

DISTRICT COURT, CITY AND COUNTY OF DENVER,  
STATE OF COLORADO  
1437 Bannock Street  
Denver, Colorado 80202

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CASE NUMBER: 2025CV30630

Plaintiff: **MARIANNA WHITE**,

v.

Defendant: **CULINARY CREATIVE GROUP, INC.**, a  
Delaware corporation.

▲ COURT USE ONLY ▲

Attorneys for the Plaintiff:

Adam M. Harrison, #50553  
Cynthia J. Sánchez, #55999  
HKM Employment Attorneys LLP  
518 17<sup>th</sup> Street, Suite 1100  
Denver, Colorado 80202  
Phone: (720) 255-0370  
Fax: (720) 668-8989  
E-mail: aharrison@hkm.com  
csanchez@hkm.com

Case Number:

Division:

## COMPLAINT

The Plaintiff, Marianna White (“Plaintiff”), through her undersigned counsel from HKM Employment Attorneys LLP, pursuant to Article XVIII, Section 15 of the Colorado Constitution, the Colorado Wage Act, C.R.S. § 8-4-101 *et seq.* (“CWA”), the Colorado Minimum Wage Act, C.R.S. § 8-6-101 *et seq.* (“CMWA”), and the applicable Colorado Overtime and Minimum Pay Standards (“COMPS”) Orders, 7 CCR 1103-1 (2023-24) (collectively “Colorado Wage and Hour Law”), as her Complaint against the Defendant, Culinary Creative Group, Inc., a Delaware corporation (“Defendant”), states as follows:

### NATURE OF CASE

1. The Plaintiff is a former employee of the Defendant who worked for the Defendant as a Server from September 2023 to January 2024.

2. The Defendant violated the Plaintiff's rights, and the rights of hundreds of other Servers under Colorado Wage and Hour Law by:

- (1) Stealing tips/gratuities ("Tips") that were intended for the Plaintiff and other Servers, while falsely representing to the Defendant's customers that "100% of the service charge is distributed to staff in an equitable manner;"
- (2) Taking Tips earned by the Plaintiff and other Servers and paying that money to the Defendant's management in blatant violation of Colorado Wage and Hour Law;
- (3) Retroactively reducing the Plaintiff's and other Servers' agreed hourly rates and paying them lower rates for hours that they had already worked in January 2024;
- (4) Taking advantage of Colorado's tip credit by paying the Plaintiff and other Servers a cash wage that was \$3.02 less than the applicable minimum wage ("Tipped Minimum Wage"), while stealing Tips from the Plaintiff; and
- (5) Depriving the Plaintiff and other Servers of duty-free, compensated 10-minute rest periods ("Rest Periods") that are required under Colorado Wage and Hour Law.

*See* Colo. Const. Art. XVIII, § 15; C.R.S. §§ 8-4-103, 8-6-106; 7 CCR 1103-1, Rules 3 and 5.2.

3. At all times relevant to this Complaint, the Defendant knew – or through the exercise of any modicum of diligence should have known – that their policies and practices violated the Plaintiff's rights and the rights of hundreds of other Servers, the Defendant's violations of Colorado Wage and Hour Law were willful as a matter of law. *See Mumby v. Pure Energy Servs. (USA), Inc.*, 636 F.3d 1266, 1270 (10th Cir. 2011) (discussing standard for willful violations of wage and hour law); *see also* C.R.S. § 8-4-109(3)(b)(II) (providing enhanced damages for willful violations of CWA).

4. In addition to violating Colorado Wage and Hour Law, the Defendant's conduct toward the Plaintiff and other Servers constitutes civil theft in violation of C.R.S. § 8-4-114(1) and C.R.S. § 18-4-401 *et seq.* (collectively, "Colorado Anti-Theft Law").

5. In addition and in the alternative to the Plaintiff's Colorado Wage and Hour Law claims, the Defendant's conduct constitutes unjust enrichment under Colorado common law. *See Scott v. Scott*, 2018 COA 25, ¶ 47 (setting out elements of unjust enrichment under Colorado law).

