

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANDRES DUQUE, on his own behalf and on
behalf of others similarly situated,

Plaintiff,

CASE NO.:

COLLECTIVE ACTION COMPLAINT

vs.

MICHAELS GENUINE HOSPITALITY, LLC,
a Florida for-profit corporation, MICHAEL
SCHWARTZ, an individual, and CHARLES
BELL, an individual,

Defendants.

COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiff ANDRES DUQUE, on his own behalf and on behalf of those similarly situated (“Plaintiff”), who was an employee of Defendants MICHAELS GENUINE HOSPITALITY, LLC, a Florida for-profit corporation, MICHAEL SCHWARTZ, an individual, and CHARLES BELL, an individual, (together, “Defendants”), and files this Collective Action Complaint for unpaid minimum wage compensation, unpaid overtime wage compensation, reimbursement for tips illegally taken, liquidated damages, and other relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter, the “Act” or “FLSA”) and declaration of rights.

INTRODUCTION

The FLSA was passed by Congress in 1938. The principal congressional purpose in enacting the FLSA was to protect all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to maintenance of minimum standards of

living necessary for health, efficiency, and general well-being of workers. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739 (1981). The liquidated damages provision of the FLSA constitutes a congressional recognition that failure to pay the statutory minimum, on time, may be so detrimental to maintenance of minimum standard of living necessary for health, efficiency, and general well-being of workers and to the free flow of commerce, that double payment must be made, in event of delay, in order to insure restoration of worker to that minimum standard of well-being. *Brooklyn v. Sav. Bank v. O'Neil*, 324 U.S. 697, 707-08 (1945).

I. NATURE OF THE CASE

1. The Florida Constitution, Article X, Section 24(a) (“the Amendment”) provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families.” *See* Fla. Const. Art. X sec. 24(1). In doing so, the Amendment permits employers to pay less than the Florida minimum wage to employees who receive tips *only if* the eligibility requirements for the tip credit under the Federal Fair Labor Standards Act (“FLSA”) are met. *Id.* at § 24(c). If an employer satisfies the tip credit requirements, it may apply a portion of the employee’s tips (up to a maximum of \$3.02 per hour) to satisfy its own minimum wage obligation. This portion is known as the “tip credit.”
2. To utilize the tip credit under the FLSA, the employer must allow its tipped employees to retain all the tips they receive, except when there is a valid arrangement for “pooling of tips among employees who customarily and regularly receive tips.” 29 U.S.C. § 203(m). If an employer fails to satisfy this requirement, it may not take advantage of the tip credit and must directly pay its tipped employees the full minimum wage.

3. To the best of Plaintiff's knowledge or belief, for at least the last three years pursuant to 29 U.S.C. § 201, *et seq* (hereinafter, "the Relevant Time Period"), Defendants claimed the tip credit to pay servers, who served food and/or beverages to Defendants' customers, at an hourly wage rate that was less than the minimum regular and overtime wage required under Florida law even though those employees did not retain all of their tips because they were forced to pay a portion of their tips to non-tipped employees, were not given proper notice of how they were being paid as tipped employees, and were forced to pay impermissible business expenses such as uniforms with from their wages. By failing to satisfy the requirements of 29 U.S.C. § 203(m) during the Relevant Time Period, Defendants were not eligible to claim the tip credit and were required to pay their servers the full minimum and overtime wage required under Federal and Florida law.
4. Thus, this action is brought pursuant to the FLSA for unpaid minimum wage compensation, unpaid overtime wage compensation, reimbursement for tips illegally taken, liquidated damages, and other relief.
5. Pursuant to the FLSA, Plaintiff and the proposed collective action members were subjected to similar violations of the FLSA. The class of similarly situated employees or potential collective action members sought to be certified under 29 U.S.C. § 216(b) is defined as:

All persons who worked for Defendants as servers during the three (3) years preceding this lawsuit and who, as a result of Defendants' policy of requiring servers to share their tips with employees who do not customarily and regularly receive tips and/or to pay for impermissible business expenses and/or were paid less than the statutory minimum overtime wage for tipped employees, earned less than the applicable minimum regular and/or overtime wage for one or more weeks during the Relevant Time Period.

6. Additionally, Plaintiff and those similarly situated seeks a declaration of rights pursuant to Rule 57 of the Federal Rules of Civil Procedure and the Federal Declaratory Judgment Act (“DJA”), 28 U.S.C. § 2201.
7. The precise size and identity of the class can be ascertained from the business records, tax records, and/or employee or personnel records of Defendants and its related and affiliated entities.

