

District Court, Arapahoe County, Colorado Arapahoe County Justice Center 7325 S. Potomac Street Centennial, Colorado 80112		DATE FILED: February 10, 2015 4:03 PM FILING ID: 10CB51CC5E2EB CASE NUMBER: 2015CV30354
FRED D. BAUER, Individually and on behalf of all others similarly situated,  Plaintiff,  v.  GLENMOOR COUNTRY CLUB, A Colorado nonprofit corporation,  Defendant.		
David H. Miller, Atty Reg. 8405 SAWAYA & MILLER LAW FIRM 1600 Ogden Street Denver, CO 80218 Telephone : (303) 839-1650 Fax : (720) 235-4380 <a href="mailto:DMiller@sawayalaw.com">DMiller@sawayalaw.com</a>	Case Number:  Division :	
<b>CLASS ACTION COMPLAINT          AND JURY DEMAND</b>		

Plaintiff Fred D. Bauer (“Plaintiff”), individually and on behalf of all others similarly situated, through undersigned counsel at the SAWAYA & MILLER LAW FIRM, makes the following allegations in support of this individual and class action Complaint:

### **INTRODUCTION**

1. Plaintiff brings this action pursuant to the Colorado Wage Act, Colo. Rev. Stat. §§ 8-4-101, *et seq.*; and all applicable Colorado Minimum Wage Orders, 7 C.C.R. § 1103-1. (The Colorado Wage Act along with the Colorado Minimum Wage Order are referenced below as the “Colorado Wage and Hour Law”).
2. The named Plaintiff is a former banquet service employee who, until approximately December 20, 2014, worked as a banquet server at Glenmoor Country Club (“Glenmoor”) in Arapahoe County, Colorado. He brings this action on behalf of himself and all other similarly situated service employees of Glenmoor to recover gratuity and service charges wrongfully withheld and uniform charges improperly deducted from wages by Defendant in violation of the Colorado Wage and Hour Law.

3. This action is brought to obtain damages for Plaintiff and all other class members similarly situated, who work or have worked as servers at Glenmoor from three years preceding the filing of this Complaint until the latest date allowed by the Court.

### **PARTIES**

4. Until on or about December 20, 2014, Plaintiff Bauer worked as an hourly employee of Glenmoor. Bauer is over the age of 21 years and is a resident of the state of Colorado.

5. Defendant Glenmoor is a Colorado nonprofit corporation that conducts business within the state of Colorado, providing its members with golf, fitness, event, and entertainment facilities and related services.

6. Mr. Bauer started work as a banquet server at Glenmoor's location at 110 Glenmoor Drive, Englewood, Colorado, in approximately March 2014.

### **JURISDICTION AND VENUE**

7. Glenmoor's principal office is located at 110 Glenmoor Dr., Englewood, Arapahoe County, Colorado 80113.

8. The events that give rise to the claims stated in this Complaint occurred within Arapahoe County. Accordingly, venue is proper under Colo. Rev. Stat. § 8-1-111 (2012), and Colorado Rules of Civil Procedure 98(c).

9. Glenmoor is a covered industry under all applicable Colorado Minimum Wage Orders, 7 CCR § 1103-1(1).

10. This Court has jurisdiction to consider claims for money damages and equitable relief, including individual and class action claims, based on alleged violations of the Colorado Wage and Hour Law.

### **GENERAL ALLEGATIONS**

11. Plaintiff restates all preceding allegations and incorporates them herein by this reference.

12. Plaintiff and those similarly situated work or worked as servers at banquets, private events and other venues hosted by Glenmoor and in other server roles at Glenmoor facilities. such servers serve, and / or bartend, bus tables, set up furniture, decorate, and perform similar work at private events hosted by Glenmoor.

13. Defendant Glenmoor charges customers, as set out in its agreements with customers, what it calls a "gratuity/service charge" for such events.

14. Defendant keeps a substantial portion of that gratuity and service charge ("gratuity") rather than distributing it to Plaintiff and similarly situated servers.

