

IN THE CIRCUIT COURT OF THE  
SEVENTH JUDICIAL CIRCUIT IN AND FOR  
VOLUSIA COUNTY, STATE OF FLORIDA  
Civil Division

DOMINIQUE BAGNELL, JENNIFER  
WOJTAS, ARGINA DEJESUS, and  
SUMMER HENSLEY, on behalf of  
themselves and those similarly situated,

Plaintiffs,

vs.

WINGHOUSE OF DAYTONA  
BEACHSIDE, LLC, a Florida Limited  
Liability Company, WINGHOUSE XI,  
LLC, a Florida Limited Liability  
Company, F/K/A WINGHOUSE OF  
DAYTONA BEACH, LLC, KER  
MANAGEMENT SERVICES, LLC, a  
Florida Limited Liability Company, and  
KER, INC., a Florida Corporation,

Defendants.

CASE NO.: 2011-31469-CIC1  
32  
CLASS ACTION ALLEGATIONS

CLERK OF THE CIRCUIT  
CITY COURT VOLUSIA CO., FL  
CC 52

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FILED

CLASS ACTION COMPLAINT & JURY DEMAND  
("Class Representation")

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Plaintiffs, Dominique Bagnell, Jennifer Wojtas, Argina DeJesus, and Summer Hensley ("Plaintiffs"), on behalf of themselves and those similarly situated, sue the Defendants, WINGHOUSE OF DAYTONA BEACHSIDE, LLC, a Florida Limited Liability Company, WINGHOUSE XI, LLC, a Florida Limited Liability Company, f/k/a Winghouse of Daytona Beach, LLC, KER MANAGEMENT SERVICES, LLC, a Florida Limited Liability Company, and KER, INC., a Florida Corporation ("Defendants"), for failing to pay minimum wages to all servers and waitresses (hereinafter "servers" or "class members") who worked in the State of Florida and

were not paid at least the minimum wage for all hours worked, pursuant to the Fla. Const. Art. X § 24.

**I. Nature of Case**

1. “All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.” Fla. Const. Art. X § 24(a).

2. Defendants violated the Florida Constitution by failing to pay class members that were employed in Florida at anytime within the past five (5) years at least the minimum wage for all hours worked pursuant to Fla. Const. Art X § 24(c) (“Employers *shall* pay Employees Wages no less than the Minimum Wage for *all* hours worked in Florida.”) (emphasis added).

**II. Parties**

3. Plaintiffs were hourly paid servers who worked for Defendants within the last five (5) years in Volusia County, Florida.

4. Defendants collectively own and operate approximately twenty (20) “Winghouse” restaurants throughout the State of Florida.

5. Plaintiff, Dominique Bagnell, worked for Defendants as a server from approximately September 27, 2009 to March 17, 2011, at the Daytona Beachside location.

6. Plaintiff, Jennifer Wojtas, has worked for Defendants as a server from approximately September 27, 2009 to the present at the Daytona Beachside location.

7. Plaintiff, Argina DeJesus, has worked for Defendants as a server from June 2009, working at both the Daytona Beachside location and the Daytona location.

8. Plaintiff, Summer Hensley, has worked for Defendants as a server from

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approximately February 2010 at the Daytona Beachside location.

9. The proposed class members worked for Defendants at its restaurants throughout Florida.

10. Defendants conduct business in Volusia County, Florida. Defendants' principal place of business is in Largo, Florida. The majority of Defendants' officers reside in Florida. Defendants' officers direct, control, and coordinate Winghouse operations from Florida.

### **III. Jurisdiction & Venue**

11. Plaintiffs, on behalf of themselves and those similarly situated, allege that the aggregate damages for the entire class exceed \$15,000.00, exclusive of attorneys' fees and costs.

12. This Court has jurisdiction over this complaint as Plaintiffs worked for Defendants in Daytona Beach, Florida.

### **IV. Employer-Employee Relationship**

13. Plaintiffs worked as servers for Defendants at their Winghouse locations in Daytona Beach, Florida.

14. Plaintiffs were paid pursuant to a "tip credit" method and were paid the minimum wage minus the tip credit.

15. At all material times, Defendants were an enterprise subject to the Florida Constitution's provision on minimum wages.

16. At all material times (during the last five years), Defendants were an enterprise engaged in commerce or in the production of goods for commerce, in that said enterprise has had at least two employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

17. Defendants' employees handled such goods as napkins, silverware, appliances, food items, and restaurant equipment which had travelled in interstate commerce.

18. At all material times (during the last five years), Defendants have had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

19. Defendants are in the business of providing food and drinks to the general public.

20. Specifically, Defendants operate approximately twenty (20) restaurants throughout the State of Florida.

21. Defendants each jointly employed Plaintiffs and have employed hundreds, if not thousands of servers ("class members" or the "class") at their Florida Winghouse locations in the last four (4) years.

22. Plaintiffs and the class members worked in the State of Florida without being paid at least the minimum wage for all hours worked.