6. During their periods of employment, the Plaintiff and the other Servers were compelled to sign a document drafted by the Defendant entitled "Alternative Dispute

Resolution Agreement” (“Arbitration Agreement”) that was and is oppressive, intimidating, and otherwise unenforceable. The Defendant required the Plaintiff and the other Servers to sign the Agreement despite the fact that it was and is unenforceable and unconscionable.<sup>1 2</sup>

7. The Plaintiff seeks, *inter alia*: (A) a declaratory judgment condemning the Defendant’s willful violations of Colorado Wage and Hour Law and Colorado Anti-Theft Law; (B) actual and compensatory damages; (C) *quantum meruit*; (D) unpaid wages; (E) unpaid minimum wages; (F) mandatory penalties under C.R.S. § 8-4-109(3)(b)(I) in an amount equal to two times the unpaid wages awarded to the Plaintiff; (G) additional penalties (based on the willful nature of the Defendant’s violations) under C.R.S. § 8-4-109(3)(b)(II) in an amount equal to the unpaid wages awarded to the Plaintiff; (H) treble damages under C.R.S. § 18-4-405 based on the Defendant’s violations of Colorado Anti-Theft Law; (I) the Plaintiff’s reasonable attorney’s fees; and (J) all of the costs incurred by the Plaintiff as a result of the Defendant’s violations of her rights. *See* C.R.S. §§ 8-4-109(3)(b), 8-4-110, 8-4-114, and 18-4-405.

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<sup>1</sup> Among the most unlawful aspects of the Arbitration Agreement were provisions that purported to require the Servers: (1) to engage in *non-voluntary* pre-filing requirements (thus prejudicing their rights under applicable statutes of limitations, including under the CWA and the CMWA); (2) under the threat of severe penalties, to refrain from disclosing the fact that they had any claims against the Defendant to the public, which the Servers have a right to do under the First Amendment of the United States Constitution and Section 7 of the National Labor Relations Act, 29 U.S.C. § 157; (3) to pay the attorney’s fees and costs incurred by the Defendant in arbitration if they do not prevail, in blatant contravention of Colorado Wage and Hour Law and longstanding precedent. *See Nesbit v. FCNH, Inc.*, 74 F.Supp.3d 1366, 1372-75 (D. Colo. 2014), *aff’d*, 811 F.3d 371 (10th Cir. 2016) (fee-shifting provisions of employee arbitration agreements are unlawful); *see also Lester v. Career Bldg. Acad.*, 2014 COA 88, ¶ 16 (discussing standards for fee shifting under the CWA).

<sup>2</sup> Even if the Arbitration Agreement were not unenforceable, this Court would nevertheless retain a vital “supervisory role” over claims that go to arbitration. *See Smith v. Spizziri*, 601 U.S. 472, 472-79 (2024). As the Supreme Court of the United States recently unanimously recognized in *Smith*, the Federal Arbitration Act “provides mechanisms for courts with proper jurisdiction to assist parties in arbitration by, for example, appointing an arbitrator, see 9 U.S.C. § 5; enforcing subpoenas issued by arbitrators to compel testimony or produce evidence, see § 7; and facilitating recovery on an arbitral award, see § 9.”

## **PARTIES**

8. The Plaintiff is a Colorado resident who is represented by, and may be reached through her attorneys, HKM Employment Attorneys LLP, 518 17<sup>th</sup> Street, Suite 1100, Denver, Colorado 80202.

9. At all times relevant to this Complaint, the Plaintiff was an “employee” entitled to the protections of Colorado Wage and Hour Law. *See* C.R.S. § 8-4-101(5); 7 CCR 1103-1, Rule 1.5.

10. The Defendant is a Delaware corporation with its principal office at 2921 W. 38<sup>th</sup> Avenue, #310, Denver, Colorado 80211.

11. At all times relevant to this Complaint, the Defendant was an “employer” subject to the requirements and prohibitions of Colorado Wage and Hour Law and Colorado Anti-Theft Law. *See* C.R.S. § 8-4-101(6); 7 CCR 1103-1, Rule 1.6.

