

6. Kelly is a corporate entity registered with the Commonwealth and maintaining a principal place of business in Pittsburgh, PA (Allegheny County).

7. Defendants jointly employ individuals, including Plaintiff, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person.

FACTS

8. During the relevant three-year period, Defendants have owned and operated between 16 and 23 restaurants in Pennsylvania under the “Kings Family Restaurant” brand.

9. Defendants employed between 10 and 30 servers (a.k.a. waitresses/waiters) at each Kings Family Restaurant location.

10. Up until approximately June 26, 2020, Defendants owned and operated the Kings Family Restaurant located at 2400 Leechburg Road, New Kensington, PA 15068 (the “New Kensington Restaurant”).

11. From approximately 1991 until September 2019, Plaintiff worked as a server at the New Kensington Restaurant.

12. During the relevant period, Defendants paid Plaintiff and other servers an hourly wage of approximately \$3.45 plus tips from customers.

13. In seeking to comply with the FLSA and PMWA mandate that employees receive a minimum wage of \$7.25/hour, Defendants purport to utilize a “tip credit” in the amount of \$3.80 (\$7.25 - \$3.45) for each hour worked by Plaintiff and other servers at their Kings Family Restaurants. *See* 29 U.S.C. § 203(m); 43 P.S. § 333.103(d).

14. As part of their work at Defendants’ Kings Family Restaurants, Plaintiff and other servers have been required to perform non-tip-producing work. Such work included, but was not

limited to: rolling silverware; washing dishes, cleaning the ice cream bar, taking used dishes from the dining room to the back of the Restaurant, bringing clean dishes from the back of the restaurant to the dining room, cutting fruit, and cleaning the restaurant.

15. Plaintiff estimates that she and other servers spent at least 30% of their working hours performing the types of tasks identified in paragraph 14, *supra*. This includes being required by Defendants to perform non-tip-producing work for approximately 15-30 minutes at the end of the day when restaurant managers relieve (or “cut”) servers of their customer service duties to focus exclusively on performing non-tip producing work.

16. Kelly and KRG each exercise significant control over the working conditions of their servers making them joint employers under the FLSA and PMWA. For example, both entities share the same “Vice President of Human Resources” named James Covelli according to his individual LinkedIn page. Defendants announced the permanent closure of the New Kensington Restaurant to employees via a June 26, 2020 email from Mr. Covelli. In this June 26th correspondence, Mr. Covelli informed Plaintiff and other servers that “[a]ll New Kensington location employees are being laid off (terminated) effective today, 6/26/2020” and “[u]nfortunately, we will not be accepting transfers to other locations.” Mr. Covelli then provided additional details to the New Kensington Restaurant employees regarding, *inter alia*, medical benefits, unemployment benefits, and year-end IRS W-2 form documents.

COLLECTIVE AND CLASS ALLEGATIONS

17. Plaintiff brings this lawsuit against Defendants as an FLSA collective on behalf of herself and all individuals who, during anytime within the past three years, have been employed as servers at one of Defendants’ Kings Family Restaurants.

18. Plaintiff’s FLSA claim should proceed as a collective action because Plaintiff and

other potential members of the collective, having worked pursuant to the common policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

19. Plaintiff brings this lawsuit against Defendants as a PMWA class action on behalf of herself and all individuals who, during anytime within the past three years, have been employed as servers at one of Defendants’ Kings Family Restaurants in Pennsylvania.

20. Plaintiff’s PMWA claim should proceed as a class action because, as summarized in paragraphs 8-16, all of Federal Rule of Civil Procedure 23’s requisites are satisfied.

21. The putative class, upon information and belief, includes at least 40 individuals, all of whom are readily ascertainable based on Defendants’ standard timekeeping and payroll records, and, as such, is so numerous that joinder of all class members is impracticable.

22. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

23. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members’ interests.

24. Questions of law and fact are common to all class members, since, *inter alia*, this action concerns the legality of Defendant’s standardized compensation practices.

25. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any questions affecting only Plaintiff and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging Violations of the FLSA)

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

27. The FLSA entitles employees to a minimum hourly wage of \$7.25.

28. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so with respect to hours in which the servers perform non-tip-generating tasks (such as those identified in paragraph 14, *supra*) that are either: (a) unrelated to the servers' tip-generating duties, *see* 29 C.F.R. § 531.56(e);¹ *or* (b) related to the employee's tipped occupation but exceed 20% of the employees' work hours, *see Belt v. P.F. Chang's China Bistro, Inc.*, 401 F. Supp. 3d 512 (E.D. Pa. 2019).

29. By utilizing the tip credit to pay Plaintiff and other servers for time associated with non-tip-generating tasks, Defendant has willfully violated the FLSA.

COUNT II
(Alleging Violations of the PMWA)

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

31. The PMWA entitles employees to a minimum hourly wage of \$7.25.

32. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so with respect to hours in which the servers perform non-tip-generating tasks such as those identified in paragraph 14, *supra*. *See Zellagui v. MCD Pizza, Inc.*, 59 F. Supp. 3d 712, 715 (E.D. Pa. 2014) (Under the PMWA "[w]hen employees perform both tipped and non-tipped work, employers must pay the full minimum

¹ *See also Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) (Posner, J.) (explaining that when tipped employees perform "non-tipped duties" that "are unrelated to their tipped duties . . . such as, in the case of restaurant servers, washing dishes, preparing food, mopping the floor, or cleaning bathrooms, they are entitled to the full minimum wage for the time they spend at that work").

wage for all hours that their employees spend performing non-tipped tasks”).

33. By utilizing the tip credit to pay Plaintiff and other servers for time associated with non-tip-generating tasks, Defendant has violated the PMWA.

JURY TRIAL DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. The tip-credit for every hour worked performing non-tip-generating tasks;
- B. Prejudgment interest to the fullest extent permitted under federal and state law;
- C. Liquidated damages to the fullest extent permitted under the FLSA;
- D. Litigation costs, expenses, and attorneys’ fees; and
- E. Such other and further relief as this Court deems just and proper.

Date: July 15, 2020



Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DARLENE McDONNELL, et al.

(b) County of Residence of First Listed Plaintiff Westmoreland County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025; Ph: (215) 884-2491;

DEFENDANTS

KRG Kings LLC and KELLY OPERATIONS GROUP, LLC

County of Residence of First Listed Defendant Allegheny County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act

Brief description of cause:

Unpaid Minimum Wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 7/15/2020

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____