

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KIRSTEN E. JOSE, On Behalf of Herself and All Others Similarly Situated,)	
)	
<i>Plaintiff,</i>)	
)	COLLECTIVE ACTION
v.)	
)	CASE NO. _____
OLIVER HOSPITALITY, LLC d/b/a THE FAIRLANE HOTEL AND ELLINGTON’S MID WAY BAR & GRILL,)	JURY DEMAND
)	
<i>Defendant.</i>)	

COLLECTIVE ACTION COMPLAINT

1. Plaintiff Kirsten E. Jose (“Plaintiff”) bring this collective action against Defendant Oliver Hospitality, LLC, a Nashville, Tennessee based company that owns and operates The Fairlane Hotel and Ellington’s Mid Way Bar & Grill, to recover unpaid minimum and overtime wages, liquidated damages, attorneys’ fees, and costs under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiff asserts these FLSA claims as a collective action on behalf of herself and all similarly situated individuals, pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

2. Plaintiff also brings a retaliation claim, pursuant to the FLSA, 29 U.S.C. § 215(a)(3), challenging Defendant’s decision to terminate her employment which was made in response to Plaintiff questioning the legality of Defendant’s pay practices.

3. During the three-year period preceding the filing of this lawsuit, Defendant has employed dozens, if not hundreds, of bartenders and servers who were paid a tipped hourly rate—*i.e.*, lower than the minimum wage of \$7.25 per hour—relying on the “tip credit” provision of the FLSA, 29 U.S.C. § 203(m). Plaintiff asserts that Defendant improperly paid this lower tipped

hourly rate to servers because it did not satisfy the requirements to utilize the “tip credit” provision of the FLSA. Specifically, Defendant violated the “tip credit” provisions of the FLSA by requiring its bartenders and servers to spend more than 20% of each shift performing non-tip-producing work tasks at the lower tipped hourly rate. In this lawsuit, Plaintiff seeks to recover all unpaid minimum and overtime wages for herself and those similarly situated bartenders and servers, resulting from Defendant’s improper use of the “tip credit” to satisfy the requirements of the FLSA as to them and similarly situated servers as well as an equal amount as liquidated damages.

4. Additionally, Plaintiff alleges that Defendant violated the FLSA by keeping a portion of the tips earned by its servers and bartenders in violation of 29 U.S.C. § 203(m). Specifically, Plaintiff alleges that Defendant regularly and routinely keeps a portion of the tip pool prior to dividing the remainder to the bartenders and servers who earned the tips.

I. JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff’s claims under the FLSA because they are brought pursuant to 29 U.S.C. § 216(b) and because they raise a federal question pursuant to 28 U.S.C. § 1331.

6. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant resides in this judicial district and because the claims arose in this judicial district.

II. PARTIES

A. Plaintiff

7. Plaintiff Kirsten E. Jose is over the age of nineteen (19) and is a resident of Nashville, Davidson County, Tennessee. Plaintiff Jose was employed by Defendant as a bartender from approximately September 2019 to March 2021.

B. Defendant

8. Defendant is a Tennessee limited liability company doing business within this judicial district. Specifically, Defendant owns and operates the The Fairlane Hotel and Ellington's Mid Way Bar & Grill located at 401 Union Street, Nashville TN 37219.

9. Defendant is an entity that has employed all bartenders and servers who have worked at The Fairlane Hotel and Ellington's Mid Way Bar & Grill during the three-year period preceding the filing of this lawsuit.

10. Defendant employs individuals who are engaged in interstate commerce and/or in the production of goods for interstate commerce.

11. Defendant has at all relevant times been an employer within the meaning of the FLSA.

III. FACTS

A. Defendant's Use of the "Tip Credit"

12. Plaintiff and those she seeks to represent in this action were employed by Defendant as bartenders and servers during the three years preceding the filing of this lawsuit.

13. Defendant paid Plaintiff and other bartenders and servers an hourly wage below \$7.25. For example, Defendant paid Plaintiff \$3.50 per hour.

14. In seeking to comply with the FLSA mandate that employees receive a minimum wage of \$7.25 per hour, Defendant purported to utilize a "tip credit" for each hour worked by Plaintiff and other bartenders and servers. *See* 29 U.S.C. § 203(m). For example, the "tip credit" for Plaintiff was \$3.75 for each hour worked when Defendant paid her \$3.50 per hour.