II. JURISDICTION AND VENUE

8. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants transact business in this District; because all wages were earned and due to be paid in this District; because Defendants’ restaurant is situated in this District; and because most, if not all, of the operational decisions were made in this District.
9. This Court has original jurisdiction over Plaintiff’s federal question claims.

III. PARTIES

10. Plaintiff ANDRES DUQUE (“Duque”) is over 18 years old and was a *sui juris* resident of Miami-Dade County, Florida, at all times material. He was an hourly, non-exempt employee of Defendants, as the term “employee” is defined by 29 U.S.C. § 203(e). Plaintiff consents to participate in this lawsuit.
11. Plaintiff Duque and the proposed class members were subjected to similar violations of the FLSA for the three years preceding the filing of this lawsuit (“Relevant Time Period”).
12. Defendant MICHAELS GENUINE HOSPITALITY, LLC is a Florida for-profit company that owns Michael’s Genuine restaurant.
13. Defendant MICHAEL SCHWARTZ (“Schwartz”), an individual and *sui juris*, was the owner of Michael’s Genuine Food and Drink restaurant (“the Restaurant”) and was the sole

manager of MICHAELS GENUINE HOSPITALITY, LLC (“MGH”). Schwartz acted directly and indirectly in the interest of the Restaurant and MGH. Schwartz managed the Restaurant and had the power to direct employees’ actions. Schwartz had management responsibilities, degree of control over the corporation's financial affairs and compensation practices, and was in a position to exert substantial authority over corporate policy relating to employee wages and whether to compensate (or not to compensate) employees at the Restaurant in accordance with the FLSA, making Defendant Michael Schwartz an employer pursuant to 29 USC § 203(d).

14. Defendant CHARLES BELL (“Bell”), an individual and *sui juris*, was the Director of Operations of MICHAELS GENUINE HOSPITALITY, LLC (“MGH”). Bell acted directly and indirectly in the interest of the Restaurant and MGH. Bell managed the Restaurant and had the power to direct employees’ actions. Bell had management responsibilities, degree of control over the corporation's financial affairs and compensation practices, and was in a position to exert substantial authority over corporate policy relating to employee wages and whether to compensate (or not to compensate) employees at the Restaurant in accordance with the FLSA, making Defendant Charles Bell an employer pursuant to 29 USC § 203(d).

IV. COVERAGE

15. During the all material times, Defendant MICHAELS GENUINE HOSPITALITY, LLC was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of § 29 U.S.C. 203(s)(1) of the Act, in that said the enterprise had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or

otherwise working on goods or materials that have been moved in or produced for commerce by any person.

16. During the all material times, Defendants were employers as defined by 29 U.S.C. § 203(d).
17. During all material times, the enterprise has had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

V. FACTUAL ALLEGATIONS

18. Defendants operate several restaurants in Miami-Dade County, including the restaurant known as Michael's Genuine Food and Drink, located at 130 N.E. 40th Street, Miami, Florida, Miami-Dade County, Florida, which is the restaurant at which Duque was employed.
19. Duque worked as a server for Defendants from January, 2013, approximately, to October, 2014.
20. During the Relevant Time Period, the applicable Florida minimum wage was \$7.31 per hour from November, 2011 through December 31, 2011, \$7.79 per hour from January 1, 2012 through December 31, 2012, \$7.93 per hour from January 1, 2013 through December 31, 2013, and \$7.93 per hour from January 1, 2014 to the present.
21. During the Relevant Time Period, the applicable Florida minimum overtime wage was \$10.965 per hour from November 2011 through December 31, 2011, \$11.685 per hour from January 1, 2012 through December 31, 2012, \$11.895 per hour from January 1, 2013 through December 31, 2013, and \$11.895 per hour from January 1, 2014 to the present.
22. Under the FLSA, if an employer satisfies the requirements of 29 U.S.C. 203(m), it may apply a portion of a tipped employee's tips (this portion known as the "tip credit") up to a maximum of \$3.02 per hour in Florida towards satisfaction of its obligation to pay its

employees the minimum wage. This tip credit may apply to both regular and overtime hours worked. The burden is on the employer to prove they are entitled to apply the tip credit.

