

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

JASON FRANKS, ROBERTO SCHMEDA,
GUILHERME MARQUES,
and PETER VOUTSINAS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

JOSEPHINE'S ITALIAN RESTAURANT, INC.,
a Florida corporation, and
JOSEPHINE TRIBUNELLA, individually,

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, JASON FRANKS, ROBERTO SCHMEDA, GUILHERME MARQUES, and PETER VOUTSINAS, on behalf of themselves and all others similarly situated, by and through their undersigned counsel, sue the Defendants, JOSEPHINE'S ITALIAN RESTAURANT, INC., a Florida corporation ("Josephine's") and JOSEPHINE TRIBUNELLA, individually ("Tribunella"), and for their causes of action, declare and aver as follows:

1. Plaintiffs are former employees of Defendants, and bring this action on behalf of themselves and all other current and former employees of the Defendants similarly situated to them, for compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, et seq. (hereinafter referred to as "the FLSA") and Florida's Minimum Wage Amendment, Art. X, § 24, Fla.'s Const. (hereinafter referred to as "Florida's Minimum Wage Law").

2. Jason Franks is a resident of Palm Beach County, Florida, and within the jurisdiction of this Court.

3. Roberto Schmeda is a resident of Palm Beach County, Florida, and within the jurisdiction of this Court.

4. Guilherme Marques is a resident of Palm Beach County, Florida, and within the jurisdiction of this Court.

5. Peter Voutsinas is a resident of Palm Beach County, Florida, and within the jurisdiction of this Court.

6. Defendant Josephine's is a Florida corporation doing business, and operating a restaurant, in Florida, and is within the jurisdiction of this Court.

7. At all times material hereto, Defendant Tribunella was and is an individual resident of the State of Florida, Palm Beach County, who owns and operates Josephine's, and who regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of Josephine's. By virtue of such control and authority, Tribunella is an "employer" under the FLSA and Florida's Minimum Wage Law.

8. This action is brought to recover from Defendants unpaid overtime compensation and unpaid minimum wages, liquidated damages, compensatory damages in the amount of unlawfully retained tips and other amounts unlawfully withheld, costs and reasonable attorneys' fees, as well as for declaratory and injunctive relief, under the provisions of the FLSA, 29 U.S.C. § 201, et seq., and specifically under 29 U.S.C. § 216(b) and Florida's Minimum Wage Law, Art. X, § 24, Fla.'s Const., and specifically under Art. X, § 24(c).

9. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1367(a) and by 29 U.S.C. § 216(b).

10. At all times material hereto, Defendants were, and continue to be, engaged in interstate commerce as defined by the FLSA.

11. At all times material hereto, during their employment with Defendants, Plaintiffs and those similarly situated to Plaintiffs, were engaged in interstate commerce.

12. Upon information and belief, at all times material hereto, Josephine's had an annual gross volume of sales made or business done in excess of \$500,000.00.

13. The additional persons who may become Plaintiffs in this action, and who Plaintiffs believe are entitled to notification of the pendency of this action, and of their right to opt-in to this action, are current and former employees of Defendants similarly situated to Plaintiffs who are or were subject to the payroll practices and procedures described in the paragraphs below.

14. At all times pertinent to this Complaint, Defendants failed to comply with 29 U.S.C. § 201-19 in that Plaintiffs, and those current and former employees similarly situated to Plaintiffs, performed hours of service for Defendants in excess of forty during one or more workweeks, for which Defendants failed to properly pay additional compensation.

15. In the course of their employment with the Defendants, Plaintiffs, and those current and former employees similarly situated to Plaintiffs, worked the number of hours required of them, many times in excess of forty (40), but were not properly paid overtime.

16. Further, at all times pertinent to this Complaint, Defendants failed to comply with 29 U.S.C. § 201-19 and Art. X, § 24, Fla.'s Const., in that Plaintiffs, and those current and former employees similarly situated to Plaintiffs, performed hours of service for Defendants for which Defendants failed to properly pay minimum wages.

17. In the course of their employment with the Defendants, Plaintiffs, and those current and former employees similarly situated to Plaintiffs, worked the number of hours required of them, but were not properly paid minimum wages.

18. At all times material hereto, Plaintiffs, and others similarly situated, were hourly paid, “tipped” employees.

19. At all times material hereto, Defendants claimed a “tip credit” for Plaintiffs and others similarly situated, and paid them \$3.02 less than the Florida minimum wage for some hours worked.

