

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**LIANET B. BATISTA and
LUCY GALVEZ, on behalf of
themselves and on behalf of all others
similarly situated,**

Plaintiffs,

v.

Case No.:

**SANTO COYOTE, INC., and
MARTIN JIMENEZ, an individual,**

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, LIANET B. BATISTA and LUCY GALVEZ (“Plaintiffs”), by and through undersigned counsel, on behalf of themselves and on behalf of all others similarly situated, bring this action against Defendants, SANTO COYOTE, INC. and MARTIN JIMENEZ, in his individual capacity, (“Defendants”), and in support of their claims states as follows:

JURISDICTION AND VENUE

1. This is an action for damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq., for failure to pay a minimum wage, and overtime wages under 29 U.S.C. § 215(a)(3).
2. This Complaint is filed as a collective action under 29 U.S.C. § 216(b).
3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 201 et seq.

4. Venue is proper in the Middle District of Florida, because all of the events giving rise to these claims occurred in Hillsborough County, Florida, which lies within the Middle District.

PARTIES

5. Named Plaintiff, LIANET B. BATISTA is a resident of Hillsborough County, Florida.

6. Named Plaintiff, LUCY GALVEZ is a resident of Hillsborough County, Florida.

7. Defendant, SANTO COYOTE, INC. operates a restaurant in Brandon, in Hillsborough County, Florida.

GENERAL ALLEGATIONS

8. Plaintiffs have satisfied all conditions precedent, or they have been waived.

9. Plaintiffs have hired the undersigned attorneys and agreed to pay them a fee.

10. Plaintiffs request a jury trial for all issues so triable.

11. At all times material hereto, Named Plaintiffs LIANET B. BATISTA and LUCY GALVEZ were employed by Defendants as servers.

12. The collective action of similarly situated employees consist of all other servers employed by Defendants within the last three years. These similarly situated persons will be referred to as “Members of the Collective Action” or “the Collective Action.”

13. At all times material hereto, Named Plaintiffs and Members of the Collective Action were “engaged in the production of goods” for commerce within the meaning of Sections 6 and 7 of the FLSA, and as such were subject to the individual coverage of the FLSA.

14. At all times material hereto, Named Plaintiffs and Members of the Collective Action were “employees” of Defendants within the meaning of the FLSA.

15. At all times material hereto, Defendants were an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d).

16. Defendants continue to be an “employer” within the meaning of the FLSA.

17. At all times material hereto, Defendants were and continue to be an enterprise covered by the FLSA, as defined under 29 U.S.C. §§ 203(r) and 203(s).

18. At all times relevant to this action, Defendants engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 203(s).

19. At all times relevant to this action, the annual gross sales volume of Defendants exceeded \$500,000.00 per year.

20. Defendant, MARTIN JIMENEZ, is the owner of Defendant, SANTO COYOTE, INC.

21. Defendant, MARTIN JIMENEZ, supervised Named Plaintiffs and Members of the Collective Action, and exercised control over the wages, hours, and working conditions of Named Plaintiffs and the Members of the Collective Action. Defendant, MARTIN JIMENEZ, also controlled the payroll practices of SANTO COYOTE, INC.

22. Through the exercise of dominion and control over all employee-related matters at Defendant, SANTO COYOTE, INC., Defendant, MARTIN JIMENEZ, in his individual capacity, is also an “employer” within the meaning of the FLSA.

FACTS

23. Named Plaintiff, LIANET B. BATISTA began working for Defendants as a server in May 2015 until November 2017.

24. Named Plaintiff, LUCY GALVEZ began working for Defendants as a server in March 2015 and worked in this capacity until December 2017.

25. At all times material hereto, Named Plaintiffs and Members of the Collective Action worked hours at the direction of Defendants, and they were not paid at least the applicable minimum wage for all of the hours that they worked.

26. At various times material hereto, Named Plaintiffs and Members of the Collective Action worked hours in excess of forty hours within a work week for Defendants, and they were entitled to be paid an overtime premium equal to one and one-half times their regular hourly rate for all of these hours.

