

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
Civil Division**

KOLY CAMARA :  
*Individually, on Behalf of All Others* :  
*Similarly Situated, and on Behalf of the* :  
*General Public of the District of* :  
*Columbia* :  
4857 Battery Lane :  
Apt 407 :  
Bethesda, MD, 20814 :

Plaintiff,

v.

MASTRO’S RESTAURANTS LLC, :  
1510 West Loop South, :  
Houston, TX 77027 :

REGISTERED AGENT: :  
CT CORPORATION SYSTEM :  
1015 15th St NW :  
Suite 1000 :  
Washington, D.C. 20005 :

Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS AND COLLECTIVE ACTION COMPLAINT**

*COMES NOW* Plaintiff Koly Camara, on behalf of himself and all others similarly situated, (“Plaintiff”), by and through undersigned counsel, brings this wage-theft complaint against Mastro’s Restaurants, LLC (“Mastro’s Restaurants” or “Defendant”). In support of this Complaint, Plaintiff states the following facts and claims upon knowledge as to matters relating to himself and upon information and belief as to all other matters, as follows:

## **INTRODUCTION AND SUMMARY OF ACTION**

1. This is a class and collective action on behalf of individuals who were employed as servers by Mastro's Restaurants. The Defendant owns and operates a chain of restaurants located in several states, including Washington D.C. Plaintiff worked as a server at Defendant's Washington D.C. restaurant from approximately summer 2015 to November 2017. During the time of his employment, Defendant required that approximately 42-45% of the tips received by servers be placed into a "tip pool" to be shared with other employees including wine runners, food runners, bartenders, bussers, and baristas. The nature of many of these employees' positions (namely, the wine runners and baristas) did not entail customarily and regularly interacting with restaurant customers.

2. Plaintiff brings this action pursuant to Rule 23 of the D.C. Superior Court Rules of Civil Procedure and D.C. Code § 32-1308 on behalf of himself and a class of similarly situated employees who worked for Mastro's Restaurants.

3. Plaintiff, on behalf of himself and all other similarly situated, alleges that Defendant has violated provisions of the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 201.

4. Plaintiff, on behalf of himself and all others similarly situated, alleges that Defendant has violated provisions of the Washington D.C. Minimum Wage Revision Act ("DCMWRA").

5. Plaintiff, on behalf of himself and all other similarly situated, alleges that Defendant has violated provisions of the Washington D.C. Wage Payment and Wage Collection Law ("DCWPCL")

## **JURISDICTION AND VENUE**

6. The subject matter jurisdiction of the Court is invoked pursuant to D.C. Code §32-

1012, and by virtue of the fact that all acts and omissions complained of occurred in the District of Columbia.

7. This Court has personal jurisdiction over each Defendant pursuant to D.C. Code §§ 13-423(a) and 13-422.

8. Venue lies in the Superior Court of the District of Columbia because a substantial part of the events or omissions giving rise to this claim occurred in the District of Columbia.

### **PARTIES**

9. Plaintiff, Koly Camara, is an adult resident of Bethesda, MD, and a former employee of Defendant who worked at Defendant's District of Columbia restaurant.

10. During all relevant times, Plaintiff Camara was employed by Defendant, including from approximately the summer of 2015 to November 2017, as a server at the Mastro's Steakhouse, located at 600 13<sup>th</sup> Street NW in Washington D.C.

11. Defendant, Mastro's Restaurants, is a Nevada corporation with its corporate offices in Houston, Texas that owns and operates a chain of restaurants located across the United States, including Mastro's Steakhouse at 600 13<sup>th</sup> Street NW in Washington D.C.

12. Defendant is an employer covered by the record keeping, minimum wage, wage payment, and overtime pay mandates of the FLSA, DCMWRA, and DCWPCL.

### **STATEMENT OF FACTS**

13. Defendant, Mastro's Restaurants, is a company that owns and operates a chain of restaurants in several cities, including Washington D.C., and has employed hundreds, if not thousands, of servers.

14. During the period between approximately summer of 2015 and November of 2017, Plaintiff was employed by Defendant as a server at one of Defendant's restaurants located in Washington D.C.

15. During his period of employment, Defendant paid Plaintiff and other servers a "tipped minimum wage" below \$7.25 per hour plus tips.

