

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.:

Jose Lezama, individually, and on behalf of
others similarly situated,

CLASS REPRESENTATION

Plaintiffs,

vs.

Baires Grill, LLC, a Florida limited liability
company; **Baires Brickell, LLC**, a Florida
limited liability company; and, **Baires Sunny
Isles, LLC**, a Florida limited liability
company,

Defendants.

_____ /

FAIR LABOR STANDARDS ACT COMPLAINT

Plaintiff Jose Lezama, individually and on behalf of others similarly situated, sues
Defendants, Baires Grill, LLC, Baires Brickell, LLC, and Baires Sunny Isles, LLC, and alleges:

JURISDICTIONAL ALLEGATIONS

1. This is an action to recover damages for unpaid wages, minimum wages, overtime wages, and other relief brought under the laws of the United States of America and under Florida common law and statutes, including §448, Florida Statutes. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C., §§201-219 (“FLSA”), §448, Florida Statutes, and § 24, Art. X of the Florida Constitution.

2. Plaintiff Jose Lezama is a resident of Miami-Dade County, Florida.

3. Defendant Baires Grill, LLC is a Florida limited liability company which is in the business of operating restaurants and bars in South Florida as a single conglomerate organized

under related, closely held and operated limited liability companies using the same name. See <http://www.BairesGrill.com>.

4. Among the restaurants and bars operated by the Defendant are three located in Miami-Dade County, Florida, with locations on Lincoln Road, Brickell Avenue, Sunny Isles, and another in Weston, Broward County, Florida, all within the jurisdiction of this Court.

5. The Plaintiff worked as a wait-staff busser at all three restaurants operated by the Defendants in Miami-Dade County from approximately September 2015 through June 22, 2018. He brings this action individually and on behalf of others similarly situated to recover from the Employer unpaid wages, minimum wages, overtime wage compensation, liquidated damages, other relief, including attorney's fees and costs.

6. Defendants Baires Grill, LLC, Baires Brickell, LLC, and Baires Sunny Isles, LLC Inc. are each, individually, and together as group, a "person" and "employer" within the meanings provided by 29 U.S.C. §203(a) and (d). Defendants are referred to herein jointly as "Employer". Moreover, this same "Employer", individually and together as a group, which includes the various related restaurants and venues which it operates, is an enterprise engaged in commerce within the meaning of 29 U.S.C. §203(r) and (s). Further, in the course of employment with this Employer, Plaintiff Lezama, and all of those similarly situated persons who may hereinafter opt-in to this lawsuit, was and were individually engaged in commerce because they were employed in a manner which required that they regularly use the implements of interstate commerce and directly interacted and served customers of the restaurants who traveled from other states and countries, and also by nature of the work Plaintiffs performed. Upon information and belief, the annual gross revenue of the Employer was at all times material to this action in excess of \$500,000.00 per annum.

7. By reason of the foregoing, the Employer is, and at all times material to this action was, an enterprise engaged in commerce or in the production of goods for commerce as defined in Sections 3(r) and 3(s) of the FLSA, 29 U.S.C., Sections 203(r) and 203(s).

8. Federal jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1337, 1367 and by 29 U.S.C. §216(b). The Employer is, and at all times material to this action was, an organization which sells and/or markets and/or transports goods and services in Florida to customers from all over the world.

ATTORNEY'S FEES

9. Plaintiff has engaged the services of the undersigned attorneys and has agreed to pay a reasonable attorney's fee and costs related to their professional services.

ENTITLEMENT TO ATTORNEY'S FEES

10. Plaintiff is entitled to an award of attorney's fees if he is the prevailing parties in this action pursuant to the Fair Labor Standards Act, 29 U.S.C., Sections 201-219 and other related authority, including §§448.08, 448.104 Florida Statutes.

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT **(Failure to Pay Minimum Wages)**

Plaintiff Jose Lezama, and others similarly situated, realleges paragraphs 1 through 10 as though fully set forth herein.

11. The Employer is a conglomerate of related persons or entities engaged in the business of operating restaurants.

12. At all times during his employment, Plaintiff Lezama, and others similarly situated, were hourly wage wait staff employees required to be paid a minimum hourly wage for all work performed for the Employer.

13. Throughout substantially all of his employment at three restaurant locations operated by Defendant, the Employer violated the provisions of the FLSA, 29 U.S.C. §206 and §215(a)(2) by failing to pay Plaintiff, and those similarly situated, at least the highest applicable minimum hourly rate.

14. The Employer paid said Plaintiff, and those similarly situated, at a reduced wage rate of pay even though there is no applicable exception to the requirement that said Plaintiff or plaintiffs be paid at least the highest applicable minimum wage rate of pay.

15. The Employer failed to timely pay wages to Plaintiff, and those similarly situated, at the regularly scheduled pay date when those wages were earned.

16. The Employer is not entitled to any so-called “tip credit” toward the applicable minimum wage rate of pay and has actually paid less than required by law as the result of among other factors, the following: (a) Plaintiff and others similarly situated are not “tipped employees” within the meaning of the FLSA §3(m); (b) Plaintiffs and others similarly situated were not properly advised of any intention by the employer to take a “tip credit” toward the obligation to pay at least applicable minimum wage rate of pay, nor were they advised of the amount of such credit; (c) Defendant took a “tip credit” in excess actual tips received and kept by Plaintiff; (d) Defendant took a tip credit greater than permitted by regulations, including 29 CFR §531.59; (e) taking a “tip credit” from revenues which are not “tips”; (f) taking a “tip credit” through an invalid tip pool; (g) taking possession of Plaintiff’s tips without also taking a “tip credit”; (h) taking retroactive “tip credits”; (i) the Employer failed to timely disburse minimum wage during the applicable pay day for the corresponding pay period, and (j) charging Plaintiff an unlawful service fee for tips distributed via third party vendors.

17. At all times material to this action, the Employer failed to comply with 29 U.S.C. §§201-219 and 29 C.F.R., §§516.2, 516.4, 516.28 *et seq.*, and §§531.35 and 531.50 *et seq.* and other applicable authority in that Plaintiff and those similarly situated performed services for the benefit of the Defendant for which they were paid well below the minimum wage rates required by both federal law, and under applicable Florida law and Florida Constitution (including §448.110(6), Florida Statutes, and § 24, Art. X of the Florida Constitution.), whose occasionally higher minimum wage rates are made applicable under the FLSA.

18. Others who are similarly situated as the Plaintiff, also provided labor as hourly-rate wait staff employees and/or former employees of the Employer and were also systematically paid less than the applicable minimum hourly wage, for the reasons set forth above.

19. The Employer knowingly and wilfully and/or with a reckless disregard of the provisions of the FLSA, failed to comply the applicable minimum wage provisions, and remains owing Plaintiff and other similarly situated employees a minimum wage for at least the extended three year period preceding this lawsuit.

WHEREFORE, Plaintiff and others similarly situated request damages equal to all unpaid minimum wages, liquidated damages in an amount equal unpaid wages, together with reasonable attorney's fees and costs, pursuant to the Fair Labor Standards Act as cited above to be proven at the time of trial for their entire applicable employment period with Defendants, or as much as is allowed by the Fair Labor Standards Act, whichever is greater.

COUNT II – VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Failure to Pay Overtime Wages)

Plaintiff Jose Lezama realleges paragraphs 1 through 10 as if fully set forth herein.

20. At all times during his employment, Plaintiff, and others similarly situated, were hourly wage wait-staff employees required to be paid at a premium rate for hours work worked in excess of forty (40) during each workweek.

21. At all times material to this action, the Employer failed to comply with 29 U.S.C. Sections 201-219 and 29 C.F.R., Sections 516.2, 516.4, 516.28 *et seq.*, and 531.35 and 531.50 *et seq.*, and other applicable authority in that Plaintiff and those similarly situated performed services and worked in excess of the maximum hours provided by the FLSA, but no adequate provision was made by the Employer to properly pay them at the rate of time-and-a-half for all hours worked in excess of forty (40) hours per workweek as provided in the FLSA.

22. The Employer failed to pay overtime compensation to Plaintiff, and those similarly situated, based upon factors to include, the following: (a) the Employer failed pay overtime hours at all; (b) the Employer paid hours in excess of forty in an applicable workweek at the same below minimum wage rate of pay or “straight time” rate of pay; (c) the Employer calculated the overtime premium by factoring upon an unlawfully low base rate of pay; (d) the Employer failed to maintain the types of books and records necessary and required in order to account for the number of hours worked during any given workweek and failed to establish the start of any workweek for purposes of overtime compensation calculations, and; (e) the Employer has failed to timely disburse overtime compensation during the applicable pay day for the corresponding pay period during which the excess hours were worked.