## **JURISDICTION AND VENUE**

12. The Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

13. This Court has original jurisdiction over this action pursuant to Article 6 § 9(1) of the Colorado Constitution and C.R.S. § 13-1-124(1)(a) and (b), and (c).

14. At all times relevant to this Complaint, the Defendant conducted substantial business in this District. Moreover, the facts and circumstances giving rise to this Complaint occurred in this District.

15. Venue is proper before this Court under C.R.C.P. 98 because the Defendant resides in this District and will be served in Denver, Colorado.

## **FACTUAL BACKGROUND**

16. The Plaintiff incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

17. The Plaintiff was employed by the Defendant as a Server from September 2023 to January 2024.

18. On information and belief, the Defendant employed hundreds of Servers during the period relevant to this Complaint.<sup>3</sup>

19. The Plaintiff attended training for several weeks during September 2023, and then began working at the Defendant's *Kumoya* restaurant in October 2023.

20. The Plaintiff's rate of pay from September 2023 to December 2023 was \$17.58, plus Tips.

21. In January 2024, the Defendant (retroactively and thus illegally) reduced the Plaintiff's pay rate to \$15.27 per hour – the Tipped Minimum Wage in Denver.

22. The Defendant lured the Plaintiff to work for them by falsely representing that Servers were paid \$35.00 to \$45.00 per hour. At no point during the Plaintiff's employment did her wages reach anywhere near that level.

23. Throughout the Plaintiff's employment, the Defendant maintained an illegal tip pool that it referred to as a "Service Charge."

24. Also, throughout the Plaintiff's employment, the Defendant intentionally misled their Servers and their customers by falsely representing on customer receipts that "100% of the service charge is distributed to staff in an equitable manner."

25. The fact that the "Service Charge" consisted entirely of Tips earned by the Plaintiff and other Servers was and is apparent from the fact that the Defendant took advantage of the tip credit by paying the Plaintiff Denver's Tipped Minimum Wage, instead of the full minimum wage.

26. It was and is also apparent that the Defendant did not distribute Servers' Tips "in an equitable manner." The Defendant consistently paid the Plaintiff and other Servers the same wage rate – approximately \$25.00 to \$26.00 per hour – no matter how busy the restaurant was, how much money the restaurant made, or how much money was paid by customers as "Service Charges" (*i.e.* Tips).

27. During a staff meeting in October 2023, the Plaintiff learned that the Defendant was misappropriating 30% of the "Service Charge" and giving it directly to the Defendant's Manager, Wes Zelio ("Zelio") – instead of the "staff" it told customers would be receiving those Tips.

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<sup>3</sup> See C.R.S. § 8-4-122 (providing two- or three- year statute of limitations under CWA); *see also Perez v. By the Rockies, LLC*, 2023 COA 109, ¶ 1 (holding that six-year statute of limitations applies to CMWA claims).

28. At no time during the Plaintiff's employment did the Defendant ever disclose to the Plaintiff the amount of Tips that she actually earned, or how they were distributing her Tips.

29. Throughout her employment, the Plaintiff was constantly deprived of Rest Periods.

30. From the time the Plaintiff and other Servers arrived at work, they were constantly moving and performing job duties for the Defendant. They had no opportunity to take Rest Periods.

31. When the Plaintiff did try to take a short break to eat food during a shift, Zelio reprimanded her for doing so and told her she should be working.

32. The Plaintiff was under constant pressure to keep working throughout each shift.

33. At no point during the Plaintiff's employment did the Defendant take any reasonable steps to inform Servers of their right to take Rest Periods, to teach them about their rights to Rest Periods, or to facilitate Rest Periods in any way.

34. As a result of the Defendant's failures to provide Rest Periods, the Plaintiff was deprived of an estimated 136 rest periods.

