

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

CAROLYN PANCURAK
916 MOSBY DR
FREDERICK, MD 21701

RESIDENT OF FREDERICK COUNTY

Plaintiff,

v.

MCFLY'S, INC.
d/b/a WHITE RABBIT GASTROPUB
18 MARKET SPACE
FREDERICK, MD 21701

RESIDENT OF FREDERICK COUNTY

Serve: Christopher Hubbard
7503 Rockwood Rd
Frederick, MD 21702

Registered Agent

KENNETH MACFAWN
6631 E LAKERIDGE RD
NEW MARKET, MD 21774

RESIDENT OF FREDERICK COUNTY

LARRY FELLOWS
5611 DENTON CT
FREDERICK, MD 21703

RESIDENT OF FREDERICK COUNTY

Defendants.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Carolyn Pancurak (“**Plaintiff**” or “**Pancurak**”), by and through her undersigned counsel, Joseph W. Gibson of the Employment Law Center of Maryland, alleges and states as follows:

JURISDICTION

1. This Court has jurisdiction over this civil action pursuant to 29 U.S.C. § 215(a)(3), in that this is a civil action for retaliation (Count I, as to all Defendants) arising under the Fair Labor Standards Act (“**FLSA**”), 29 U.S.C.A. § 201, *et seq.*

VENUE

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), in that defendants McFly’s, Inc., *d/b/a* White Rabbit Gastropub (“**White Rabbit**”), Kenneth MacFawn (“**MacFawn**”), and Larry Fellows (“**Fellows**”) (collectively, “**Defendants**”) all reside in this district.

3. Venue is further proper in this district pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to this civil action occurred in this district.

PLAINTIFF

4. Pancurak resides in Frederick, MD.
5. Pancurak is a restaurant server and bartender.
6. Pancurak was an employee of Defendants, as defined by 29 U.S.C.A. § 203(e)(1).

DEFENDANTS

McFly's, Inc., d/b/a White Rabbit Gastropub

7. McFly's, Inc. a Maryland corporation, Maryland Department of Assessments & Taxation ID No. D17402173.

8. McFly's, Inc., does business as White Rabbit Gastropub, a lapsed and forfeited trade name, Maryland Department of Assessments & Taxation ID No. T00423515.

9. White Rabbit is a craft beer house and gastropub located in downtown Frederick, MD.

10. White Rabbit is located at 18 Market Space, Frederick, MD 21701.

11. White Rabbit has two corporate directors and co-owners: Christopher Hubbard (“**Hubbard**”) and Kenneth MacFawn (“**MacFawn**”).

12. White Rabbit was Pancurak's employer, as defined by 29 U.S.C.A. § 203(d).

Kenneth MacFawn

13. MacFawn resides in New Market, MD.

14. MacFawn has the power to hire and fire employees at White Rabbit.

15. MacFawn exercised this power to fire Pancurak on or about July 8, 2022.

16. MacFawn supervises and controls conditions of employment at White Rabbit.

17. On information and belief, MacFawn exercised this power to direct Fellows to reduce Pancurak's scheduled shifts on or about July 8, 2022.

18. On information and belief, MacFawn has the power to determine the rate and method of employee wages at White Rabbit.

19. On information and belief, MacFawn maintains employment records for White Rabbit.

20. On or about August 6, 2022, MacFawn indicated his control over employee wages and records at White Rabbit by texting Pancurak's husband that he should have "directly reach[ed] out" to MacFawn; additionally, MacFawn was the only person cc'd on Fellows's emails to Pancurak after July 8, 2022.

21. MacFawn was Pancurak's employer, as defined by 29 U.S.C.A. § 203(d).

Larry Fellows

22. Fellows resides in Frederick, MD.

23. Fellows is the General Manager at White Rabbit.

24. Fellows has the power to hire and fire employees at White Rabbit.

25. Fellows exercised this power to hire Pancurak on December 3, 2021.

26. Fellows exercised this power to fire Pancurak on or about July 8, 2022.

27. Fellows supervises and controls conditions of employment at White Rabbit.

28. Fellows exercised this power to reduce Pancurak's scheduled shifts on or about July 8, 2022.

29. Fellows determines the rate and method of employee wages at White Rabbit.

30. Fellows maintains employment records at White Rabbit.

31. Fellows further indicated his control over wages and employment records at White Rabbit on or about August 3, 2022, when he threatened to retaliate against White Rabbit server Kevin Golden ("**Golden**") following Golden's complaints of wage and hour law violations.