23. The Employer knowingly and wilfully and/or with reckless disregard for the overtime provisions of the FLSA, failed to pay overtime wages as required by the FLSA and applicable Florida law (including §448.110(6), Florida Statutes, and § 24, Art. X of the Florida Constitution) made applicable under the FLSA and remains owing Plaintiff and other similarly

situated employees the overtime wages earned during at least the extended three year period preceding this lawsuit.

WHEREFORE, Plaintiff and others similarly situated request unpaid overtime wages due, liquidated damages in a like amount, and reasonable attorney's fees and costs pursuant to the Fair Labor Standards Act as cited above to be proven at the time of trial for their entire applicable employment period with Defendant, or as much as is allowed by the Fair Labor Standards Act, whichever is greater.

– COUNT III –
BREACH OF AGREEMENT TO PAY WAGES AND FOR UNPAID WAGES

Plaintiff realleges ¶¶ 1 through 10 as though fully set forth herein.

24. At all times during their employment, the Plaintiff, and others similarly situated, were employees whom the Employer agreed to pay wages and commissions.

25. Plaintiff has satisfied any condition precedent to filing this action, if any.

26. The Employer breached the agreement by failing to pay minimum hourly wages, and overtime wages as agreed and required by law, including §448.110(6), Florida Statutes, and § 24, Art. X of the Florida Constitution.

27. The Employer breached the agreement to pay wages by failing to pay all wages and commissions earned and due to be paid at the time his employment ended on June 22, 2018.

WHEREFORE, Plaintiff demands the following: payment of all accrued unpaid wages and commissions, in an amount to be proven at the time of trial; accrued interest on those sums at the applicable judgment rate of interest, and; an award of reasonable attorney's fees and costs.

JURY DEMAND

Plaintiff, and those similarly situated, demand trial by jury of all issues, claims and defenses that are triable as of right by a jury.

Dated: September 19, 2018.

ANTHONY F. SANCHEZ, P.A.
COUNSEL FOR PLAINTIFFS
6701 SUNSET DRIVE, SUITE 101
MIAMI, FL 33143
TEL.: 305-665-9211
FAX: 305-328-4842
E-MAIL: AFS@LABORLAWFLA.COM

BY: /s/Anthony F. Sanchez
ANTHONY F. SANCHEZ
FLORIDA BAR NO. 0789925

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOSE LEZAMA, individually, and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff Miami-Dade

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Anthony F. Sanchez

6701 Sunset Drive, Suite 101

Miami, FL 33143 305-665-9211

DEFENDANTS

BAIRES GRILL, LLC, a Florida limited liability company;

BAIRES BRICKELL, LLC, a Florida limited liability company;

BAIRES SUNNY ISLES, LLC, a Florida limited liability company;

County of Residence of First Listed Defendant Miami-Dade

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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**

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> 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 (Excl. 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 PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <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"/> 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"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <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"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act, 29 U.S.C., Sections 201-219

Brief description of cause:

FLSA Minimum & OT Wages, Breach of Agreement to Pay Wages and for Unpaid Wages**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

09/19/2018

/s/ Anthony F. Sanchez

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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Southern District of Florida

SUMMONS IN A CIVIL ACTION

BAIRES GRILL, LLC c/o
Registered Agent Alejandro de la Vega
4700 Biscayne Blvd., Suite 400
Miami, FL 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: **Anthony F. Sanchez**

Anthony F. Sanchez
Anthony F. Sanchez, P.A.
6701 Sunset Drive, Suite 101
Miami, Florida 33143
Tel.: 305-665-9211
Fax: 305-328-4842

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

Signature of Clerk or Deputy Clerk

Southern District of Florida

SUMMONS IN A CIVIL ACTION

BAIRES SUNNY ISLES, LLC c/o
Registered Agent Alejandro de la Vega
4700 Biscayne Blvd., Suite 400
Miami, FL 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: **Anthony F. Sanchez**

Anthony F. Sanchez
Anthony F. Sanchez, P.A.
6701 Sunset Drive, Suite 101
Miami, Florida 33143
Tel.: 305-665-9211
Fax: 305-328-4842

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Baires Grill Improperly Applied Tip Credit to Busser's Wages, Lawsuit Alleges](#)