35. In January 2024, the Defendant announced to its Servers that it was (retroactively) reducing their cash wage rate to the Tipped Minimum Wage in order to avoid paying them the full minimum wage rate that was applicable in Denver. **Exhibit 1: Padró Memo.**

36. As a result of this retroactive reduction, the Plaintiff was paid less than her agreed wage rate for the hours that she worked in January 2024.

37. At all times relevant to this Complaint, the Defendant knew or, through the exercise of reasonable diligence should have known, that they were prohibited from stealing Tips, were required to pay the Plaintiff and the other Servers their earned wages, and were required to authorize and permit Rest Periods. As such, the Defendant's violations of Colorado Wage and Hour Law were willful.

**FIRST CLAIM FOR RELIEF**

**WAGE THEFT IN VIOLATION OF COLORADO WAGE AND HOUR LAW**

**Colo. Const. Art. XVIII, § 15**

**C.R.S. § 8-4-101 *et seq.***

**C.R.S. § 8-6-101 *et seq.***

**7 CCR 1103-1**

38. The Plaintiff hereby incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

39. The CWA requires employers to pay all “wages” and “compensation” earned by employees in a timely manner, which generally must be 30 days or fewer from the date on which the wages/compensation are earned. C.R.S. § 8-4-103(1)(a). Such wages/compensation must be paid at a rate that is no lower than the applicable minimum wage. *See* 7 CCR 1103-1, Rule 3.

40. The CWA provides as follows with regard to Tips:

It is unlawful for an employer engaged in a business where the custom prevails of the giving of gratuities by patrons to an employee of the business ***to assert a claim to, or right of ownership in, or control over gratuities***. These gratuities are the sole property of the employee unless the employer notifies each patron in writing, including by a notice on a menu, table tent, or receipt, that gratuities are shared by employees. Nothing in this section prevents an employer from requiring employees to share or allocate gratuities on a preestablished basis among the employees of the business.

C.R.S. § 8-4-103(6) (emphasis added).

41. The CWA prohibits employers from deducting any amounts from employee wages with limited enumerated exceptions, none of which are applicable to this case. *See* C.R.S. § 8-4-105.

42. The CWA declares that “[a]ny agreement, written or oral, by any employee purporting to waive or to modify such employee’s rights in violation of this article shall be void.” C.R.S. § 8-4-121.

43. Employers who violate the CWA by failing to pay wages/compensation earned by an employee, and who continue to violate the Act by failing to tender such wages/compensation within 14 days of receiving a written demand or a civil complaint are

liable for either: (A) treble damages, if the employee is not able to show that the employer's wage violation was "willful;" or (B) quadruple damages, if the employee is able to show that the violation was willful. C.R.S. § 8-4-109(3)(a)-(b); *see Graham v. Zurich Am. Ins. Co.*, 2012 COA 188, ¶¶ 12-14 ("[P]enalties are mandatory if (1) the employee makes a written demand for payment and (2) the defendant does not pay within fourteen days."). A violation is "willful" if the employer "either knew or showed reckless disregard for the matter of whether its conduct violated the statute." *See Mumby*, 636 F.3d at 1270.

44. Employers who violate the CWA are also presumptively liable for attorneys' fees and costs incurred by the employee in obtaining their wages. *See Lester v. Career Bldg. Acad.*, 2014 COA 88, ¶ 16 (holding that CWA contains rebuttable presumption that prevailing employee is entitled to fees and costs).

45. The CMWA requires employers to pay employees a wage rate that is no less than the applicable minimum wage rate *per hour* for all of the hours that they work. *See Colo. Const. Art. XVIII § 15; C.R.S. § 8-6-106; 7 CCR 1103-1, Rule 3.*

46. Employers who violate the CMWA by failing to pay employees the applicable minimum wage are liable for the full amount of such minimum wage, reasonable attorneys' fees and court costs. C.R.S. § 8-6-118.

47. Under the COMPS Order, the minimum wage applicable to employees who work in Denver is the Denver minimum wage. *See 7 CCR 1103-1, Rule 3.2* ("If an employee is covered by multiple minimum or overtime wage requirements, the requirement providing a higher wage, or otherwise setting a higher standard, shall apply").

