IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

**CHELSEA BOURNE**, individually and on behalf of all similarly situated persons,

Plaintiffs,

v.

**ANSARA RESTAURANT GROUP, INC. d/b/a RED ROBIN OF MICHIGAN**; **CLINTON ROBIN, INC.**; and **VICTOR L. ANSARA**,

Defendants.
_____/

**CLASS AND COLLECTIVE ACTION**
**COMPLAINT AND DEMAND FOR JURY**

Plaintiff, Chelsea Bourne, on behalf of herself and all others similarly situated, by and through her attorneys, brings this class/collective action lawsuit against Ansara Restaurant Group, Inc. d/b/a Red Robin of Michigan, Clinton Robin, Inc., and Victor L. Ansara (collectively, "Defendants"). Plaintiff alleges as follows:

## INTRODUCTION

1. Defendants own and operate a large chain of casual dining restaurants throughout Michigan and Northwest Ohio commonly known as Red Robin Gourmet Burgers & Brews ("Red Robin"). Defendants employed Plaintiff, and similarly situated employees, as tipped Servers at each of their restaurant locations.

2. As part of their business model, Defendants rely on a statutory "tip credit" to pay Servers a reduced minimum wage instead of the full minimum wage. However, Defendants pay practices are unlawful because they require their Servers to share tip income with food expeditors ("Expos"), who are not permitted to share in tip pooling arrangements because they do not customarily and regularly receive tips from customers. As such, Defendants' tip-pooling practices violate the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*.

3. Plaintiff brings this action on behalf of herself and all similarly situated current and former Servers who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b), to remedy Defendants' violations of the wage-and-hour provisions of the FLSA. At the earliest time possible, Plaintiff seeks permission to send a Court-authorized notice of this action pursuant to 29 U.S.C. § 216(b) to all Servers who are presently, or have at any time during the three years immediately preceding the filing of this action, worked for Defendants.

4. Additionally, Plaintiff brings this action on behalf of herself and all similarly situated current and former Servers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of Michigan law, including but not limited to the Michigan Workforce Opportunity Wage Act, MCL § 408.411, *et seq*. ("WOWA").

5. Defendants own and operate at least 22 Red Robin restaurants

throughout Michigan and Northeast Ohio, including those at the following locations:

a. 575 Briarwood Cir., Ann Arbor, MI 48108;

b. 8522 W. Grand River, Brighton, MI 48116;

c. 15780 Hall Rd., Clinton Twp., MI 48917;

d. 3003 Commerce Crossing, Commerce Twp., MI 48390;

e. 19650 Ford Rd., Detroit, MI 48228;

f. 4141 Miller Rd., Flint, MI 48507;

g. 3722 Potomac Circle, Grandville, MI 48148;

h. 3379 Westshore Dr., Holland, MI 49424;

i. 3195 28th Street SE, Kentwood, MI 49512;

j. 6524 W. Saginaw Hwy., Delta Twp., MI 48917;

k. 37701 Six Mile Rd., Livonia, MI 48152;

l. 31805 John R Rd., Madison Hgts., MI 48084;

m. 5785 Harvey St., Norton Shores, MI 49444;

n. 43250 Crescent Blvd., Novi, MI 48375;

o. 3797 Carpenter Rd., Pittsfield, MI 48197;

p. 5710 S. Westnedge, Portage, MI 49002;

q. 32051 Gratiot, Roseville, MI 48066;

r. 15777 Eureka Rd., Southgate, MI 48195;

s. 5460 Corporate Dr., Troy, MI 48098;

t. 36350 Warren Rd., Westland, MI 48185;

u. 31000 Main St., Ste. 1500, Maumee, OH 43537;

v. 4850 Monroe St., Toledo, OH 43623.[1]

**JURISDICTION & VENUE**

6. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under 29 U.S.C. § 201, *et seq.*

7. This Court has jurisdiction over this FLSA collective action pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction."

8. Defendants' annual sales exceed $500,000, and Defendants employ more than two persons, so the FLSA applies in this case on an enterprise basis. Defendants' employees engage in interstate commerce; therefore, they are also covered by the FLSA on an individual basis.

9. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because they arise under the same facts.

[1] *See* http://ansararestaurantgroup.com/restaurants.html (last visited January 29, 2016).

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the actions and omissions giving rise to the claims pled in this Complaint substantially occurred in this District.