32. Fellows was Pancurak's employer, as defined by 29 U.S.C.A. § 203(d).

FACTS

Pancurak's Hiring

33. Pancurak has roughly fifteen (15) years' experience in the service industry.

34. In or around November 2021, Pancurak interviewed for a server and bartender position with White Rabbit.

35. Pancurak's in-person interview was conducted by Quinn Cotton ("Cotton").

36. Following her in-person interview, White Rabbit hired Pancurak as a server and bartender on or about December 3, 2021.

37. Pancurak's hourly wage at White Rabbit was \$3.63 per hour.

38. Pancurak was a tipped employee.

39. At all times during her employment at White Rabbit, Pancurak's performance was excellent.

Pancurak's Protected Activity

40. Defendants have a practice of requiring tipped workers to stay after closing to perform non-tip-producing tasks, such as cleaning the ice machine, sweeping, or organizing dry goods.

41. This non-tip-producing work would often take multiple, continuous hours after closing.

42. Pancurak had a good-faith and reasonable belief that the above-mentioned practice of the Defendants violated the U.S. Department of Labor's so called "80/20" rule, found in 29 C.F.R. § 531.56, which limits an employer's right to take a tip credit for substantial time spent in non-tip-producing roles.

43. On or around December 2021, Pancurak began complaining verbally to White Rabbit's management, including Cotton, informing them that White Rabbit was violating wage and hour laws.

44. Additionally, during breaks or downtime, Pancurak began educating her fellow employees on their rights as employees, including the “80/20” rule.

45. Despite her repeated complaints, no member of the management, including Fellows, took material action to correct the issue, and instead accused Pancurak of “insubordination” for her complaints.

46. On June 2, 2022, Pancurak left an anonymous review on Glassdoor.com, a website where current and former employees anonymously review companies for the purpose of increasing workplace transparency.

47. In her Glassdoor.com review, Pancurak wrote, “[White Rabbit’s management] are violating Federal law ... any work that is not tip producing must be paid minimum wage. I brought this to the General Managers [sic] attention three times and provided literature, gave them time to correct, and it has not been done ... Unfortunately the owners were not receptive.”

48. When prompted by Glassdoor.com to provide “advice to management,” Pancurak wrote, “Stop breaking the law.”

49. In early July, 2022, Pancurak and another White Rabbit employee, Sabrina Mondon (“**Mondon**”), began drafting a group letter from the “front of house” staff to Defendants. The draft letter read, in part:

This is an official appeal from the Front of House staff members **asking that henceforth the management and owners abide by the minimum wage laws for tipped employees set forth by the Fair Labor Standards Act.** Effective December 31, 2021, employees may no longer take a tip credit for any and all non-tipped work, and only for work supporting tipped wages that does not exceed 30minutes.

We understand wanting to maintain a teamwork-centered environment and are aligned on that philosophy and need to make

the distinction that this is not a refusal to do said work, but it is a refusal to do the work without the proper legal compensation.

The members of the front of house staff are the faces of your business. We care about this restaurant; we care about the work we do, and we care about each other. We need consistency and we need to feel supported and advocated for. Which means before making a sweeping change on a whim, consider every one of us (back of house and front of house staff), discuss ideas so together we can effect positive change.

We suggest the minimum wage violations be amended in full compliance with the FLSA by August 1, 2022.

(emphasis supplied)

50. But before the letter could be finalized, Fellows learned of it and told all front-of-house staff (including Pancurak) to meet with him on Friday, July 8, 2022, if they had “issues.”

51. Accordingly, on July 8, 2022, Pancurak met with Fellows in his office, carrying a copy of the draft letter.

52. During her meeting with Fellows, Pancurak disclosed the existence of the letter, and asked Fellows to correct the “labor and wage violations” she’d been raising for months.

53. Fellows initially seemed willing to correct these issues, and Pancurak left the meeting feeling optimistic that Defendants would take corrective action.

Defendants’ Retaliation

54. However, immediately after the July 8, 2022, meeting, Fellows called MacFawn from his office, and the two had a phone conversation that lasted roughly one hour.