16. In seeking to comply with the FLSA and DCMWRA mandate that employees receive a minimum wage of \$7.25 under the FLSA and between \$9.50 and 12.50 per hour under the DCMWRA, Defendant has purported to utilize a tip credit under the FLSA and DCMWRA.

17. At the end of each work shift, Defendant would take between 42-45% of each server's tips and distribute them to other employees, such as, among others, wine runners, food runners, bartenders, bussers, and baristas.

18. The primary duties of the wine runner are to bring wine to the restaurant from the cellar, and leave it at the bar, where the server would pick it up and deliver it to the restaurant customers.

19. Wine runners spend almost all their time working in or near the wine cellar and have little to no interaction with restaurant customers. Wine runners are not the types of employees who customarily and regularly interact with restaurant customers.

20. The primary duties of the barista are to make the coffee beverages for the customers in the back of the restaurant, where the server will retrieve the beverages and deliver them to the restaurant customers.

21. Baristas spend almost all their time working in or near the kitchen and have no interaction with restaurant customers. Baristas are not the types of employees who customarily and regularly interact with restaurant customers.

## **FLSA COLLECTIVE ALLEGATIONS**

22. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of individuals who were employed as servers by Mastro's Restaurants at locations across the United States within the last three years.

23. Plaintiff desires to pursue his FLSA claim on behalf of any individuals who opt in to this action pursuant to 29 U.S.C. § 216(b).

24. Plaintiff and Defendant's other servers are "similarly situated" as that term is used in 29 U.S.C. § 216(b), because, among other things, all such individuals worked pursuant to Defendant's above described tip-pooling policies and practices and, as a result of such policies and practices, were not paid the full and legally mandated wage.

25. Resolution of this action requires inquiry into common facts, including, among other things, Defendant's common compensation, timekeeping, and payroll practices.

26. These similarly situated individuals are known to the Defendant, are readily identifiable, and can be located through Defendant's payroll records which Defendant was required to maintain pursuant to the FLSA, *see* 29 U.S.C. § 211(c); 29 C.F.R. § 215.2 *et seq.*

27. Conditional certification of this case as a collective matter pursuant to 29 U.S.C. § 216(b) is proper and necessary so that these employees may be readily notified of this action through direct U.S. mail and/or other means including email, and allowed to opt in for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

28. There are many similarly situated current and former servers who have not been paid proper wages in violation of the FLSA and who would benefit from the issuance of a court-

supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent to the Collective pursuant to 29 U.S.C. § 216(b).

### **WASHINGTON D.C. CLASS ALLEGATIONS**

29. Plaintiff brings this class action pursuant to D.C. Super. Ct. R. Civ. P. 23 and D.C. Code § 32-1308 on behalf of himself and all servers employed by Defendant who worked at Mastro's Steakhouse in Washington D.C. during the relevant time period. These individuals are referred to herein as "Class Members." Given the potential complexity of this case, Plaintiff hereby seeks relief from the 90-day filing requirement set forth by Local Rule 23-I and seeks that a schedule for the briefing of Class certification be set forth at the initial scheduling conference of this matter.

30. The members of the class are so numerous that joinder of all class members is impracticable.

31. Plaintiff is a Class member and his claims are typical of the claims of other Class Members.

32. Plaintiff will fairly and adequately represent the Class Members and their interests, and they have retained competent and experience counsel who will effectively represent the Class Members' interests.

33. The critical questions of law and fact are common to all Class Members since this action concerns the legality of Defendant's tip pooling policies and practices. The illegality of these policies and practices will be demonstrated by applying general legal principles to common evidence such a standardized policies and payroll/compensation practices.

34. This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual

members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

### **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF THE FLSA**

#### **Count I**

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

36. Plaintiffs and Defendant's other servers are employees entitled to the FLSA's protections.

37. Defendant is an employer covered by the FLSA.

38. The FLSA entitles employees to a minimum hourly compensation of \$7.25 for hours worked under 40 in a week, *see* 29 U.S.C. § 206(b) and \$10.875 for hours worked over 40 in a week, *see id.* at § 207(a)(1).

39. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not "customarily and regularly receive tips." *See* 29 U.S.C. § 203(m). Federal courts interpreting this statutory language hold that restaurants lose their right to utilize a tip credit when tips are shared with employees – such as Defendant's wine runners and baristas – whose direct customer interaction is minimal. *See, e.g., Montano v. Montrose Restaurant Associates,*

*Inc.*, 800 F.3d 186 (5th Cir. 2015); *Ford v. Lehigh Valley Restaurant Group, Inc.*, 2014 U.S. Dist. LEXIS 92801 (M.D. Pa. July 9, 2014).