48. Colorado Wage and Hour Law permits employers to use a "tip credit" of up to \$3.02 per hour for employees who receive Tips. *See Colo. Const. Art. XVIII, § 15; 7 CCR 1103-1, Rule 6.2.3.* However, "[e]mployer-required sharing of tips with management, or with employees who do not have such duties, or deduction of credit card processing fees from tipped employees, shall nullify allowable tip credits towards the minimum wage." 7 CCR 1103-1, Rule 1.10(B).

49. The COMPS Order requires employers to provide employees with compensated, duty-free, 10-minute rest periods for every four hours, or major fractions of four hours, that the employees work. 7 CCR 1103-1, Rule 5.2. "When an employee is not authorized and permitted a required 10-minute rest period, his or her shift is effectively extended by 10 minutes without compensation." *Pilmenstein v. Devereux Cleo Wallace*, 2021 COA 59, ¶ 19.

50. An employee whose rights under the COMPS Order have been violated may sue their employer under the CWA and/or the CMWA. *See id.* at ¶¶ 25, 30, 38 (recognizing that both the CWA and the CMWA authorize private rights of action for employees who are deprived of rest periods); *see also id.* at ¶ 64 (Pawar, J., concurring).

51. The Defendant violated Colorado Wage and Hour Law by stealing Tips that were intended for the Plaintiff and other Servers, while falsely representing to customers that “100% of the service charge is distributed to staff in an equitable manner.” *See* C.R.S. §§ 8-4-103, 8-4-105, 8-6-106.

52. The Defendant further violated Colorado Wage and Hour Law by taking Tips earned by Servers and paying that money to the Defendant’s management in blatant violation of Colorado Wage and Hour Law. *See* C.R.S. §§ 8-4-103, 8-4-105, 8-6-106; *see also* 7 CCR 1103-1, Rule 1.10.

53. The Defendant also violated Colorado Wage and Hour Law by retroactively reducing the Plaintiff’s and other Server’s agreed hourly rates and paying them lower rates for hours that they had already worked in January 2024. *See* C.R.S. §§ 8-4-103, 8-4-105.

54. In addition, the Defendant violated Colorado Wage and Hour Law by taking the tip credit, while stealing Tips from the Plaintiff and other Servers. *See* C.R.S. §§ 8-4-103, 8-4-105; 7 CCR 1103-1, Rule 1.10

55. Moreover, the Defendant violated Colorado Wage and Hour Law by depriving the Plaintiff and other Servers of Rest Periods. *See* 7 CCR 1103-1, Rule 5.2.

56. Because the Defendant knew, or through the exercise of reasonable diligence should have known that its conduct violated Colorado Wage and Hour Law, the Defendant’s violations were willful as a matter of law. *See* C.R.S. § 8-4-109(3)(b)(II); *see also Mumby*, 636 F.3d at 1270.

## **SECOND CLAIM FOR RELIEF**

### **CIVIL THEFT IN VIOLATION OF COLORADO ANTI-THEFT LAW**

**C.R.S. § 8-4-114**

**C.R.S. §§ 18-4-401 *et seq.***

57. The Plaintiff hereby incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

58. With regard to civil claims for theft, Colorado Anti-Theft Law declares:

All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. ***In any such action, the owner may recover two hundred dollars or three times the amount of the actual damages***

*sustained by him, whichever is greater, and may also recover costs of the action and reasonable attorney fees*; but monetary damages and attorney fees shall not be recoverable from a good-faith purchaser or good-faith holder of the property.

C.R.S. § 18-4-405 (emphasis added).