## THE PARTIES

11. Plaintiff Chelsea Bourne is a resident of Sterling Heights, Macomb County, Michigan. Ms. Bourne has worked for Defendants as a Server from May 2015 until the present and her consent form is attached hereto as ***Exhibit A***.

12. At all times relevant to this Complaint, Plaintiff was a tipped "employee" of Defendants as defined by the FLSA, 29 U.S.C. § 203(e), and MCL § 408.412.

13. Each corporate Defendant is a domestic corporation authorized to do business pursuant to the state laws of Michigan.

14. Upon information and belief, each corporate Defendant may be served at its headquarters, principal place of business, and registered office, located at 23925 Industrial Park Dr., Farmington Hills, Michigan 48335.

15. At all times relevant to this Complaint, Defendants were joint "employers" of Plaintiff and similarly situated individuals as defined by the FLSA, 29 U.S.C. § 203(d), and MCL § 408.412; *see also* 29 C.F.R. 791.2(a).

16. At all times relevant to this Complaint, the individual Defendant, Victor Ansara, was the owner, CEO, and President of each corporate Defendant.

17. At all times relevant to this Complaint, Defendant Victor Ansara was a joint "employer" of Plaintiff and similarly situated individuals as defined by the FLSA, 29 U.S.C. § 203(d) and MCL § 408.412; *see also* 29 C.F.R. 791.2(a).

## COMMON FACTUAL ALLEGATIONS

18. According to their website, Defendants have been in the grocery and restaurant industries since 1961. [2]

19. Defendants own and operate at least 22 Red Robin restaurants throughout Michigan and Northwest Ohio.

20. During the past three years, Defendants have employed hundreds of Servers – including Plaintiff – whose duties included, but were not limited to, waiting on customers, serving customers, preparing food, refilling condiments, cleaning the restaurant, and stocking supplies to the bar and food stations.

21. At all times relevant to this Complaint, Defendants maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, tip pooling arrangements, and other applicable employment practices.

22. It was and still is Defendants' policy and practice to claim the statutory tip credit on its Servers and to pay them a reduced minimum wage while allowing them to retain the tips received from Defendants' customers.

[2] *See* http://www.ansararestaurantgroup.com/story.html (last visited February 1, 2016).

23. However, Defendants also required their Servers to participate in unlawful tip-pooling or sharing arrangements with other employees.

24. For example, at the end of each shift, Defendants required all their Servers to contribute a percentage of their gross sales to Defendants' Expos.

25. Defendants' Expos spend almost all of their time working in or near the kitchen area and rarely interact with restaurant customers. Accordingly, Defendants' Expos do not customarily and regularly receive tips from customers and are improper participants in Defendants' tip-pooling arrangement.

26. Because Defendants' Servers – tipped employees – cannot be required to share their tips with employees who do not customarily and regularly receive tips from customers, Defendants' tip-pooling arrangement is unlawful.

27. As a result, Defendants cannot claim the statutory tip credit and should have been paying their Servers the full minimum wage due for all hours worked.

28. Upon information and belief, Defendants kept accurate records of the total tips the Servers earned and the amounts the Servers shared with the Expos.

## FLSA COLLECTIVE ACTION ALLEGATIONS

29. At all times within the past three years, Defendants paid their Servers at the reduced minimum wage pursuant to the FLSA tip credit provisions. *See* 29 U.S.C. § 203(m).

30. However, Defendants did not satisfy the strict requirements under the FLSA that would allow them to claim the tip credit. *See* DOL Fact Sheet #15, attached hereto as ***Exhibit B***.

31. Where a tipped employee is required to contribute to a tip pool that includes employees who do not customarily and regularly receive tips, the employee (*e.g.*, Server) is owed all tips he or she contributed to the pool ***and*** the full minimum wage. *Id*. at p. 3.

32. Defendants' Expos are not recognized as employees who customarily and regularly receive tips from customers and are improper participants in Defendants' tip-pooling arrangement.

33. Upon information and belief, there are hundreds of current and former Servers who are similarly situated to Plaintiff who lost tip income due to Defendants' unlawful tip-pooling arrangement and were also paid less than the full minimum wage.

34. Accordingly, Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on her own behalf and on behalf of:

> *All similarly situated current and former Servers who worked for Defendants at any time during the last three years.*

(hereinafter referred to as the "Collective"). Plaintiff reserves the right to amend this definition as necessary.

35. Excluded from the proposed Collective are Defendants' exempt

executives, administrative and professional employees, including computer professionals and outside sales persons.

36. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan; and (c) their claims are based upon the same factual and legal theories.

