

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANN MARIE RUDD, MATTHEW ROACH,
MELISSA LONGO, JENNIFER DOTY, and
GARRETT TITCHEN,

Plaintiffs,

v.

10-CV-0591

T.L. CANNON CORP., d/b/a Applebees,
T.L. CANNON MANAGEMENT CORP.,
TLC WEST, LLC, TLC CENTRAL, LLC,
TLC UTICA, LLC, TLC EAST, LLC, TLC
NORTH, LLC, DAVID A. STEIN, MATTHEW
J. FAIRBAIRN, and JOHN A. PERRY,

Defendants.

THOMAS J. McAVOY
United States District Judge

DECISION and ORDER

This matter is brought pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, and was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

No objections to the January 4, 2011 Report-Recommendation have been raised. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

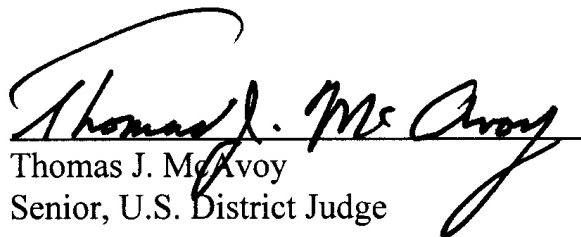
It is, therefore, ORDERED that:

- (1) Certification of this action as a collective action for purposes of the FLSA is GRANTED IN PART, as stated in Judge Peebles' Report-Recommendation;

- (2) Plaintiffs' motion for class certification under Federal Rule of Civil Procedure 23 with regard to the claims under New York Labor Law are DENIED without prejudice;
- (3) Plaintiffs are permitted to engage in discovery initially focusing upon the Rule 23 certifications issues; and
- (4) The parties negotiate and submit to the Court, within thirty days, either a form collective action notice acceptable to both parties or, alternatively, counter-proposed language for inclusion in such a notice.

IT IS SO ORDERED.

Dated: March 3, 2011


Thomas J. McAvoy
Senior, U.S. District Judge