55. Following this phone call, Fellows sent Pancurak home, telling her that White Rabbit was “overstaffed.”

56. When Pancurak asked Fellows if she was being “punished,” Fellows demurred, responding that management needed to deal with some “employee issues.”

57. Defendants then removed Pancurak from its “7Shifts” account, which White Rabbit used to schedule employees for shift work.

58. On July 9, 2022, Pancurak texted Fellows, writing, “Hey Larry [Fellows]. I’m kinda [sic] spiraling after yesterday. Am I working tonight? I need to know if my job is in jeopardy. Trying not to panic.”

59. Fellows responded, “Carrie. As the General Manager I would like to ask you not to reach out to myself or any other employee via text message. We will communicate through email. We are over staffed the next 3 days. Your services are not required.”

60. White Rabbit was not, in fact, overstaffed, and other front-of-house employees struggled to keep up without Pancurak.

61. Following this text message exchange on July 9, 2022, Pancurak emailed Fellows, writing, in part:

Larry [Fellows],

I’m a little confused right now and I would like some clarification as to why I was removed from my shifts this week. You and I had a meeting on Friday regarding some front of house labor/wage violations and other issues brought forward by tenured and/or veteran staff members.

But when I went in for my shift that afternoon, I was sent home. I was cut from my scheduled shifts for being ‘over staffed’ [sic] and I haven't received any other type of communication or explanation since then; with the exception of being asked to only communicate via email going forward. **This seems retaliatory.**

(emphasis supplied)

62. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 8, 2022. Defendants removed Pancurak from this shift.

63. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 9, 2022. Defendants removed Pancurak from this shift.

64. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 10, 2022. Defendants removed Pancurak from this shift.

65. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 11, 2022. Defendants removed Pancurak from this shift.

66. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 15, 2022. Defendants removed Pancurak from this shift.

67. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 16, 2022. Defendants removed Pancurak from this shift.

68. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 17, 2022. Defendants removed Pancurak from this shift.

69. Prior to her meeting with Fellows, Pancurak had been scheduled to work from 3:30 p.m. to close on July 18, 2022. Defendants allowed Pancurak to work this shift.

70. In sum, following her July 8, 2022, meeting with Fellows, Defendants deliberately cut Pancurak's scheduled shifts per week from roughly five (5), to one (1).

71. As a result, Pancurak's weekly wages at White Rabbit became so low as to be intolerable.

72. As of July 8, 2022, when she met with Fellows, Pancurak had never been late for work.

73. As of July 8, 2022, Pancurak had never missed a scheduled shift, except for when she had to call in sick while recovering from COVID-19.

74. As of July 8, 2022, Pancurak was among the most experienced and high-performing servers and bartenders at White Rabbit.

75. In her roughly fifteen (15) years of experience in the service industry, this is the first and only time Pancurak has been discharged by an employer.

76. On August 6, 2022, the day after Defendants were made aware of Pancurak's retaliation claim, MacFawn texted Pancurak's husband, calling him a "coward" for "consult[ing] with a government agency behind their back."

Defendants' Subsequent Retaliation

77. Defendants' have retaliated against other White Rabbit employees who have engaged in similar protected activity like Pancurak.

78. On or around August 2022, White Rabbit server Kevin Golden ("**Golden**") complained to Fellows about the amount of non-tip-producing time that tipped White Rabbit employees were being forced to perform.

79. Golden told Fellows that, "I know these are the labor laws, and I know you're not following them!"

80. Fellows responded by threatening to retaliate against Golden in the same manner as he had with Pancurak, telling Golden, "If you don't want to work, I won't give you shifts."

81. Fellows followed through on this threat and cut Golden's shifts to just one per week—the exact thing he had done to Pancurak.

82. Golden, unable to survive on such a small amount of pay, was forced to leave his job at White Rabbit.

83. Defendants' campaign of retaliation has ultimately had its intended chilling effect.

84. Mondon, for instance, who was originally one of the leaders of the front-of-house staff asking for compliance with wage laws, has since texted Pancurak, writing, *inter alia*: “I’m really scared[.]”

85. As a result, the draft letter prepared by the front-of-house staff at White Rabbit asking that White Rabbit’s management “abide by the minimum wage laws for tipped employees set forth by the Fair Labor Standards Act” has never been sent.