37. The employment relationships between Defendants and every Collective member are the same and differs only name, location, and rate of pay. The key issues – the amount of tips and wages owed – does not vary substantially from Server to Server.

38. The key legal issues are also the same for every Collective member, to wit: whether Defendants' Expos are not employees who customarily and regularly receive tips from customers and are improper participants in Defendants' tip-pooling arrangement under the FLSA.

39. Plaintiff estimates that the Collective, including both current and former employees over the relevant period, will include hundreds of individuals. The precise number of individuals should be readily available from a review of

Defendants' personnel and payroll records.

40. The FLSA Collective is readily identifiable and locatable through use of the Defendants' records. The FLSA Collective should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendants.

## RULE 23 CLASS ALLEGATIONS

41. Plaintiff also brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) on her own behalf and on behalf of:

> *All similarly situated current and former Servers who worked for Defendants in Michigan at any time during the last three years.*

(hereinafter referred to as the "Michigan Class"). Plaintiff reserves the right to amend this definition as necessary.

42. The persons in the Michigan Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and facts upon which the calculation of that number are presently within the sole control of Defendants, there are hundreds of members of the Michigan Class during the Michigan Class Period.

43. There are questions of law and fact common to the Michigan Class

that predominate over any questions solely affecting individual members of the Michigan Class, including but not limited to:

a. Whether Defendants employed Plaintiff and the Michigan Class within the meaning of WOWA, MCL§ 408.411 *et seq*.;

b. Whether Defendants unlawfully failed to pay the minimum wage in violation of, and within the meaning of, WOWA, MCL§ 408.411 *et seq*.;

c. Whether Defendants unlawfully required Plaintiff and the Michigan Class to share their tips with employees who were ineligible to receive shared tips;

d. Whether Defendants failed to keep accurate time and payroll records for Plaintiff and the Michigan Class;

e. Whether Defendants' policy of failing to pay the minimum wage was instituted willfully or with reckless disregard of the law;

f. Whether Defendants' policy of distributing Servers' tipped income to employees that do not customarily and regularly receive tips from customers was instituted willfully or with reckless disregard of the law;

g. The proper measure of damages sustained by Plaintiff and the Michigan Class; and

h. Whether Defendants should be enjoined from such violations in the future.

44. Plaintiff will fairly and adequately protect the interests of the Michigan Class and has no interests antagonistic to the class. Plaintiff is represented by attorneys who are experienced and competent in both class litigation and wage and hour litigation.

45. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individuals lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The damages sustained by individual class members are small when compared to the expense and burden of individual prosecution of this litigation. Class action treatment will obviate unduly duplicative litigation and the possibility of inconsistent judgments.

46. This case will be manageable as a Rule 23 Class action. Plaintiff and her counsel know of no unusual difficulties in this case and Defendants all have advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

47. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) ("[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

48. Because Defendants acted and refused to act on grounds that apply generally to the Rule 23 Michigan Class and declaratory relief is appropriate in this case with respect to the Rule 23 Michigan Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

**COUNT I**

**(29 U.S.C. § 216(b) Collective Action)**

**VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201, *et seq*. -- FAILURE TO PAY MINIMUM WAGE**

49. Plaintiff hereby incorporates all of the preceding paragraphs.

50. This claim arises out of Defendants' willful violation of the Fair labor Standards Acts, 29 U.S.C. § 201, *et seq*., for failure to pay a minimum wage to Plaintiff and members of the FLSA Collective to which they were entitled.

51. At all relevant times, Defendants jointly employed Plaintiff and all members of the FLSA Collective within the meaning of the FLSA.

52. At all relevant times, Defendants have been engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 201, *et seq*.

53. The minimum wage provisions of the FLSA, 29 U.S.C. § 201 *et. seq.*, apply to Defendants and protect Plaintiff and members of the FLSA Collective.

54. Plaintiff has consented in writing to be a part of this action, pursuant to 29 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will file consent forms to join as party plaintiffs.

55. Pursuant to 29 U.S.C. § 206, Plaintiff and the FLSA Collective were entitled to be compensated at the rate of at least $2.65 per hour plus tips to meet the federal minimum of $7.25 per hour.

56. Defendants failed to pay Plaintiff and members of the FLSA Collective the minimum wages set forth in 29 U.S.C. § 206, or any wages whatsoever for many hours of work.

57. Defendants failed to pay FLSA Collective members a minimum wage throughout the relevant time period because Defendants intentionally withheld pay for hours worked.