27. By failing to accurately record all of the hours worked by Named Plaintiffs and Members of the Collective Action, Defendants have failed to make, keep, and preserve records with respect to each of its employees in a manner sufficient to determine their wages, hours, and other conditions of employment, in violation of the FLSA. See 29 C.F.R. § 516.2.

28. Defendants’ actions were willful, and showed reckless disregard for the provisions of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

29. Named Plaintiffs bring this case as an “opt-in” collective action on behalf of similarly situated employees of Defendants pursuant to 29 U.S.C. § 216(b). The Collective Action is composed of servers whom Defendants failed to compensate for all overtime hours worked in accordance with the FLSA.

30. Therefore, notice is properly sent to: “All servers whom Defendants failed to pay at a rate that was at least equal to the applicable statutory minimum wage and all servers whom Defendants failed to compensate for all of the overtime hours that they worked from December 2014 to the present.”

31. The total number and identities of the Collective Action members may be determined from the records of Defendants, and the Collective Action may easily and quickly be notified of the pendency of this action.

32. Named Plaintiffs are similar to the Collective Action because Named Plaintiffs and the Collective Action have been unlawfully denied full payment of their overtime wages as mandated by the FLSA.

33. Named Plaintiffs’ experience with Defendants’ payroll practices is typical of the experiences of the Collective Action.

34. Defendants’ failure to pay all overtime wages due at the premium rates required by the personal circumstances of the Named Plaintiffs or of similarly situated persons is common to the Collective Action.

35. Defendants’ failure to pay all wages due at a rate that was at least equal to the applicable statutory minimum wage is common to the Collective Action.

36. Defendants' practice of making unlawful deductions from wages in violation of the FLSA is common to the Collective Action.

37. Overall, Named Plaintiffs' experience as servers who worked for Defendants is typical of the experience of the Collective Action.

38. Specific job titles or job duties of the Collective Action do not prevent collective treatment.

39. Although the issues of damages can be individual in character, there remains a common nucleus of operative facts concerning Defendants' liability under the FLSA in this case.

COUNT I – FLSA OVERTIME VIOLATIONS

40. Named Plaintiffs reallege and readopt the allegations of Paragraphs 1 through 39 of this Complaint, as fully set forth herein. Named Plaintiffs bring this action on behalf of themselves and all other similarly situated employees in accordance with 29 U.S.C. § 216(b). Named Plaintiffs anticipate that as this case proceeds, other individuals will sign consent forms and join this collective action as plaintiffs.

41. During the statutory period, Named Plaintiffs and the Collective Action worked overtime hours while employed by Defendants, and they were not properly compensated for all of these hours under the FLSA.

42. Defendants failed to compensate Named Plaintiffs and the Collective Action for all of the overtime hours that Named Plaintiffs and the Collective Action worked.

43. The Members of the Collective Action are similarly situated because they were all employed as servers by Defendants, were compensated in the same manner, and were all subject to Defendants' common policy and practice of failing to pay its servers for all of the overtime hours that they worked in accordance with the FLSA.

44. This reckless practice violates the provisions of the FLSA; specifically, 29 U.S.C. § 207(a)(1). As a result, Named Plaintiffs and the Members of the Collective Action are individually entitled to an amount equal to their unpaid overtime wages as liquidated damages.

45. All of Defendants' conduct, as alleged and described above, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

46. As a result of the foregoing, Named Plaintiffs and the Collective Action have suffered damages.

WHEREFORE, Named Plaintiffs and all similarly situated employees who join this collective action demand:

- (a) Designation of this action as a collective action on behalf of the Named Plaintiffs and the prospective Collective Action that they seek to represent, in accordance with the FLSA;
- (b) Prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA collective action, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. § 216(b);

- (c) Equitable tolling of the statute of limitations from the date of the filing of this complaint until the expiration of the deadline for filing consent to sue forms under 29 U.S.C. § 216(b);
- (d) Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by this Court;
- (e) Judgment against Defendants for an amount equal to the unpaid overtime wages of Named Plaintiffs and all opt-in Members of the Collective Action, at the applicable overtime rate;
- (f) A declaratory judgment stating that the practices complained of herein are unlawful under the FLSA;
- (g) Judgment against Defendants for an amount equal to the unpaid back wages of Named Plaintiffs and all opt-in Members of the Collective Action at the applicable overtime rate, as liquidated damages;
- (h) Judgment against Defendants stating that their violations of the FLSA were willful;
- (i) To the extent liquidated damages are not awarded, an award of prejudgment interest;
- (j) All costs and attorney's fees incurred in prosecuting these claims; and
- (k) For such further relief as this Court deems just and equitable.