23. To utilize the tip credit under the FLSA, the employer must pay its tipped employees the proper minimum wage for tipped employees and allow its tipped employees to retain all the tips they receive, except when there is a valid arrangement for “pooling of tips among employees who customarily and regularly receive tips.” 29 U.S.C. § 203(m). If an employer fails to satisfy either requirement, it may not take advantage of the tip credit and must pay its tipped employees the full applicable minimum wage.
24. In the instant case, Plaintiff and those similarly situated were required to share their tips with non-tipped employees such as kitchen employees and managers in an illegal tip-sharing scheme in violation of the Act.
25. In the instant case, Plaintiff and those similarly situated were required to pay for impermissible business expenses such as uniforms and inventory in violation of the Act.
26. In the instant case, Plaintiff and those similarly situated were paid less than the statutory minimum for tipped employees in violation of the Act.
27. As the result of the above violations, Defendants did not satisfy the requirements of 29 U.S.C. 203(m) during the Relevant Time Period and thus cannot apply Plaintiff’s tips towards satisfaction of Defendants’ minimum wage obligation, and must therefore pay Plaintiff, and those similarly situated, the tip credit claimed for each regular and overtime hour worked as repayment for the tip credit improperly credited to their wages.
28. In addition, as the result of the above violations in which Defendants did not satisfy the requirements of 29 U.S.C. 203(m) during the Relevant Time Period and thus cannot apply Plaintiff’s tips towards satisfaction of Defendants’ minimum wage obligation, Defendants

must therefore reimburse Plaintiff, and those similarly situated, for all tips taken in Defendants' illegal tip-sharing scheme.

29. In addition, Defendants failed to provide the notice required under the FLSA in informing Plaintiff of Defendants' intent to take a credit against their minimum wage obligations based on their tips, up to a maximum of \$3.02 per hour.
30. Because of the institution and maintenance of the illegal tip-sharing scheme and tip credit violations during the Relevant Time Period, Defendants willfully engaged in practices that denied Plaintiff the applicable minimum wage under the FLSA.
31. Plaintiff retained the undersigned counsel and agreed to pay a reasonable fee for all services rendered.

FLSA COLLECTIVE ACTION ALLEGATIONS

32. Plaintiff seeks certification of collective action from this court, for himself and those similarly situated, pursuant to 29 U.S.C. 216(b).
33. A district court, under the two-tiered approach used to determine whether an FLSA collective action is appropriate, first approves conditional certification upon a minimal showing that members of the proposed class are similarly situated. Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201, *et seq.*
34. “[A]t the initial stage the district court's decision to certify a class is based primarily on pleadings and affidavits.” *Anderson v. Cagle's, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007), citing *Mooney v. Aramco Servs. Co.*, 54 F.3d 1207, 1213–14 (5th Cir. 1995). “Accordingly, at the initial stage, courts apply a ‘fairly lenient standard’ for determining whether the plaintiffs are truly similarly situated.” *Anderson*, at 953, citing *Mooney*, at 1214. “At the first stage (typically in response to a motion to conditionally certify made prior to discovery) the court

utilizes a “fairly lenient” standard in light of the limited evidence then available.” *Epps v. Oak St. Mortg., LLC*, 2006 WL 1460273, at *3 (M.D. Fla. May 22, 2006). “[A]t the second stage plaintiffs *may*—the ultimate decision rests largely within the district court’s discretion—not succeed in maintaining a collective action under § 216(b) based solely on allegations and affidavits, depending upon the evidence presented by the party seeking decertification.” *Id.*

35. Plaintiff and those similarly situated performed the same or similar jobs as one another in that they were employed as servers in Defendants’ restaurant.
36. Plaintiff and those similarly situated were subjected to similar policies in that Defendants forced Plaintiff and those similarly situated to share their tips with non-tipped employees.
37. Plaintiff and those similarly situated were subjected to similar policies in that Defendants forced Plaintiff and those similarly situated to pay for impermissible business expenses with their wages.
38. Plaintiff and those similarly situated were subjected to similar policies in that Defendants forced Plaintiff and those similarly situated to work for overtime wages that were below the statutory minimum for tipped employees.
39. These policies or practices were applicable to Plaintiff and members of the collective action. Application of these policies or practices does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policies or practices, which resulted in the forced sharing of tips with non-tipped employees, apply to all members of the collective action. Accordingly, members of the collective action are properly defined as:

All persons who worked for Defendants as servers during the three (3) years preceding this lawsuit and who, as a result of Defendants’ policy of requiring servers to share their tips with employees who do not

customarily and regularly receive tips and/or to pay for impermissible business expenses and/or were paid less than the statutory minimum overtime wage for tipped employees, earned less than the applicable minimum regular and/or overtime wage for one or more weeks during the Relevant Time Period.

40. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.
41. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of forcing Plaintiff and those similarly situated to participate in an illegal tip-sharing scheme, in which their tips were shared with non-tipped employees.
42. Defendants violated § 207(a)(1) and § 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for one or more workweeks without compensating such employees for their work at the minimum wage rate for all regular hours worked and at the overtime rate of time-and-one-half for all hours worked in excess of 40 hours in a work week.
43. Thus, Defendants acted willfully by failing to pay Plaintiff, and those similarly situated, in accordance with the law.

COUNT I
FAILURE TO PAY MINIMUM WAGE IN
VIOLATION OF THE FLSA, 29 U.S.C. § 201, *et seq*

44. Plaintiff, and those similarly situated, reincorporates and re-alleges paragraphs 1 through 43 as though set forth fully herein and further alleges as follows:

45. Defendants willfully and intentionally forced Plaintiff, and those similarly situated, to participate in an illegal tip-sharing scheme in which tipped employees shared their tips with non-tipped employees.
46. Defendants willfully and intentionally forced Plaintiff, and those similarly situated, to pay for impermissible business expenses, including missing inventory, with their own wages.
47. Defendants did not provide Plaintiff with the requisite notice for instituting the tip credit under the FLSA.
48. By forcing Plaintiff and those similarly situated to share tips with non-tipped employees, and pay for impermissible business expenses, Defendants cannot claim the tip credit and therefore owe Plaintiff and Class the full minimum wage for each hour worked up to forty hours in a week.
49. As a direct and proximate result of forcing Plaintiff and those similarly situated to share tips with non-tipped employees, Plaintiff, and those similarly situated, have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff ANDRES DUQUE, on behalf of himself and those similarly situated, demands judgment in his favor and against Defendants as follows:

- a) Award to Plaintiff, and those similarly situated, for payment of all regular hours at the full minimum wage due them for the hours worked by them which have not been properly compensated;
- b) Award to Plaintiff, and those similarly situated, for payment of all tips taken and distributed in Defendants' illegal tip-sharing scheme;

- c) Award to Plaintiff, and those similarly situated, liquidated damages equal to the payment of all regular hours at the full minimum wage owed under the FLSA or, if liquidated damages are not awarded, then prejudgment interest;
- d) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs;
- e) Judgment entered in favor of Plaintiff, and those similarly situated, against Defendants, MICHAELS GENUINE HOSPITALITY, LLC, MICHAEL SCHWARTZ, and CHARLES BELL for payment of all regular hours at the full minimum wage for which Plaintiff, and others similarly situated, were not compensated, liquidated damages, attorneys' fees, costs, and all interest allowed by law; and
- f) Award such other and further relief as this Court may deem just and proper.

COUNT II
FAILURE TO PAY OVERTIME WAGE COMPENSATION
IN VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq

50. Plaintiff, and those similarly situated, reincorporates and re-alleges paragraphs 1 through 43 as though set forth fully herein and further alleges as follows:
51. Defendants willfully and intentionally forced Plaintiff, and those similarly situated, to participate in an illegal tip-sharing scheme in which tipped employees shared their tips with non-tipped employees.
52. By forcing Plaintiff and those similarly situated to share tips with non-tipped employees, Defendants cannot claim the tip credit and therefore owe Plaintiff and Class one-and-a-half times the minimum wage for each hour worked in excess of forty hours in a week.

53. As a direct and proximate result of Defendants' forcing Plaintiff and those similarly situated to share tips with non-tipped employees, Plaintiff, and those similarly situated, have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff ANDRES DUQUE, on behalf of himself and those similarly situated, demands judgment in his favor and against Defendants as follows:

- a) Award to Plaintiff, and those similarly situated, for payment of all overtime hours at one-and-one-half times the regular rate of pay due them for the hours worked by them which have not been properly compensated;
- b) Award to Plaintiff, and those similarly situated, for payment of all tips taken and distributed in Defendants' illegal tip-sharing scheme;
- c) Award to Plaintiff, and those similarly situated, liquidated damages equal to the payment for all overtime hours owed under the FLSA or, if liquidated damages are not awarded, then prejudgment interest;
- d) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs;
- e) Judgment entered in favor of Plaintiff, and those similarly situated, against Defendants, MICHAELS GENUINE HOSPITALITY, LLC, MICHAEL SCHWARTZ, and CHARLES BELL for payment of all overtime hours for which Plaintiff, and others similarly situated, were not compensated, liquidated damages, attorneys' fees, costs, and all interest allowed by law; and
- f) Award such other and further relief as this Court may deem just and proper.