23. Defendants controlled and/or were responsible for the work of class members.

24. Plaintiffs and all similarly situated did a specialty job, i.e. serve food and drink, which was/is an integral part of the restaurant business of Defendants.

25. Plaintiffs and all similarly situated were economically dependent on Defendants and took instructions from them.

26. Defendants utilized Florida's tip-credit and paid Plaintiffs and all similarly situated servers under the applicable minimum wage. Notwithstanding Defendants' preference to pay Plaintiffs and the class members through the tip-credit, Defendants chose not to pay Plaintiffs and the class for all hours worked. Hence, Defendants violated the terms of the tip-credit and Florida Constitution's provision on minimum wages.

27. During their employment with Defendants, Plaintiffs and those similarly situated servers were not allowed to clock in at the time clock until a customer was seated in their area of responsibility. As an example, Plaintiffs would begin their shifts at 10:00 A.M., but were not allowed to clock in until a customer was seated, which on some days would not be until 11:30 A.M., or even later.

28. Defendants' supervisors and managers regularly and routinely told Plaintiffs and the other servers not to clock in until they began to serve a customer.

29. Even though Plaintiffs and those similarly situated servers were not clocked in when they arrived for their shift, they still performed work for Defendants, such as rolling silverware, cleaning bar stools, cleaning the bar area, cleaning tables, dusting the lights and signs, greeting customers, and other general work.

30. Defendants were aware of this practice and continued to pressure and force their servers to clock in late after their shift actually began.

31. Additionally, Plaintiffs and those similarly situated servers were not paid for all hours worked when performing promotional activities.

32. Defendants required Plaintiffs and those similarly situated servers to perform promotional work for a few hours each month (such as passing out coupons or flyers at concerts, festivals or gatherings) but did not pay their employees for this work performed.

33. As a result of this practice, Plaintiffs and those similarly situated servers were not paid the required minimum wage for each hour worked.

34. Each Plaintiff and the other servers are owed additional compensation for these hours worked off-the-clock and promotional work for which they were not paid.

**V. Factual Allegations**

35. Class members are treated equally by Defendants.

36. Defendants have approximately employed over 1000 class members who were paid pursuant to a tip credit and required to work off the clock in the State of Florida within the past five (5) years.

37. Defendants pay class members in the same manner.

38. Defendants pay class members less than the minimum wage as a result of not paying the class members for all hours worked.

39. Defendants regularly made class members work before they were allowed to clock in.

40. Plaintiffs and all class members worked in the State of Florida.

41. Plaintiffs and all class members in the State of Florida were not guaranteed at least the minimum wage for all hours worked.

42. Plaintiffs and all class members worked one or more hours within the past five (5) years without receiving the minimum wage guaranteed pursuant to the Florida Constitution.

43. Defendants failed to keep accurate time records for Plaintiffs and all class members.

44. Defendants' failure to keep accurate time records casts the burden on Defendants to disprove the testimony of Plaintiffs and all class members regarding the number of hours they suffered or were permitted to work.

45. During the relevant period, Defendants violated Fla. Const. Art. X § 24 by failing to compensate the class members for all hours worked. Defendants have acted willfully in failing to pay Plaintiffs and the class members in accordance with the law.

46. All conditions precedent to filing this action have been performed, or waived.

**VI. Class Representation Allegations**

**A. The Relief Sought for Members of the Class**

47. This action is brought by Plaintiffs, and all similarly situated employees, under the provisions of Florida Rules of Civil Procedure Rule 1.220(b)(1),(2) and alternatively (3) for: (i) violations of the Florida Constitution minimum wage guarantee, (ii) money damages to be paid by the Defendants associated with the above claims; (iii) relief incident and subordinate thereto, including the costs and expenses of this action and an award of attorneys' fees and reimbursement of expenses to Plaintiffs' counsel.

48. The prosecution of separate claims or defenses by or against individual members of the class would create a risk of adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests.

**B. Common Questions of Law and Fact Predominate**

49. There are common questions of law and fact in this class action that relate to and affect the rights of each member of the class including, *inter alia*:

- a) Whether Plaintiffs performed work off the clock;
- b) Whether Plaintiffs are entitled to compensation for minimum wages for hours worked off the clock according to the Florida Constitution;
- c) What remedies are appropriate compensation for the damages caused to Plaintiffs and each member of the class;

d) Whether Defendants' failure to compensate Plaintiffs at the applicable minimum wage rates was willful, intentional or done with reckless disregard; and

e) Whether the Plaintiffs and the class members are entitled to a reasonable award of attorneys' fees, interest and costs of suit.

50. The relief sought is common to the entire class including, *inter alia*:

a) payment by the Defendants of actual damages caused by their failure to pay minimum wages pursuant to the Florida Constitution;

b) payment by the Defendants of liquidated damages caused by their failure to pay minimum wages pursuant to the Florida Constitution;

c) payment by the Defendants of the costs and expenses of this action, including the attorneys' fees of Plaintiff's counsel.

