *et seq.*;
- d. whether Defendants violated the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*;
- e. whether Defendants violated the Philadelphia Administrative Code, § 9-614; and
- f. the nature and extent of class-wide injury and the measure of damages for the injury.

58. Plaintiff's claims are typical of the claims of the Class, because she was employed as Banquet Staff, much the same as the Class Members, and was subject to and victimized by the same unlawful policies and practices of Defendants.

59. Plaintiff is represented by counsel experienced in class action litigation, and, in particular, in litigating claims under Pennsylvania wage and hours laws. Plaintiff will fairly and adequately protect the interests of the Class and has no conflicts with the interests of the Class.

60. The prosecution of separate actions against Defendants would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants. In addition, adjudications with respect to individual members of the Class could as a practical matter be dispositive of the interests of all the other members of the Class not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

61. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions

would entail. Facts not common to the Class, if any, are immaterial to resolving the common legal questions whether Defendants' policies violated Pennsylvania law. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

62. Without a class action, Defendants will likely retain the benefit of their wrongdoing and will continue a course of action, which will result in further damages to Plaintiff and the Class.

63. The members of the Class are known to Defendants and are readily identifiable through Defendants' records.

Tolling Of Statute Of Limitations

64. Applicable statutes of limitation may be tolled based upon principles of equitable tolling, fraudulent concealment, and/or the discovery rule. For putative collective and Class Members whose claims would otherwise be barred by the applicable statute of limitations, equitable tolling is available and should apply.

65. Opt-in plaintiffs and members of the putative class could not, despite the exercise of due diligence, have discovered the underlying basis for their claims. Further, Defendants knowingly and actively concealed the basis for Plaintiff's claims by engaging in a scheme that was, by its very nature and purposeful design, self-concealing.

66. Indeed, by way of example, approximately four to five years ago, the Sofitel Philadelphia eliminated its long-standing policy of internally posting the terms of banquet contracts, which allowed Banquet Staff to calculate the gratuities from Banquet Fees rightfully due to them for working banquet events. Upon information and belief, similar policies were

instituted at Defendants' other locations with the intent to hide from Banquet Staff the amounts rightfully due to them. For these reasons, any delay by opt-in plaintiffs or members of the Class whose claims would otherwise be barred by the applicable statute of limitations, was excusable.

67. Due to the complex, undisclosed and self-concealing nature of Defendants' scheme to divert gratuities and underpay overtime due Banquet Staff, opt-in plaintiffs and Class Members whose claims would otherwise be barred by the applicable statute of limitations did not possess sufficient information or possess the requisite expertise in order to enable them to discover the true nature of Defendants' violative conduct.

Claims for Relief

Count I

Violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (Brought by Plaintiff on Behalf of Herself and on Behalf of the Members of the FLSA Collective Action Class)

68. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

69. At all relevant times, Defendants were "employers" engaged in interstate "commerce," within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants employed "employee[s]," including Plaintiff and each of the members of the FLSA Collective Action Class. At all relevant times, Defendants had gross operating revenues in excess of \$500,000.

70. Attached hereto as Exhibit F is the consent to join form signed by Plaintiff in this action pursuant to §16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256. It is likely that other individuals will sign consent forms and join as plaintiffs with respect to this claim in the future.

71. The FLSA requires each covered employer, such as Defendants, to compensate

all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek.

72. At all relevant times, Plaintiff and the FLSA Collective Action Class were non-exempt employees.

73. At all relevant times, Defendants, pursuant to their uniform, systematic and non-individualized policies and practices, intentionally failed and refused to pay overtime premiums to the FLSA Collective Action Class for their hours worked in excess of forty hours per week.

74. By failing to compensate Plaintiff, and the members of the FLSA Collective Action Class, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Defendants violated the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

75. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

76. Plaintiff, on behalf of herself and the members of the FLSA Collective Action Class, seeks damages in the amount of her respective unpaid overtime compensation, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as this Court deems just and proper.

77. Plaintiff, on behalf of herself and the members of the FLSA Collective Action Class, seeks recovery of her attorneys' fees and costs of action to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

Count II

**Violation of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 *et seq.*
(On Behalf of Plaintiff and the Class)**

78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

79. Defendants are “employers” within the meaning of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.104(g).

80. By regularly and routinely failing to pay Plaintiff and the Class one and one-half times their regularly hourly wage rate for overtime hours worked, Defendants violated the provisions of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.104(c).

81. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with costs and attorneys’ fees pursuant to the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.113, and such other legal and equitable relief as this Court deems just and proper.

Count III

**Violation of the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333 *et seq.*
(On Behalf of Plaintiff and the Class)**

82. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

83. The Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.103(d)(2) states that, with respect to tipped employees, “where the gratuity is added to the charge made by the establishment, either by the management, or by the customer, the gratuity shall become the property of the employee.”

84. The Banquet Fees which Defendants added to amounts charged banquet event customers, were gratuities due to Banquet Staff, for purposes of compliance with 43 P.S. § 333.103(d)(2).

85. Therefore, by retaining a portion of the Banquet Fees added to amounts charged to banquet event customers, Defendants violated the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.103(d)(2), with respect to Banquet Staff who were paid part, but not all, of the Banquet Fees collected by Defendants.

86. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with costs and attorneys' fees pursuant to the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.113, and such other legal and equitable relief as this Court deems just and proper.

Count IV
Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*
(On Behalf of Plaintiff and the Class)

87. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

88. Defendants are "employers" within the meaning of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.2a. The Wage Payment and Collection Law, 43 P.S. § 260.3, provides in relevant part: "Every employer shall pay all wages, . . . , due to his employees on regular paydays designated in advance by the employer."

89. By their actions alleged above, Defendants violated the provisions of the Wage Payment and Collection Law, 43 P.S. § 260.1 *et seq.*

90. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, and liquidated damages, together with costs and attorneys' fees pursuant to the Wage Payment and Collection Law, 43 P.S. §§260.9a, 260.10.

Count V

**Violation of the Philadelphia Administrative Code, § 9-614
(On Behalf of Plaintiff and the Class)**

91. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

92. The Philadelphia Administrative Code, § 9-614, states that: "Every gratuity shall be the sole property of the employee or employees to whom it was paid, given, or left for, and shall be paid over in full to such employee or employees."

93. Moreover, the Philadelphia Administrative Code, § 9-614, also states that: "Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

94. By retaining a portion of the Banquet Fees charged to customers, Defendants violated the Philadelphia Administrative Code, § 9-614.

95. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with exemplary damages of \$2,000 per violation, costs and attorneys' fees pursuant to the Philadelphia Administrative Code, § 9-614, and such other legal and equitable relief as this Court deems just and proper.

Count VI

**Unjust Enrichment – Quasi Contract
(On Behalf of Plaintiff and the Class)**

32. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

33. Defendants devised and implemented a plan to increase their profits by depriving Plaintiff and the Class of: (1) their rightful rate of overtime pay; and (2) the full amount of gratuities due them.

34. By securing the work and efforts of Plaintiff and the Class without compensating them at their rightful level of pay, Defendants retained monies they owed to Plaintiff and the Class and thereby enjoyed reduced over-head with respect to their hotel operations. Defendants therefore recognized additional profits at such locations, to their own benefit and to the detriment of Plaintiff and the Class. It would be unjust to allow Defendants to retain such benefits.

35. Accordingly, Plaintiff and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by Defendants.

Prayer for Relief

WHEREFORE, Plaintiff respectfully prays that relief be granted as set forth above and also as follows:

- (A) For an order certifying that Count I of this Complaint may be maintained as a collective action pursuant to 29 U.S.C. § 216(b), appointing Plaintiff as Class Representative for the FLSA Collective Action Class and Plaintiffs' undersigned counsel as counsel to the FLSA Collection Action Class, and that prompt notice of this action be issued to potential members of the opt-in FLSA Collective

Action Class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims;

- (B) For an order certifying this action as a class action, appointing Plaintiff and her undersigned counsel to represent the Class Members;
- (C) A declaratory judgment that the practices complained of herein are unlawful under the FLSA and Pennsylvania law;
- (D) Require Defendants to provide an accounting to Plaintiff of the amount of damages incurred by her and the Class members, and direct Defendants to provide to Plaintiff a list of all persons employed by them as Banquet Staff during the Class Period, including the last known address and telephone number of each employee, so that Plaintiff can give such Class members notice of the pendency of this action and an opportunity to make an informed and timely decision about whether to participate in it;
- (E) Award Plaintiff and the FLSA Collective Action Class all unpaid overtime as calculated by the applicable provision of the FLSA at 29 U.S.C. §§ 201 *et seq.*, and applicable regulations promulgated in the Code of Federal Regulations and/or opinions and directives of the Department of Labor, as well as liquidated damages to be paid by Defendants, together with such prejudgment interest as may be allowed by law;

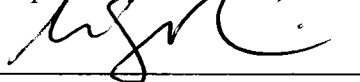
- (F) Determine the damages sustained by Plaintiff and the Class members as the result of Defendants' unlawful underpayment of overtime wages and gratuities under Pennsylvania law, and award those damages, plus liquidated damages, against Defendants and in favor of Plaintiff and the Class Members, together with such prejudgment interest as may be allowed by law;
- (G) Award Plaintiff and the Class Members their costs and disbursements in this suit, including, without limitation, reasonable attorneys' fees and any reasonable accountants' or experts' fees;
- (H) Enter a permanent injunction ordering Defendants henceforth to refrain from engaging in the unlawful conduct described in this Complaint and to take all necessary measures to ensure that they are at all times in compliance with such injunction; and
- (I) Grant Plaintiff and the Class Members such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury for all issues so triable.

Dated: August ___, 2015

Respectfully submitted,



Marc A. Goldich
Attorney I.D. No. 93055
Sheller, P.C.
1528 Walnut Street, 4th Floor
Philadelphia, PA 19102
215.790.7300
215.546.0942 (fax)
mgoldich@sheller.com

Noah Axler
Attorney I.D. No. 85324
Michael D. Donovan
DONOVAN AXLER, LLC
Donovan Axler, LLC
1055 Westlakes Drive, Suite 155
Berwyn, PA 19312
610-647-6067
610-647-7215(fax)
naxler@donovanaxler.com
Attorneys for Plaintiff and the Class