58. The new calculation of the hours worked would place FLSA Collective members' pay below the statutory minimum wage.

59. Plaintiff, on behalf of herself and the FLSA Collective, seeks damages in the amount of their respective unpaid wages, liquidated damages as provided by 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems proper.

60. Plaintiff, on behalf of herself and the FLSA Collective, seek recovery of attorneys' fees and costs incurred in enforcing their rights pursuant to 29 U.S.C. § 216(b).

61. 29 U.S.C. § 211(c) provides in pertinent part:

> (c) Records
>
> Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by

> regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder.

62. 29 C.F.R.§ 516.2 and 29 C.F.R. § 825.500 further require that every employer shall maintain and preserve payroll or other records containing, without limitation, the total hours worked by each employee each workday and total hours worked by each employee each workweek.

63. To the extent Defendants failed to maintain all records required by the aforementioned statutes and regulations, and failed to furnish Plaintiff and the FLSA Collective comprehensive statements showing the hours that they worked during the relevant time period, Defendants also violated the aforementioned laws causing Plaintiff damage.

64. When the employer fails to keep accurate records of the hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 687-688 (1946) is controlling. That rule states:

> ...where the employer's records are inaccurate or inadequate ... an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

65. The Supreme Court set forth this test to avoid placing a premium on

an employer's failure to keep proper records in conformity with its statutory duty, thereby allowing the employer to reap the benefits of the employees' labors without proper compensation as required by the FLSA. Where damages are awarded pursuant to this test, "[t]he employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with ... the Act." *Id*.

66. Based on the foregoing, Plaintiff seeks unpaid minimum wages at the required legal rate for all working hours during the relevant time period, back pay, restitution, damages, reimbursement of any improper tip-splits, liquidated damages, attorneys' fees and costs, and all other costs, penalties and other relief allowed by law.

**COUNT II**

**(Rule 23 Michigan Class Action)**

**VIOLATION OF THE WORKFORCE OPPORTUNITY WAGE ACT, M.C.L. § 408.11, *et seq*. -- FAILURE TO PAY MINIMUM WAGE**

67. Plaintiff hereby incorporates all of the preceding paragraphs.

68. Defendants, Plaintiff and the Rule 23 Michigan Class members are "employers" and "employees" for the purposes of the WOWA, § 408.412.

69. WOWA § 404.413 states that an "employer shall not pay any employee at a rate that is less than prescribed in this act."

70. Thus, all putative Rule 23 Michigan Class members are entitled to

their full minimum wages pursuant to Michigan's wage and hour laws. WOWA §§ 408.414 and 408.414d.

71. Defendants violated Michigan law, including WOWA §§ 408.414 and 408.414d, by regularly and repeatedly failing to compensate Plaintiff and the Rule 23 Michigan Class at the appropriate minimum wage as described in this Complaint. As a result, Plaintiff and the Rule 23 Michigan Class have and will continue to suffer loss of income and other damages. Accordingly, Plaintiff and the Rule 23 Michigan Class are entitled to recover unpaid wages owed, plus all damages, fees and costs, available under WOWA, MCL § 408.411, *et seq*.

## RELIEF REQUESTED

WHEREFORE, Plaintiff, on behalf of herself and the putative Collective and Class members, prays for an order for relief as follows:

a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);

b. Certifying this action as a class action (for the Rule 23 Michigan Class) pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's state law claims (Count II);

c. Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all collective action Class members and Rule 23 Class members, and permitting Plaintiff to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the class members of their rights by law to join and participate in this lawsuit;

d. Designating Plaintiff as the representative of the FLSA collective action and the Rule 23 Michigan Class, and undersigned counsel as Class counsel for the same;

e. Declaring Defendants violated the FLSA and the Department of Labor's attendant regulations as cited herein;

f. Declaring Defendants' violation of the FLSA was willful;

g. Declaring Defendants violated WOWA §§ 408.414 and 408.414d and that said violations were intentional or willful;

h. Granting judgment in favor of Plaintiff and against Defendants and awarding Plaintiff and the Collective and Michigan Class members the full amount of damages and liquidated damages available by law;

i. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as provided by statute;

j. Awarding pre- and post-judgment interest to Plaintiff on these damages; and

k. Awarding such other and further relief as this Court deems appropriate.

## JURY DEMAND

Plaintiff, Chelsea Bourne, individually and on behalf of all others similarly situated, by and through her attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

Dated: February 1, 2016

Respectfully submitted,

By: */s/ Jesse Young*

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