#### **C. Typicality**

51. The claims of Plaintiffs, who are the representatives of the class, are typical of the claims of all class members thereof. Plaintiffs are situated identically to all members of the class with respect to the issues presented in this case. The claims of Plaintiffs are based on the same fundamental factual allegations and legal theories as the claims of all other member of the class. Similarly, if Defendants are violating the Florida Constitution, such violations affect the Plaintiffs and class members in an identical fashion.

52. All class members have been adversely affected by the wrongdoing of the Defendants as described herein.

#### **D. Numerosity**

53. The exact number of members of the class as above described is not known by Plaintiffs, but is within the sole knowledge of Defendants. Upon information and belief, the

members of the class are so numerous as to make a Class Action appropriate. Plaintiffs estimate that there are/were in excess of **1,000** class members who worked for Defendants within the last five years subject to the same violations.

54. On information and belief, the members of the class are located throughout the state of Florida.

**E. Class Definition**

55. The proposed class is defined as follows:

**All persons who worked for Defendants as servers or waitresses within Florida during the five (5) years preceding this lawsuit, after Fla. Const. Art. X § 24 was enacted, and who were not paid at least the minimum wage pursuant to Fla. Const. Art. X § 24(c) for each hour worked.**

Individuals that do not fall within the defined class are excluded from the class.

**F. Adequacy of Representation**

56. Plaintiffs are adequate representatives of the class because they are members of the class and their interests do not conflict with the interests of the members of the class she seeks to represent. Further, Plaintiffs are represented by experienced able counsel whose firm has litigated numerous collective actions and class actions. Plaintiffs have retained the undersigned law firms to represent them in this action. Plaintiffs intend to prosecute this action vigorously for the benefit of the entire class. Plaintiffs and their counsel will fairly and adequately protect the interests of the members of the class. All prerequisites, if any, to bringing forth this action have been completed.

57. The attorneys for Plaintiffs are experienced and capable of prosecuting complex litigation such as this case. The attorneys for Plaintiffs and the class will actively conduct and be responsible for the prosecution of this litigation and the expenses thereof. The attorneys for

Plaintiffs have adequate resources, experience and commitment to litigate this matter.

**G. Defendant Has Acted or Refused to Act on Generally Applicable Grounds**

58. Defendants have acted and/or refused to act on grounds generally applicable to all members of the class and relief concerning the class as a whole is therefore appropriate. Each of Defendants' actions challenged herein affect Plaintiffs and each class member in an identical fashion.

59. Plaintiffs and the class members performed the same or similar job duties as one another in that they served food and drink for Defendants in Florida during the past five (5) years without receiving at least the minimum wage for *all* hours worked.

60. Plaintiffs and the class members were subjected to the same pay provisions in that they suffered or were permitted to work but not paid at least the minimum wage for all hours worked. Thus, the class members are owed minimum wages for the same reasons as Plaintiffs.

61. Defendants' failure to compensate class members for at least the minimum wage as required by the Florida Constitution results from a policy or practice of not allowing class members to clock in when they begin working, and to not pay them for other work performed. This policy or practice was applicable to Plaintiffs and the class members. Application of this policy or practice does not depend on the personal circumstances of Plaintiffs or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of minimum wages to Plaintiffs applies to all class members.

62. The proposed class is so numerous that joinder is impractical. The disposition of these claims through this class action will be more efficient and will benefit the parties and the Court. Defendants operate multiple restaurants in Florida, with over one thousand class members state-wide. The identities of the individual members of the class are ascertainable

through employment records of Defendants. Additionally, class members may be informed of the pendency of this class action by mailing, the internet or other means.

63. A class action is superior to other available methods for the efficient adjudication of this litigation since individual litigation of each class members' claims is impracticable. It would be unduly burdensome to the courts for individual litigants to proceed. Further, individual litigations present a potential for inconsistent and/or contradictory judgments and further increase the delay and expense to all parties and the courts. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale and comprehensive supervision by a single court. Additionally, notice of the pendency and/or resolution of this class action can be provided to class members by direct mail, as upon information and belief, Defendants have kept employment records detailing the names and addresses of past and present class members.

**VII. RELIEF SOUGHT**

Wherefore, Plaintiffs demand an Order awarding:

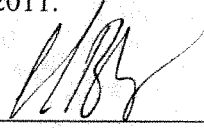
(a) payment to them and all class members of minimum wages at the correct rate pursuant to Article X, Section 24 of the Florida Constitution;

(b) an equal amount of liquidated damages pursuant to Article X, Section 24 of the Florida Constitution, or in the alternative pre-judgment and post-judgment interest at the highest rate allowed by law; and

(c) reasonable attorneys' fees and costs for all time worked by the attorneys for Plaintiffs in prosecuting this case pursuant to Article X, Section 24 of the Florida Constitution.

Plaintiffs also demand a trial by jury.

Respectfully submitted this 12<sup>th</sup> day of July, 2011.



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