15. Defendant does not post and for the last 3 years has not posted a notice, as required by Colorado Wage and Hour Law, notifying customers that it keeps a portion of the gratuity.
16. Plaintiff was paid the state minimum wage of \$8 an hour and received occasional compensation from gratuities.
17. Defendant does not disclose to Plaintiff or those similarly situated how compensation from gratuity charges are calculated, what percentage goes to servers, or which Glenmoor employees make up the “tip pool” among whom compensation in the form of gratuities are distributed.
18. Defendant also unlawfully has deducted uniform fees from the paychecks of Plaintiff and those similarly situated.
19. Defendant benefits from and is unjustly enriched by misrepresenting to customers that the gratuity charge is a tip that is paid to servers and by unlawfully requiring employees to pay for their uniforms.
20. Defendant has unlawfully interfered with Plaintiff and similarly situated servers’ relationships with customers, who reasonably believe and expect what Glenmoor characterizes as a “service charge” to be paid to the servers as a tip.
21. Once a customer designates a fixed amount of money as a gratuity for servers, such gratuity is the sole property of the employee under Colo. Rev. Stat. § 8-4-103(6).
22. As a result of Defendant’s action, Plaintiff and similarly situated servers who have been subjected to Defendant’s policies and practices described above have suffered damages.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

(Violation of the Colorado Wage and Hour Law)

23. Plaintiff restates all preceding allegations and incorporates them herein by this reference.
24. Plaintiff brings this First Claim for Relief for violations of the Colorado Wage Act, Colo. Rev. Stat. § 8-4-101, *et. seq.*, and all applicable Colorado Minimum Wage Orders, 7 CCR 1103-1.
25. The Colorado Wage and Hour Law requires that presents, tips and gratuities are the sole property of the employee of a business unless the business places a conspicuous notice to the general public that such presents, tips, or gratuities belong to the employer.
26. Defendant Glenmoor’s policy of collecting gratuities and not distributing 100 percent of those gratuities to employees is a violation of the Colorado Wage and Hour Law.

27. The Colorado Wage and Hour Law further requires that, where employees are required to wear a particular uniform, the employer must pay the cost of purchasing, maintaining, and cleaning the uniform.

28. The Colorado Wage and Hour Law prohibits deduction of uniform expenses from employees' wages or compensation.

29. Defendant Glenmoor's policy of deducting uniform costs from the paychecks of Plaintiff and similarly situated servers is a violation of the Colorado Wage Act, Colo. Rev. Stat. § 8-4-105, and all relevant Colorado Minimum Wage Orders, 7 CCR 1103-1(11).

30. Defendant willfully violated its legal obligations to distribute all gratuities to servers and to pay for required uniforms. Glenmoor knew and/or recklessly disregarded Colorado Wage and Hour Law regarding gratuities, payroll deductions, and uniforms.

31. Because Defendant's actions were willful, Plaintiff's claims for relief are subject to a three-year statute of limitations pursuant to Colo. Rev. Stat. § 8-4-122.

32. Representative Plaintiff Bauer, within 60 days of the date of his termination from employment, gave sufficient notice on behalf of himself and all others similarly situated by way of letter addressed to the registered agent for service of process of Defendant under C.R.S. § 8-4-109(3), demanding payment of compensation due under the Colorado Wage and Hour Law. Defendant failed to tender all such compensation due as required by Colorado Wage and Hour Law.

33. As a result of Defendant's violation of the Colorado Wage and Hour Law, Plaintiff suffered damages by failing to receive appropriate wages and gratuities for all hours worked in an amount to be determined at trial and is entitled to the recovery of such amounts, and accounting therefore, liquidated and penalty damages, pre- and post-judgment interest, damages for tax reimbursement, attorneys' fees, costs, and other compensation and legal remedies, and additionally, such declaratory and injunctive or other equitable relief as the law allows.

**SECOND CLAIM FOR RELIEF**  
(Colorado Rule of Civil Procedure 23)

34. Plaintiff restating all preceding allegations and incorporating them herein by this reference, further alleges: Plaintiff and those similarly situated bring their Second Claim for Relief as a class action pursuant to Rule 23(a) and (b) of the Colorado Rules of Civil Procedure. The Class for Plaintiffs is defined as all hourly non-exempt banquet servers who perform or performed work for Defendant in Colorado during the applicable statutory period.

35. This action is properly maintainable as a class action under Colorado Rules of Civil Procedure 23 because the class is so numerous that joinder of all its members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

36. This action is also properly maintainable as a class action under Colorado Rule of Civil Procedure 23(b) because questions of law or facts common to the members of the class predominate over any questions affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

37. The members of the class identified above are so numerous that joinder of all members is impracticable. The exact number of the class is unknown, but may amount to more than thirty people and may be determined from the records maintained by Defendant Glenmoor.