15. However, because the practices described herein do not meet the statutory requirements of the FLSA's tip credit provision, Defendant impermissibly used the "tip credit" to meet its minimum wage obligations under the FLSA.

16. Thus, Plaintiff and other bartenders and servers were entitled to receive the full \$7.25 per hour statutory minimum wage for every hour worked.

B. Required Non-Tip-Producing Work Paid at Lower Tipped Hourly Rate

17. Defendant required Plaintiff and other bartenders and servers to spend more than 20% of their time performing non-tip-producing work tasks while being paid the lower tipped hourly rate.

18. A significant amount of this non-tip producing work was performed during hours before or after Defendant's bartenders and servers were assigned customers or tables, or even had an opportunity to earn tips. Such non-tip producing work during these hours included but was not limited to: batching syrups and juices for cocktails; deep cleaning of the restaurant and bar; conducting inventory; ordering liquor and supplies for the bar; setting up events, including arranging furniture and decorations. Plaintiff and similarly situated bartenders and servers were paid at an hourly rate lower than \$7.25 for this work.

19. A significant amount of this non-tip producing work was also performed while Plaintiff and those similarly situated bartenders and servers were assigned customers and tables. Such non-tip producing work included but was not limited to rolling silverware, polishing, and washing dishes.

C. Defendant's Retention of Tips Earned by Bartenders and Servers

20. Plaintiff and all other similarly situated bartenders and servers were required to pay their tips into a tip pool that was maintained by Defendant.

21. A portion of the tips paid into this tip pool was kept by Defendant before the remainder was divided among the bartenders and servers who had actually earned these tips.

22. Plaintiff routinely raised concerns that she and other bartenders and servers were not paid all the tips that they had earned.

23. Defendant's practice of keeping tips from the bartenders' and servers' tip pool became so egregious in December 2020 that Plaintiff requested to meet with management to determine the amount of tips that had been withheld from her pay.

D. Defendant's Retaliatory Actions Directed at Plaintiff

24. As early as May 2020 and more routinely beginning in November 2020, Plaintiff raised issues of concern with Defendant's management that she was not paid the hourly wage she had been promised.

25. Defendant refused to address Plaintiff's complaint that she was not paid the tips she had earned pursuant to the agreed upon tip pool.

26. After Defendant's repeated refusals to address the issues raised by Plaintiff concerning the earned tips she was denied, Plaintiff determined that she could no longer work for an employer who would not ensure that she would receive all tips she earned.

27. In response to Plaintiff raising concerns about her hourly wage and the tips that Defendant was keeping, Defendant's management badgered and complained about Plaintiff's job performance and attitude.

28. One member of Defendant's management, Sondra Richardson, even responded to Plaintiff's concern that she "just needed to be a team player" and told Plaintiff that Defendant was "not afraid to clean house."

29. In a March 18, 2021 email, Plaintiff referenced the issues she had raised for several month and notified Defendant that she intended to end her employment with Defendant in two weeks following the email.

30. Following her March 18, 2021 email, Plaintiff continued to try to address the pay discrepancies with Defendant's management. Instead of addressing her concerns or determining

the amount Plaintiff was owed, Defendant terminated her employment on March 25, 2021.

IV. COLLECTIVE ACTION ALLEGATIONS

31. Plaintiff asserts their FLSA claims pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following individuals:

All current and former bartenders and servers employed by Defendant at its The Fairlane Hotel and Ellington's Mid Way Bar & Grill location at any time since April 1, 2018.

32. Plaintiff's claims should proceed as a collective action because Plaintiff and other similarly situated servers, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

V. CAUSES OF ACTION

COUNT I **VIOLATION OF THE MINIMUM WAGE REQUIREMENTS OF THE FLSA'S TIP CREDIT PROVISIONS**

33. All previous paragraphs are incorporated as though fully set forth herein.

34. Plaintiff asserts this claim on behalf of herself and all similarly situated individuals who opt into this action by filing a consent form, pursuant to 29 U.S.C. § 216(b).

35. Plaintiff and similarly situated bartenders and servers are employees of Defendant entitled to the FLSA's protections.

36. Defendant is an employer covered by the FLSA.

37. The FLSA entitles employees to a minimum hourly wage of \$7.25 for every hour worked. 29 U.S.C § 206(a).

38. While restaurants may utilize a "tip credit" to satisfy their minimum wage obligations to tipped employees, they forfeit the right to do so when certain requirements are not met. *See* 29 U.S.C. §§ 203(m) and 203(t).

39. Restaurants forfeit the tip credit when they require their tipped employees—such

as Defendant's servers—to share tips with the employer. 29 U.S.C. § 203(m).

40. By taking tips that bartenders and servers had earned, Defendant has forfeited its right to utilize the “tip credit” in satisfying its minimum wage obligations to Plaintiff and similarly situated bartenders and servers. As such, Defendant has violated the FLSA's minimum wage mandate by paying Plaintiff and similarly situated bartenders and servers an hourly wage below \$7.25 for regular hours worked.

41. Restaurants may only take the tip credit for employees in an occupation in which the employee qualifies as a “tipped employee.” 29 U.S.C. § 203(m). Federal courts interpreting this statutory language also hold that restaurants lose their right to utilize a “tip credit” when their tipped employees—such as Defendant's servers—spend more than 20% of their shift performing non-tip-producing work. Similarly, restaurants may not utilize the tip credit when their tipped employees—such as Defendant's servers—spend large amounts of time performing non-tip-producing work because they are considered to be working in an entirely separate, “dual job” and are not “tipped employees.” *See* 29 C.F.R. § 531.56(e).

42. By requiring Plaintiff and similarly situated bartenders and servers to spend more than 20% of their shift performing non-tip-producing work and to work “dual jobs” before serving any tables and after all of their service obligations are finished, Defendant has forfeited its right to utilize the “tip credit” in satisfying its minimum wage obligations to Plaintiff and similarly situated bartenders and servers. As such, Defendant has violated the FLSA's minimum wage mandate by paying Plaintiff and similarly situated bartenders and servers an hourly wage below \$7.25 for regular hours worked.

43. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II
**VIOLATION OF THE OVERTIME REQUIREMENTS
OF THE FLSA'S TIP CREDIT PROVISIONS**

44. All previous paragraphs are incorporated as though fully set forth herein.

45. Plaintiff asserts this claim on behalf of herself and all similarly situated individuals who opt into this action by filing a consent form, pursuant to 29 U.S.C. § 216(b).

46. Plaintiff and similarly situated bartenders and servers are employees of Defendant entitled to the FLSA's protections, including the overtime protections.

47. Defendant is an employer covered by the FLSA.

48. The FLSA entitles employees to an overtime hourly wage of \$10.88 for every hour worked over forty (40) in a workweek. 29 U.S.C §§ 206(a), 207.

49. While restaurants may utilize a "tip credit" to satisfy their overtime wage obligations to tipped employees, they forfeit the right to do so when certain requirements are not met. *See* 29 U.S.C. §§ 203(m) and 203(t).

50. Restaurants forfeit the tip credit when they require their tipped employees—such as Defendant's servers—to share tips with the employer. 29 U.S.C. § 203(m).

51. By taking tips that bartenders and servers had earned, Defendant has forfeited its right to utilize the "tip credit" in satisfying its overtime wage obligations to Plaintiff and similarly situated bartenders and servers. As such, Defendant has violated the FLSA's overtime wage mandate by paying Plaintiff and similarly situated bartenders and servers an hourly wage below \$7.25 for regular hours worked.

52. Restaurants may only take the tip credit for employees in an occupation in which the employee qualifies as a "tipped employee." 29 U.S.C. § 203(m). Federal courts interpreting this statutory language also hold that restaurants lose their right to utilize a "tip credit" when their

tipped employees—such as Defendant’s servers—spend more than 20% of their shift performing non-tip-producing work. Similarly, restaurants may not utilize the tip credit when their tipped employees—such as Defendant’s servers—spend large amounts of time performing non-tip-producing work because they are considered to be working in an entirely separate, “dual job” and are not “tipped employees.” *See* 29 C.F.R. § 531.56(e).

53. By requiring Plaintiff and similarly situated bartenders and servers to spend more than 20% of their shift performing non-tip-producing work and to work “dual jobs” before serving any tables and after all of their service obligations are finished, Defendant has forfeited its right to utilize the “tip credit” in satisfying its overtime wage obligations to Plaintiff and similarly situated bartenders and servers. As such, Defendant has violated the FLSA’s overtime wage mandate by paying Plaintiff and similarly situated bartenders and servers an hourly wage below \$7.25 for regular hours worked.

54. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT III
**VIOLATION OF THE FLSA’S PROHIBITION OF EMPLOYERS KEEPING ITS
EMPLOYEES’ EARNED TIPS**

55. All previous paragraphs are incorporated as though fully set forth herein.

56. Plaintiff asserts this claim on behalf of herself and all similarly situated individuals who opt into this action by filing a consent form, pursuant to 29 U.S.C. § 216(b).

57. Plaintiff and similarly situated bartenders and servers are employees entitled to the FLSA’s protections.

58. Defendant is an employer covered by the FLSA.

59. Defendant required Plaintiff and its other bartenders and servers to pay their tips into a tip pool that was maintained by Defendant.

60. Defendant kept a portion of the tips earned by bartenders and servers prior to dividing up the remaining funds between the bartenders and servers.

61. Plaintiff seeks to recover, for herself and all other servers who join this litigation, the tips earned by them that Defendant improperly retained and an equal amount as liquidated damages. 29 U.S.C. § 216(b).

COUNT IV
VIOLATION OF THE FLSA'S ANTI-RETALIATION PROVISION

62. All previous paragraphs are incorporated as though fully set forth herein.

63. Beginning in December 2020, Plaintiff routinely raised issues of concern with Defendant's management that she and other bartenders and servers were not paid all of the tips that they earned.

64. As early as May 2020 and more routinely beginning in November 2020, Plaintiff raised issues of concern with Defendant's management that she was not paid the hourly wage she had been promised.

65. In response to Plaintiff raising concerns about her hourly wage and the tips that Defendant was keeping, Defendant's management badgered and complained about Plaintiff's job performance and attitude.

66. One member of Defendant's management, Sondra Richardson, even responded to Plaintiff's concern that she "just needed to be a team player" and told Plaintiff that Defendant was "not afraid to clean house."

67. Ultimately, in retaliation for Plaintiff raising these concerns, Defendant terminated Plaintiff's employment in March 2021.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of herself and all others

similarly situated:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. Prompt notice of this litigation, pursuant to 29 U.S.C. § 216(b), to all similarly situated employees;

C. A finding that Defendant has violated the FLSA;

D. A finding that Defendant's FLSA violations are willful;

E. A judgment against Defendant and in favor of Plaintiff and all similarly situated employees for all unpaid and underpaid minimum and overtime wages that Defendant has failed and refused to pay in violation of the FLSA;

F. A judgment against Defendant and in favor of Plaintiff and all similarly situated employees for all tipped monies they earned that were improperly kept by Defendant, in violation of the FLSA;

G. A finding and judgment against Defendant and in favor of Plaintiff that Defendant violated the FLSA by retaliating against Plaintiff, providing Plaintiff with compensation and available equitable relief for its retaliatory actions;

H. Prejudgment interest to the fullest extent permitted under the law;

I. Liquidated damages to the fullest extent permitted under the FLSA;

J. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the FLSA and the Federal Rules of Civil Procedure; and,

K. Such other and further relief as this Court deems just and proper.

VII. JURY DEMAND

Plaintiff demands a jury as to all claims so triable.

Date: April 1, 2021

Respectfully submitted,

/s/ David W. Garrison

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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
KIRSTEN E. JOSE, On Behalf of Herself and All Others Similarly Situated,

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

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

DEFENDANTS
OLIVER HOSPITALITY, LLC d/b/a THE FAIRLANE HOTEL AND ELLINGTON'S MID WAY BAR & GRILL,

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

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 (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	PERSONAL INJURY <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	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"/> 376 Qui Tam (31 USC 3729(a)) <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			
<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	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 - 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; 29 U.S.C. § 215(a)(3)

Brief description of cause:
recover unpaid minimum and overtime wages, earned tips and retaliation

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 04/01/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ David W. Garrison

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges Fairlane Hotel, Ellington's Failed to Properly Pay Tipped Employees](#)