20. Josephine’s unlawfully availed itself of a “tip credit” under the FLSA and Florida’s Minimum Wage Law.

21. Josephine’s also failed to meet all the legal requirements for taking a tip credit.

22. Defendants would never pay more than 40 hours in a single workweek, and would never pay an employee more than 6 hours per shift or per day.

23. As such, Defendants would cut Plaintiffs’ hours, and the hours of those similarly situated, on a regular and consistent basis simply to avoid paying these employees all wages owed to them, including minimum wages and overtime wages.

24. Defendants failed to properly pay Plaintiffs when they worked daytime parties (Defendants would have customers pay Tribunella personally by checks so she would not have to report this income).

25. Defendants would take 5% off of all tips to “pay” non-existent busboys and food runners, or use that money to pay actual wages, in cash and off the books, to busboys and food runners.

26. Upon information and belief, Josephine’s had a policy or practice of deducting 5% from the credit card tips of the Plaintiffs and other similarly situated.

27. By deducting 5% of the Plaintiffs’ tips, and the tips of others similarly situated, Defendants retained a portion of the tips of Plaintiffs and others similarly situated.

28. Upon information and belief, based on the credit card processing fees charged to Josephine's, the 5% deduction from the credit card tips of the Plaintiffs and others similarly situated enriched Josephine's.

29. Because Josephine's was enriched by the 5% deduction from credit card tips of the Plaintiffs, and others similarly situated, such deduction violated the FLSA and Florida's Minimum Wage Law.

30. Defendants also failed to inform the Plaintiffs and others similarly situated of the tip credit provisions as required by the FLSA, 29 U.S.C. §203(m) and Florida's Minimum Wage Law.

31. Defendants' failure to inform the Plaintiffs and others similarly situated of the information required to take a tip credit rendered the tip credit invalid at Josephine's.

32. Defendants were not entitled to take a \$3.02 tip credit against the minimum wages of the Plaintiffs and other employees similarly situated.

33. Since Defendants were unable to claim a "tip credit," they were required to compensate the Plaintiffs, and others similarly situated, whom they employed with at least the full FLSA and Florida minimum wage for each hour worked.

34. Defendants failed to keep accurate time and pay records regarding all the hours worked by the Plaintiffs and others similarly situated, as required by the FLSA and Florida's Minimum Wage Law.

35. The pay practices of the Defendants as described in the above paragraphs violated the FLSA and Florida's Minimum Wage Law by failing to properly pay overtime to Plaintiffs, and those current and former employees similarly situated to Plaintiffs, for those hours worked in excess of forty (40) and by failing to properly pay minimum wages to Plaintiffs, and those current and former employees similarly situated to Plaintiffs, for those hours worked by them.

36. The complete records concerning the number of hours actually worked by, and the compensation actually paid to, Plaintiffs, and those current and former employees similarly situated to Plaintiffs, are in the possession, custody and control of the Defendants, and Plaintiffs is unable to state at this time the exact amount due and owing them. Plaintiff proposes to obtain such information by appropriate discovery to be taken promptly in this case. However, at no time material have the Defendants maintained any form of time records reflecting the actual hours worked by Plaintiffs, and those current and former employees similarly situated to Plaintiffs.

37. However, Plaintiffs are in possession of certain of their pay records from Defendants.

38. During the three (3) years preceding the filing of this lawsuit, Defendants have (1) employed and continue to employ individuals similarly situated to Plaintiffs (*i.e.* tipped employees); (2) paid these workers utilizing the tip credit; (3) suffered or permitted to be suffered, with knowledge, hours of service by these employees in excess of forty (40) during one or more workweeks, for which Defendants failed to properly pay additional overtime premiums; and (4) have failed to pay minimum wages for all hours worked. Each improperly paid employee who performed and/or continues to perform services for Defendants, for any time period during the three (3) years preceding this lawsuit,¹ is entitled to notification of the pendency of this action and of his/her right to consent to becoming a party to this action.

COUNT I - RECOVERY OF UNPAID OVERTIME

39. Plaintiffs reaver and reallege all allegations contained in paragraphs 1 through 38 above as if fully set forth herein.

¹ Pursuant to a pre-suit agreement of counsel for the parties, Defendants agreed to toll the statute of limitations as of April 26, 2017.

40. Plaintiffs are entitled to be paid time and one-half for each hour worked in excess of forty (40) per workweek and to have such overtime calculated in accordance with Federal Regulations, to include bonus payments earned in the appropriate workweek in the calculation of the regular rate for the purposes of determining overtime entitlement. All similarly situated employees are similarly owed time and one-half, calculated properly, for those overtime hours they worked and for which they were not properly paid.

41. By reason of the willful and unlawful acts of the Defendants, all Plaintiffs (Plaintiffs and those similarly situated to them) have suffered damages plus incurred costs and reasonable attorneys' fees.

42. As a result of the Defendants' violation of the Act, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to liquidated damages in an amount equal to that which they are owed as unpaid overtime.

WHEREFORE, Plaintiffs, and those similarly situated to him, who have or will opt-in to this action, demand judgment against Defendants, jointly and severally, for the wages and overtime payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper.

COUNT II - RECOVERY OF UNPAID MINIMUM WAGES (FEDERAL LAW)

43. Plaintiffs reaver and reallege all allegations contained in paragraphs 1 through 38 above as if fully set forth herein.

44. Plaintiffs are entitled to be paid minimum wages at their rate of pay that Defendants compensated them at for each hour worked per workweek and to have such wages calculated in accordance with Federal Regulations, to include bonus payments earned in the appropriate workweek in the calculation of the wages owed them.

45. Defendant's violated the FLSA's minimum wage provisions through their unlawful policies and pay practices, as set forth above.

46. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA.

47. By reason of the willful and unlawful acts of the Defendants, all Plaintiffs (Plaintiffs and those similarly situated to them) suffered damages plus incurred costs and reasonable attorneys' fees.

48. As a result of the Defendants' violation of the FLSA, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to liquidated damages in an amount equal to that which they are owed as unpaid minimum wages.

WHEREFORE, Plaintiffs, and those similarly situated to them, who have or will opt-in to this action, demand judgment against Defendants, jointly and severally, for the wages and payments due them for the hours worked by them for which they have not been properly compensated, including recoupment of tips and other monies unlawfully paid to Defendants, liquidated damages, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper.

COUNT III- RECOVERY OF UNPAID MINIMUM WAGES (FLORIDA LAW)

49. Plaintiffs reaver and reallege all allegations contained in paragraphs 1 through 38 above as if fully set forth herein.

50. Plaintiffs are entitled to be paid wages at his rate of pay that Defendants compensated them at for each hour worked per workweek and to have such wages calculated in accordance with Florida's Minimum Wage Law, to include bonus payments earned in the appropriate workweek in the calculation of the wages owed them.

51. Defendant's violated Florida's Minimum Wage Law through their unlawful policies and pay practices, as set forth above.

52. By reason of the willful and unlawful acts of the Defendants, all Plaintiffs (Plaintiffs and those similarly situated to them) suffered damages plus incurred costs and reasonable attorneys' fees.

53. As a result of the Defendants' violation of Florida's Minimum Wage Law, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to liquidated damages in an amount equal to that which they are owed as unpaid minimum wages.

54. As a result of the Defendants' violation of Florida's Minimum Wage Law, all Plaintiffs (Plaintiffs and those similarly situated to them) are entitled to compensatory damages for their tips which were improperly taken.

WHEREFORE, Plaintiffs, and those similarly situated to them, who have or will opt-in to this action, demand judgment against Defendants, jointly and severally, for the wages and payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages, compensatory damages in an amount equal to the tips and other monies unlawfully retained by Defendants, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: August 15, 2017
Boca Raton, FL

Respectfully submitted,

s/ Robin I. Frank

ROBIN I. FRANK, ESQ.

Florida Bar No. 0649619

E-Mail: rifrank@sbwlawfirm.com

SHAPIRO, BLASI, WASSERMAN & HERMANN, P.A.

7777 Glades Road, Suite 400

Boca Raton, FL 33434

Telephone: (561) 477-7800

Facsimile: (561) 477-7722

Counsel for Plaintiffs

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

JASON FRANKS, ROBERTO SCHMEDA, GUILHERME MARQUES, and PETER VOUTSINAS,

(b) County of Residence of First Listed Plaintiff Palm Beach (EXCEPT IN U.S. PLAINTIFF CASES)

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

Robin I. Frank, Esq., Shapiro, Blasi, Wasserman & Hermann, P.A. 7777 Glades Rd., Suite 400, Boca Raton, FL 33434 Tel: (561) 477-7800; Fax: (561) 477-7722; Email: rfrank@sbwh.law

DEFENDANTS

JOSEPHINE'S ITALIAN RESTAURANT, INC., and JOSEPHINE TRIBUNELLA,

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

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. Brief description of cause: Recovery of unpaid compensation and unpaid minimum wages

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/15/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Robin I. Frank

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

JASON FRANKS, ROBERTO SCHMEDA,
GUILHERME MARQUES, and PETER VOUTSINAS,
on behalf of themselves and
all others similiary situated,

Plaintiff(s)

v.

JOSEPHINE'S ITALIAN RESTAURANT, INC., a
Florida corporation, and
JOSEPHINE TRIBUNELLA, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JOSEPHINE'S ITALIAN RESTAURANT, INC., a Florida corporation
c/o Josephine Tribunella, Registered Agent
5751 N. Federal Highway
Boca Raton, FL 33487

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: Robin I. Frank, Esq.
Shapiro, Blasi, Wasserman & Hermann, P.A.
7777 Glades Rd., Suite 400
Boca Raton, FL 33434
Tel: (561) 477-7800

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: 08/15/2017

Signature of Clerk or Deputy Clerk

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

UNITED STATES DISTRICT COURT

for the

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Florida corporation, and
JOSEPHINE TRIBUNELLA, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JOSEPHINE TRIBUNELLA
5751 N. Federal Highway
Boca Raton, FL 33487

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:

Robin I. Frank, Esq.
Shapiro, Blasi, Wasserman & Hermann, P.A.
7777 Glades Rd., Suite 400
Boca Raton, FL 33434
Tel: (561) 477-7800

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: 08/15/2017

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

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JOSEPHINE TRIBUNELLA, individually,

Defendants.

_____ /

CONSENT TO BECOME PARTY PLAINTIFF

I hereby give my consent to become a party plaintiff in the above-captioned action. I am a former employee of Josephine's Italian Restaurant, Inc. in Palm Beach County, Florida.

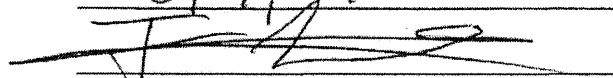
I understand this lawsuit is being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. I hereby consent, agree, and opt-in to become a Plaintiff herein and agree to be bound by any adjudication of this action by the Court. I further agree to be bound by a collective action settlement herein approved by my attorneys and approved by this Court as fair and reasonable.

I hereby designate Shapiro, Blasi, Wasserman & Hermann, P.A., to represent me in this action.

DATE:

8/14/17

SIGNATURE:



JASON FRANKS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

JASON FRANKS, ROBERTO SCHMEDA,
GUILHERME MARQUES,
and PETER VOUTSINAS, on behalf of
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a Florida corporation, and
JOSEPHINE TRIBUNELLA, individually,

Defendants.

_____ /

CONSENT TO BECOME PARTY PLAINTIFF

I hereby give my consent to become a party plaintiff in the above-captioned action. I am a former employee of Josephine's Italian Restaurant, Inc. in Palm Beach County, Florida.

I understand this lawsuit is being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. I hereby consent, agree, and opt-in to become a Plaintiff herein and agree to be bound by any adjudication of this action by the Court. I further agree to be bound by a collective action settlement herein approved by my attorneys and approved by this Court as fair and reasonable.

I hereby designate Shapiro, Blasi, Wasserman & Hermann, P.A., to represent me in this action.

DATE:

8-14-17

SIGNATURE:



ROBERTO SCHMEDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

JASON FRANKS, ROBERTO SCHMEDA,
GUILHERME MARQUES,
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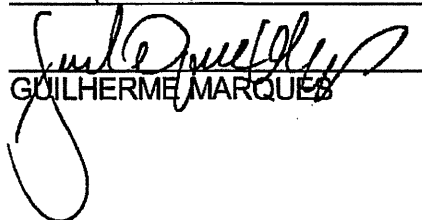
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I hereby designate Shapiro, Blasi, Wasserman & Hermann, P.A., to represent me in this action.

DATE:

08/01/2017

SIGNATURE:


GUILHERME MARQUES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

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I hereby give my consent to become a party plaintiff in the above-captioned action. I am a former employee of Josephine's Italian Restaurant, Inc. in Palm Beach County, Florida.

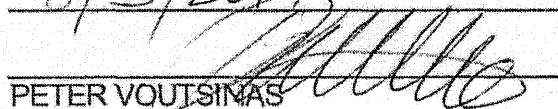
I understand this lawsuit is being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. I hereby consent, agree, and opt-in to become a Plaintiff herein and agree to be bound by any adjudication of this action by the Court. I further agree to be bound by a collective action settlement herein approved by my attorneys and approved by this Court as fair and reasonable.

I hereby designate Shapiro, Blasi, Wasserman & Hermann, P.A., to represent me in this action.

DATE:

8/15/2017

SIGNATURE:


PETER VOUTSINAS

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Josephine's Italian Restaurant, Owner Accused of Wage Violations](#)