COUNT I
Retaliation
Fair Labor Standards Act
29 U.S.C. § 215(a)(3)
(As to all Defendants)

86. Pancurak repeats and realleges the preceding paragraphs hereof, as if fully set forth herein.

87. To establish a *prima facie* case for retaliation under the FLSA, Pancurak must show that: (1) she engaged in an activity protected by the FLSA; (2) she suffered an adverse action by Defendants after or contemporaneous with her protected activity; and (3) a causal connection exists between the Pancurak’s protected activity and Defendants’ adverse action. *Darveau v. Detecon, Inc.*, 515 F.3d 334, 340 (4th Cir. 2008).

88. Pancurak has engaged in numerous instances of protected activity under the FLSA, starting with her verbal complaints in or around December 2021, and culminating with her July 8, 2022, meeting with Fellows.

89. A constructive discharge claim can satisfy the element of an adverse employment action in a substantive employment claim. *Crockett v. SRA Int’l*, 943 F. Supp. 2d 565 (D. Md. 2013). To establish constructive discharge, Pancurak must show that Defendants deliberately

made her working conditions intolerable in an effort to induce her to quit. *See Heiko v. Colombo Sav. Bank, F.S.B.*, 434 F.3d 249 (4th Cir. 2006).

90. Following her protected activity, Defendants reduced Pancurak's scheduled shifts by roughly eighty percent (80%)—an unlivable wage, and an intolerable condition. Accordingly, Defendants have constructively discharged Pancurak.

91. Regardless, Defendants' substantial reduction in Pancurak's scheduled shifts, and its according decrease to her wages, is an adverse employment action in itself.

92. Lastly, Pancurak's constructive discharge occurred near simultaneously with her protected conduct, resulting in a clear nexus and causal relationship between the two.

93. As a direct and proximate result of Defendants' wrongful acts and omissions, Pancurak has suffered and continues to suffer substantial losses, including expenses, past and future lost wages, and benefits. Pancurak is also entitled to liquidated damages and attorneys' fees and costs, and other damages as recoverable by law.

94. Pancurak has been diagnosed with clinical depression, generalized anxiety disorder, and attention-deficit/hyperactivity disorder.

95. Pancurak suffered substantial anxiety as a result of Defendants' conduct, which has exacerbated her existing medical conditions.

96. As a result, Pancurak is entitled to emotional distress damages.

PRAYER FOR RELIEF
(as to all counts)

WHEREFORE, Pancurak respectfully requests a judgment in excess of seventy-five thousand dollars (**\$75,000**), to include:

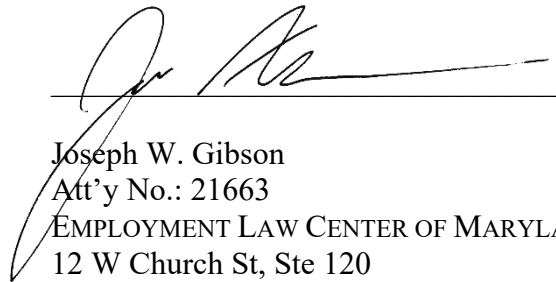
- a. Accept jurisdiction over this matter;
- b. Award Pancurak for past and future loss of wages and benefits, plus interest;

- c. Order White Rabbit to reinstate Pancurak to a position comparable to her former position or, in lieu of reinstatement, award her front pay (including benefits);
- d. Award Pancurak liquidated damages pursuant to 29 U.S.C.A. § 216(b);
- e. Award Pancurak damages for emotional distress;
- f. Award to Pancurak all costs and reasonable attorneys' fees incurred in connection with this action;
- g. Grant Pancurak such additional or alternative relief as the Court deems just and proper.

JURY DEMAND

Pancurak demands a jury trial in this action.

Respectfully submitted,



Joseph W. Gibson
Att'y No.: 21663
EMPLOYMENT LAW CENTER OF MARYLAND, INC.
12 W Church St, Ste 120
Frederick, MD 21701
(240) 384-5705 (main)
(240) 384-5716 (direct)
(240) 597-4794 (fax)
jgibson@elcmd.org

Counsel for Plaintiff Carolyn Ann Pancurak