COUNT III
DECLARATION OF RIGHTS

54. Plaintiff reincorporates and re-alleges paragraphs 1 through 43 as though set forth fully herein, and further alleges as follows:
55. Plaintiff, and those similarly situated, and Defendants have a pending dispute under the FLSA, which this Court has jurisdiction to decide pursuant to 29 U.S.C. § 1331. The Court also had jurisdiction over Plaintiff's, and those similarly situated, request for a declaration of rights pursuant to 29 U.S.C. §§ 2201, 2202.
56. Defendants did not rely on a good faith defense in forcing Plaintiff, and those similarly situated, to share tips with non-tipped employees, pay for impermissible business expenses, or to work for less than the statutory minimum overtime wage for tipped employees, under the FLSA.
57. A declaration of rights would serve the useful purpose of clarifying and settling the legal relations at issue.
58. The entry of a declaration of the rights of the parties herein would afford relief from uncertainty, insecurity, and controversy giving rise to this proceeding as affecting Plaintiff, and those similarly situated, from Defendants, now and in the future.

WHEREFORE Plaintiff ANDRES DUQUE, and those similarly situated, demand the entry of judgment in their favor and against Defendants MICHAELS GENUINE HOSPITALITY, LLC, MICHAEL SCHWARTZ, and CHARLES BELL, jointly and severally, as follows:

- a) Issue declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the FLSA;

- b) Enjoin Defendants from further violations of the FLSA;
- c) Award Plaintiff reasonable attorneys' fees and costs;
- d) Award such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted this 24th day of October, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **October 23, 2014**, I electronically filed the foregoing document via CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the attached Service in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

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DUQUE, et al v. MICHAELS GENUINE HOSPITALITY, LLC, et al

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS ANDRES DUQUE, on his own behalf and on behalf of others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Robert W. Brock II, Esq., Law office of Lowell J. Kuvin, LLC 17 East Flagler Street, Suite 223, Miami, Florida 33131 305.358.6800</p>	<p>DEFENDANTS MICHAELS GENUINE HOSPITALITY, LLC a Florida for-profit Corporation, MICHAEL SCHWARTZ, an Individual, and CHARLES BELL, an individual,</p> <p>County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in one Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	PROPERTY RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
			IMMIGRATION	SOCIAL SECURITY	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
				FEDERAL TAX SUITS	
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201, et seq. Non-payment of minimum wages under FLSA

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 10/24/2014 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ANDRES DUQUE, on his own behalf and on behalf of others similarly situated,

Plaintiff(s)

v.

MICHAELS GENUINE HOSPITALITY, LLC, a Florida for-profit corporation, MICHAEL SCHWARTZ, an individual, and CHARLES BELL, an individual,

Defendant(s)

Civil Action No. 14CV23965

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MICHAELS GENUINE HOSPITALITY, LLC 130 NE 40th Street Miami, Florida 33137

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305.358.6808

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ANDRES DUQUE, on his own behalf and on behalf of others similarly situated,

Plaintiff(s)

v.

MICHAELS GENUINE HOSPITALITY, LLC, a Florida for-profit corporation, MICHAEL SCHWARTZ, an individual, and CHARLES BELL, an individual,

Defendant(s)

Civil Action No. 14CV23965

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MICHAEL SCHWARTZ MICHAELS GENUINE HOSPITALITY, LLC 130 NE 40th Street Miami, Florida 33137

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305.358.6808

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ANDRES DUQUE, on his own behalf and on behalf of others similarly situated,

Plaintiff(s)

v.

MICHAELS GENUINE HOSPITALITY, LLC, a Florida for-profit corporation, MICHAEL SCHWARTZ, an individual, and CHARLES BELL, an individual,

Defendant(s)

Civil Action No. 14CV23965

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CHARLES BELL MICHAELS GENUINE HOSPITALITY, LLC 130 NE 40th Street Miami, Florida 33137

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305.358.6808

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: