

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

AMBER MCKINLEY, INDIVIDUALLY AND ON BEHALF OF)	
ALL OTHERS SIMILARLY SITUATED,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No.
)	
GENGHIS GRILL)	Judge:
GENGHIS GRILL FRANCHISE CONCEPTS, LP,)	Magistrate:
CHALAK MITRA GROUP OF COMPANIES,)	
AL BHAKTA)	Jury Trial Demanded
CHET BHAKTA)	
RON PARIKH)	
NIK BHAKTA)	
MANISH PATEL)	
DR. SANJAY PATEL)	
PUSHPAK PATEL)	
DOE DEFENDANTS 1-10,)	
)	
<i>Defendants.</i>)	

COLLECTIVE ACTION COMPLAINT

Plaintiff Amber McKinley (“Plaintiff McKinley”), by her undersigned attorneys, on her own behalf and on behalf of all others similarly situated, upon personal knowledge as to herself and her own acts, and upon information and belief as to all other matters, brings this putative collective action against all named Defendants, Genghis Grill, Genghis Grill Franchise Concepts, LP, Chalak Mitra Group of Companies, Al Bhakta, Chet Bhakta, Ron Parikh, Nik Bhakta, Manish Patel, Dr. Sanjay Patel, Pushpak Patel, and Doe Defendants 1-10, (hereinafter collectively referred to as “Defendants”) as Defendants form a single enterprise that acts as a unified entity for the purpose of owning, operating, managing, and/or controlling Genghis Grill restaurants, and allege as follows:

PRELIMINARY STATEMENT

1. This is a collective action for unpaid minimum and overtime wages, liquidated damages, attorneys' fees, costs, and interest under the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. § 216(b).

2. The FLSA was enacted "to protect all covered workers from substandard wages and oppressive working hours."

3. Under the FLSA, employers must pay all non-exempt employees a minimum wage of pay for all time spent working during their regular 40 hour workweeks.

4. The FLSA's definition of the term "wage," in turn, recognizes that under certain circumstances, an employer of tipped employees may credit a portion of its employees' tips against its minimum wage obligation, a practice commonly referred to as taking a "tip credit."

5. However, an employer may not take a "tip credit" when 1) employees are required to contribute to a tip pool that is distributed to other employees who do not regularly and customarily engaged in tipped work; 2) employees are required to perform job tasks unrelated to their tipped occupation; and/or 3) employees are required to spend a substantial amount of their time (20% or more) performing non-tipped job tasks that are related to their tipped occupation.

6. The FLSA further protects employees from "off-the-clock" work, *i.e.*, instances where an employer receives work from its employees without paying their employees' wages for the work performed and where such "off-the-clock" work reduces the employees' pay to a rate that is below that of the applicable minimum wage.

7. As alleged and described more fully below, Defendants violated the FLSA by requiring Plaintiff and others similarly situated to: 1) contribute to an unlawful tip pool, 2) work "off-the-clock" for no pay which reduced their weekly pay below that of the applicable minimum wage; 3) perform

non-tipped job tasks that were unrelated to their tipped occupation while only being paid the tipped minimum wage; and 4) perform non-tipped job tasks that were related to their tipped occupation for a substantial amount of time (20% or more) while only being paid the tipped minimum wage.

JURISDICTION AND VENUE

8. This Court has federal-question subject-matter jurisdiction pursuant to 29 U.S.C. §216(b) and 28 U.S.C. § 1331.

9. This Court has personal jurisdiction over all Defendants because Defendants act as a single enterprise and regularly and systematically conduct business in this District.

10. Upon information and belief, the various Defendants are only mere departments of Defendants, and are under the complete control of some other Defendants.

11. Defendants exist as a group of interrelated corporate entities whose business is owning, operating, managing, and/or controlling Genghis Grill restaurants.

12. As the true corporate form of Defendants is a single enterprise, with more than \$500,000 in annual revenue, which regularly and systematically conducts business within this state, Defendants are properly haled before this Court.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants transact business within this District and some of the actions giving rise to Plaintiff's injuries took place in this District.

14. Venue is proper in this Western Division of the United States District Court for the Western District of Tennessee pursuant to LR 3.3(a).

THE PARTIES

15. Plaintiff Amber McKinley is an individual citizen of the State of Tennessee. Plaintiff McKinley resides in Memphis, Tennessee.

16. Plaintiff McKinley was employed by Defendants as a hostess and server at the Genghis Grill restaurant located at 5849 US Hwy 72, Suite 117, Memphis, Tennessee 38119 (“Genghis Grill – TN07”), from on or about January 2016 through on or about May 2016.

17. Plaintiff McKinley is familiar with the policies and practices at the Genghis Grill – TN07 location.

18. Plaintiff McKinley is a covered employee within the meaning of the FLSA.

19. Plaintiff McKinley worked as a non-exempt employee of Defendants.

20. Upon information and belief, Defendant Genghis Grill is a collective conglomerate of the Defendants which owns, operates, controls, and/or manages all Genghis Grill locations. Genghis Grill – TN07 is managed, controlled, dictated, directed, and operated according to policies and practices set by Genghis Grill. In fact, Defendants use the Business Name/Mailing Address of “Genghis Grill – TN07, 18900 Dallas, Dallas TX 75287” with the Assessor of Property for Shelby County. Ex. A. The other Genghis Grill locations in Shelby County similarly reflect a business name of Genghis Grill, and a business address of “18900 Dallas, Dallas TX 75287.” Ex. B.

21. Defendant Genghis Grill Franchise Concepts, LP is a Texas limited partnership with a principal place of business at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287. Defendant Genghis Grill Franchise Concepts, LP may be served through its registered agent, Chetan Bhakta, at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287.

22. Defendant Chalak Mitra Group of Companies is, upon information and belief, a general partnership between Defendants Al Bhakta, Chet Bhakta, Ron Parikh, Nik Bhakta, Manish Patel, Dr. Sanjay Patel, Pushpak Patel, among other individuals. The Chalak Mitra Group of Companies website, at <http://www.chalakmitragroup.org/about/> (last visited June 13, 2017), describes itself “as the owners of the largest Mongolian stir-fry chain, Genghis Grill, an 80+ unit, fast-

casual concept” restaurant. Chalak Mitra Group of Companies also describes itself as “a dynamic business organization lead by 7 young, energetic entrepreneurs” *Id.*

23. Chalak Mitra Group of Companies lists 18900 Dallas Parkway, #125, Dallas Texas 75287 as its address – the same address as Genghis Grill – TN07 and Genghis Grill Franchise Concepts, L.P. <http://www.chalakmitragroup.org/contact/> (last visited June 13, 2017).

24. Defendant Al Bhakta is a managing partner at Chalak Mitra Group of Companies. <http://www.albhakta.com/about/> (last visited June 13, 2017).

25. Defendant Chet Bhakta is a managing partner at Chalak Mitra Group of Companies. <http://www.chetbhakta.com/about/> (last visited June 13, 2017).

26. Defendant Ron Parikh is a managing director at Chalak Mitra Group of Companies. <http://www.ronparikh.com/about/> (last visited June 13, 2017).

27. Defendant Nik Bhakta is a managing partner at Chalak Mitra Group of Companies. <http://www.nikbhakta.com/about/> (last visited June 13, 2017).

28. Defendant Manish Patel is a managing director and partner at Chalak Mitra Group of Companies. <http://www.manishpatel.co/about/> (last visited June 13, 2017).

29. Defendant Dr. Sanjay Patel is a managing director and partner at Chalak Mitra Group of Companies. <http://www.sanjay-patel.com/about/> (last visited June 13, 2017).

30. Defendant Pushpak Patel is a managing partner at Chalak Mitra Group of Companies. <http://www.pushpakpatel.com/about/> (last visited June 13, 2017).

31. Doe Defendants 1-10 may include other related entities discovered as discovery in this litigation progresses.

32. At all relevant times, Plaintiff was an “employee” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

33. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to Defendants.

34. At all relevant times, Defendants were and continue to be “employers” as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

35. Defendants individually and/or through an enterprise or agent directed and exercised control over Plaintiff’s work and wages at all times relevant to this action.

36. Plaintiff, in her work for Defendants, was employed by an enterprise engaged in commerce that had, upon information and belief, annual gross sales in excess of \$500,000.

FACTUAL ALLEGATIONS

37. Defendants own, operate, manage, and/or control Genghis Grill restaurants across the United States.

38. Plaintiff was hired by Defendants as a tipped employee, as defined by the FLSA, 29 U.S.C. § 203(t).

39. Despite this, Defendants did not pay Plaintiff the proper minimum wages for all of the time that she was suffered or permitted to work each workweek.

40. Plaintiff McKinley worked for Defendants between on or about January 2016 through on or about May 2016.

41. During Plaintiff McKinley’s employment, she worked at the Genghis Grill restaurant in Memphis, Tennessee located at 5849 US Hwy 72, Suite 117, Memphis, TN 38119. Upon information and belief, and based on records found through the Shelby County Assessor of Property’s website, this address may also commonly be referred to as “5849 Poplar Ave.”

42. Plaintiff McKinley was subject to and observed the policies and practices at this location.

43. Additionally, and as more fully described below, the same practices in place at the Genghis Grill – TN07 location were the same practices alleged about the Tulsa and Bixby Oklahoma Genghis Grill locations in another FLSA lawsuit filed against Genghis Grill, and, upon information and belief, are the same policies and practices in place at all Genghis Grill locations.

44. As Defendants utilize company-wide pay policies and practices, the same pay policies and practices were in effect at all Genghis Grill locations, including the Genghis Grill locations in Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Maryland, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina Tennessee, Texas, and Virginia. <http://www.genghisgrill.com/locations/> (last visited June 13, 2017).

45. Consistent with their enterprise-wide policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

DEFENDANTS' TIP POOL VIOLATIONS

46. Defendants required Plaintiff to contribute to a tip pool.

47. Specifically, Defendants mandated that 4 percent of the tips earned by Plaintiff were to be contributed to the tip pool and paid to other Genghis Grill employees.

48. The tip pool which Plaintiff contributed to, as required by Defendants, included employees who do not customarily and regularly receive tips, despite the scope of the definition of “tipped employee” from 29 U.S.C. § 203(t), and in willful violation of the FLSA, 29 U.S.C. § 206(a).

49. As a result of Defendants’ violation of 29 U.S.C. § 206(a), Defendants are disallowed from taking a tip credit from its tipped employees’ hourly wages.

50. Accordingly, Plaintiff should have been paid the full hourly minimum wage with no tip-credit reduction, \$7.25 per hour.

51. However, as alleged above, Defendants regularly and consistently paid Plaintiff at the tip-credit minimum wage, only \$2.13 per hour.

52. Plaintiff is therefore entitled to the difference between the full minimum hourly wage rate and the wage rate paid for all hours Plaintiff worked – \$5.12 per hour for Plaintiff – and, additionally, the amount of all tips contributed to the illegal tip pool.

DEFENDANTS TIP-CREDIT VIOLATIONS

53. Plaintiff was also paid the tipped wage rate indicated above for time spent working before the location was open and after the location was closed, performing tasks that were not related to earning tips, at times when Plaintiff could not earn tips.

54. Defendants engaged in the regular practice of requiring Plaintiff to perform a substantial amount of non-tipped labor.

55. Plaintiff was required to engage in non-tipped labor unrelated to her tipped occupation over the course of her regular workweeks.

56. Further, Plaintiff was required to engage in non-tipped labor related to her tipped occupation.

57. To the extent such non-tipped labor was related to Plaintiff's tipped occupation, it exceeded 20% of Plaintiff's regular workweeks.

58. Examples of non-tipped labor unrelated to Plaintiff's tipped occupation that Plaintiff performed during her regular workweeks include, but are not limited to: preparatory and workplace maintenance tasks such as taking out trash, scrubbing walls, sweeping floors, cleaning booths, sweeping, mopping, washing dishes, breaking down and cleaning the expeditor line, and restocking restrooms.

59. Non-tipped labor related to Plaintiff's tipped occupation included, but is not limited to: preparatory and workplace maintenance tasks such as brewing tea, brewing coffee, rolling silverware, cleaning soft drink dispensers, wiping down tables, setting tables, busing tables, cutting and stocking fruit, stocking ice, taking out trash, scrubbing walls, sweeping floors, restocking to-go supplies, cleaning booths, cleaning ramekins, sweeping, mopping, restocking all stations, washing dishes, and breaking down and cleaning the expeditor line.

60. As a result of Defendants' willful requirement that Plaintiff perform non-tipped labor unrelated to her tipped occupation over the course of her regular workweeks and a substantial amount of non-tipped labor related to her tipped occupations in excess of 20% of her regular workweeks, Defendants effectively paid Plaintiff less than the applicable overall minimum wage for such work.

61. Although Plaintiff should have been paid the full minimum wage, as stated above, Defendants paid Plaintiff an hourly rate that fell below the minimum wage to which Plaintiff was entitled, in violation of the FLSA.

62. Defendants knew that – or acted with reckless disregard as to whether – their failure to pay Plaintiff the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

63. Upon information and belief, Plaintiff McKinley was paid less than minimum wage on a weekly basis, for multiple workweeks.

64. Plaintiff McKinley believes and avers that Defendants owe her unpaid wages for each and every workweek during which she was employed by Defendants. Furthermore, as Defendants

have failed to keep complete and accurate time records, Plaintiff McKinley may establish the hours worked by her testimony and the burden of overcoming such testimony shifts to Defendants.

DEFENDANTS' STRAIGHT TIME MINIMUM WAGE VIOLATIONS

65. Defendants also regularly and consistently required Plaintiff to “clock out” yet continue to perform non-tip-earning duties and/or remain on the premises in order to avoid incurring excessive and/or overtime labor costs, in willful violation of the FLSA.

66. As a result, Defendants failed to compensate Plaintiff at the applicable minimum wage rate for all hours worked, in violation of 29 U.S.C. § 206(a).

67. From approximately January 2016 to May 2016, Plaintiff was regularly and consistently required to perform “off-the-clock” work approximately one half hours (.5 hours) to one and one half hours (1.5) per shift while “off-the-clock.”

68. Defendants engaged in the regular practice of willfully failing to pay Plaintiff for all time that Plaintiff worked while “off-the-clock.”

69. Defendants engaged in the regular practice of failing to accurately, if at all, record the time during which Defendants suffered or permitted Plaintiff to work.

70. As such, Plaintiff's time records, if in existence, understate the duration of time each workweek that Defendants suffered or permitted Plaintiff to work.

71. Defendants utilized an online/electronic system for tracking Plaintiff's “clock-in” and “clock-out” data, sometimes referred to as “time detail records.”

72. Plaintiff does not have access to these records or other payroll records.

73. Plaintiff was not allowed to track different work codes, other than Server or Host, even though the timekeeping system had the ability to do so.

74. Defendants' timekeeping system could have tracked tipped vs. untipped work, but Defendants did not use this feature, and prevented Plaintiff from doing so.

75. Defendants maintain possession and control of this data.

76. This action effectively prevents Plaintiff from pinpointing exact hours worked during specific weeks, and whether or not Plaintiff was properly paid for a given workweek.

77. This information must be maintained by Defendants and will be discoverable in this matter.

78. Due to the allegations set forth above, Defendants failed to furnish Plaintiff with accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance.

SUMMARY OF DEFENDANTS' ALLEGED VIOLATIONS

79. Plaintiff alleges four different violations of the FLSA by Defendants.

80. Plaintiff believes and avers that Defendants owe her unpaid wages for each and every workweek during which she was employed by Defendants because Defendants violated the FLSA by requiring Plaintiff and others similarly situated to: 1) contribute to an unlawful tip pool, 2) work "off-the-clock" for no pay which reduced their weekly pay below that of the applicable minimum wage; 3) perform non-tipped job tasks that were unrelated to their tipped occupation while only being paid the tipped minimum wage; and 4) perform non-tipped job tasks that were related to their tipped occupation for a substantial amount of time (20% or more) while only being paid the tipped minimum wage.

81. Upon information and belief, Plaintiff was subject to the same company-wide policies and practices and same FLSA violations as other Genghis Grill locations across the country, even though it appears Genghis Grill locations form an LLC for each location.

82. Defendants co-mingle control and act through various entities – which are sometime completely fabricated fictitious names for other entities, all of which act concertedly for the betterment of Genghis Grill. As such, Defendants are jointly liable for their unlawful acts.

83. Additionally, other Genghis Grill restaurants operate using the same company-wide policies and practices, as similar lawsuits have been filed in Arizona, Georgia, Texas, and Arkansas.¹

84. These allegations further show the overarching, nationwide minimum wage policies and practices that are endemic to the entire Genghis Grill enterprise and have harmed all similarly situated employees of Genghis Grill.

COLLECTIVE ACTION ALLEGATIONS

85. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) on behalf of herself and two FLSA Collective Classes, encompassing persons similarly situated to Plaintiff and seeking relief, and defined as:

The FLSA Tip-Credit Collective Class

All current and former workers employed by Defendants who were paid at a sub-minimum wage rate or had to contribute to a tip pool within three years preceding the date of conditional certification of this action through final judgment in this matter, and who elect to opt into this action.

The FLSA Minimum Wage Collective Class

All current and former non-exempt hourly paid employees who were required to work “off-the-clock and therefore were not properly paid minimum wage for all hours worked in a workweek within three years preceding the date of conditional certification of this action through final judgment in this matter, and who elect to opt into this action.

¹ *Collins v. Chalak-MMT PV LLC et al*, Case No. 2:15-cv-02158 (D. Ariz.); *Elezovic et al v. Chalak-Carroll Buford, LLC*, Case No. 1:16-cv-00532 (N.D. Ga.); *Arnold v. Genghis Grill, et al.*; Case No. 4:16-cv-00328 (N.D. Okla.); *Fulton v. Chalak Restaurants, Inc. et al*, Case No. 5:09-cv-00673 (W.D. Tex.); and *Israsena et al v. Chalak M&M AR1 LLC et al*, Case No. 4:15-cv-00038 (E.D. Ark.). *Swaney, et al. v. M&M Mongolian Grill, LLC d/b/a Genghis Grill*, Case No. 4:14-cv-00110 (E.D. Ark.). Complaints provided as Group Ex. C.

The FLSA Tip-Credit Collective Class and The FLSA Minimum Wage Collective Class are collectively referred to herein as the “Classes,”

86. Plaintiff reserves the right to add, amend, modify, or further define the Classes and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

87. Plaintiff asserts claims against Defendants individually and on behalf of all Class members for violations of the law as set forth below.

88. The members of the Classes are ascertainable from objective criteria.

89. If necessary to preserve the case as a collective action, the Court itself can redefine the Classes, create additional subclasses, or both.

90. Additionally, Collective Class treatment will permit large numbers of similarly-situated non-exempt hourly and tipped workers to prosecute their respective claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

91. Further, Plaintiff and all others similarly situated have substantive right to bargain and proceed together as members of a collective legal process, guaranteed by the National Labor Relations Act, 29 U.S.C. § 157 and 158(a)(1) (“NLRA”), which cannot be waived. Any contract or agreement that attempts to do so is illegal and unenforceable under binding Sixth Circuit precedent. *NLRB v. Alt. Entm’t, Inc.*, No. 16-1385, 2017 U.S. App. LEXIS 9272 (6th Cir. May 26, 2017).

92. By prosecuting this case as a collective class action, collective class members, who may be current employees of Defendants’, may receive just compensation for the work performed for Defendants without fear of retaliation for seeking just compensation individually.

93. Further, giving notice to all Genghis Grill employees, even if eventually compelled to arbitrate their claims, serves the important social purpose of keeping employees informed of their rights.

94. Moreover, notice may be provided to members of the proposed class by including notice with each potential class members paycheck stub, first-class mail to addresses maintained for each employee by Defendants, and through the alternative means, including electronic mail (email), social network posting (*i.e.*, Facebook posts), and job-site postings.

95. Finally, the collective and class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. all putative class and subclass members are “similarly situated,” in that, at least, Defendants utilized a company-wide compensation policy and practice whereby tipped workers were paid the tipped minimum wage for all hours worked regardless of the duties performed or the ability to earn tips, tipped-workers have to contribute to an illegal tip pool, and workers are forced to work “off-the-clock” and are not paid, resulting in Defendants failure to pay minimum wage for all hours worked in a workweek. Plaintiff McKinley was subject to and saw the same policy and practice complained of at other Genghis Grill locations, even though there were different managers at each store;
- b. common questions of fact and law predominate over any individual questions that may arise, such that the class or collective action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- c. there will be enormous economies to the Court and the parties in litigating the common issues in a class or collective action instead of individual claims;
- d. class or collective action treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class or collective action members;
- e. if the size of individual class or collective action members’ claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class or collective action on a cost-effective basis, especially when compared with the cost of individual litigation; and

- f. the trial of this case as a class or collective action will be fair and efficient because the questions of law and fact which are common to the Plaintiff, the FLSA Tip-Credit Collective Class and The FLSA Minimum Wage Collective Class predominate over any individual issues that may arise.

CLAIMS FOR RELIEF

COUNT I

ON BEHALF OF THE FLSA TIP-CREDIT COLLECTIVE CLASS FAIR LABOR STANDARDS ACT – ILLEGAL TIP POOLING ARRANGEMENT

96. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

97. Defendants required Plaintiff and members of the FLSA Tip-Credit Collective Class to participate in a tip-pooling arrangement wherein Plaintiff and members of the FLSA Tip-Credit Collective Class were required to contribute to a tip pool that included employees who do not customarily and regularly receive tips, despite the scope of the definition of “tipped employee” contained within 29 U.S.C. § 203(m), and in willful violation of the FLSA, 29 U.S.C. 206(a).

98. Plaintiff and members of the FLSA Tip-Credit Collective Class were paid at the tip-credit minimum wage.

99. Each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class worked for Defendants, Plaintiff and members of the FLSA Tip-Credit Collective Class were required to distribute a portion of their earned tips to back-of-the-house, non-tipped employees, in violation of 29 U.S.C. § 203(m).

100. As a result of Defendants requirement that Plaintiff and members of the FLSA Tip-Credit Collective Class participate in an illegal tip pooling arrangement, Defendants are disallowed

entirely from taking a tip credit from its tipped employees' hourly wages, including Plaintiff and the members of the FLSA Tip-Credit Collective Class.

101. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to the difference between the full minimum hourly wage rate and the wage rate paid for all hours Plaintiff and members of the FLSA Tip-Credit Collective Class worked and, additionally, the amount of all tips Plaintiff and members of the FLSA Tip-Credit Collective Class contributed to the illegal tip pool.

102. Defendants have willfully violated the FLSA by not paying proper wages to Plaintiff and members of the FLSA Tip-Credit Collective Class, and, upon information and belief, continue to willfully violate the FLSA by not paying proper wages to FLSA Tip-Credit Collective Class members.

103. Due to Defendants' companywide illegal wage practices, Plaintiff and members of the FLSA Tip-Credit Collective Class are entitled to recover from Defendants compensation for the difference between the full minimum hourly wage and the tip-credit minimum wage for all hours worked for Defendants, the amount of all tips contributed to the illegal tip pool, and additional equal amount as liquidated damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

COUNT II

ON BEHALF OF THE FLSA MINIMUM WAGE COLLECTIVE CLASS FAILURE TO PAY MINIMUM WAGES UNDER THE FAIR LABOR STANDARDS ACT

104. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

105. Defendants regularly and consistently required Plaintiff and members of the FLSA Minimum Wage Collective Class to clock out, yet continue to perform non-tip-earning duties and/or remain on the restaurant premises in order to avoid incurring excessive and/or overtime labor costs.

106. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Minimum Wage Collective Class minimum wage according to the provisions of the FLSA for each and every workweek that Plaintiff and members of the FLSA Minimum Wage Collective Class worked for Defendant, for the duration of their employment, in violations of 29 U.S.C. § 206(a).

107. As a result of Defendants' willful failure to compensate Plaintiff and members of the FLSA Minimum Wage Collective Class the applicable minimum wage for all hours worked, Defendants violated the FLSA.

108. As such, full minimum wage is owed to Plaintiff and members of the FLSA Minimum Wage Collective Class for time Plaintiff and members of the FLSA Minimum Wage Collective Class were suffered or permitted to work "off-the-clock."

109. Defendants knew that – or acted with reckless disregard as to whether their failure to pay to Plaintiff and members of the FLSA Minimum Wage Collective Class the full minimum wage for time spent performing non-tipped labor and/or requiring Plaintiff and members of the FLSA Minimum Wage Collective Class to remain on restaurant premises would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and other similarly situated FLSA Minimum Wage Collective Class members' employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

110. Defendants have willfully violated the FLSA by failing to pay Plaintiff and members of the FLSA Minimum Wage Collective Class a wage equal to or greater than minimum wage for time Defendants required Plaintiff and members of the FLSA Minimum Wage Collective Class to perform

non-tipped labor and/or remain on the premises while “off-the-clock,” and Defendants continue to willfully violate the FLSA by requiring FLSA Minimum Collective Class members to perform non-tipped labor and/or remain on the premises while “off-the-clock.”

111. Plaintiff and members of the FLSA Minimum Wage Collective Class are therefore entitled to compensation for the difference between wages paid and the minimum wage at an hourly rate to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, costs, and reasonable attorney’s fees.

COUNT III

ON BEHALF OF THE FLSA TIP CREDIT COLLECTIVE CLASS FLSA TIP CREDIT VIOLATION – NON-TIPPED LABOR UNRELATED TO WORK

112. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

113. Defendants intentionally failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook § 30d00(e) by requiring Plaintiff and members of the FLSA Tip-Credit Collective Class in a given workweek, and during each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, to perform non-tipped labor unrelated to their tipped occupation over the house of their regular workweek, while paying Plaintiff and members of the FLSA Tip-Credit Collective Class at the tip-credit rate.

114. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage according to the provisions of the FLSA for time spent performing non-tipped labor unrelated to the tipped occupation over the

course of a given workweek, for each and every workweek that Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, in violation of 29 U.S.C. § 206(a).

115. As such, full applicable minimum wage for such time Plaintiff and members of the FLSA Tip-Credit Collective Class performed non-tipped labor unrelated to the tipped occupation over the course of the regular workweek is owed to Plaintiff and members of the FLSA Tip-Credit Collective Class for each and every workweek they were employed by Defendants.

116. Defendants knew that – or acted with reckless disregard as to whether – its failure to pay to Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and FLSA Tip-Credit Collective Class members' employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

117. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

COUNT IV

ON BEHALF OF THE FLSA TIP-CREDIT COLLECTIVE CLASS FLSA TIP CREDIT VIOLATION – NON-TIPPED LABOR RELATED TO TIPPED WORK IN EXCESS OF 20% OF WORKTIME

118. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

119. Defendants intentionally failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook

§30d00(e) by requiring Plaintiff and members of the FLSA Tip-Credit Collective Class in a given workweek, and during each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, to perform non-tipped labor related to their tipped occupation in excess of twenty percent (20%) of their regular 40-hour workweek, while paying Plaintiff and members of the FLSA Tip-Credit Collective Class at the tip credit rate.

120. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage according to the provisions of the FLSA for time spent performing non-tipped labor related to the tipped occupation in excess of twenty percent (20%) of a given workweek, for each and every workweek that Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, in violation of 29 U.S.C. § 206(a).

121. As such, full applicable minimum wage for such time Plaintiff and members of the FLSA Tip-Credit Collective Class performed non-tipped labor related to the tipped occupation in excess of twenty percent (20%) of the regular workweek is owed to Plaintiff and members of the FLSA Tip-Credit Collective Class for each and every workweek they were employed by Defendants.

122. Defendants knew that – or acted with reckless disregard as to whether – its failure to pay to Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and FLSA Tip-Credit Collective Class members' employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

123. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for relief as follows:

- A. an order from the Court certifying the FLSA Tip-Credit Collective Class and the FLSA Minimum Wage Collective Class identified herein as an FLSA collective action;
- B. an order from the Court awarding Plaintiff and Collective Class members their unpaid wages in an amount to be proven at trial;
- C. an order from the Court awarding Plaintiff and Collective Class members compensatory damages in an amount to be proven at trial;
- D. an order from the Court awarding Plaintiff and Collective members liquidated damages in an amount set by applicable law and to be proven at trial;
- E. an order from the Court awarding Plaintiff and Collective Class members pre-judgment and post-judgment interest, as well as reasonable attorneys' and expert-witness fees and other costs as may be available under law; and
- F. an order from the Court awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable.

Dated: June 14, 2017

Respectfully Submitted,

By: /s/ Bryce Ashby

Bryce Ashby - #26179

DONATI LAW, PLLC

1545 Union Avenue

Memphis, TN 38104

Ph: 901-278-3111

Email: bryce@donatilaw.com

Brandon M. Wise – MO Bar #67242

PEIFFER ROSCA WOLF

ABDULLAH CARR & KANE, APLC

818 Lafayette Ave., Floor 2

St. Louis, MO 63104

Ph: 314-833-4825

Email: bwise@prwlegal.com

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

Amber McKinley, and all others similarly situated

DEFENDANTS

Genghis Grill, et al.

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

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.

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

Bryce Ashby, Donati Law, PLLC

1545 Union Avenue Memphis, TN 38104

Ph: 901-278-3111

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)Click here for: [Nature of Suit Code Descriptions.](#)

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 ACTIONCite 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:
Failure to pay minimum wage**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

06/14/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Bryce Ashby

FOR OFFICE USE ONLY

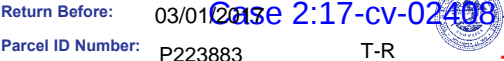
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

Return Before: 03/01/2018

Parcel ID Number: P223883

T-R



CHEYENNE JOHNSON
ASSESSOR OF PROPERTY
SHELBY COUNTY



Filed: 01/13/2017

For Tax Year: 2017

TANGIBLE PERSONAL PROPERTY SCHEDULE

1075 MULLINS STATION ROAD, MEMPHIS, TN 38134-7725 TELEPHONE (901) 222-7002

1. Date operation ceased: 2. Date Business License Finalized, if applicable:
3. What was the disposition of the equipment which had been used. (If sold, the name and mailing address of buyer must be provided.):

BUSINESS NAME / MAILING ADDRESS		FILE YOUR 2017 SCHEDULE ONLINE	
<div>GENGHIS GRILL - TN07</div> <div>18900 DALLAS</div> <div>DALLAS TX 75287</div> <div></div> <div>*P2238832017*</div>		<div>www.assessor.shelby.tn.us</div> <div>For security purposes you must use this assigned PIN number to file online</div> <div>Online Filing PIN:</div>	
		<div>In Accordance with Tennessee Code Annotated 67-5-903, this schedule must be completed, signed and received by the Assessor on or before MARCH 1, 2017</div> <div>Failure to do so will result in a forced assessment, and you will be subject to a penalty as provided by law.</div>	
		REMARKS / EXPLANATION	

PART I - GENERAL DATA

A. Our records indicate your business is located at: 5849 POPLAR AVE JURISDICTION: MEMPHIS
(Location as of January 1st)
If this is in error, provide correct location. Should Mailing Address Be Changed?

B. What is the type of business activity at this location? SIC: 5812

C. Business Owner(s) or Stockholders:

D. Business Telephone: Contact Person: Telephone #:

E. E-mail Address: New E-mail Address:

F. Shelby County Business License ACCOUNT NO: 111001325 Fax #:

G. Date Business Began: Formerly Operated As:

IF YOU WERE OUT OF BUSINESS IN THIS COUNTY ON JANUARY 1, PLEASE NOTIFY THE ASSESSOR OF PROPERTY OF THE DATE YOU WENT OUT OF BUSINESS IN ORDER TO AVOID A FORCED ASSESSMENT.

PART II - OWNED PERSONAL PROPERTY

Report all Personal Property owned by you and used or held for use in your business or profession as of January 1, 2017, including items fully depreciated or expensed in your accounting records. DO NOT report inventories of merchandise held for sale or exchange or finished goods in the hands of the manufacturer. A separate schedule should be filed for each business location. Personal property leased or rented and used in your business MUST be reported in Part III of this schedule and not in this section. List the total original cost to you for each group below by year acquired in the REVISED COST column. If cost on file is printed on the schedule, you need only report new cost totals resulting from acquisition or disposition of property in the REVISED COST column. (Revised cost = Cost on file + acquisitions - dispositions.) Property on which you wish to report a nonstandard value must be reported in PART IV of this schedule, not this section. Please report cost in whole dollars. FOR ADDITIONAL INFORMATION, PLEASE REFER TO ENCLOSED INSTRUCTIONS.

ALTERNATIVE REPORTING FOR SMALL ACCOUNTS-If you believe the depreciated value of your property is \$1,000 or less, you have the option to use the small accounts certificate on the reverse side, instead of completing PART II of this schedule. This will automatically set your assessment at \$300.

ANY REDUCTIONS IN COST FROM PREVIOUS FILINGS MUST BE EXPLAINED IN WRITING.

Group 1 - Furniture, Fixtures, General Equip. & All Other Property Not Listed In Another Group				Group 4 - Aircraft, Towers, and Boats				Group 6 - Billboards, Tanks & Pipelines			
Year	Cost on File	Revised Cost	Depr.	Year	Cost on File	Revised Cost	Depr.	Year	Cost on File	Revised Cost	Depr.
2016	0		.88	2016	0		.92	2016	0		.94
2015	0		.75	2015	0		.85	2015	0		.88
2014	0		.63	2014	0		.77	2014	0		.81
2013	0		.50	2013	0		.69	2013	0		.75
2012	0		.38	2012	0		.62	2012	0		.69
2011	228,632		.25	2011	0		.54	2011	0		.63
Prior	0		.20	2010	0		.46	2010	0		.56
Total	228,632			2009	0		.38	2009	0		.50
Group 2 - Computers, Copiers, Fax Machines Peripherals and Tools				2008	0		.31	2008	0		.44
Year	Cost on File	Revised Cost	Depr.	2007	0		.23	2007	0		.38
2016	0		.67	Prior	0		.20	2006	0		.31
2015	0		.33	Total	0			2005	0		.25
Prior	14,369		.20	Group 5 - Manufacturing Machinery				Prior	0		.20
Total	14,369			Year	Cost on File	Revised Cost	Depr.	Total	0		
Group 3 - Molds, Dies and Jigs				2016	0		.88	Group 7 - Scrap Property			
Year	Cost on File	Revised Cost	Depr.	2015	0		.75	Year	Cost on File	Revised Cost	Depr.
2016	0		.75	2014	0		.63	All	0		.02
2015	0		.50	2013	0		.50	Group 8 - Raw Materials and Supplies			
2014	0		.25	2012	0		.38	FIFO	Cost on File	Revised Cost	
Prior	0		.20	2011	0		.25		1,187		
Total	0			Prior	0		.20	Group 9 - Vehicles			
Group 10 - Construction-In-Process (CIP)				Total	0			Year	Cost on File	Revised Cost	Depr.
Year	Cost on File	Revised Cost	Depr.	Group 10 - Construction-In-Process (CIP)				2016	0		.80
All	0		.15	Year	Cost on File	Revised Cost	Depr.	2015	0		.60
Part II Appraisal Last Year: 90,941				2014	0		.40	Prior	0		.20
Part III Appraisal Last Year: 0				Total	0			Total	0		
Part IV Appraisal Last Year: 0				THE REVERSE SIDE OF THIS FORM MUST BE COMPLETED AND SIGNED							
Total Appraisal Last Year: 86,000											
Total Assessment Last Year: 25,800											

PART III - LEASED PERSONAL PROPERTY, LESSEE SECTION

Report all items leased or rented by you for the conduct of your business as of January 1, 2017. REGARDLESS OF ANY CONTRACT BETWEEN THE LESSOR AND LESSEE AS TO WHO SHALL PAY THE TAXES, LEASED PERSONAL PROPERTY IS TO BE REPORTED BY AND ASSESSED TO THE LESSEE.

*--Report the year of acquisition if the lessor purchased the property being used.

**--Report lessor's original cost. Report the advertised retail price if lessor's original cost is unknown.

Is any personal property leased or rented for use in your business/profession or for an employee to use on behalf of your business/profession? Yes _____ or No _____
If YES, THIS SECTION MUST BE COMPLETED.

Depr. Group	Item Description, Make and Model Number	* Year Acquired	** Cost	Terms of Lease and Year Lease Began	Monthly Rent	Lease Number	Name of Lessor	Address of Lessor
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
If additional space is needed, attach a separate sheet using the same format.								

PART IV - OWNED ITEMS WITH NONSTANDARD VALUES

Report property on which you wish to report a value different from standard depreciated cost where such value more closely approximates fair market value. **Report Pollution Control Equipment in this section.** The Shelby County Assessor requires supportive documentation be submitted before accepting such value.

PART IV - OWNED ITEMS WITH NONSTANDARD VALUES							ASSESSOR'S NOTES--NONSTANDARD VALUE	
Group	Item Description	Year Made	Original Cost	Depr. Factor	Value as of January 1, 2017	Assessor's Use Only		
If additional space is needed, attach separate sheet using the same format.							Total	

PART V - ALTERNATIVE REPORTING FOR SMALL ACCOUNTS

(b) **SMALL ACCOUNTS CERTIFICATION (OPTIONAL).** By checking the box at the left, I certify that the total depreciated value of my property, all groups, is \$1,000 or less. I understand this certification is subject to the penalties for perjury, and I may be subject to statutory penalty and cost if this certification is proven false.

PART VI - SIGNATURE

Under the penalties prescribed by law, I hereby affirm that the information contained herein, including any accompanying documents, is true, correct, and complete, to the best of my knowledge and belief.

Print Name _____ Print Title _____

Signed _____ Date _____ Telephone Number _____

IF YOU NEED ANY ASSISTANCE IN COMPLETING THIS SCHEDULE, PLEASE GIVE MY STAFF A CALL AT (901) 222-7002. CHEYENNE JOHNSON, ASSESSOR


ASSESSOR'S USE ONLY									
Jurisdictional Change: _____									
New Town Code: _____									
Active Code			Assmt. Type						
Schedule Filed? (Y/N)									
Date: _____									
More Info. Requested? (Y/N)									
Date: _____									
Desk Audit By: _____									
Date: _____									
Field Audit By: _____									
Date: _____									
Book Audit By: _____									
Date: _____									
Business Code-SIC									
Review Code: _____									
Abstract Notes: _____									
Other Notes: _____									

EXHIBIT B



TANGIBLE PERSONAL PROPERTY SCHEDULE
1075 MULLINS STATION ROAD, MEMPHIS, TN 38134-7725 TELEPHONE (901) 222-7002

1. Date operation ceased: _____ 2. Date Business License Finalized, if applicable: _____
3. What was the disposition of the equipment which had been used. (If sold, the name and mailing address of buyer must be provided.): _____

BUSINESS NAME / MAILING ADDRESS		FILE YOUR 2017 SCHEDULE ONLINE www.assessor.shelby.tn.us For security purposes you must use this assigned PIN number to file online Online Filing PIN: In Accordance with Tennessee Code Annotated 67-5-903, this schedule must be completed, signed and received by the Assessor on or before MARCH 1, 2017 . Failure to do so will result in a forced assessment, and you will be subject to a penalty as provided by law.	
GENGHIS GRILL- TN05 18900 DALLAS DALLAS TX 75287  *P2189252017*		REMARKS / EXPLANATION	

PART I - GENERAL DATA

- A. Our records indicate your business is located at: 2362 N GERMANTOWN PKWY STE 110 JURISDICTION: MEMPHIS
(Location as of January 1st)
If this is in error, provide correct location: _____ Should Mailing Address Be Changed? _____
- B. What is the type of business activity at this location? _____ SIC: 5812
- C. Business Owner(s) or Stockholders: _____
- D. Business Telephone: _____ Contact Person: _____ Telephone #: _____
- E. E-mail Address: _____ New E-mail Address: _____
- F. Shelby County Business License ACCOUNT NO: 110004125 Fax #: _____
- G. Date Business Began: _____ Formerly Operated As: _____

IF YOU WERE OUT OF BUSINESS IN THIS COUNTY ON JANUARY 1, PLEASE NOTIFY THE ASSESSOR OF PROPERTY OF THE DATE YOU WENT OUT OF BUSINESS IN ORDER TO AVOID A FORCED ASSESSMENT.

PART II - OWNED PERSONAL PROPERTY

Report all Personal Property owned by you and used or held for use in your business or profession as of **January 1, 2017**, including items fully depreciated or expensed in your accounting records. DO NOT report inventories of merchandise held for sale or exchange or finished goods in the hands of the manufacturer. **A separate schedule should be filed for each business location.** Personal property leased or rented and used in your business **MUST** be reported in Part III of this schedule and not in this section. List the total original cost to you for each group below by year acquired in the REVISED COST column. If cost on file is printed on the schedule, you need only report new cost totals resulting from acquisition or disposition of property in the REVISED COST column. (Revised cost = Cost on file + acquisitions - dispositions.) Property on which you wish to report a nonstandard value must be reported in PART IV of this schedule, not this section. Please report cost in whole dollars. FOR ADDITIONAL INFORMATION, PLEASE REFER TO ENCLOSED INSTRUCTIONS.

ALTERNATIVE REPORTING FOR SMALL ACCOUNTS-If you believe the depreciated value of your property is \$1,000 or less, you have the option to use the small accounts certificate on the reverse side, instead of completing PART II of this schedule. This will automatically set your assessment at \$300.

ANY REDUCTIONS IN COST FROM PREVIOUS FILINGS MUST BE EXPLAINED IN WRITING.

Group 1 - Furniture, Fixtures, General Equip. & All Other Property Not Listed In Another Group				Group 4 - Aircraft, Towers, and Boats				Group 6 - Billboards, Tanks & Pipelines			
Year	Cost on File	Revised Cost	Depr.	Year	Cost on File	Revised Cost	Depr.	Year	Cost on File	Revised Cost	Depr.
2016	0		.88	2016	0		.92	2016	0		.94
2015	0		.75	2015	0		.85	2015	0		.88
2014	109,170		.63	2014	0		.77	2014	0		.81
2013	0		.50	2013	0		.69	2013	0		.75
2012	0		.38	2012	0		.62	2012	0		.69
2011	5,036		.25	2011	0		.54	2011	0		.63
Prior	193,290		.20	2010	0		.46	2010	0		.56
Total	307,496			2009	0		.38	2009	0		.50
Group 2 - Computers, Copiers, Fax Machines Peripherals and Tools				2008	0		.31	2008	0		.44
Year	Cost on File	Revised Cost	Depr.	2007	0		.23	2007	0		.38
2016	0		.67	Prior	0		.20	2006	0		.31
2015	0		.33	Total	0			2005	0		.25
Prior	11,709		.20	Group 5 - Manufacturing Machinery				Prior	0		.20
Total	11,709			Year	Cost on File	Revised Cost	Depr.	Total	0		
Group 3 - Molds, Dies and Jigs				2016	0		.88	Group 7 - Scrap Property			
Year	Cost on File	Revised Cost	Depr.	2015	0		.75	Year	Cost on File	Revised Cost	Depr.
2016	0		.75	2014	0		.63	All	0		.02
2015	0		.50	2013	0		.50	Group 8 - Raw Materials and Supplies			
2014	0		.25	2012	0		.38	FIFO	Cost on File	Revised Cost	
Prior	0		.20	2011	0		.25		1,080		
Total	0			Prior	0		.20	Group 9 - Vehicles			
Group 10 - Construction-In-Process (CIP)				Total	0			Year	Cost on File	Revised Cost	Depr.
Year	Cost on File	Revised Cost	Depr.	Group 10 - Construction-In-Process (CIP)				2016	0		.80
All	0		.15	Year	Cost on File	Revised Cost	Depr.	2015	0		.60
				2014	0		.40	Prior	0		.20
				Total	0			Total	0		


Part II Appraisal Last Year: 137,059
Part III Appraisal Last Year: 0
Part IV Appraisal Last Year: 0
Total Appraisal Last Year: 129,600
Total Assessment Last Year: 38,880

THE REVERSE SIDE OF THIS FORM MUST BE COMPLETED AND SIGNED

1. Date operation ceased: _____

2. Date Business License Finalized, if applicable: _____

3. What was the disposition of the equipment which had been used. (If sold, the name and mailing address of buyer must be provided.): _____

BUSINESS NAME / MAILING ADDRESS				FILE YOUR 2017 SCHEDULE ONLINE			
<div>GENGHIS GRILL-TN08</div> <div>18900 DALLAS</div> <div>DALLAS TX 75287</div> <div></div> <div>*P2265332017*</div>				<div>www.assessor.shelby.tn.us</div> <div>For security purposes you must use this assigned PIN number to file online</div> <div>Online Filing PIN:</div>			
				<div>In Accordance with Tennessee Code Annotated 67-5-903, this schedule must be completed, signed and received by the Assessor on or before MARCH 1, 2017</div> <div>Failure to do so will result in a forced assessment, and you will be subject to a penalty as provided by law.</div>			
				REMARKS / EXPLANATION			

PART I - GENERAL DATA

A. Our records indicate your business is located at: 7706 WINCHESTER RD STE 110

(Location as of January 1st)

If this is in error, provide correct location. _____

JURISDICTION:MEMPHIS

Should Mailing Address Be Changed? _____

SIC: 5812

B. What is the type of business activity at this location? _____

C. Business Owner(s) or Stockholders: _____

D. Business Telephone: _____ Contact Person: _____ Telephone #: _____

E. E-mail Address: _____ New E-mail Address: _____

F. Shelby County Business License ACCOUNT NO: 111004661 Fax #: _____

G. Date Business Began: _____ Formerly Operated As: _____

IF YOU WERE OUT OF BUSINESS IN THIS COUNTY ON JANUARY 1, PLEASE NOTIFY THE ASSESSOR OF PROPERTY OF THE DATE YOU WENT OUT OF BUSINESS IN ORDER TO AVOID A FORCED ASSESSMENT.

PART II - OWNED PERSONAL PROPERTY

Report all Personal Property owned by you and used or held for use in your business or profession as of **January 1, 2017**, including items fully depreciated or expensed in your accounting records. DO NOT report inventories of merchandise held for sale or exchange or finished goods in the hands of the manufacturer. **A separate schedule should be filed for each business location.** Personal property leased or rented and used in your business **MUST** be reported in Part III of this schedule and not in this section. List the total original cost to you for each group below by year acquired in the REVISED COST column. If cost on file is printed on the schedule, you need only report new cost totals resulting from acquisition or disposition of property in the REVISED COST column. (Revised cost = Cost on file + acquisitions - dispositions.) Property on which you wish to report a nonstandard value must be reported in PART IV of this schedule, not this section. Please report cost in whole dollars. FOR ADDITIONAL INFORMATION, PLEASE REFER TO ENCLOSED INSTRUCTIONS.

ALTERNATIVE REPORTING FOR SMALL ACCOUNTS-If you believe the depreciated value of your property is \$1,000 or less, you have the option to use the small accounts certificate on the reverse side, instead of completing PART II of this schedule. This will automatically set your assessment at \$300.

ANY REDUCTIONS IN COST FROM PREVIOUS FILINGS MUST BE EXPLAINED IN WRITING.

Group 1 - Furniture, Fixtures, General Equip. & All Other Property Not Listed In Another Group				Group 4 - Aircraft, Towers, and Boats				Group 6 - Billboards, Tanks & Pipelines			
				Year	Cost on File	Revised Cost	Depr.	Year	Cost on File	Revised Cost	Depr.
Year	Cost on File	Revised Cost	Depr.	2016	0		.92	2016	0		.94
2016	0		.88	2015	0		.85	2015	0		.88
2015	0		.75	2014	0		.77	2014	0		.81
2014	0		.63	2013	0		.69	2013	0		.75
2013	0		.50	2012	0		.62	2012	0		.69
2012	39,440		.38	2011	0		.54	2011	0		.63
2011	210,916		.25	2010	0		.46	2010	0		.56
Prior	0		.20	2009	0		.38	2009	0		.50
Total	250,356			2008	0		.31	2008	0		.44
Group 2 - Computers, Copiers, Fax Machines Peripherals and Tools				2007	0		.23	2007	0		.38
				Prior	0		.20	2006	0		.31
				Total	0			2005	0		.25
				Group 5 - Manufacturing Machinery				Prior	0		.20
Year	Cost on File	Revised Cost	Depr.	Group 7 - Scrap Property							
2016	0		.67	Year	Cost on File	Revised Cost	Depr.				
2015	0		.33	2016	0		.88	All	0		.02
Prior	14,247		.20	2015	0		.75	Group 8 - Raw Materials and Supplies			
Total	14,247			2014	0		.63	FIFO	Cost on File	Revised Cost	
Group 3 - Molds, Dies and Jigs				2013	0		.50	1,099			
Year	Cost on File	Revised Cost	Depr.	2012	0		.38	Group 9 - Vehicles			
2016	0		.75	2011	0		.25	Year	Cost on File	Revised Cost	Depr.
2015	0		.50	Prior	0		.20	2016	0		.80
2014	0		.25	Total	0			2015	0		.60
Prior	0		.20	Group 10 - Construction-In-Process (CIP)				2014	0		.40
Total	0			Year	Cost on File	Revised Cost	Depr.	Prior	0		.20
Part II Appraisal Last Year: 103,816 Part III Appraisal Last Year: 0 Part IV Appraisal Last Year: 0 Total Appraisal Last Year: 98,200 Total Assessment Last Year: 29,460				All	0		.15	Total	0		
				THE REVERSE SIDE OF THIS FORM MUST BE COMPLETED AND SIGNED							

PART III - LEASED PERSONAL PROPERTY, LESSEE SECTION

Report all items leased or rented by you for the conduct of your business as of January 1, 2017. REGARDLESS OF ANY CONTRACT BETWEEN THE LESSOR AND LESSEE AS TO WHO SHALL PAY THE TAXES, LEASED PERSONAL PROPERTY IS TO BE REPORTED BY AND ASSESSED TO THE LESSEE.

*--Report the year of acquisition if the lessor purchased the property being used.

**--Report lessor's original cost. Report the advertised retail price if lessor's original cost is unknown.

Is any personal property leased or rented for use in your business/profession or for an employee to use on behalf of your business/profession? Yes _____ or No _____
If YES, THIS SECTION MUST BE COMPLETED.

Depr. Group	Item Description, Make and Model Number	* Year Acquired	** Cost	Terms of Lease and Year Lease Began	Monthly Rent	Lease Number	Name of Lessor	Address of Lessor
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____
	_____		_____	_____	_____	_____	_____	_____

If additional space is needed, attach a separate sheet using the same format.

PART IV - OWNED ITEMS WITH NONSTANDARD VALUES

Report property on which you wish to report a value different from standard depreciated cost where such value more closely approximates fair market value. **Report Pollution Control Equipment in this section.** The Shelby County Assessor requires supportive documentation be submitted before accepting such value.

ASSESSOR'S NOTES--NONSTANDARD VALUE						
Group	Item Description	Year Made	Original Cost	Depr. Factor	Value as of January 1, 2017	Assessor's Use Only
If additional space is needed, attach separate sheet using the same format.				Total		

PART V - ALTERNATIVE REPORTING FOR SMALL ACCOUNTS

(b) **SMALL ACCOUNTS CERTIFICATION (OPTIONAL).** By checking the box at the left, I certify that the total depreciated value of my property, all groups, is \$1,000 or less. I understand this certification is subject to the penalties for perjury, and I may be subject to statutory penalty and cost if this certification is proven false.

PART VI - SIGNATURE

Under the penalties prescribed by law, I hereby affirm that the information contained herein, including any accompanying documents, is true, correct, and complete, to the best of my knowledge and belief.

Print Name _____ Print Title _____

Signed _____ Date _____ Telephone Number _____

IF YOU NEED ANY ASSISTANCE IN COMPLETING THIS SCHEDULE, PLEASE GIVE MY STAFF A CALL AT (901) 222-7002. CHEYENNE JOHNSON, ASSESSOR

ASSESSOR'S USE ONLY									
Jurisdictional Change: _____									
New Town Code: _____									
Active Code			Assmt. Type						
Schedule Filed? (Y/N)									
Date: _____									
More Info. Requested? (Y/N)									
Date: _____									
Desk Audit By: _____									
Date: _____									
Field Audit By: _____									
Date: _____									
Book Audit By: _____									
Date: _____									
Business Code-SIC									
Review Code: _____									
Abstract Notes: _____									
Other Notes: _____									

GROUP EXHIBIT C

DISTRICT OF ARIZONA

COMPLAINT

-1-

1 739 (1981). Under the FLSA, employers must pay all non-exempt employees a minimum
2 wage of pay for all time spent working during their regular 40 hour workweeks. See 29
3 U.S.C. § 206(a). The FLSA’s definition of the term “wage,” in turn, recognizes that under
4 certain circumstances, an employer of tipped employees may credit a portion of its
5 employees’ tips against its minimum wage obligation, a practice commonly referred to as
6 taking a “tip credit.” See id. § 203(m).

8 JURISDICTION AND VENUE

9 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29
10 U.S.C. § 201, *et seq.* This civil action arises under the Constitution and law of the United
11 States.

12 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts
13 giving rise to the claims of Plaintiff occurred within the District of Arizona, and Defendant
14 regularly conducts business in and has engaged in the wrongful conduct alleged herein – and,
15 thus, are subject to personal jurisdiction in – this judicial district.

17 PARTIES

18 5. At all material times, Plaintiff is an individual residing in Maricopa County,
19 Arizona, and is a former employee of Defendant.

20 6. At all material times, Defendant Genghis was a limited liability company duly
21 licensed to transact business in the State of Arizona. Defendant Genghis does business, has
22 offices, and/or maintains agents for the transaction of its customary business in Maricopa
23 County, Arizona.

1 7. At all relevant times, Plaintiff was an employee of Defendant Genghis. At all
2 relevant times, Defendant Genghis, acting through its agents, representatives, employees,
3 managers, members, and/or other representatives had the authority to hire and fire
4 employees, supervised and controlled work schedules or the conditions of employment,
5 determined the rate and method of payment, and maintained employment records in
6 connection with Plaintiff's employment with Defendant Genghis. In any event, at all
7 relevant times, Defendant Genghis was an employer subject to the Fair Labor Standards Act
8 (FLSA) and employed Plaintiff.
9

10 8. At all relevant times, Defendant Troy Horning owns, operates as a manager
11 of, operates as a member of, and/or possesses a similar interest in Chalak-MMT PV, L.L.C.
12 At all relevant times, Defendant Troy Horning had the authority to hire and fire employees,
13 supervised and controlled work schedules or the conditions of employment, determined the
14 rate and method of payment, and maintained employment records in connection with
15 Plaintiff's employment with Chalak-MMT PV, L.L.C. In any event, at all relevant times,
16 Defendant Troy Horning was an employer subject to the FLSA and employed Plaintiff.
17
18

19 9. Upon information and belief, Defendants Chalak-MMT PV, L.L.C. and Troy
20 Horning were and continue to be residents of Maricopa County, Arizona.
21

22 10. Jane Doe Horning is the fictitious name for Defendant Troy Horning's
23 spouse. When Jane Doe Horning's true name has been ascertained, this Complaint shall be
24 amended accordingly. Troy Horning and Jane Doe Horning have caused events to take place
25 giving rise to this Complaint to which their marital community is fully liable.
26
27

1 11. At all relevant times, Plaintiff was an “employee” of Defendants as defined by
2 the FLSA, 29 U.S.C. § 201, *et seq.*

3 12. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
4 Defendants.

5 13. At all relevant times, Defendants were and continue to be “employers” as
6 defined by FLSA, 29 U.S.C. § 201, *et seq.*

7 14. Defendants individually and/or through an enterprise or agent, directed and
8 exercised control over Plaintiff’s work and wages at all relevant times.

9 15. Plaintiff, in his work for Defendants, was employed by an enterprise engaged
10 in commerce that had annual gross sales of at least \$500,000.

11
12
13 **NATURE OF THE CLAIM**

14 16. Defendants own and/or operate as Chalak-MMT PV L.L.C. d/b/a Genghis
15 Grill, an enterprise located in Maricopa County, Arizona.

16 17. Plaintiff was hired by Defendants as a tipped employee, as defined by the
17 FLSA at 29 U.S.C. § 203(m), and Plaintiff worked for Defendants between approximately
18 March 1, 2012 and December 31, 2014, when Plaintiff left his employment with Defendants.

19 18. Rather than pay their tipped employees the applicable state minimum wage,
20 for the time Plaintiff was paid an hourly wage, Defendants imposed a tip credit upon
21 Plaintiff at below the applicable minimum wage.

22 19. As a result of Defendants’ imposition of a tip credit, Plaintiff was forced to
23 perform minimum wage work at an hourly rate that was less than minimum wage.

1 20. Defendants required Plaintiff to participate in an tip-pooling arrangement
2 wherein Plaintiff was required to contribute to a tip pool that included employees who do
3 not customarily and regularly receive tips, despite the scope of the definition of “tipped
4 employee” contained within 29 U.S.C. § 203(m), and in willful violation of the FLSA, 29
5 U.S.C. § 206(a).

6
7 21. As a result of Defendants’ violation of 29 U.S.C. § 206(a), Defendants are
8 disallowed entirely from taking a tip credit from its tipped employees’ hourly wages.

9 22. Therefore, Defendants regularly and consistently paid Plaintiff less than the
10 overall minimum wage for the work Plaintiff performed during each of his regular
11 workweeks for the entire duration of his employment, such that Plaintiff’s pay, when
12 averaged across his total time worked, was less than the minimum wage.

13
14 23. Plaintiff is therefore entitled to the difference between the full minimum
15 hourly wage rate and the wage rate paid for all hours Plaintiff worked and, additionally, the
16 amount of all tips contributed to the illegal tip pool.

17
18 24. Defendants also regularly and consistently required Plaintiff to clock out yet
19 continue to perform non-tip-earning duties and/or remain on premises in order to avoid
20 incurring excessive and/or overtime labor costs, in willful violation of the FLSA.

21 25. As a result, Defendants failed to compensate Plaintiff minimum wage for all
22 hours worked, in violation of 29 U.S.C. § 206(a).

23
24 26. From approximately June 1, 2013 through December 31, 2013, Plaintiff was
25 regularly and consistently required to perform work approximately two hours or more per
26 shift while off the clock in a given work week.

1 27. For example, during the week of November 4, 2013, Plaintiff was required to
2 perform approximately two hours of work per shift while off the clock.

3 28. Defendants engaged in the regular practice of willfully failing to pay Plaintiff
4 the applicable minimum wage or higher for all time that Defendants suffered or permitted
5 Plaintiff to work for all hours worked while off the clock.

6 29. Defendants engaged in the regular practice of failing to accurately, if at all,
7 record the time during which Defendants suffered or permitted Plaintiff to work. As such,
8 Plaintiff's time records, if in existence, understate the duration of time each workweek that
9 Defendants suffered or permitted Plaintiff to work.

10 30. Defendants knew that – or acted with reckless disregard as to whether – their
11 failure to pay to Plaintiff the applicable minimum wage for all time the Defendants suffered
12 or permitted Plaintiff to work, would violate federal and state law, and Defendants were
13 aware of the FLSA minimum wage requirements during Plaintiff's employment. As such,
14 Defendants' conduct constitutes a willful violation of the FLSA.

15 31. Defendants engaged in the regular practice of requiring Plaintiff to perform a
16 substantial amount of non-tipped labor related to his tipped occupation in excess of 20% of
17 her regular workweek and non-tipped labor unrelated to his tipped occupation over the
18 course of his regular workweeks.

19 32. Examples of non-tipped labor related to Plaintiff's tipped occupation that
20 exceeded 20% of Plaintiff's regular workweek, include, but are not limited to: preparatory
21 and workplace maintenance tasks such as brewing tea, brewing coffee, rolling silverware,
22 cleaning soft drink dispensers, wiping down tables, setting tables, busing tables, cutting and
23

1 stocking fruit, stocking ice, taking out trash, scrubbing walls, sweeping floors, restocking to-
2 go supplies, cleaning booths, cleaning ramekins, sweeping, mopping, restocking all stations,
3 washing dishes, and breaking down and cleaning the expo line.

4 33. Examples of non-tipped labor unrelated to Plaintiff's tipped occupation that
5 Plaintiff performed during her regular workweeks, include, but are not limited to:
6 preparatory and workplace maintenance tasks such as taking out trash, scrubbing walls,
7 sweeping floors, cleaning booths, sweeping, mopping, washing dishes, breaking down and
8 cleaning the expo line, and restocking restrooms.

9 34. As a result of Defendants' willful requirement that Plaintiff perform a
10 substantial amount of non-tipped labor related to his tipped occupation in excess of 20% of
11 his regular workweeks and non-tipped labor unrelated to his tipped occupation over the
12 course of his regular workweeks, Defendants paid Plaintiff less than the overall minimum
13 wage for such work that Plaintiff performed for Defendants, such that the average of
14 Plaintiff's hourly wages was less than the applicable minimum wage.

15 35. In both policy and practice, Defendants regularly and consistently required
16 Plaintiff to perform the above-listed non-tipped labor related to his tipped occupation in
17 excess of twenty percent (20%) of Plaintiff's regular workweek before, during, and after
18 scheduled shifts; before the restaurant was open to customers; after the restaurant was
19 closed to customers; while Plaintiff had few to no customers to serve; before serving his first
20 customer; and after being "cut" from serving customers.

21 36. In both policy and practice, Defendants regularly and consistently required
22 Plaintiff to perform the above-listed non-tipped labor unrelated to his tipped occupation
23
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1 during the course of Plaintiff's regular workweek before, during, and after scheduled shifts;
2 before the restaurant was open to customers; after the restaurant was closed to customers;
3 while Plaintiff had few to no customers to serve; before serving his first customer; and after
4 being "cut" from serving customers.

5
6 37. As a result of Defendants' requirement that Plaintiff perform such non-tipped
7 labor related to his tipped occupation, and in excess of twenty percent (20%) of his regular
8 workweek, while earning the reduced tip credit rate, Plaintiff was engaged in a non-tipped
9 occupation, as defined by the "dual jobs" regulation 29 C.F.R. §§ 531.56(e) and (a) and the
10 Department of Labor Field Operations Handbook §30d00(e), for such work performed
11 during that time. Such work performed by Plaintiff included, but was not limited to,
12 spending more than part of his time cleaning and setting tables and making coffee, and more
13 than occasionally washing dishes or glasses. As a result, Defendants were prohibited from
14 taking the tip credit for the hours Plaintiff spent working in a non-tipped occupation.
15 Plaintiff is, therefore, entitled, under 29 C.F.R. § 531.56(a) and 29 U.S.C. § 216(b), to the
16 overall minimum wage for all time spent performing such non-tipped, dual occupation labor.
17 As such, Defendants paid Plaintiff less than the overall minimum wage for the work Plaintiff
18 performed during his regular workweek, in willful violation of the FLSA, 29 U.S.C. § 206(a).

19
20
21 38. As a result of Defendants' requirement that Plaintiff perform such non-tipped
22 labor unrelated to his tipped occupation, while earning the reduced tip credit rate, Plaintiff
23 was engaged in a non-tipped occupation, as defined by the "dual jobs" regulation 29 C.F.R.
24 §§ 531.56(e) and (a) and the Department of Labor Field Operations Handbook §30d00(e),
25 for such work performed during that time. Such work performed by Plaintiff included, but
26
27

1 was not limited to, spending more than part of his time cleaning and setting tables and
2 making coffee, and more than occasionally washing dishes or glasses. As a result, Defendants
3 were prohibited from taking the tip credit for the hours Plaintiff spent working in his non-
4 tipped occupation. Plaintiff is, therefore, entitled, under 29 C.F.R. § 531.56(a), to the overall
5 minimum wage for all time spent performing such non-tipped, dual occupation labor. As
6 such, Defendants paid Plaintiff less than the overall minimum wage for the work Plaintiff
7 performed during his regular workweek, in willful violation of the FLSA, 29 U.S.C. § 206(a).

9 39. As a result of Defendants' willful failure to compensate Plaintiff the applicable
10 minimum wage for such hours worked, Defendants have violated 29 U.S.C. § 206(a).

11 40. Defendants knew that – or acted with reckless disregard as to whether – its
12 failure to pay to Plaintiff the full applicable minimum wage, without applying the tip credit,
13 for time spent performing labor in such a non-tipped occupation, would violate federal and
14 state law, and Defendants were aware of the FLSA minimum wage requirements during
15 Plaintiff's employment. As such, Defendants' conduct constitutes a willful violation of the
16 FLSA.
17

18 41. Defendants have and continue to willfully violate the FLSA by not paying
19 Plaintiff the full applicable minimum wage for time spent performing non-tipped labor
20 related to his tipped occupation in excess of 20% of her regular workweeks, and non-tipped
21 labor unrelated to his tipped occupation over the course of his regular workweeks.
22

23 42. In a given workweek, and during each and every workweek for which Plaintiff
24 worked for Defendants as a tipped employee, Defendants required Plaintiff to perform a
25 substantial amount of non-tipped labor related to his tipped occupation in excess of 20% of
26
27

1 his regular workweek and non-tipped labor unrelated to his tipped occupation over the
2 course of his regular workweek. Defendants paid Plaintiff less than the overall minimum
3 wage for such work that Plaintiff performed for Defendants, such that the average of
4 Plaintiff's hourly wages was less than the applicable minimum wage, in willful violation of 29
5 U.S.C. § 206(a). Defendants required Plaintiff to perform non-tipped labor related to his
6 tipped occupation in excess of 20% of his regular workweeks and non-tipped labor unrelated
7 to his tipped occupation each and every workweek during which he worked for Defendants.
8

9 43. For example, during workweek of November 4, 2013, Defendants required
10 Plaintiff to perform, and Plaintiff did perform, non-tipped labor related to his tipped
11 occupation in excess of 20 percent of his regular workweek, despite being compensated less
12 than the full applicable minimum wage for such time. Such conduct by Defendants violated
13 29 U.S.C. § 206(a).
14

15 44. For example, during workweek of November 4, 2013, Defendants required
16 Plaintiff to perform, and Plaintiff did perform, non-tipped labor unrelated to his tipped
17 occupation during his regular workweek, despite being compensated less than the full
18 applicable minimum wage for such time. Such conduct by Defendants violated 29 U.S.C. §
19 206(a).
20

21 45. Plaintiff believes and therefore avers that Defendants owe him similar wages
22 for each and every workweek during which he worked for Defendants for the entire
23 duration of his employment. Furthermore, when an employer fails to keep complete and
24 accurate time records, employees may establish the hours worked by their testimony, and the
25 burden of overcoming such testimony shifts to the employer.
26
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46. Defendants engaged in the regular practice of failing to accurately, if at all, record the time during which Defendants suffered or permitted Plaintiff to work. As such, Defendants' records of Plaintiff's time worked, if in existence, understate the duration of time each workweek that Defendants suffered or permitted Plaintiff to work.

47. Defendants, individually and/or through an enterprise or agent, directed and exercised control over Plaintiff's work and wages at all relevant times.

48. Plaintiff is a covered employee within the meaning of the Fair Labor Standards Act ("FLSA").

49. Plaintiff was a non-exempt employee.

50. Defendants have and continue to willfully violate the FLSA by not paying Plaintiff wages owed for all times Plaintiff worked while off the clock.

51. Defendants individually and/or through an enterprise or agent, directed and exercised control over Plaintiff's work and wages at all relevant times.

52. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover from Defendant compensation for unpaid wages, an additional equal amount as liquidated damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

**COUNT ONE: FAIR LABOR STANDARDS ACT: ILLEGAL TIP
POOLING ARRANGEMENT**

53. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

54. Defendants required Plaintiff to participate in a tip-pooling arrangement wherein Plaintiff was required to contribute to a tip pool that included employees who do

1 not customarily and regularly receive tips, despite the scope of the definition of “tipped
2 employee” contained within 29 U.S.C. § 203(m), and in willful violation of the FLSA, 29
3 U.S.C. § 206(a).

4 55. As a result of Defendants’ requirement that Plaintiff participate in an illegal tip
5 pooling arrangement, Defendants are disallowed entirely from taking a tip credit from its
6 tipped employees’ hourly wages.
7

8 56. Plaintiff is therefore entitled to the difference between the full minimum
9 hourly wage rate and the wage rate paid for all hours Plaintiff worked and, additionally, the
10 amount of all tips Plaintiff contributed to the illegal tip pool.
11

12 57. Each and every workweek Plaintiff worked for Defendants, Plaintiff was
13 required to distribute a portion of his earned tips to back of the house non-tipped
14 employees, in violation of 29 U.S.C. § 203(m).

15 58. Defendants have and continue to willfully violate the FLSA by not paying
16 proper wages to Plaintiff.
17

18 59. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover from
19 Defendants compensation for the difference between the full minimum hourly wage and the
20 tip credit minimum wage for all hours worked for Defendants, the amount of all tips
21 contributed to the illegal tip pool, an additional equal amount as liquidated damages, interest,
22 and reasonable attorney’s fees and costs of this action under 29 U.S.C. § 216(b).
23

24 **WHEREFORE**, Plaintiff, Christian Collins, individually, requests that this Court
25 enter Judgment against Defendants, Chalak-MMT PV L.L.C. d/b/a Genghis Grill and Troy
26 Horning, for compensation for the difference between the full minimum hourly wage and
27

1 the tip credit minimum wage for all hours worked for Defendants, the amount of all tips
2 contributed to the illegal tip pool, an additional equal amount as liquidated damages,
3 prejudgment and post-judgment interest, reasonable attorney's fees, costs, and
4 disbursements of this action, and any additional relief that this Court deems just and proper.

5 **COUNT TWO: FAIR LABOR STANDARDS ACT: UNPAID WAGES**

6
7 60. Plaintiff realleges and incorporates by reference all allegations in all preceding
8 paragraphs.

9 61. Defendants regularly and consistently required Plaintiff clock out yet continue
10 to perform non-tip-earning duties and/or remain on the restaurant premises in order to
11 avoid incurring excessive and/or overtime labor costs.

12
13 62. Defendants intentionally failed and/or refused to pay Plaintiff minimum wage
14 according to the provisions of the FLSA for each and every workweek that Plaintiff worked
15 for Defendant, for the duration of his employment, in violation of 29 U.S.C. § 206(a).

16
17 63. As a result of Defendants' willful failure to compensate Plaintiff the applicable
18 minimum wage for all hours worked, Defendants violated the FLSA.

19 64. As such, full minimum wage is owed for all time spent performing labor off
20 the clock.

21 65. Defendants knew that – or acted with reckless disregard as to whether – their
22 failure to pay to Plaintiff the full minimum wage for time spent performing non-tipped labor
23 and/or requiring Plaintiff to remain on restaurant premises would violate federal and state
24 law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's
25 employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.
26
27

66. Defendants have and continue to willfully violate the FLSA by not paying Plaintiff a wage equal to or greater than minimum wage for time Defendants required Plaintiff to perform non-tipped labor and/or remain on premises while off the clock.

67. Plaintiff is therefore entitled to compensation for the difference between wages paid and Arizona's minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, costs, and reasonable attorney fees.

WHEREFORE, Plaintiff, Christian Collins, individually, respectfully requests that this Court grant relief in Plaintiff's favor, and against Defendants Chalak-MMT PV L.L.C. d/b/a Genghis Grill and Troy Horning for compensation for unpaid minimum wages, plus an additional equal amount as liquidated damages, prejudgment and post-judgment interest, reasonable attorney fees, costs, and disbursements of this action, and any additional relief this Court deems just and proper.

COUNT THREE: FAIR LABOR STANDARDS ACT
NON-TIPPED LABOR RELATED TO TIPPED WORK IN EXCESS OF 20%

68. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

69. Defendants intentionally failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook §30d00(e) by requiring Plaintiff in a given workweek, and during each and every workweek Plaintiff was employed by Defendants, to perform non-tipped labor related to her tipped occupation in excess of twenty percent (20%) of her regular 40-hour workweek, while paying Plaintiff at the tip credit rate.

1 70. Defendants intentionally failed and/or refused to pay Plaintiff the full
2 applicable minimum wage according to the provisions of the FLSA for time she spent
3 performing non-tipped labor related to her tipped occupation in excess of twenty percent
4 (20%) of a given workweek, for each and every workweek that Plaintiff was employed by
5 Defendants, in violation of 29 U.S.C. § 206(a).

6
7 71. As such, full applicable minimum wage for such time Plaintiff performed non-
8 tipped labor related to her tipped occupation in excess of twenty percent (20%) of her
9 regular workweek is owed to Plaintiff for each and every workweek she was employed by
10 Defendants.

11
12 72. Defendants knew that – or acted with reckless disregard as to whether – its
13 failure to pay to Plaintiff the full applicable minimum wage, without applying the tip credit,
14 for time spent performing labor in such a non-tipped occupation, would violate federal and
15 state law, and Defendants were aware of the FLSA minimum wage requirements during
16 Plaintiff's employment. As such, Defendants' conduct constitutes a willful violation of the
17 FLSA.

18
19 73. Plaintiff is therefore entitled to compensation for the full minimum wage at an
20 hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages,
21 together with interest, reasonable attorney's fees, and costs.

22
23 **WHEREFORE**, Plaintiff, Christian Collins, individually, respectfully requests that
24 this Court grant relief in Plaintiff's favor, and against Defendant Chalak-MMT PV L.L.C.
25 d/b/a Genghis Grill and Troy Horning for compensation for unpaid minimum wages, plus
26 an additional equal amount as liquidated damages, prejudgment and post-judgment interest,
27

1 reasonable attorney fees, costs, and disbursements of this action, and any additional relief
2 this Court deems just and proper.

3 **COUNT FOUR: FAIR LABOR STANDARDS ACT**
4 **NON-TIPPED LABOR UNRELATED TO TIPPED WORK**

5 74. Plaintiff realleges and incorporates by reference all allegations in all preceding
6 paragraphs.

7 75. Defendants intentionally failed and/or refused to comply with the FLSA, 29
8 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations
9 Handbook §30d00(e) by requiring Plaintiff in a given workweek, and during each and every
10 workweek Plaintiff was employed by Defendants, to perform non-tipped labor unrelated to
11 her tipped occupation over the course of her regular 40-hour workweek, while paying
12 Plaintiff at the tip credit rate.
13

14 76. Defendants intentionally failed and/or refused to pay Plaintiff the full
15 applicable minimum wage according to the provisions of the FLSA for time she spent
16 performing non-tipped labor unrelated to her tipped occupation over the course of a given
17 workweek, for each and every workweek that Plaintiff was employed by Defendants, in
18 violation of 29 U.S.C. § 206(a).
19

20 77. As such, full applicable minimum wage for such time Plaintiff performed non-
21 tipped labor unrelated to her tipped occupation over the course of her regular workweek is
22 owed to Plaintiff for each and every workweek she was employed by Defendants.
23

24 78. Defendants knew that – or acted with reckless disregard as to whether – its
25 failure to pay to Plaintiff the full applicable minimum wage, without applying the tip credit,
26 for time spent performing labor in such a non-tipped occupation, would violate federal and
27

1 state law, and Defendants were aware of the FLSA minimum wage requirements during
2 Plaintiff's employment. As such, Defendants' conduct constitutes a willful violation of the
3 FLSA.

4 79. Plaintiff is therefore entitled to compensation for the full minimum wage at an
5 hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages,
6 together with interest, reasonable attorney's fees, and costs.
7

8 **WHEREFORE**, Plaintiff, Christian Collins, individually, respectfully requests that
9 this Court grant relief in Plaintiff's favor, and against Defendant Chalak-MMT PV L.L.C.
10 d/b/a Genghis Grill and Troy Horning for compensation for unpaid minimum wages, plus
11 an additional equal amount as liquidated damages, prejudgment and post-judgment interest,
12 reasonable attorney fees, costs, and disbursements of this action, and any additional relief
13 this Court deems just and proper.
14

15 **JURY TRIAL DEMAND**

16 Plaintiff hereby demands a trial by jury on all issues so triable.
17

18 RESPECTFULLY SUBMITTED this 27th Day of October 2015.
19

20 THE BENDAU LAW FIRM, PLLC

21 By: /s/ Clifford P. Bendau, II

22 Clifford P. Bendau, II

23 Attorney for Plaintiff
24
25
26
27

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ELDINA ELEZOVIC, ZEHRA ELEZOVIC,)	
ANISSA LAUW, LILIANA LEAHY,)	
EMILY PHILLIPS, and DISHA SMITH)	
Plaintiffs,)	
)	Civil Action No:
v.)	
)	
CHALAK-CARROLL BUFORD, LLC,)	
d/b/a GENGHIS GRILL)	
Defendant.)	

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiffs, Eldina Elezovic, Zehra Elezovic, Anissa Lauw, Liliana Leahy, Emily Phillips, and Disha Smith, by and through their undersigned counsel of record, and set forth this Complaint for Damages against the above-named Defendant. CHALAK-CARROLL BUFORD, LLC d/b/a GHENGIS GRILL (hereinafter “Defendant” or “Defendant Employer”) is a domestic limited liability corporation doing business in the state of Georgia. Plaintiff respectfully shows this Court as follows:

JURISDICTION

1. This action is for violations of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 et seq (hereinafter the “FLSA”). Plaintiff seeks declaratory and injunctive relief, compensatory damages, and attorney’s fees and costs.

VENUE

2. All parties to this action reside or are located within the boundaries of this judicial district, and venue is proper pursuant to, inter alia, 28 U.S.C. § 1391(b)(2) as the unlawful acts complained of herein occurred within the geographic boundaries of this Court.

PARTIES

3. This Court has personal jurisdiction over Defendant Employer.
4. Defendant Employer may be served by delivering a copy of the summons and complaint to its registered agent to wit: Corporate Creations Network, Inc. 2985 Gordy Parkway, 1st Floor, Cobb County, Marietta, Georgia 30066.
5. Defendant Genghis Grill is an employer within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d) as it is an entity which acted directly and indirectly in the interest of an employer, in relation to Plaintiffs, its employees, and controlled the terms and conditions of Plaintiff's employment on a day-to-day basis.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. Defendant Employer owns and operates "Genghis Grill" in Buford, Georgia.
7. This action involves claims of violations of the Fair Labor Standards Act, 29 U.S.C. §201 et seq, as amended, based upon Defendant's failure to compensate Plaintiff for actual hours worked, failure to properly collect and record data, its failure to pay its employees minimum wage at the required rate of \$7.25 an hour, and its failure to include only tipped employees in the tip pool resulting in unlawful tip sharing.
8. At all times relevant hereto, Plaintiffs were employees of Defendant Employer and Defendant Employer engaged in an industry affecting commerce at all times relevant to this action.
9. Defendant Employer is an enterprise engaged in commerce as it was and, upon information and belief, is, engaged in a business which gainfully employs employees engaged in

services and the supply of goods that have been moved or produced for commerce by any person.

10. Upon information and belief, Defendant Employer is an enterprise whose annual gross volume of sales made or business done is not less than Five Hundred Thousand (\$500,000.00) (exclusive of excise taxes at retail level that are separately stated).
11. Upon information and belief, Defendant Employer is individually engaged in interstate commerce, producing services through interstate commerce, or an activity that is closely related and directly essential to such services.
12. Plaintiffs were not subject to any exemption under the FLSA.
13. Plaintiffs were regularly required to work during their lunch breaks even though they were required to clock out.
14. Plaintiffs are required to contribute to a tip pool.
15. Defendant Employer utilizes an Aloha Point of Sale system to track and record employee hours.
16. Defendant Employer assigns each employee a PIN for clocking in and out.
17. Defendant Employer does not allow employees to clock in without a manager's key card any earlier than 1 minute before the start of their scheduled shift and any later than 5 minutes after the start of their scheduled shift.
18. Defendant Employer regularly requires employees to come to work at certain scheduled times but does not allow them to clock in until they have a table to wait on, thus requiring them to work "off the clock."
19. Defendant Employer failed to keep an accurate record of the hours worked by Plaintiffs.

20. Defendant Employer's tip pool includes employees who do not customarily and regularly receive tips.

Eldina Elezovic

21. Eldina Elezovic began employment with Defendant Employer on September 15, 2010.

22. Plaintiff has worked as a server at a rate of \$2.13 per hour since September 15, 2010.

23. Plaintiff worked as a host at a rate of \$6.50 per hour, plus tips, at intermittent periods of time from September 15, 2010 until April of 2013.

24. Plaintiff was required to share tips with employees who do not customarily and regularly receive tips.

25. Plaintiff regularly had to work "off the clock" as she waited for a table to wait on.

26. Plaintiff was required to work during her break and lunch hour without compensation.

27. Plaintiffs paycheck regularly did not reflect the actual amount of hours worked.

Zehra Elezovic

28. Zehra Elezovic began employment with Defendant Employer on June 3, 2015.

29. Plaintiff worked as a trainee at a rate of \$7.25 per hour from June 3, 2015 until August of 2015.

30. Plaintiff has worked as a host at a rate of \$4.75 per hour since June of 2015.

31. Plaintiff regularly had to work "off the clock" as she completed "side work".

32. Plaintiffs paycheck regularly did not reflect the actual amount of hours worked.

Anissa Lauw

33. Anissa Lauw began employment with Defendant Employer on September 3, 2013.

34. Plaintiff has worked as a server at a rate of \$2.13 per hour since September 3, 2013.

35. Plaintiff worked as an assistant manager at a rate of \$12.00 per hour from March of 2014 until January of 2015.
36. Plaintiff worked as a manager at a rate of \$11.00 per hour from January of 2015 until August of 2015.
37. Plaintiff has worked as a manager at a rate of \$12.50 per hour since August of 2015.
38. Plaintiff was required to share tips with employees who do not customarily and regularly receive tips.
39. Plaintiff regularly had to work “off the clock” as she waited for a table to wait on.
40. Plaintiff was required to work during her break and lunch hour without compensation.
41. Plaintiff's paycheck regularly did not reflect the actual amount of hours worked.

Liliana Leahy

42. Liliana Leahy began employment with Defendant Employer on December 15, 2010.
43. Plaintiff has worked as a server at a rate of \$2.13 per hour since December 15, 2010.
44. Plaintiff worked as a host at a rate of \$6.50 per hour, plus tips, from January of 2012 until February of 2012.
45. Plaintiff worked as a manager at a rate of \$10.00 per hour in September of 2013.
46. Plaintiff worked as a manager at a rate of \$12.00 per hour at intermittent periods of time from October of 2013 until September of 2014.
47. Plaintiff was required to share tips with employees who do not customarily and regularly receive tips.
48. Plaintiff regularly had to work “off the clock” as she waited for a table to wait on.
49. Plaintiff was required to work during her break and lunch hour without compensation.

50. Plaintiffs paycheck regularly did not reflect the actual amount of hours worked.

Emily Phillips

51. Emily Phillips began employment with Defendant Employer on August 6, 2012.

52. Plaintiff worked as a host at a rate of \$6.50 per hour, plus tips, from August 6, 2012 until November of 2013.

53. Plaintiff worked as a host at a rate of \$4.75 per hour, plus tips, at intermittent periods of time from November of 2013 until October of 2014.

54. Plaintiff has worked as a server at a rate of \$2.13 per hour since October of 2014.

55. Plaintiff was required to share tips with employees who do not customarily and regularly receive tips.

56. Plaintiff regularly had to work “off the clock” as she waited for a table to wait on.

57. Plaintiff was required to work during her break and lunch hour with compensation.

58. Plaintiffs paycheck regularly did not reflect the actual amount of hours worked.

Disha Smith

59. Disha Smith began employment with Defendant Employer in October 28, 2013

60. Plaintiff worked as a server at a rate of \$2.13 per hour from October 28, 2013 until December of 2015.

61. Plaintiff was required to share tips with employees who do not customarily and regularly receive tips.

62. Plaintiff regularly had to work “off the clock” as she waited for a table to wait on.

63. Plaintiff was required to work during her break and lunch hour with compensation.

64. Plaintiffs paycheck regularly did not reflect the actual amount of hours worked.

**COUNT ONE: VIOLATIONS OF 29 U.S.C. § 211 AND § 516: COLLECTION OF DATA
AND RECORDS TO BE KEPT BY EMPLOYERS**

65. The previous paragraphs are re-alleged by the Plaintiffs as if fully set forth herein.

Eldina Elezovic

66. Plaintiff was regularly required to clock out and work through her lunch break.

67. Plaintiff was regularly not allowed to clock in until a customer arrived despite working her scheduled hours.

68. Plaintiff regularly worked “off the clock” for extended periods of time, awaiting a manager’s key card to be able to clock in.

69. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”

70. Defendant Employer has violated 29 U.S.C. § 516 and the FLSA by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

Zehra Elezovic

71. Plaintiff regularly worked “off the clock” as she completed her “side work”.

72. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”

73. Defendant Employer has violated 29 U.S.C. § 516 and the FLSA by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

Anissa Lauw

74. Plaintiff was regularly required to clock out and work through her lunch break.
75. Plaintiff was regularly not allowed to clock in until a customer arrived despite working her scheduled hours.
76. Plaintiff regularly worked “off the clock” for extended periods of time, awaiting a manager’s key card to be able to clock in.
77. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”
78. Defendant Employer has violated the FLSA by failing to maintain records of the hours Plaintiff worked.
79. Defendant Employer has violated 29 U.S.C. § 516 by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

Liliana Leahy

80. Plaintiff was regularly required to clock out and work through her lunch break.
81. Plaintiff was regularly not allowed to clock in until a customer arrived despite working her scheduled hours.
82. Plaintiff regularly worked “off the clock” for extended periods of time, awaiting a manager’s key card to be able to clock in.
83. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”
84. Defendant Employer has violated 29 U.S.C. § 516 and the FLSA by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

Emily Phillips

85. Plaintiff was regularly required to clock out and work through her lunch break.
86. Plaintiff was regularly not allowed to clock in until a customer arrived despite working her scheduled hours.
87. Plaintiff regularly worked “off the clock” for extended periods of time, awaiting a manager’s key card to be able to clock in.
88. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”
89. Defendant Employer has violated 29 U.S.C. § 516 and the FLSA by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

Disha Smith

90. Plaintiff was regularly required to clock out and work through her lunch break.
91. Plaintiff was regularly not allowed to clock in until a customer arrived despite working her scheduled hours.
92. Plaintiff regularly worked “off the clock” for extended periods of time, awaiting a manager’s key card to be able to clock in.
93. Defendant Employer did not adjust for and record the hours Plaintiff worked “off the clock.”
94. Defendant Employer has violated 29 U.S.C. § 516 and the FLSA by failing to maintain records of the hours Plaintiff worked each workday and total hours worked each workweek.

COUNT TWO: VIOLATION OF 29 U.S.C. § 206: MINIMUM WAGE

95. The previous paragraphs are re-alleged by the Plaintiffs as if fully set forth herein.

96. Plaintiffs were entitled to payment of minimum wage for all hours worked less than 40 hours per week.

97. Plaintiff were not exempt from the minimum wage requirement of the FLSA.

98. Defendant Employer has violated the FLSA by not paying the required minimum wage to Plaintiffs.

COUNT THREE: VIOLATION OF 29 U.S.C. § 203

99. The previous paragraphs are re-alleged by the Plaintiffs as if fully set forth herein.

100. Plaintiffs are required to contribute to a tip pool.

101. Defendant Employer's tip pool includes employees who do not customarily and regularly receive tips.

102. Defendant Employer has violated the FLSA by including non-tipped employees in the tip pool.

103. Defendant Employer's willful failure to comply with FLSA's record-keeping, minimum wage, and tip credit/pool requirements gives rise to a claim for relief by Plaintiffs in the amount of their unpaid minimum wages, as the case may be, and in an additional equal amount as liquidated damages, reasonable attorney's fees, compensatory and punitive damages, and costs of bringing this action.

WHEREFORE, Plaintiffs demand for the following relief:

- a) that Summons issue;
- b) that Defendant Employer be served with Summons and Complaint;

- c) that judgment be issued against Defendant Employer for any and all general, special, and where applicable, punitive damages as allowed by law under each and every count and cause of action contained in this Complaint;
- d) or injunctive relief;
- e) for all costs of this action to be taxed against Defendant Employer;
- f) for all costs and attorney's fees to be awarded to Plaintiff; and
- g) for any and all other further relief as this Court may deem just and equitable under the circumstances.

Respectfully submitted this 19th day of February, 2016.

s/Jonathan P. Sexton
Georgia Bar No. 636486
Attorney for Plaintiffs

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION**

1) COURTNIIE ARNOLD, individually and on)
behalf of all others similarly situated,)
)
Plaintiff,)
)
v.) Case No. 16-cv-328-GKF-PJC
)
1) GENGHIS GRILL) Judge: Frizzell
2) GENGHIS GRILL INTERNATIONAL, LLC,) Magistrate Judge: Cleary
3) GENGHIS GRILL FRANCHISE CONCEPTS, LP,)
4) CHALAK MITRAS GROUP, LLC,) <i>JURY TRIAL DEMANDED</i>
5) CMG GENERAL PARTNERS, LLC,)
6) CHALAK-M&M OK1, LLC,)
7) CHALAK-M&M OK2, LLC,)
8) CHALAK-M&M OK3, LLC,)
9) CHALAK-M&M OK4, LLC,)
10) AKASH BHAKTA,)
11) CHETAN BHAKTA,)
12) RONAK PARIKH,)
13) DOE DEFENDANTS 1-10,)
)
Defendants.)

COLLECTIVE ACTION COMPLAINT

Plaintiff Courtnie Arnold (“Plaintiff”), by her undersigned attorney, on her own behalf and on behalf of all others similarly situated, upon personal knowledge as to herself and her own acts, and upon information and belief as to all other matters, brings this putative collective action against all named Defendants, Genghis Grill, Genghis Grill International, LLC, Genghis Grill Franchise Concepts, LP, Chalak Mitras Group, LLC, CMG General Partners, LLC, Chalak-M&M OK1, LLC, Chalak-M&M OK2, LLC, Chalak-M&M OK3, LLC, Chalak-M&M OK4, LLC, Akash “Al” Bhakta, Chetan “Chet” Bhakta, Ronak Parikh, and Doe Defendants 1-10, (hereinafter collectively referred to as “Defendants”) as Defendants form a single enterprise that

acts as a unified entity for the purpose of owning, operating, managing, and/or controlling Genghis Grill restaurants, and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid wages, liquidated damages, attorneys' fees, costs, and interest under the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. § 216(b).

2. The FLSA was enacted "to protect all covered workers from substandard wages and oppressive working hours."

3. Under the FLSA, employers must pay all non-exempt employees a minimum wage of pay for all time spent working during their regular 40 hour workweeks.

4. The FLSA's definition of the term "wage," in turn, recognizes that under certain circumstances, an employer of tipped employees may credit a portion of its employees' tips against its minimum wage obligation, a practice commonly referred to as taking a "tip credit."

5. However, an employer may not take a "tip credit" when 1) employees are required to contribute to a tip pool that is distributed to other employees who do not regularly and customarily engaged in tipped work; 2) employees are required to perform job tasks unrelated to their tipped occupation; and/or 3) employees are required to spend a substantial amount of their time (20% or more) performing non-tipped job tasks that are related to their tipped occupation.

6. The FLSA further protects employees from "off-the-clock" work, *i.e.*, instances where an employer receives work from its employees without paying their employees' wages for the work performed and where such "off-the-clock" work reduces the employees' pay to a rate that is below that of the applicable minimum wage.

7. As alleged and described more fully below, Defendants violated the FLSA by requiring Plaintiff and others similarly situated to: 1) contribute to an unlawful tip pool, 2) work

“off-the-clock” for no pay which reduced their weekly pay below that of the applicable minimum wage; 3) perform non-tipped job tasks that were unrelated to their tipped occupation while only being paid the tipped minimum wage; and 4) perform non-tipped job tasks that were related to their tipped occupation for a substantial amount of time (20% or more) while only being paid the tipped minimum wage.

JURISDICTION AND VENUE

8. This Court has federal-question subject-matter jurisdiction pursuant to 29 U.S.C. §216(b) and 28 U.S.C. § 1331.

9. This Court has personal jurisdiction over all Defendants because Defendants act as a single enterprise and regularly and systematically conduct business in this District.

10. Upon information and belief, the various Defendants are only mere departments of other Defendants, and are under the complete control of some other Defendants.

11. Defendants exist as a group of interrelated corporate entities whose business is owning, operating, managing, and/or controlling Genghis Grill restaurants.

12. As the true corporate form of Defendants is a single enterprise, with more than \$500,000 in annual revenue, which regularly and systematically conducts business within this state, Defendants are properly haled before this Court.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants transact business within this District and some of the actions giving rise to Plaintiff’s injuries took place in this District.

THE PARTIES

14. Plaintiff Courtnie Arnold (“Plaintiff Arnold”) is an individual citizen of the State of Oklahoma. Plaintiff Arnold resides in Tulsa, Oklahoma.

15. Plaintiff Arnold has been employed by Defendants as a bartender and hourly manager at the Genghis Grill restaurant located at 10438 South 82nd East Avenue, Bixby, Oklahoma 74133 and 1619 East 15th Street, Tulsa, Oklahoma 74120, from on or about May 2015 through on or about November 2015.

16. Plaintiff Arnold, having worked at two locations, is familiar with the policies in place at the Bixby and Tulsa Genghis Grill locations.

17. Plaintiff Arnold is a covered employee within the meaning of the FLSA.

18. Plaintiff worked as a non-exempt employee of Defendants.

19. Upon information and belief, Defendant Genghis Grill is a collective conglomerate of the Defendants which owns, operates, controls, and/or manages all Genghis Grill locations.

20. Defendant Genghis Grill International, LLC is a Texas limited liability company with its principal place of business at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287. Defendant Genghis Grill International, LLC may be served through its registered agent, Akash Bhakta, at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287.

21. Defendant Genghis Grill Franchise Concepts, LP is a Texas limited partnership with a principal place of business at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287. Defendant Genghis Grill Franchise Concepts, LP may be served through its registered agent, Chetan Bhakta, at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287.

22. Defendant Chalak Mitras Group, LLC is a Texas limited liability company with a principal place of business at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287. Defendant Chalak Mitras Group, LLC may be served through its registered agent, Mr. Manish Patel, at 4901 LBJ Freeway, Suite 150, Dallas, TX 75244.

23. Defendant CMG General Partners, LLC is a Texas limited liability company with its principal place of business at 18900 Dallas Parkway, Suite 125, Dallas, Texas 75287. Defendant CMG General Partners, LLC may be served through its registered agent, Mr. Manish Patel, at 4901 LBJ Freeway, Suite 150, Dallas, TX 75244.

24. Defendant Chalak-M&M OK1, LLC is an Arkansas limited liability company with a principal place of business in Oklahoma. Defendant Chalak-M&M OK1, LLC may be served through its registered agent, Corporation Creations Network Inc., at 609 SW 8th Street, Suite 600, Bentonville, Arkansas 72712.

25. Defendant Chalak-M&M OK2, LLC is an Arkansas limited liability company with a principal place of business in Oklahoma. Defendant Chalak-M&M OK2, LLC may be served through its registered agent, Corporation Creations Network Inc., at 609 SW 8th Street, Suite 600, Bentonville, Arkansas 72712.

26. Defendant Chalak-M&M OK3, LLC is an Arkansas limited liability company with a principal place of business in Oklahoma. Defendant Chalak-M&M OK3, LLC may be served through its registered agent, Corporation Creations Network Inc., at 609 SW 8th Street, Suite 600, Bentonville, Arkansas 72712.

27. Defendant Chalak-M&M OK4, LLC is an Arkansas limited liability company with a principal place of business in Oklahoma. Defendant Chalak-M&M OK4, LLC may be served through its registered agent, Corporation Creations Network Inc., at 609 SW 8th Street, Suite 600, Bentonville, Arkansas 72712.

28. Defendant Akash Bhakta is, upon information and belief, an individual citizen of the state of Texas. Defendant Akash Bhakta is a founding member of the Chalak Mitra Group,

and currently serves in a variety of corporate positions within the Genghis Grill/Chalak Mitras enterprise.

29. Defendant Chetan Bhakta is, upon information and belief, an individual citizen of the state of Texas. Defendant Chetan Bhakta is a founding member of the Chalak Mitra Group, and currently serves in a variety of corporate positions within the Genghis Grill/Chalak Mitras enterprise.

30. Defendant Ronak Parikh is, upon information and belief, an individual citizen of the state of Texas. Defendant Ronak Parikh is a founding member of the Chalak Mitra Group, and currently serves in a variety of corporate positions within the Genghis Grill/Chalak Mitras enterprise.

31. Doe Defendants 1-10 may include other related entities discovered as discovery in this litigation progresses.

32. At all relevant times, Plaintiff Arnold was an “employee” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

33. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to Defendants.

34. At all relevant times, Defendants were and continue to be “employers” as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

35. Defendants individually and/or through an enterprise or agent directed and exercised control over Plaintiff Arnold’s work and wages at all times relevant to this action.

36. Plaintiff Arnold, in her work for Defendants, was employed by an enterprise engaged in commerce that had, upon information and belief, annual gross sales in excess of \$500,000.

FACTUAL ALLEGATIONS

37. Defendants own, operate, manage, and/or control Genghis Grill restaurants across the United States.

38. Plaintiff was hired by Defendants as a tipped employee, as defined by the FLSA, 29 U.S.C. § 203(t).

39. Despite this, Defendants did not pay Plaintiff Arnold the proper minimum wages for all of the time that she was suffered or permitted to work each workweek.

40. Plaintiff worked for Defendants between May 2015 and November 2015, when Plaintiff began working for another Tulsa restaurant chain. Defendants told Plaintiff that she could no longer work for Genghis Grill because she was taking a management position with another Tulsa restaurant chain.

41. During Plaintiff's employment, she worked at two different Genghis Grill locations – Tulsa and Bixby, both located in Tulsa, Oklahoma. Plaintiff was subject to and observed the same policies and practices at both locations.

42. Consistent with their enterprise-wide policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

DEFENDANTS' TIP POOL VIOLATIONS

43. Defendants required Plaintiff to contribute to a tip pool.

44. Specifically, Defendants mandated that 4 percent of the tips earned by Plaintiff were to be contributed to the tip pool and paid to other Genghis Grill employees.

45. The tip pool which Plaintiff contributed to, as required by Defendants, included employees who do not customarily and regularly receive tips, despite the scope of the definition of "tipped employee" from 29 U.S.C. § 203(t), and in willful violation of the FLSA, 29 U.S.C. § 206(a).

46. As a result of Defendants' violation of 29 U.S.C. § 206(a), Defendants are disallowed from taking a tip credit from its tipped employees' hourly wages.

47. Accordingly, Plaintiff should have been paid the full hourly minimum wage with no tip-credit reduction, \$7.25 per hour.

48. However, as alleged above, Defendants regularly and consistently paid Plaintiff at the tip-credit minimum wage, only \$3.63 per hour.

49. Plaintiff is therefore entitled to the difference between the full minimum hourly wage rate and the wage rate paid for all hours Plaintiff worked (\$3.62 per hour) and, additionally, the amount of all tips contributed to the illegal tip pool.

50. Plaintiff was subject to and observed tip pool violations at both Tulsa Genghis Grill locations.

DEFENDANTS' TIP-CREDIT VIOLATIONS

51. Plaintiff was also paid the tipped wage rate for time spent working before the location was open and after the location was closed, performing tasks that were not related to earning tips, at times when Plaintiff could not earn tips.

52. Defendants engaged in the regular practice of requiring Plaintiff to perform a substantial amount of non-tipped labor.

53. Plaintiff was required to engage in non-tipped labor unrelated to her tipped occupation over the course of her regular workweeks.

54. Further, Plaintiff was required to engage in non-tipped labor related to her tipped occupation.

55. To the extent such non-tipped labor was related to her tipped occupation, it exceed 20% of her regular workweek.

56. Examples of non-tipped labor unrelated to Plaintiff's tipped occupation that Plaintiff performed during her regular workweeks include, but are not limited to: preparatory and workplace maintenance tasks such as taking out trash, scrubbing walls, sweeping floors, cleaning booths, sweeping, mopping, washing dishes, breaking down and cleaning the expeditor line, and restocking restrooms.

57. Non-tipped labor related to Plaintiff's tipped occupation included, but is not limited to: preparatory and workplace maintenance tasks such as brewing tea, brewing coffee, rolling silverware, cleaning soft drink dispensers, wiping down tables, setting tables, busing tables, cutting and stocking fruit, stocking ice, taking out trash, scrubbing walls, sweeping floors, restocking to-go supplies, cleaning booths, cleaning ramekins, sweeping, mopping, restocking all stations, washing dishes, and breaking down and cleaning the expeditor line.

58. As a result of Defendants' willful requirement that Plaintiff perform non-tipped labor unrelated to her tipped occupation over the course of her regular workweeks and a substantial amount of non-tipped labor related to her tipped occupation in excess of 20% of her regular workweeks, Defendants effectively paid Plaintiff less than the applicable overall minimum wage for such work.

59. Although Plaintiff Arnold should have been paid the full minimum wage, as stated above, Defendants paid her an hourly rate that fell below the minimum wage to which she was entitled, in violation of the FLSA.

60. Defendants knew that – or acted with reckless disregard as to whether – their failure to pay Plaintiff the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law,

and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

61. Upon information and belief, Plaintiff Arnold was paid less than minimum wage on a weekly basis, for multiple workweeks.

62. Plaintiff believes and avers that Defendants owe her unpaid wages for each and every workweek during which she was employed by Defendants. Furthermore, as Defendants have failed to keep complete and accurate time records, Plaintiff may establish the hours worked by her testimony and the burden of overcoming such testimony shifts to Defendants.

63. Finally, Plaintiff was subject to and observed tip credit violations at both Tulsa Genghis Grill locations.

DEFENDANTS' STRAIGHT TIME MINIMUM WAGE VIOLATIONS

64. Defendants also regularly and consistently required Plaintiff Arnold to "clock out" yet continue to perform non-tip-earning duties and/or remain on the premises in order to avoid incurring excessive and/or overtime labor costs, in willful violation of the FLSA.

65. As a result, Defendants failed to compensate Plaintiff Arnold minimum wage for all hours worked, in violation of 29 U.S.C. § 206(a).

66. From approximately May 2015 to November 2015, Plaintiff was regularly and consistently required to perform "off-the-clock" work approximately two hours per shift while "off-the-clock."

67. For example, at least, each Sunday Plaintiff had to work "off-the-clock" for approximately two hours after the restaurant closed.

68. Defendants engaged in the regular practice of willfully failing to pay Plaintiff for all time that Plaintiff worked while "off-the-clock."

69. Defendants engaged in the regular practice of failing to accurately, if at all, record the time during which Defendants suffered or permitted Plaintiff to work.

70. As such, Plaintiff's time records, if in existence, understate the duration of time each workweek that Defendants suffered or permitted Plaintiff to work.

71. Defendants utilized an online/electronic system for providing access to Plaintiff's paycheck stubs.

72. After Plaintiff's employment with Defendants ended, Defendants terminated Plaintiff's ability to access her paycheck stubs.

73. This action effectively prevents Plaintiff from pinpointing exact hours worked during specific weeks, and whether or not Plaintiff was properly paid for a given workweek.

74. Due to the allegations set forth above, Defendants failed to furnish Plaintiff Arnold with accurate statements of wages, hours worked, rates paid, gross wages, and the claimed tip allowance.

75. Plaintiff was subjected to and observed minimum wage violations at both Tulsa Genghis Grill locations.

SUMMARY OF DEFENDANTS' ALLEGED VIOLATIONS

76. Plaintiff alleges four different violations of the FLSA by Defendants.

77. Plaintiff believes and avers that Defendants owe her unpaid wages for each and every workweek during which she was employed by Defendant because Defendants violated the FLSA by requiring Plaintiff and others similarly situated to: 1) contribute to an unlawful tip pool, 2) work "off-the-clock" for no pay which reduced their weekly pay below that of the applicable minimum wage; 3) perform non-tipped job tasks that were unrelated to their tipped occupation while only being paid the tipped minimum wage; and 4) perform non-tipped job tasks that were

related to their tipped occupation for a substantial amount of time (20% or more) while only being paid the tipped minimum wage.

78. Plaintiff was subject to the same company-wide policies and practices and same FLSA violations at 2 separate Genghis Grill locations, even though the locations were “separate” limited liability companies.

79. Additionally, other Genghis Grill restaurants operate using the same company-wide policies and practices, as similar lawsuits have been filed in Arizona, Georgia, Texas, and Arkansas.¹

80. These allegations further show the overarching, nationwide minimum wage policies and practices that are endemic to the entire Genghis Grill enterprise and have harmed all similarly situated employees of Genghis Grill.

COLLECTIVE CLASS ACTION ALLEGATIONS

81. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) and Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of herself and a two FLSA Collective Classes and on Rule 23 Subclass, encompassing persons similarly situated to plaintiff and seeking relief, and defined as:

The FLSA Tip-Credit Collective Class

All current and former workers employed by Defendants who were paid at a sub-minimum wage rate or had to contribute to a tip pool within three years preceding the date of conditional certification of this action through final judgment in this matter, and who elect to opt into this action;

¹ *Collins v. Chalak-MMT PV LLC et al*, Case No. 2:15-cv-02158 (D. Ariz.); *Elezovic et al v. Chalak-Carroll Buford, LLC*, Case No. 1:16-cv-00532 (N.D. Ga.); *Fulton v. Chalak Restaurants, Inc. et al*, Case No. 5:09-cv-00673 (W.D. Tex.); and *Israsena et al v. Chalak M&M AR1 LLC et al*, Case No. 4:15-cv-00038 (E.D. Ark.).

The FLSA Minimum Wage Collective Class

All current and former non-exempt hourly paid employees who were required to work “off-the-clock and therefore were not properly paid minimum wage for all hours worked in a workweek within three years preceding the date of conditional certification of this action through final judgment in this matter, and who elect to opt into this action;

The Oklahoma Rule 23 Subclass

All current and former hourly-paid, non-exempt employees who provided labor to Defendants, were not paid or were underpaid by Defendants for this labor, and because of the circumstances created by Defendants payment policies and practices, Defendants retention of the benefit conferred by the Oklahoma Rule 23 Subclass members would be unjust.

The FLSA Tip-Credit Collective Class and The FLSA Minimum Wage Collective Class are collectively referred to herein as the “Classes,” unless otherwise indicated. The Oklahoma Rule 23 Subclass is referred to as the “Subclass” unless otherwise indicated. Plaintiff reserves the right to add, amend, modify, or further define the Classes or Subclass and/or to move for certification of a class or classes defined differently than set forth above depending on the facts or law as discovered in this action.

82. Plaintiff asserts claims against Defendants individually and on behalf of all Class members for violations of the law as set forth below.

83. The members of the Classes are ascertainable from objective criteria.

84. If necessary to preserve the case as a collective or class action, the Court itself can redefine the Classes, create additional subclasses, or both.

85. The requirements of Rule 23(a) are satisfied for the proposed classes because the members of the proposed classes are so numerous and geographically dispersed that joinder of all its members is impracticable.

86. Upon information and belief there are more than 50 Subclass members.

87. Therefore, the “numerosity” requirement of Rule 23(a)(1) is met.

88. The commonality requirement of Rule 23(a)(2) is satisfied because there are questions of law or fact common to Plaintiff and the other members of the proposed Subclass that predominate over questions affecting only individual members of Subclass. Among those common questions of law or fact are, but are not limited to, the following:

- a. whether Plaintiff and Subclass members provided labor to Defendants for which Plaintiff and Subclass members were unpaid or underpaid;
- b. whether Defendants received a benefit from not paying or underpaying Plaintiff and Subclass members for time that Plaintiff and Subclass members were working;
- c. whether there were common conditions and circumstances that would make it unjust for Defendants to retain the benefit without paying Plaintiff and Subclass members for the benefit they conferred;
- d. whether Defendants are guilty of unjust enrichment;
- e. whether Defendants made unlawful deductions from wages paid to Plaintiff and Subclass Members; and
- f. whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the Subclass Members, and other records required by law.

89. Plaintiff's claims are typical of the claims of the proposed classes that she seeks to represent, as described above, because they arise from the same course of conduct and policies and procedures of Defendants and are based on the same legal theories. Further, Plaintiff has sustained legal injuries arising from Defendants' conduct, as alleged herein, and Plaintiff seeks the same forms of relief for herself and the proposed classes. Therefore, the "typicality" requirement of Rule 23(a)(3) is satisfied.

90. Because her claims are typical of the proposed classes that Plaintiff seeks to represent, Plaintiff has every incentive to pursue those claims vigorously. Plaintiff has no conflicts with, or interests antagonistic to, the proposed classes. Plaintiff, a victim of Defendants' unlawful pay practices and unjust conduct, is committed to the vigorous prosecution of this

action, which is reflected in their retention of competent counsel experienced in complex and challenging litigation.

91. Plaintiff's counsel satisfies the requirements of Rule 23(g) to serve as counsel for the proposed class. Plaintiff's counsel (a) has identified and thoroughly investigated the claims set forth herein, (b) has been in the past, and is currently, involved in complex wage-and-hour litigation; (c) has extensive knowledge of the applicable law; and (d) is committed to the vigorous prosecution of this action on behalf of the proposed class. Accordingly, Plaintiff satisfies the adequacy of representation requirements of Rule 23(a)(4).

92. In addition, this action meets the requirements of Rule 23(b)(2). Defendants have acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed classes, making declaratory relief with respect to the proposed classes appropriate.

93. This action also meets the requirements of Rule 23(b)(3). Common questions of law or fact, including those set forth above, exist as to the claims of all members of the proposed classes and predominate over questions affecting only individual class members, and a class action is the superior method – if not the only method – for the fair and efficient adjudication of this controversy.

94. Additionally, Collective Class treatment will permit large numbers of similarly-situated non-exempt hourly and tipped workers to prosecute their respective claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce.

95. Further, by prosecuting this case as a collective class action, collective class members, who may be current employees of Defendants', may receive just compensation for the

work performed for Defendants without fear of retaliation for seeking just compensation individually.

96. Moreover, notice may be provided to members of the proposed class by including notice with each potential class members paycheck stub, first-class mail to addresses maintained for each employee by Defendants, and through the alternative means, including electronic mail (email), social network posting (*i.e.*, Facebook posts), and job-site postings.

97. Finally, the collective and class action is an appropriate method for the fair and efficient adjudication of this controversy given the following:

- a. all putative class and subclass members are “similarly situated,” in that, at least, Defendants utilized a company-wide compensation policy and practice whereby tipped workers were paid the tipped minimum wage for all hours worked regardless of the duties performed or the ability to earn tips, tipped-workers have to contribute to an illegal tip pool, and workers are forced to work “off-the-clock” and are not paid, resulting in Defendants failure to pay minimum wage for all hours worked in a workweek. Plaintiff Arnold saw the same policy and practice enforced at both the Tulsa and Bixby Genghis Grill locations even though there were different managers at each store;
- b. common questions of fact and law predominate over any individual questions that may arise, such that the class action mechanism is superior to other available means for the fair and efficient adjudication of this dispute;
- c. there will be enormous economies to the Court and the parties in litigating the common issues in a class action instead of individual claims;
- d. class treatment is required for optimal resolution of this matter and for limiting the court-awarded reasonable legal expenses incurred by class members;
- e. if the size of individual class members’ claims are small, their aggregate volume, coupled with the economies of scale in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with the cost of individual litigation; and

- f. the trial of this case as a class action will be fair and efficient because the questions of law and fact which are common to the Plaintiff, the FLSA Tip-Credit Collective Class, The FLSA Minimum Wage Collective Class, and the Subclasses predominate over any individual issues that may arise.

CLAIMS FOR RELIEF

COUNT I

ON BEHALF OF THE FLSA TIP-CREDIT COLLECTIVE CLASS FAIR LABOR STANDARDS ACT – ILLEGAL TIP POOLING ARRANGEMENT

98. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

99. Defendants required Plaintiff and members of the FLSA Tip-Credit Collective Class to participate in a tip-pooling arrangement wherein Plaintiff and members of the FLSA Tip-Credit Collective Class were required to contribute to a tip pool that included employees who do not customarily and regularly receive tips, despite the scope of the definition of “tipped employee” contained within 29 U.S.C. § 203(m), and in willful violation of the FLSA, 29 U.S.C. 206(a).

100. Plaintiff and members of the FLSA Tip-Credit Collective Class were paid at the tip-credit minimum wage.

101. Each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class worked for Defendants, Plaintiff and members of the FLSA Tip-Credit Collective Class were required to distribute a portion of their earned tips to back-of-the-house, non-tipped employees, in violation of 29 U.S.C. § 203(m).

102. As a result of Defendants requirement that Plaintiff and members of the FLSA Tip-Credit Collective Class participate in an illegal tip pooling arrangement, Defendants are

disallowed entirely from taking a tip credit from its tipped employees' hourly wages, including Plaintiff and the members of the FLSA Tip-Credit Collective Class.

103. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to the difference between the full minimum hourly wage rate and the wage rate paid for all hours Plaintiff and members of the FLSA Tip-Credit Collective Class worked and, additionally, the amount of all tips Plaintiff and members of the FLSA Tip-Credit Collective Class contributed to the illegal tip pool.

104. Defendants have willfully violated the FLSA by not paying proper wages to Plaintiff and members of the FLSA Tip-Credit Collective Class, and, upon information and belief, continue to willfully violate the FLSA by not paying proper wages to FLSA Tip-Credit Collective Class members.

105. Due to Defendants' companywide illegal wage practices, Plaintiff and members of the FLSA Tip-Credit Collective Class are entitled to recover from Defendants compensation for the difference between the full minimum hourly wage and the tip-credit minimum wage for all hours worked for Defendants, the amount of all tips contributed to the illegal tip pool, and additional equal amount as liquidated damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

COUNT II

ON BEHALF OF THE FLSA MINIMUM WAGE COLLECTIVE CLASS FAILURE TO PAY MINIMUM WAGES UNDER THE FAIR LABOR STANDARDS ACT

106. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

107. Defendants regularly and consistently required Plaintiff and members of the FLSA Minimum Wage Collective Class to clock out, yet continue to perform non-tip-earning duties and/or remain on the restaurant premises in order to avoid incurring excessive and/or overtime labor costs.

108. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Minimum Wage Collective Class minimum wage according to the provisions of the FLSA for each and every workweek that Plaintiff and members of the FLSA Minimum Wage Collective Class worked for Defendant, for the duration of their employment, in violations of 29 U.S.C. § 206(a).

109. As a result of Defendants' willful failure to compensate Plaintiff and members of the FLSA Minimum Wage Collective Class the applicable minimum wage for all hours worked, Defendants violated the FLSA.

110. As such, full minimum wage is owed to Plaintiff and members of the FLSA Minimum Wage Collective Class for time Plaintiff and members of the FLSA Minimum Wage Collective Class were suffered or permitted to work "off-the-clock."

111. Defendants knew that – or acted with reckless disregard as to whether their failure to pay to Plaintiff and members of the FLSA Minimum Wage Collective Class the full minimum wage for time spent performing non-tipped labor and/or requiring Plaintiff and members of the FLSA Minimum Wage Collective Class to remain on restaurant premises would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and other similarly situated FLSA Minimum Wage Collective Class members' employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

112. Defendants have willfully violated the FLSA by failing to pay Plaintiff and members of the FLSA Minimum Wage Collective Class a wage equal to or greater than minimum wage for time Defendants required Plaintiff and members of the FLSA Minimum Wage Collective Class to perform non-tipped labor and/or remain on the premises while “off-the-clock,” and Defendants continue to willfully violate the FLSA by requiring FLSA Minimum Collective Class members to perform non-tipped labor and/or remain on the premises while “off-the-clock.”

113. Plaintiff and members of the FLSA Minimum Wage Collective Class are therefore entitled to compensation for the difference between wages paid and the minimum wage at an hourly rate to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, costs, and reasonable attorney’s fees.

COUNT III

ON BEHALF OF THE FLSA TIP CREDIT COLLECTIVE CLASS FLSA TIP CREDIT VIOLATION – NON-TIPPED LABOR UNRELATED TO TIPPED WORK

114. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

115. Defendants intentionally failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook § 30d00(e) by requiring Plaintiff and members of the FLSA Tip-Credit Collective Class in a given workweek, and during each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, to perform non-tipped labor unrelated to her tipped occupation over the house of her regular workweek, while paying Plaintiff and members of the FLSA Tip-Credit Collective Class at the tip-credit rate.

116. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage according to the provisions of the FLSA for time spent performing non-tipped labor unrelated to the tipped occupation over the course of a given workweek, for each and every workweek that Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, in violation of 29 U.S.C. § 206(a).

117. As such, full applicable minimum wage for such time Plaintiff and members of the FLSA Tip-Credit Collective Class performed non-tipped labor unrelated to the tipped occupation over the course of the regular workweek is owed to Plaintiff and members of the FLSA Tip-Credit Collective Class for each and every workweek they were employed by Defendants.

118. Defendants knew that – or acted with reckless disregard as to whether – its failure to pay to Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff's and FLSA Tip-Credit Collective Class members' employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.

119. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

COUNT IV

**ON BEHALF OF THE FLSA TIP-CREDIT COLLECTIVE CLASS
FLSA TIP CREDIT VIOLATION – NON-TIPPED LABOR RELATED
TO TIPPED WORK IN EXCESS OF 20% OF WORKTIME**

120. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

121. Defendants intentionally failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook §30d00(e) by requiring Plaintiff and members of the FLSA Tip-Credit Collective Class in a given workweek, and during each and every workweek Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, to perform non-tipped labor related to their tipped occupation in excess of twenty percent (20%) of their regular 40-hour workweek, while paying Plaintiff and members of the FLSA Tip-Credit Collective Class at the tip credit rate.

122. Defendants intentionally failed and/or refused to pay Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage according to the provisions of the FLSA for time spent performing non-tipped labor related to the tipped occupation in excess of twenty percent (20%) of a given workweek, for each and every workweek that Plaintiff and members of the FLSA Tip-Credit Collective Class were employed by Defendants, in violation of 29 U.S.C. § 206(a).

123. As such, full applicable minimum wage for such time Plaintiff and members of the FLSA Tip-Credit Collective Class performed non-tipped labor related to the tipped occupation in excess of twenty percent (20%) of the regular workweek is owed to Plaintiff and

members of the FLSA Tip-Credit Collective Class for each and every workweek they were employed by Defendants.

124. Defendants knew that – or acted with reckless disregard as to whether – its failure to pay to Plaintiff and members of the FLSA Tip-Credit Collective Class the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such a non-tipped occupation, would violate federal and state law, and Defendants were aware of the FLSA minimum wage requirements during Plaintiff’s and FLSA Tip-Credit Collective Class members’ employment. As such, Defendants’ conduct constitutes a willful violation of the FLSA.

125. Plaintiff and members of the FLSA Tip-Credit Collective Class are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney’s fees, and costs.

COUNT V

ON BEHALF OF THE OKLAHOMA RULE 23 SUBCLASS UNJUST ENRICHMENT

126. Plaintiff incorporates by reference all allegations in all preceding paragraphs as is fully set forth herein.

127. Plaintiff, Subclass Members, and all similarly-situated employees, by virtue of providing free labor, have conferred a benefit on Defendants.

128. Defendants have appreciated the benefit conferred by Plaintiff, Subclass Members, and all those similarly situated, by being able to operate their business and provide their services without having to pay for certain integral portions of its labor force’s work-time.

129. At least, Defendants use tipped workers making less than minimum wage to fill positions that should be staffed by full minimum wage workers and benefit from having Plaintiff, Subclass Members, and all those similarly situated work off the clock.

130. Defendants have retained this benefit by failing to adequately compensate Plaintiff and others similarly situated for their labor and for continuing to operate its business without compensating employees similarly situated to Plaintiff.

131. Defendants have been able to retain this benefit by maintaining its current business model and its current pay scheme.

132. Under the circumstances set forth above, Defendants retaining the benefit conferred, in the form of free and reduced rate labor, is unjust and inequitable.

133. Plaintiff, Subclass Members, and all those similarly situated have an absence of remedies at law.

134. Because Defendants obtained this benefit at the expense of Plaintiff and Subclass Members through unlawful and inequitable conduct, Defendants are obligated to disgorge back to Plaintiff and Subclass Members all amounts by which Defendants have been unjustly enriched at Plaintiff and Subclass Members expense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, pray for relief as follows:

- A. an order from the Court certifying the FLSA Tip-Credit Collective Class and the FLSA Minimum Wage Collective Class identified herein as an FLSA collective action;
- B. an order from the Court certifying the Oklahoma Rule 23 Subclass as a Rule 23 class action;

- C. an order from the Court awarding Plaintiff and Class members their unpaid wages in an amount to be proven at trial;
- D. an order from the Court awarding Plaintiff and Class and Subclass members compensatory damages in an amount to be proven at trial;
- E. an order from the Court awarding Plaintiff and Class and Subclass members liquidated damages in an amount set by applicable law and to be proven at trial;
- F. an order from the Court directing Defendants to disgorge back to Plaintiff and Subclass Members all amounts by which Defendants have been enriched by unlawful and inequitable conduct, in an amount to be proven at trial;
- G. an order from the Court awarding Plaintiff and Class and Subclass members pre-judgment and post-judgment interest, as well as reasonable attorneys' and expert-witness fees and other costs as may be available under law; and
- H. an order from the Court awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable.

Dated: June 2, 2016

Respectfully submitted,

/s/ A. Daniel Woska

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**ATTORNEYS FOR PLAINTIFF
COURTNIE ARNOLD, individually and
on behalf of all other similarly situated**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
AUG 17 2009
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

MEGAN FULTON, on Behalf of Herself
and Others Similarly Situated,

Plaintiffs,

v.

CHALAK RESTAURANTS, INC. and
YASHVEER RESTAURANTS, LLC.

Defendants.

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CASE NO. _____

SA09CA0673

OG

JURY DEMANDED

COLLECTIVE ACTION

ORIGINAL COMPLAINT

SUMMARY

1. This is a collective action to recover unpaid minimum wages owed to servers employed by Chalak Restaurants, Inc. (Chalak) and Yashveer Restaurants, LLC (Yashveer) (collectively, Genghis Grill). Genghis Grill violates the Fair Labor Standards Act (FLSA) by paying its servers less than the minimum wage. Further, Genghis Grill is not entitled to rely on the tip credit provisions of the FLSA.

JURISDICTION AND VENUE

2. This Court has subject matter under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper in the Western District of Texas, San Antonio Division, because all, or a substantial part, of the acts and conduct charged herein occurred in this district.

THE PARTIES

4. Chalak is a domestic corporation that operates a chain of restaurants known as Genghis Grill. It advertises for, receives applications from, interviews and hires employees at Genghis Grill's locations across Texas and elsewhere. Chalak's policies and procedures apply at all Genghis Grill locations, including its policies related to the payment of wages and handling of employee tips. Chalak trains the management-level employees at Genghis Grill on these policies. Chalak's annual gross volume of sales exceeds \$500,000. Further, its employees handle and sell goods (such as food and beverages) that have been moved in or been produced for commerce. Chalak's registered agent for service of process is: Akash Bhakta, 5049 Stanely Drive, The Colony, Texas 75056.

5. Yashveer is a domestic company that owns one or more Genghis Grill locations in Texas. Together with Chalak, Yashveer operates the Genghis Grill locations in San Antonio, Texas. Yashveer's annual gross volume of sales exceeds \$500,000 and its employees handle and sell goods (such as food and beverages) that have been moved in or been produced for commerce. Yashveer's registered agent for the service of process is: Ketan R. Bhakta, 2527 Concan St., San Antonio, Texas 78251.

6. Megan Fulton ("Fulton" or "Plaintiff") is an individual who resides in San Antonio, Texas. Fulton worked at Genghis Grill in the past three years. Fulton's consent to participate in this collective action is attached hereto as Exhibit "1".

7. The class of similarly situated employees consists of all servers employed by Genghis Grill at any time in the past three years. These similarly situated persons are referred to as "the Class."

THE FACTS

8. Genghis Grill employed Fulton as a server and paid her less than the federal minimum wage. Therefore, Genghis Grill violated the FLSA's minimum wage provision.

9. Genghis Grill cannot claim a tip credit for tips Fulton received from the Genghis Grill customers. Genghis Grill cannot establish it complied with the tip credit provisions of Section 203(m). *See* 29 U.S.C. § 203(m). For example, Genghis Grill required Plaintiff and the Class to give up a portion of their tips.

10. Genghis Grill knew, or showed reckless disregard for whether, its practices violated the minimum wage provisions of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

11. Genghis Grill employed other servers who performed job duties similar to those performed by Fulton, such as serving food and drinks to customers.

12. Like Fulton, Genghis Grill paid these workers less than the minimum wage.

13. Genghis Grill is not entitled to a tip credit for any of its servers because it cannot meet the requirements of Section 203(m).

14. Like Fulton, these similarly situated workers are entitled to recover their unpaid minimum wages. Therefore, notice is appropriately sent to:

"All servers employed by Genghis Grill in the past three years."

CAUSES OF ACTION

15. Plaintiff incorporates the allegations in the preceding paragraphs.

16. By paying its servers at a rate below the minimum wage, Genghis Grill violated the FLSA. Therefore, Fulton and the Class are entitled to the minimum wage for each hour worked.

17. Fulton and the Class are also entitled to an amount equal to all of their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action.

JURY DEMAND

18. Fulton demands a trial by jury.

PRAYER

Fulton respectfully requests judgment against the defendants, jointly and severally, awarding her and the Class:

- a. the difference between the amount paid and the minimum wage for each hour worked;
- b. an equal amount as liquidated damages;
- c. reasonable attorneys' fees, costs, and expenses of this action; and
- d. such other and further relief as may be required by law.

Respectfully submitted,

DEBES LAW FIRM



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COUNSEL FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**ANDREW ISRASENA, KAYONA LANGSTON,
CHAUNCEY DURHAM, JAMUSON SCOTT,
BRITTANY GOODWIN and BARBARA
BLACKFORD, individually and on behalf of
all others similarly situated**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

~~JAN 15 2015~~

JAMES W. McORMACK, CLERK
By: _____
DEP. CLERK

PLAINTIFFS:

v.

CASE NO. 4:15cv38-JLH

**CHALAK-M&M AR1, LLC;
CHALAK-M&M AR2, LLC; and
CHALAK-M&M, LLC**

This case assigned to District Judge _____
and to Magistrate Judge W. J. [Signature]

DEFENDANTS

COLLECTIVE ACTION COMPLAINT

Comes now Plaintiffs Andrew Israsena, Kayona Langston, Chauncey Durham, Jamuson Scott, Brittany Goodwin, and Barbara Blackford, and for their Collective Action Complaint against Defendants Chalak-M&M, LLC; Chalak-M&M AR1, LLC; and Chalak-M&M AR2, LLC (collectively “Genghis” or “Genghis Grill”), state:

I. INTRODUCTION

1. This is a collective-action lawsuit for minimum wage violations. Plaintiffs Andrew Israsena, Kayona Langston, Chauncey Durham, Jamuson Scott, Brittany Goodwin, and Barbara Blackford, are current or former servers at the Little Rock location of a franchised restaurant called Genghis Grill. Servers at the location are required to pay a kickback of 4% of their gross sales into a pool at the end of each shift. Instead of distributing the funds from the pool to other tipped employees, the

II. JURISDICTION, VENUE, AND PARTIES

4. Plaintiff Andrew Israsena is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server and

host at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Israsena was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "1" to this complaint.

5. Plaintiff Kayona Langston is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Langston was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit “2” to this complaint.

6. Plaintiff Jamuson Scott is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Scott was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "3" to this complaint.

7. Plaintiff Eric Durham is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Durham was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "4" to this complaint.

8. Plaintiff Brittany Goodwin is a resident of Bauxite, Saline County, Arkansas, and she is a citizen of the state of Arkansas. She was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Blackford was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. Her consent to join this action is attached as Exhibit "5" to this complaint.

9. Plaintiff Barbara Blackford is a resident of Conway, Faulkner County, Arkansas, and she is a citizen of the state of Arkansas. She was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Blackford was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. Her consent to join this action is attached as Exhibit “6” to this complaint.

10. Defendant Chalak-M&M AR1, LLC ("Chalak 1"), is a limited liability company formed in 2009 under the laws of the State of Arkansas. Upon information and belief, Chalak 1 was formed to assist with the operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak 1 was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak 1 is an "employer" of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak 1 can be served through its registered agent, Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

11. Defendant Chalak-M&M AR2, LLC ("Chalak 2"), is a limited liability company formed in 2009 under the laws of the State of Arkansas. Upon information and belief, Chalak 2 was formed to assist with the operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak 2 was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak 2 is an "employer" of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak 2 can be served through its registered agent, Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

12. Defendant Chalak-M&M, LLC (“Chalak”) is a limited liability company formed in 2012 under the laws of the State of Arkansas. Upon information and belief, Chalak was formed to assist with operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak is an “employer” of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak can be served through its registered agent, Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

13. At all times herein, Defendants constituted a joint enterprise pursuant to 29 U.S.C. § 203(r). The Defendants' joint enterprise will be referred to as "Genghis Grill" throughout this Complaint.

14. At all times herein, Defendants constituted a single-integrated enterprise and are jointly and severally liable for any violations of the Fair Labor Standards Act committed by any one of them.

15. At all times material herein, Plaintiffs and all similarly-situated employees have been entitled to the rights, protection and benefits provided under the FLSA, as amended, 29 U.S.C. § 201, *et seq.*

16. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1337; and 29 U.S.C. §§ 216(b), 217.

17. This Court is empowered to issue a declaratory judgment under the Declaratory Judgment Statute, 28 U.S.C. §§ 2201 and 2202.

18. Venue lies within this District pursuant to 28 U.S.C. § 1391.

III. FACTUAL ALLEGATIONS

19. Genghis Grill is a franchised restaurant chain with locations in twenty-four states. It has two locations in Arkansas: one in Little Rock and one in Rogers.

20. Defendants operate, control, and do business at Genghis Grill's Little Rock location supplying patrons with food and beverages.

21. Plaintiffs and the other similarly-situated employees comprising the FLSA Class are, or were, employed as servers at Genghis Grill's Little Rock location.

22. Genghis Grill pays its servers less than the minimum wage of \$7.25 per hour. For example, Genghis Grill paid each named plaintiff \$2.63 per-hour.

23. Instead of paying the required minimum wage, Genghis Grill takes advantage of the tip credit allowed by 29 U.S.C. § 203(m).

24. Though Genghis Grill takes advantage of the FLSA's tip credit provision, it does not allow its servers to keep all of the tips they receive. Rather, Genghis Grill requires its servers to enter into a tip-pooling agreement as a condition of employment.

25. At the end of a shift, Genghis Grill requires its servers to print a receipt which lists the amount of sales charged to each server.

26. The receipt automatically calculates a “Tipshare” of a certain percentage of sales, which the server is required to kick back to the restaurant. Servers were required to contribute 4% of sales into the tip share.

27. In addition to the “tipshare,” servers are required to pay for the meals of customers who walk out without paying for their meal.

28. Upon information and belief, Genghis Grill retains the tipshare funds, distributes tipshare funds to ineligible employees (such as cooks, dishwashers, and supervisors), or some combination of the two.

29. As a result, Genghis Grill's tip pool does not satisfy the requirements of the Fair Labor Standards Act, and Genghis Grill is not eligible to take the tip credit. Plaintiffs and all other similarly-situated employees are entitled to the return of his or her tips and wages and compensation based on the standard minimum wage for all hours worked.

30. As with its illegal tip-pooling scheme, Genghis Grill takes advantage of the FLSA's tip credit provision in instances where its servers spend a substantial amount of time or an entire shift engaged in non-tip producing duties.

31. It is Genghis Grill's policy to not pay its servers the legally required minimum wage even though the servers are performing duties unrelated to their tipped jobs.

32. Instead, Genghis Grill pays its servers subminimum wage rates and requires them to perform non-tip producing duties such as general preparation work and janitorial maintenance.

33. For example, Genghis Grill has held what it calls “Deep Clean Sundays” where it paid Plaintiffs and other servers only \$2.63 per hour even though they spent an entire shift cleaning and were otherwise engaged in non-tip producing duties.

34. Under such circumstances, Genghis Grill cannot meet the FLSA's tip credit requirements as codified at 29 U.S.C. § 203(m).

35. Therefore, Genghis Grill cannot take a tip credit against the minimum wage owed to its servers. Its servers are entitled to at least \$7.25 for each hour worked.

IV. COLLECTIVE ACTION ALLEGATIONS

36. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

37. Plaintiffs bring their FLSA collective action claims on behalf of themselves and all others similarly situated pursuant to 29 U.S.C. §§ 207 and 216(b), specifically, as follows:

All Genghis Grill employees who were employed as servers within the past three years at the Genghis Grill restaurant in Little Rock, Arkansas.

38. Plaintiffs reserve the right to modify or amend the proposed class definition subject to additional information gained through further investigation and discovery.

39. There are numerous similarly situated current and former servers who work or worked at Genghis Grill's Little Rock restaurant who would benefit from the issuance of Court-supervised notice of the instant lawsuit and the opportunity to join in the present lawsuit. Similarly situated employees are known to Genghis Grill and readily identifiable through payroll records.

40. There are questions of law and fact common to Plaintiffs and others similarly situated, which predominate over any questions affecting individual members only. These factual and legal questions include:

- a. Whether Plaintiffs and others similarly situated had their tips taken pursuant to a tip-pooling agreement;
- b. Whether Plaintiffs and others similarly situated had their tips given to employees that do not customarily and regularly receive tips such as kitchen staff;
- c. Whether Plaintiffs and others similarly situated were paid minimum wage in instances where they spent a substantial amount of time engaged in non-tip producing duties;
- d. Whether Genghis Grill informed Plaintiffs and others similarly situated about the requirements of 29 U.S.C. § 203(m);
- e. Whether Genghis Grill satisfied its obligation to pay Plaintiffs and others similarly situated the minimum wage and overtime payments required by the Fair Labor Standards Act;
- f. Whether Genghis Grill's actions were willful;

- g. The correct statute of limitations for the claims of Plaintiffs and others similarly situated;
- h. The correct method of calculating back pay;
- i. Whether Plaintiffs and others similarly situated are entitled to compensatory and liquidated damages, and if so, the means of measuring such damages;
- j. Whether Genghis Grill is liable for pre-judgment interest; and
- k. Whether Genghis Grill is liable for attorney's fees and costs.

41. Genghis Grill has acted and refuses to act on grounds generally applicable to Plaintiffs and others similarly situated.

42. Plaintiffs' claims are typical of the claims of the FLSA Class in that Plaintiffs and others similarly situated were denied their tips and appropriate wages as a result of Genghis Grill's uniform payment policies based on the FLSA's tip-credit provision. This is the predominant issue that pertains to the claims of Plaintiffs and the members of the FLSA class.

43. The collective action mechanism is superior to other available methods for a fair and efficient adjudication of the controversy.

44. Plaintiffs will fairly and adequately protect the interests of the FLSA Class, as their interests are in complete alignment with others similarly situated, i.e., to prove and then eradicate Genghis Grill's illegal exploitation of the FLSA's tip-credit provision and to recover wages lost as a result of Genghis Grill's misconduct.

47. Genghis Grill has engaged in a continuing violation of the FLSA.

49. Genghis Grill's action in denying tips and wages to Plaintiffs and all other similarly-situated was intentional and constitutes a willful violation of the FLSA.

CLAIM I: VIOLATION OF THE FAIR LABOR STANDARDS ACT INVALID MANDATORY TIP-POOLING ARRANGEMENT

51. This collective action claim is brought on behalf of all FLSA Class members who were subject to Genghis Grill's illegal tip-pooling arrangement.

Page 11 of 16

53. At all relevant times, Plaintiffs and all similarly-situated employees have been “employees” of Genghis Grill, as defined by 29 U.S.C. § 203(e).

54. At all relevant times, Genghis Grill was an “employer” of Plaintiffs and all other similarly-situated employees, as defined by 29 U.S.C. § 203(d).

55. Under FLSA regulations, tips are the property of the employee whether or not the employer has taken a tip credit under 29 U.S.C. § 203(m).

56. Furthermore, valid mandatory tip pools can only include those employees who customarily and regularly receive tips. An employer may not retain any of the employees’ tips for any other purpose.

57. An employer can only retain an employee’s tips in furtherance of a valid tip-pooling arrangement or as a credit towards its minimum wage obligations.

58. At all relevant times, Genghis Grill willfully failed and refused to compensate Plaintiffs and all other similarly-situated employees for all hours worked at the standard minimum wage under the FLSA because it retained their tips in furtherance of an invalid tip pooling arrangement.

59. Genghis Grill violated the FLSA by withholding Plaintiffs and all other similarly-situated employees’ tips in furtherance of an invalid tip-pooling arrangement.

60. Genghis Grill willfully violated the above provisions by withholding Plaintiffs’ and all other similarly situated employees’ tips and wages in furtherance of an invalid tip-pooling arrangement.

61. Genghis Grill’s violations entitle Plaintiffs and all other similarly-situated employees to compensatory damages calculated as the full amount of wages owed at

the minimum wage of \$7.25 per hour amount less the amount of wages actually received and a return of the tips withheld.

62. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to liquidated damages pursuant to 29 U.S.C. § 216(b) of an amount equal to compensatory damages.

63. Plaintiffs and all other similarly-situated employees are entitled to an award of their attorney's fees and court costs pursuant to 29 U.S.C. § 216(b).

CLAIM II: VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE FOR TIME SPENT PERFORMING
NON-TIP PRODUCING DUTIES

64. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

65. This collective action claim is brought on behalf of all FLSA Class members who were not paid the hourly minimum wage in instances where they spent substantial amounts of time or entire shifts engaged in non-tip producing duties such as general preparation work and maintenance.

66. At all relevant times, Plaintiffs and all similarly-situated employees have been entitled to the rights, protection, and benefits provided by the Fair Labor Standards Act.

67. At all relevant times, Plaintiffs and all similarly-situated employees have been "employees" of Genghis Grill, as defined by 29 U.S.C. § 203(e).

68. At all relevant times, Genghis Grill was an "employer" of Plaintiffs and all other similarly-situated employees, as defined by 29 U.S.C. § 203(d).

70. At all relevant times, Genghis Grill willfully failed and refused to compensate Plaintiffs and all other similarly-situated employees for all hours worked at the standard minimum wage under the FLSA in instances where its servers spent a substantial amount of time or an entire shift performing non-tip related duties such as general preparation and maintenance.

71. Genghis Grill violated the FLSA by failing and refusing to pay its tipped employees under such circumstances.

72. Genghis Grill willfully violated the above provisions by withholding Plaintiffs' and all other similarly situated employees' proper wages in furtherance of its illegal arrangement.

73. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to compensatory damages calculated as the full amount of unpaid wages owed at the minimum wage of \$7.25 per hour amount less the amount of wages actually received.

74. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to liquidated damages pursuant to 29 U.S.C. § 216(b) of an amount equal to compensatory damages.

75. Plaintiffs and all other similarly-situated employees are entitled to an award of their attorney's fees and court costs pursuant to 29 U.S.C. § 216(b).

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes of similarly-situated individuals they seek to represent, respectfully request this Court:

- a. Enter an order certifying Plaintiffs' claims brought under the Fair Labor Standards Act for treatment as a collective action;
- b. Enter a declaratory judgment that the practices complained of herein are unlawful under Federal law;
- c. Enter a permanent injunction restraining and preventing Genghis Grill from withholding the compensation that is due to their employees, from retaliating against any of them for taking part in this action, and from further violating their rights under the Fair Labor Standards Act;
- d. Enter an Order for complete and accurate accounting of all the compensation to which Plaintiffs and all other similarly-situated employees are entitled;
- e. Award Plaintiffs and all FLSA Class members compensatory damages in an amount equal to the unpaid back wages at the applicable minimum wage and a return of all tips owed them from a period from three (3) years prior to this lawsuit through the date of trial;
- f. Award Plaintiffs and all FLSA Class members liquidated damages in an amount equal to their compensatory damages;
- g. Award Plaintiffs and all other similarly-situated employees all recoverable costs, expenses, and attorney's fees incurred in prosecuting this action and all claims, together with all applicable interest; and

**CHALAK-M&M AR01, LLC; CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC**

CHALAK-M&M, LLC

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the action against the above-referenced Defendants as a Plaintiff to assert claims for violations of the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the court.

Consented to on this 13th day of November, 2014

Andrew Israsena

Print Name _____

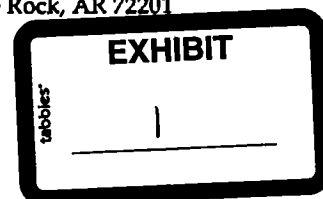
Print Name _____

 (Signature _____

13 Nov 2014

Date _____

RETURN FOR FILING BEFORE [90 days after mailing] to:
John T. Holleman, Holleman & Associates, P.A., 1008 West Second Street, Little Rock, AR 72201



**CHALAK-M&M AR01, LLC; CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC**

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the action against the above-referenced Defendants as a Plaintiff to assert claims for violations of the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the court.