40. By requiring Plaintiff and other servers to share tips with wine runners and baristas, Defendant has forfeited its right to utilize the tip credit in satisfying its minimum wage obligations. As such, Defendant has violated the FLSA's minimum wage mandate by paying Plaintiff and other servers and bartenders an hourly wage below \$7.25.

41. In violating the FLSA, Defendant acted willfully with reckless disregard of clearly applicable FLSA provisions.

### **FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF THE DCMWRA**

#### **Count II**

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

43. Plaintiffs and Class Members are employees entitled to the DCMWRA's protections

44. Defendant is an employer covered by the DCMWRA.

45. The DCMWRA, as of July 1, 2014 entitled employees to a minimum hourly compensation of \$9.50 for hours worked under 40 in a week, and \$14.25 for hours worked over 40 in a week. As of July 1, 2015, employees were entitled to minimum hourly compensation of \$10.50 for hours worked under 40 in a week, and \$15.75 for hours worked over 40 in a week. As of July 1, 2016, employees were entitled to \$11.50 for hours worked under 40 in a week, and \$17.25 for hours worked over 40 in a week. As of July 1, 2017, employees were entitled to \$12.50 for hours worked under 40 in a week, and \$18.75 for hours worked over 40 in a week. *See* D.C. Code § 32-1003(a).



46. While restaurants may utilize a tip credit to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not customarily and regularly receive tips. *See* D.C. Code § 32-1003(f). By requiring Plaintiff and other servers to share tips with wine runners and baristas, Defendant has forfeited its right to utilize the tip credit in satisfying its minimum wage obligations under the DCMWRA. As such, Defendant has violated the FLSA’s minimum wage mandate by paying Plaintiff and other servers and bartenders an hourly wage below \$7.25.

47. In violating the DCMWRA, Defendant acted willfully with reckless disregard of clearly applicable DCMWRA provisions.

**FAILURE TO PAY WAGES IN VIOLATION OF THE DCWPCL**

**Count III**

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

49. Plaintiff and other Class Members are employees entitled to the DCWPCL’s protections

50. Defendant is an employer covered by the DCWPCL.

51. “Wages” pursuant to DCWPCL (DC Code § 32-1301(3)), “includes a: (A) Bonus; (B) Commission; (C) Fringe benefits paid in cash; (D) Overtime premium; and (E) Other remuneration promised or owed: (i) Pursuant to a contract for employment, whether written or oral; (ii) Pursuant to a contract between an employer and another person or entity; or (iii) pursuant to District or Federal law.”

52. Plaintiff and other Class Members performed work duties for Defendant’s benefit as set forth above for which Defendant failed to pay Plaintiffs all wages earned and required by Federal and District of Columbia law.

53. Defendant owes Plaintiff and other Class Members wages for work duties performed as set forth above.

54. Defendant's failure to pay Plaintiff and other Class Members wages as set forth above constitutes a violation of their right to receive wages as guaranteed by the DCWPCL.

55. In violating the DCWPCL, Defendant acted willfully with reckless disregard of clearly applicable DCWPCL provisions.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Koly Camara, on behalf of himself, and all others similarly situated, prays for a judgment against Defendant as follows:

A. Authorizing dissemination of notice to similarly situated servers so that they have the opportunity to join this action;

B. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in D.C. Super. Ct. R. Civ. P. 23(a), (b)(2) and/or (b)(3);

C. Designating Plaintiff as representative of the class and his counsel as class counsel;

D. Entering judgment in favor of Plaintiff, the class and against Defendant for all compensatory, individual, class, and collective damages;

E. Awarding compensatory damages such as all wages owed to Plaintiff and Defendant's other servers;

F. Awarding liquidated damages for the wage claims of Plaintiff and other Servers;

G. Granting Plaintiff and other Servers the costs of prosecuting this action, including attorneys' fees, experts' fees and costs together with interest;

H. Granting such further relief as the Court deems just.

### **DEMAND FOR JURY TRIAL**

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

Dated: February 13, 2018

Respectfully submitted,

*/s/ Jason S. Rathod*

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\**pro hac vice* admission anticipated

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2018, the foregoing was filed electronically with the Court.

*/s/ Jason S. Rathod*  
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Jason S. Rathod, Esq.