59. As defined below, Defendant's conduct constituted theft under Colorado law. Section 8-4-114 of the CWA declares:

(1) Any employer who violates the provisions of section 8-4-103(6) commits:

- (a) A petty offense if the amount is less than three hundred dollars;
- (b) A class 2 misdemeanor if the amount is three hundred dollars or more but less than one thousand dollars;
- (c) A class 1 misdemeanor if the amount is one thousand dollars or more but less than two thousand dollars;
- (d) A class 6 felony if the amount is two thousand dollars or more but less than five thousand dollars;
- (e) A class 5 felony if the amount is five thousand dollars or more but less than twenty thousand dollars;
- (f) A class 4 felony if the amount is twenty thousand dollars or more but less than one hundred thousand dollars;
- (g) A class 3 felony if the amount is one hundred thousand dollars or more but less than one million dollars; and
- (h) A class 2 felony if the amount is one million dollars or more.

(2) In addition to any other penalty imposed by this article 4, *any employer or agent of an employer who willfully refuses to pay wages or compensation as provided in this article 4*, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, coerce, delay, or defraud

the person to whom such indebtedness is due, *commits theft as defined in section 18-4-401.*

C.R.S. § 8-4-114 (emphasis added).

60. As discussed above, the Defendant committed theft by stealing the Plaintiff's Tips, and the Tips of other Servers, and by otherwise failing to pay them wages/compensation they knew were due to the Servers under the CWA.

61. The amount stolen from the Plaintiff is more than \$200.00.

62. Accordingly, the Defendant is liable to the Plaintiff for three times the actual damages the Plaintiff has suffered as a result of the Defendant's theft, along with her attorney's fees and costs incurred in this action.

### **THIRD CLAIM FOR RELIEF**

#### **UNJUST ENRICHMENT**

63. The Plaintiff hereby incorporates the allegations in each of the foregoing paragraphs as though fully set forth herein.

64. In Colorado, a plaintiff asserting a claim for unjust enrichment must establish that, "(1) the defendant received a benefit (2) at the plaintiff's expense (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation." *Scott*, ¶ 47 (internal quotations and citations omitted).

65. As discussed above, the Defendant received benefits at the Plaintiff's expense.

66. Having falsely represented to the Plaintiff that she would be paid \$35.00 to \$45.00 per hour, and having represented to the Plaintiff and to customers that "100% of the service charge is distributed to staff in an equitable manner," it would be unjust for the Defendant to retain the benefits it received at the Plaintiff's expense without commensurate compensation.

### **CONCLUSION**

For the reasons set forth above, judgment should be entered for the Plaintiff, and against the Defendant, and the Plaintiff should be awarded:

- (A) A declaratory judgment condemning the Defendant's willful violations of Colorado Wage and Hour Law and Colorado Anti-Theft Law;

- (B) Actual and compensatory damages suffered by the Plaintiff as a result of the Defendant's violations of her rights;
- (C) *Quantum meruit*, based on the Defendant's unjust enrichment;
- (D) Unpaid wages in an amount to be determined at trial;
- (E) Unpaid minimum wages in an amount to be determined at trial;
- (F) Mandatory penalties under C.R.S. § 8-4-109(3)(b)(I) in an amount equal to two times the unpaid wages awarded to the Plaintiff at trial;
- (G) Additional penalties (based on the willful nature of the Defendant's violations) under C.R.S. § 8-4-109(3)(b)(II) in an amount equal to the unpaid wages awarded to the Plaintiff at trial;
- (H) Treble damages under C.R.S. § 18-4-405 based on the Defendant's violations of Colorado Anti-Theft Law;
- (I) Pre-judgment interest in an amount to be determined at trial;
- (J) Post-judgment interest in an amount to be determined at trial;
- (K) The Plaintiff's reasonable attorney's fees;
- (L) The costs incurred by the Plaintiff as a result of the Defendant's violations of her rights; and
- (M) All other and further relief as may be equitable, appropriate, and/or just.

Respectfully submitted on this 19<sup>th</sup> day of February, 2025.

HKM EMPLOYMENT ATTORNEYS LLP

By:

*/s/ Adam M. Harrison*

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Adam M. Harrison, Atty Reg. # 50553  
Cynthia J. Sánchez, Atty Reg. #55999  
518 17th Street, Suite 1100  
Denver, CO 80202

720-255-0370  
aharrison@hkm.com  
csanchez@hkm.com

*Counsel for the Plaintiff*