COUNT II – FLSA MINIMUM WAGE VIOLATION

47. Named Plaintiffs reallege and readopt the allegations of paragraphs 1 through 39 of this Complaint, as though fully set forth herein.

48. During the statutory period, Named Plaintiffs and the Collective Action worked for Defendants, and they were not paid the applicable federal minimum wage for the hours that they worked, as mandated by the FLSA.

49. Defendants failed to compensate Named Plaintiffs and the Collective Action at a rate that was at least equal to the applicable federal minimum wage.

50. The Members of the Collective Action are similarly situated because they were all employed as servers by Defendants, were compensated in the same manner, and were all subject to Defendants' common policy and practice of failing to pay its servers at a rate that was at least equal to the applicable federal minimum wage, in accordance with the FLSA.

51. This reckless practice violates the provisions of the FLSA, specifically 29 U.S.C. § 206(a)(1)(C). As a result, Named Plaintiffs and the Members of the Collective Action who have opted in to this action are each entitled to an amount equal to their unpaid minimum wages as liquidated damages.

52. All of Defendants' conduct, as alleged and described above, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

53. As a result of the foregoing, Named Plaintiffs and the Collective Action have suffered damages.

WHEREFORE, Named Plaintiffs and all similarly situated employees who join this collective action demand:

- (a) Designation of this action as a collective action on behalf of the Named Plaintiffs and the prospective Collective Action that they seek to represent, in accordance with the FLSA;
- (b) Prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA collective action, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. § 216(b);
- (c) Equitable tolling of the statute of limitations from the date of the filing of this complaint until the expiration of the deadline for filing consent to sue forms under 29 U.S.C. § 216(b);
- (d) Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by this Court;
- (e) Judgment against Defendants for an amount equal to the unpaid minimum wages of Named Plaintiffs and all opt-in Members of the Collective Action;
- (f) A declaratory judgment stating that the practices complained of herein are unlawful under the FLSA;

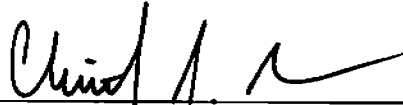
- (g) Judgment against Defendants for an amount equal to the unpaid back wages of Named Plaintiffs and opt-in Members of the Collective Action at the applicable statutory minimum wage, as liquidated damages;
- (h) Judgment against Defendants stating that its violations of the FLSA were willful;
- (i) To the extent liquidated damages are not awarded, an award of prejudgment interest;
- (j) All costs and attorney's fees incurred in prosecuting these claims; and
- (k) For such further relief as this Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands trial by jury as to all issues so triable.

Dated this 8th day of February, 2018.

Respectfully submitted,



CHRISTOPHER J. SABA

Florida Bar Number: 0092016

WENZEL FENTON CABASSA, P.A.

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Attorneys for Plaintiffs

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.)*

I. (a) PLAINTIFFS

LIANET B. BATISTA and LUCY GALVEZ, on behalf of themselves and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

CHRISTOPHER J. SABA, WENZEL FENTON CABASSA, P.A., 1110 North Florida Avenue, Suite 300, Tampa, Florida 33602, Main No.: 813-224-0431

DEFENDANTS

SANTO COYOTE, INC., and MARTIN JIMENEZ, an individual,

County of Residence of First Listed Defendant Hillsborough

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

- | | 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 |

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 <i>(Excludes Veterans)</i> <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	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & 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	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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	<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 <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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. (29 U.S.C. § 215(a)(3)) and 29 U.S.C. § 216(b)

Brief description of cause:

FLSA OVERTIME VIOLATIONS, FLSA MINIMUM WAGE VIOLATION

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE _____

DOCKET NUMBER _____

DATE: 2.8.18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING JFP _____

JUDGE _____

MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Santo Coyote Employees Sue Over Unpaid Wage Claims](#)
