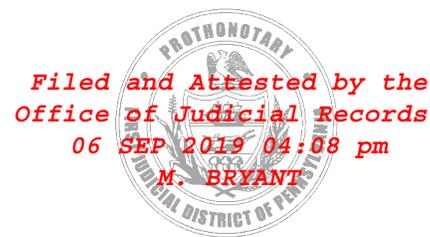


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*Attorneys for Plaintiff and the Putative Class*

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CARRIE SCHWEITZER, on behalf of herself  
 and similarly situated employees,

Plaintiff,

v.

CAFE MICHELANGELO, INC.,

Defendant.

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:  
 : PHILADELPHIA COUNTY  
 : COURT OF COMMON PLEAS  
 :  
 : CLASS ACTION  
 :  
 : JURY TRIAL DEMANDED  
 :  
 :  
 :  
 :

**COMPLAINT -- CLASS ACTION**  
**10 — Contract: Other**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

PHILADELPHIA BAR ASSOCIATION  
 Lawyer Referral and Information Service  
 1101 Market Street, 11th Floor  
 Philadelphia, PA 19107  
 (215) 238-1701

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defenses o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notification. Ademas, la corte puede decidira favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

ASOCIACION DE LICENCIADOS DE  
 FILADELFA  
 Servicio De Referencia E Informacion Legal  
 1101 Market Street, 11th Floor  
 Philadelphia, PA 19107  
 (215) 238-1701

Carrie Schweitzer (“Plaintiff”) brings this class/collective action lawsuit against Cafe Michelangelo, Inc. (“Defendant”), seeking all available relief under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§333.101, *et seq.*, the Philadelphia Gratuity Protection Bill (“GPB”), Philadelphia Code § 9-614, and the Pennsylvania doctrine of unjust enrichment.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over Defendant and this lawsuit.
2. Venue is proper under Pennsylvania Rule of Civil Procedure 2179.

### **PARTIES**

3. Plaintiff resides in Philadelphia, PA.
4. Defendant is a corporate entity with a principal place of business at 11901 Bustleton Avenue, Philadelphia, PA 19116.

### **FACTS**

5. Defendant owns and operates the Cafe Michelangelo restaurant at 11901 Bustleton Avenue, Philadelphia, PA 19116 (“the Restaurant”).
6. During the past three years, Defendant has employed at least 40 servers (a.k.a. waitresses/waiters) at the Restaurant.
7. From 2016 until approximately February 2019, Plaintiff was employed by Defendant as a server at the Restaurant. Throughout this time period, Plaintiff was subjected to all of the business practices described in this Complaint.
8. Defendant pays servers an hourly wage of \$2.83 plus tips.
9. In seeking to comply with the PMWA’s mandate that employees receive a minimum wage of \$7.25/hour, Defendant purports to utilize a “tip credit” in the amount

of \$4.42 (\$7.25 - \$2.83) for each hour worked by servers. *See* 43 P.S. § 333.103(d).

10. Defendant requires servers to contribute a portion of their tips to baristas (a.k.a. “counterpersons”). These baristas generally do not interact with Restaurant customers and never perform work at customers’ tables. Instead, the barista’s job primarily consists of preparing deserts and coffee drinks, recording reservations made by phone, and handling “to-go” orders made by phone.

11. Defendant often required servers: (i) to report to the Restaurant prior to the arrival of the servers’ first customers to perform non-tipped tasks such as, for example, cleaning and setting up for banquets and (ii) to remain at the Restaurant after the departure of the servers’ customers to perform non-tipped work such as, for example, cleaning, restocking dishes, organizing cabinets, and breaking down and restocking the antipasta station. Defendant pays servers only \$2.83/hour for such non-tipped work.

12. When customers tip servers via credit card, Defendant does not permit the servers to retain the entire tip amount. Instead, Defendant withholds from the tip amount the portion of the tip attributable to the credit card transaction fee. For example, when a customer left Plaintiff a \$50.00 credit card tip on January 19, 2019, Defendant withheld \$1.25 and paid Plaintiff only \$48.75.

13. Defendant often fails to include all of the servers’ work hours on their paystubs. When this occurs, Plaintiff and other servers receive no compensation for their uncredited work hours.

### **CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this lawsuit on behalf of herself and all individuals who, during anytime within the past three years, have been employed as servers at the

Restaurant.

15. This action is properly maintained as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

16. The class is so numerous that joinder of all individual members is impracticable.

17. Defendant's conduct with respect to Plaintiff and the class raises questions of law and fact that are common to the class.

18. Plaintiff's claims and Defendant's anticipated defenses are typical of the claims and defenses applicable to the class.

19. Plaintiff's interests in pursuing this lawsuit are aligned with the interests of the class.

20. Plaintiff will fairly and adequately protect class members' interests because she and her experienced and well-financed counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of the class.

21. A class action provides the fairest and most efficient method for adjudicating the class members' legal claims.

### **COUNT I**

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

23. Plaintiff and the class members are employees entitled to the PMWA's protections.

24. Defendant is an employer covered by the PMWA.

25. The PMWA entitles employees to a minimum wage of \$7.25/hour for all hours worked under 40 per week, *see* 43 P. S. § 333.104(a.1); 34 Pa. Code § 231.21, and,

in the case of servers paid pursuant to the PMWA's tip credit provisions, \$10.875/hour for all hours worked over 40 per week, *see* 43 P.S. § 333.104(c).

26. While a restaurant may use a tip credit to satisfy its minimum wage obligations to servers, *see* 43 P.S. § 333.103(d), it loses this privilege when the servers' tips are shared with other restaurant employees who rarely or never interact with the servers' customers. *See, e.g., Ford v. Lehigh Valley Restaurant Group, Inc.*, 47 Pa. D. & C. 5th 157 (Pa. Com. Pl., Lackawanna Cty. 2015) (Nealon, J.). Moreover, under the PMWA, "[w]hen employees perform both tipped and non-tipped work, employers must pay the full minimum wage for all hours that their employees spend performing non-tipped tasks." *Zellagui v. MCD Pizza, Inc.*, 59 F. Supp. 3d 712, 715 (E.D. Pa. 2014).

27. Defendant violated the PMWA by: (i) requiring Plaintiff and other servers to share their tips with baristas; (ii) failing to pay Plaintiff and other servers any wages for their uncredited work hours; and (iii) failing to pay the full \$7.25/hour minimum wage (or, where applicable, the full \$10.875 overtime wage) to Plaintiff and other servers for time attributable to non-tipped tasks.

**COUNT II**  
**(Alleging Violations of the GPB)**

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

29. The GPB requires that "[e]very 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." Phila. Code § 9-614(2)(a). Thus, a restaurant "that permits patrons to pay gratuities by credit card shall pay employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deduction for any credit card payment processing fees or costs that may be charged to the employer by the

credit card company.” *Id.* at § 9-614(2)(b). Moreover, gratuities may only be “pooled and distributed among all employees who directly provide service to patrons.” *Id.* at § 9-614(2)(c).

30. Defendant violated the GPB by: (i) requiring Plaintiff and other servers to share their tips with baristas and (ii) making deductions from the credit card tips of Plaintiff and other servers.

**COUNT III**  
**(Alleging Unjust Enrichment)**

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

32. Defendant has received a monetary benefit from Plaintiff and other Restaurant servers by requiring them to subsidize the pay of other baristas.

33. The above practices have resulted in Defendant realizing significant profits to its own benefit and to the detriment of Plaintiff and other servers.

34. Defendant’s acceptance and retention of such profits is inequitable and contrary to fundamental principles of justice, equity, and good conscience.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and other members of the class, seeks the following relief:

- A. all unpaid minimum and overtime wages;
- B. the reimbursement of all tip income paid to baristas or deducted due to credit card charges;
- C. all exemplary damages available under the GPB;
- D. reasonable attorney’s fees, expenses, and court costs;
- E. prejudgment and post-judgment interest; and

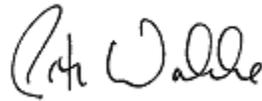
F. such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial as to all claims so triable.

Date: September 6, 2019

Respectfully,



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R. Andrew Santillo  
Mark J. Gottesfeld  
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Dresher, PA 19025  
(215) 884-2491  
pwinebrake@winebrakelaw.com

*Attorneys for Plaintiff and the Putative Class*

**VERIFICATION**

I, Carrie Schweitzer hereby state:

1. I am a plaintiff in this action;
2. I verify that the statements made in the accompanying complaint are true and correct to the best of my knowledge information and belief; and
3. I understand that the statements in the complaint are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: September 6, 2019

DocuSigned by:  
*Carrie Schweitzer*  
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Signature