38. There are numerous and substantial questions of law and fact common to all members of the class, including, but not limited to the following:

- a. Whether Defendant Glenmoor violated the Colorado Wage and Hour Law by collecting service and gratuity charges without passing on all of those charges to employees;
- b. Whether Defendant Glenmoor violated the Colorado Wage and Hour Law by deducting charges for employee uniforms; and
- c. Whether the actions of Defendant Glenmoor were willful.

39. Defendant Glenmoor is expected to raise common defenses to this class action, including denial that its actions violated the law.

40. The named representative Plaintiff will fairly and adequately protect the interests of the Class, and he has retained counsel experienced and competent in the litigation of complex class actions.

41. The claims of the named representative Plaintiff are typical of the claims of the Class. The named representative Plaintiff has the same interest and suffers from the same injury as the Class members. The named representative Plaintiff and the Class he seeks to represent have earned gratuities that Defendant improperly kept and have had uniform fees improperly deducted from their paychecks.

42. Upon information and belief, no other member of the Class has an interest in individually controlling the prosecution of his or her claim(s), especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action upon receipt of the class action notice pursuant to the Colorado Rules of Civil Procedure 23(c)(2).

43. The Court has the resources and abilities to effectively manage this class action.

44. The named representative Plaintiff intends to send notice to all members of the Class to the extent required by Rule 23. The names and addresses of the Class are available from Defendant Glenmoor.

45. By its actions alleged above, Defendant Glenmoor willfully, knowingly, and/or recklessly violated the Colorado Wage and Hour Law provisions and corresponding controlling Colorado regulations.

46. Defendant Glenmoor willfully and intentionally engaged in a widespread pattern and practice of violating the controlling provisions of the Colorado Wage and Hour Law and corresponding controlling Colorado regulations, as set out above, by making improper deductions from earned gratuities and salary from such servers.

47. As a result of Defendant Glenmoor's violation of the Colorado Wage and Hour Law, Plaintiff and similarly situated employees have suffered the same kind of damages by failing to receive wages and gratuities for all hours worked in accordance with the Colorado Wage and Hour Law.

48. Defendant Glenmoor has not made a good faith effort to comply with the Colorado Wage and Hour Law with respect to its compensation of Plaintiff and similarly situated employees.

49. As a result of the unlawful acts of Defendant Glenmoor, Plaintiff and those similarly situated employees have been deprived of their wages and gratuities for all hours worked in an amount to be determined at trial and are entitled to the recovery of such amounts, and accounting therefore, liquidated damages, pre- and post-judgment interest, attorneys' fees, costs, tax reimbursement, and other compensation and legal remedies, and additionally such declaratory and injunctive or other equitable relief, as the law allows.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiff, and the similarly situated individuals, who are described within the Rule 23 definition of any class certified by the Court, pray for the following relief:

- A. Conditional and then final certification of a class and any necessary subclasses pursuant to Colorado Rules of Civil Procedure 23, to be described as all hourly, non-exempt employees of Glenmoor who perform or performed work as servers during the applicable statutory period and whose wages or other compensation was wrongfully reduced by Glenmoor having made reductions for "service charges" retained by Glenmoor, and / or improper uniform deductions;
- B. An order finding Defendant Glenmoor liable to Plaintiff and the certified class for unlawfully deducting and otherwise failing to pay wages and gratuities in violation of the Colorado Wage and Hour Law in the amount described above and to be proven at trial;
- C. An order awarding Plaintiff and the certified class pre- and post-judgment interest at the highest rates allowed by law, along with a sufficient amount to compensate the class for any and all adverse tax consequences impossible because of any damages or other relief obtained herein;
- D. An order providing Plaintiff and the certified class all legal and equitable relief available under the Colorado Wage and Hour Law and other applicable state laws, including, but not limited to an accounting for all such monies owed and as described herein;
- E. An order awarding Plaintiff and the certified class their reasonable attorneys' fees, along with costs, tax reimbursement, and expenses of suit;

F. An order awarding Plaintiff and the certified class all available actual damages, compensatory, liquidated, penalty, and punitive damages, as alleged above and as may be proven at trial and as permitted by law;

G. An order granting such other and further relief as the Court deems fair and equitable

**VII. JURY DEMAND**

Plaintiffs request that this matter be tried to a jury.

Respectfully submitted this 6th day of February, 2015.

s/ David H. Miller  
David H. Miller  
SAWAYA & MILLER LAW FIRM  
Attorneys for Plaintiffs

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