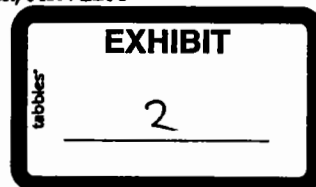
Consented to on this 18 day of November, 2014

Rayana Langston
Print Name

[Signature]
Signature

11-18-2014
Date

RETURN FOR FILING BEFORE [90 days after mailing] to:
John T. Holleman, Holleman & Associates, P.A., 1008 West Second Street, Little Rock, AR 72201



**CHALAK-M&M AR01, LLC; CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC**

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the action against the above-referenced Defendants as a Plaintiff to assert claims for violations of the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the court.

Consented to on this 12th day of December, 2014

Chauncey Durham

Print Name

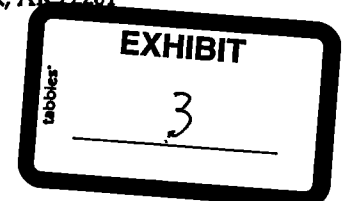
Cin Durham

Signature

12/12/14

Date

RETURN FOR FILING BEFORE [90 days after mailing] to:
John T. Holleman, Holleman & Associates, P.A., 1008 West Second Street, Little Rock, AR 72201



**CHALAK-M&M AR01, LLC; CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC**

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the action against the above-referenced Defendants as a Plaintiff to assert claims for violations of the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the court.

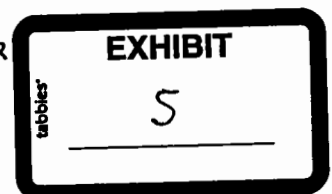
Consented to on this 8 day of January, 2015.

Brittany Goodwin
Print Name

Brittany Goodwin
Signature

Jan. 8, 2015
Date

RETURN FOR FILING BEFORE [90 days after mailing] to:
John T. Holleman, Holleman & Associates, P.A., 1008 West Second Street, Little Rock, AR



**CHALAK-M&M AR01, LLC; CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC**

CONSENT TO JOIN COLLECTIVE ACTION

I hereby consent to join the action against the above-referenced Defendants as a Plaintiff to assert claims for violations of the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the court.

Consented to on this 3 day of January 2015

Barbara L. Blackford
Print Name

Barbara L. Blackford
Signature

1-03-15
Date

RETURN FOR FILING BEFORE [90 days after mailing] to:
John T. Holleman, Holleman & Associates, P.A., 1008 West Second Street, Little Rock, AR 72201

EXHIBIT

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6

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

CHAD SWANEY, MICHAEL WALLACE,
CHRISTINA WESTRICH, & TYLER TRAXLER
individually and on behalf of
all others similarly situated

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FEB 24 2014

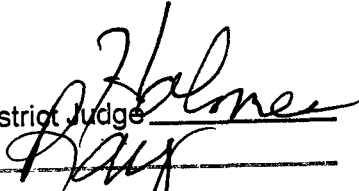

JAMES W. MCCORMACK, CLERK
By:  DEP. CLERK

PLAINTIFFS

v.

CASE NO. 4:14-cv-0110-JLH

M&M MONGOLIAN, LLC D/B/A GENGHIS GRILL
CHALAK-M&M AR01, LLC;
CHALAK-M&M AR02, LLC; and
CHALAK-M&M, LLC;

This case assigned to District Judge 
and to Magistrate Judge 

DEFENDANTS

COLLECTIVE ACTION COMPLAINT

Comes now Plaintiffs Chad Swaney, Michael Wallace, Christina Westrich, and Tyler Traxler, and for their Collective Action Complaint against Defendants M&M Mongolian, LLC d/b/a Genghis Grill; Chalak-M&M, LLC; Chalak-M&M AR1, LLC; and Chalak-M&M AR2, LLC (collectively "Genghis" or "Genghis Grill"), state:

I. INTRODUCTION

1. This is a collective-action lawsuit for minimum wage violations. Plaintiffs Chad Swaney, Michael Wallace, Christina Westrich, and Tyler Traxler are current or former servers at the Little Rock location of a franchised restaurant called Genghis Grill. Servers at the location are required to pay a kickback of 4% of their gross sales into a pool at the end of each shift. Instead of distributing the fund from the pool to other tipped employees, the restaurant retains the funds and uses it for some other purpose.

Furthermore, the servers spend more than 20% of their shifts cleaning and performing other non tip-producing side work. In addition to long lists of side work that must be done before or after a shift, the location has “Deep Clean Sundays” where servers spend almost the entire shift cleaning. Despite performing a large amount of non tip-producing work, the servers are only paid \$2.63 per hour for all the hours they work.

2. Because the servers are forced to take part in an illegal tip pool and forced to perform large amounts of non tip-producing work, Genghis is not eligible to take the tip credit to satisfy its obligation to pay a minimum wage. Genghis is liable to each server for the difference between the full federal minimum wage and the cash wage actually paid by Genghis Grill, in addition to a return of all improperly retained tips. Plaintiffs bring this suit individually and on behalf of others similarly situated to recover the minimum wages owed by law, liquidated damages, attorneys’ fees and expenses, and all other relief allowed by law.

II. JURISDICTION, VENUE, AND PARTIES

3. Genghis Grill is a franchised restaurant chain with locations in twenty-four states. It has two locations in Arkansas: one in Little Rock and one in Rogers. Defendants operate, control, and do business at Genghis Grill’s Little Rock location supplying patrons with food and beverages. Plaintiffs were, and are, employed by Defendants as servers at the Little Rock location.

4. Plaintiff Chad Swaney is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Swaney was

classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "A."

5. Plaintiff Michael Wallace is a resident of Redfield, Jefferson County, Arkansas, and he is a citizen of the state of Arkansas. He is employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Wallace has been classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "B."

6. Plaintiff Christina Westrich is a resident of Little Rock, Pulaski County, Arkansas, and she is a citizen of the state of Arkansas. She was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Westrich was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. Her consent to join this action is attached as Exhibit "C."

7. Plaintiff Tyler Traxler is a resident of Little Rock, Pulaski County, Arkansas, and he is a citizen of the state of Arkansas. He was employed as a server at the Genghis Grill location in Little Rock, Arkansas. At all relevant times, Traxler was classified as hourly and non-exempt from the overtime and minimum wage requirements of the FLSA. His consent to join this action is attached as Exhibit "D."

8. Defendant M&M Mongolian, LLC ("M&M Mongolian"), is a limited liability company formed in 2008 under the laws of the State of Arkansas. Upon information and belief, M&M Mongolian was formed to assist with operations of the Genghis Grill restaurants located in Arkansas. At all relevant times, M&M Mongolian was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). M&M

Mongolian is an “employer” of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). M&M Mongolian can be served through its registered agent, Graham Catlett, 323 Center Street, Suite 1800, Little Rock, Arkansas 72201.

9. Defendant Chalak-M&M AR1, LLC (“Chalak 1”), is a limited liability company formed in 2009 under the laws of the State of Arkansas. Upon information and belief, Chalak 1 was formed to assist with the operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak 1 was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak 1 is an “employer” of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak 1 can be served through its registered agent, Capitol Corporate Services, Inc., Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

10. Defendant Chalak-M&M AR2, LLC (“Chalak 2”), is a limited liability company formed in 2009 under the laws of the State of Arkansas. Upon information and belief, Chalak 2 was formed to assist with the operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak 2 was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak 2 is an “employer” of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak 2 can be served through its registered agent, Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

11. Defendant Chalak-M&M, LLC (“Chalak”) is a limited liability company formed in 2012 under the laws of the State of Arkansas. Upon information and belief, Chalak was formed to assist with operations of the Genghis Grill restaurants located in Arkansas, including the Little Rock location. At all relevant times, Chalak was operated as a single enterprise with the other defendants. 29 U.S.C. § 203(r). Chalak is an “employer” of Plaintiffs and other similarly-situated employees, as defined by 29 U.S.C. § 203(d). Chalak can be served through its registered agent, Corporate Creations Network, Inc., 609 SW 8th Street #600, Bentonville, Arkansas 72712.

12. At all times herein, Defendants constituted a joint enterprise pursuant to 29 U.S.C. § 203(r). The Defendants' joint enterprise will be referred to as "Genghis Grill" throughout this Complaint.

13. At all times herein, Defendants constituted a single-integrated enterprise and are jointly and severally liable for any violations of the Fair Labor Standards Act committed by any one of them.

14. At all times material herein, Plaintiffs and all similarly-situated employees have been entitled to the rights, protection and benefits provided under the FLSA, as amended, 29 U.S.C. § 201, *et seq.*

15. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1337; and 29 U.S.C. §§ 216(b), 217.

16. This Court is empowered to issue a declaratory judgment under the Declaratory Judgment Statute, 28 U.S.C. §§ 2201 and 2202.

17. Venue lies within this District pursuant to 28 U.S.C. § 1391.

III. FACTUAL ALLEGATIONS

18. Genghis Grill is a franchised restaurant chain with locations in twenty-four states. It has two locations in Arkansas: one in Little Rock and one in Rogers.

19. Defendants operate, control, and do business at Genghis Grill's Little Rock location supplying patrons with food and beverages.

20. Plaintiffs and the other similarly-situated employees comprising the FLSA Class are, or were, employed as servers at Genghis Grill's Little Rock location.

21. Genghis Grill pays its servers less than the minimum wage of \$7.25 per hour. For example, Genghis Grill paid each named plaintiff \$2.63 per-hour.

22. Instead of paying the required minimum wage, Genghis Grill takes advantage of the tip credit allowed by 29 U.S.C. § 203(m).

23. Genghis Grill does not inform its employees of the provisions of 29 U.S.C. § 203(m).

24. Though Genghis Grill takes advantage of the FLSA's tip credit provision, it does not allow its servers to keep all of the tips they receive. Rather, Genghis Grill requires its servers to enter into a tip-pooling agreement as a condition of employment.

25. At the end of a shift, Genghis Grill requires its servers to print a receipt which lists the amount of sales charged to each server.

26. The receipt automatically calculates a “Tipshare” of a certain percentage of sales, which the server is required to kick back to the restaurant. Currently, servers are required to contribute 4% of sales into the tip share.

27. In addition to the “tipshare,” servers are required to pay for the meals of customers who walk out without paying for their meal.

28. The servers are not told what is done with the tip share. According to the Company's handbook, the tipshare is distributed to hosts and hostesses and bussers. The hosts and hostesses at the Little Rock location, however, only receive a paycheck, and the West Little Rock location does not even employ bussers.

29. Upon information and belief, Genghis Grill retains the tipshare funds, distributes tipshare funds to ineligible employees (such as cooks, dishwashers, and supervisors), or some combination of the two.

30. As a result, Genghis Grill's tip pool does not satisfy the requirements of the Fair Labor Standards Act, and Genghis Grill is not eligible to take the tip credit. Plaintiffs and all other similarly-situated employees are entitled to the return of his or her tips and wages and compensation based on the standard minimum wage for all hours worked.

31. As with its illegal tip-pooling scheme, Genghis Grill takes advantage of the FLSA's tip credit provision in instances where its servers spend a substantial amount of time or an entire shift engaged in non-tip producing duties.

32. It is Genghis Grill's policy to not pay its servers the legally required minimum wage even though the servers are performing duties unrelated to their tipped jobs.

34. For example, Genghis Grill has held what it calls “Deep Clean Sundays” where it paid Plaintiffs and other servers only \$2.63 per hour even though they spent an entire shift cleaning and were otherwise engaged in non-tip producing duties.

35. Under such circumstances, Genghis Grill cannot meet the FLSA's tip credit requirements as codified at 29 U.S.C. § 203(m).

36. Therefore, Genghis Grill cannot take a tip credit against the minimum wage owed to its servers. Its servers are entitled to at least \$7.25 for each hour worked.

IV. COLLECTIVE ACTION ALLEGATIONS

37. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

38. Plaintiffs bring their FLSA collective action claims on behalf of themselves and all others similarly situated pursuant to 29 U.S.C. §§ 207 and 216(b), specifically, as follows:

All Genghis Grill employees who were employed as servers within the past three years at the Genghis Grill restaurant in Little Rock, Arkansas.

39. Plaintiffs reserve the right to modify or amend the proposed class definition subject to additional information gained through further investigation and discovery.

40. There are numerous similarly situated current and former servers who work or worked at Genghis Grill's Little Rock restaurant who would benefit from the issuance of Court-supervised notice of the instant lawsuit and the opportunity to join in the present lawsuit. Similarly situated employees are known to Genghis Grill and readily identifiable through payroll records.

41. There are questions of law and fact common to Plaintiffs and others similarly situated, which predominate over any questions affecting individual members only. These factual and legal questions include:

- a. Whether Plaintiffs and others similarly situated had their tips taken pursuant to a tip-pooling agreement;
- b. Whether Plaintiffs and others similarly situated had their tips given to employees that do not customarily and regularly receive tips such as kitchen staff;
- c. Whether Plaintiffs and other similarly situated were paid minimum wage in instances where they spent a substantial amount of time engaged in non-tip producing duties;
- d. Whether Plaintiffs and others similarly situated were paid minimum wage in instances where they spent entire shifts performing janitorial maintenance duties;
- e. Whether Genghis Grill informed Plaintiffs and others similarly situated about the requirements of 29 U.S.C. § 203(m);
- f. Whether Genghis Grill satisfied its obligation to pay Plaintiffs and others similarly situated the minimum wage and overtime payments required by the Fair Labor Standards Act;
- g. Whether Genghis Grill's actions were willful;
- h. The correct statute of limitations for the claims of Plaintiffs and others similarly situated;

- i. The correct method of calculating back pay;
- j. Whether Plaintiffs and others similarly situated are entitled to compensatory and liquidated damages, and if so, the means of measuring such damages;
- k. Whether Genghis Grill is liable for pre-judgment interest; and
- l. Whether Genghis Grill is liable for attorney's fees and costs.

42. Genghis Grill has acted and refuses to act on grounds generally applicable to Plaintiffs and others similarly situated.

43. Plaintiffs' claims are typical of the claims of the FLSA Class in that Plaintiffs and others similarly situated were denied their tips and appropriate wages as a result of Genghis Grill's uniform payment policies based on the FLSA's tip-credit provision. This is the predominant issue that pertains to the claims of Plaintiffs and the members of the FLSA class.

44. The collective action mechanism is superior to other available methods for a fair and efficient adjudication of the controversy.

45. Plaintiffs will fairly and adequately protect the interests of the FLSA Class, as their interests are in complete alignment with others similarly situated, i.e., to prove and then eradicate Genghis Grill's illegal exploitation of the FLSA's tip-credit provision and to recover wages lost as a result of Genghis Grill's misconduct.

46. Plaintiffs' counsel is experienced with class/collective litigation, has previously served as class counsel in FLSA litigation, and will adequately protect the interests of Plaintiffs and others similarly situated.

47. Plaintiffs and the proposed FLSA Class they seek to represent have suffered, and will continue to suffer, irreparable damage from the illegal policy, practice, and custom regarding Genghis Grill's pay practices.

48. Genghis Grill has engaged in a continuing violation of the FLSA.

49. Plaintiffs and all other similarly-situated were denied their tips and wages as a result of Genghis Grill's illegal practices. These violations were intended by Genghis Grill and were willfully done.

50. Genghis Grill's action in denying tips and wages to Plaintiffs and all other similarly-situated was intentional and constitutes a willful violation of the FLSA.

V. CAUSES OF ACTION

CLAIM I: VIOLATION OF THE FAIR LABOR STANDARDS ACT INVALID MANDATORY TIP-POOLING ARRANGEMENT

51. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

52. This collective action claim is brought on behalf of all FLSA Class members who were subject to Genghis Grill's illegal tip-pooling arrangement.

53. At all relevant times, Plaintiffs and all similarly-situated employees have been entitled to the rights, protection, and benefits provided by the Fair Labor Standards Act.

54. At all relevant times, Plaintiffs and all similarly-situated employees have been “employees” of Genghis Grill, as defined by 29 U.S.C. § 203(e).

55. At all relevant times, Genghis Grill was an “employer” of Plaintiffs and all other similarly-situated employees, as defined by 29 U.S.C. § 203(d).

56. Under FLSA regulations, tips are the property of the employee whether or not the employer has taken a tip credit under 29 U.S.C. § 203(m).

57. Furthermore, valid mandatory tip pools can only include those employees who customarily and regularly receive tips. An employer may not retain any of the employees’ tips for any other purpose.

58. An employer can only retain an employee’s tips in furtherance of a valid tip-pooling arrangement or as a credit towards its minimum wage obligations.

59. At all relevant times, Genghis Grill willfully failed and refused to compensate Plaintiffs and all other similarly-situated employees for all hours worked at the standard minimum wage under the FLSA because it retained their tips in furtherance of an invalid tip pooling arrangement.

60. Genghis Grill violated and continues to violate the FLSA by withholding Plaintiffs and all other similarly-situated employees’ tips in furtherance of an invalid tip-pooling arrangement.

61. Genghis Grill failed and continues to fail to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of 29 U.S.C. § 211(c).

62. Genghis Grill willfully violated and continues to violate the above provisions by withholding Plaintiffs’ and all other similarly situated employees’ tips and wages in furtherance of an invalid tip-pooling arrangement.

63. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to compensatory damages calculated as the full amount of wages owed at the minimum wage of \$7.25 per hour amount less the amount of wages actually received and a return of the tips withheld.

64. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to liquidated damages pursuant to 29 U.S.C. § 216(b) of an amount equal to compensatory damages.

65. Plaintiffs and all other similarly-situated employees are entitled to an award of their attorney's fees and court costs pursuant to 29 U.S.C. § 216(b).

CLAIM II: VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE FOR TIME SPENT PERFORMING
NON-TIP PRODUCING DUTIES

66. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

67. This collective action claim is brought on behalf of all FLSA Class members who were not paid the hourly minimum wage in instances where they spent substantial amounts of time or entire shifts engaged in non-tip producing duties such as general preparation work and maintenance.

68. At all relevant times, Plaintiffs and all similarly-situated employees have been entitled to the rights, protection, and benefits provided by the Fair Labor Standards Act.

69. At all relevant times, Plaintiffs and all similarly-situated employees have been "employees" of Genghis Grill, as defined by 29 U.S.C. § 203(e).

70. At all relevant times, Genghis Grill was an “employer” of Plaintiffs and all other similarly-situated employees, as defined by 29 U.S.C. § 203(d).

71. Under FLSA regulations, the FLSA's tip credit is not available where a tipped employee spends a substantial amount of time or an entire shift performing non-tip related duties such as general preparation and maintenance.

72. At all relevant times, Genghis Grill willfully failed and refused to compensate Plaintiffs and all other similarly-situated employees for all hours worked at the standard minimum wage under the FLSA in instances where its servers spent a substantial amount of time or an entire shift performing non-tip related duties such as general preparation and maintenance.

73. Genghis Grill violated and continues to violate the FLSA by failing and refusing to pay its tipped employees under such circumstances.

74. Genghis Grill failed and continues to fail to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of 29 U.S.C. § 211(c).

75. Genghis Grill willfully violated and continues to violate the above provisions by withholding Plaintiffs' and all other similarly situated employees' proper wages in furtherance of its illegal arrangement.

76. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to compensatory damages calculated as the full amount of unpaid wages owed at the minimum wage of \$7.25 per hour amount less the amount of wages actually received.

77. Genghis Grill's violations entitle Plaintiffs and all other similarly-situated employees to liquidated damages pursuant to 29 U.S.C. § 216(b) of an amount equal to compensatory damages.

78. Plaintiffs and all other similarly-situated employees are entitled to an award of their attorney's fees and court costs pursuant to 29 U.S.C. § 216(b).

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes of similarly-situated individuals they seek to represent, respectfully request this Court:

- a. Enter an order certifying Plaintiffs' claims brought under the Fair Labor Standards Act for treatment as a collective action;
- b. Enter a declaratory judgment that the practices complained of herein are unlawful under Federal law;
- c. Enter a permanent injunction restraining and preventing Genghis Grill from withholding the compensation that is due to their employees, from retaliating against any of them for taking part in this action, and from further violating their rights under the Fair Labor Standards Act;
- d. Enter an Order for complete and accurate accounting of all the compensation to which Plaintiffs and all other similarly-situated employees are entitled;
- e. Award Plaintiffs and all FLSA Class members compensatory damages in an amount equal to the unpaid back wages at the applicable minimum wage and a return of all tips owed them from a period from three (3) years prior to this lawsuit through the date of trial;

f. Award Plaintiffs and all FLSA Class members liquidated damages in an amount equal to their compensatory damages;

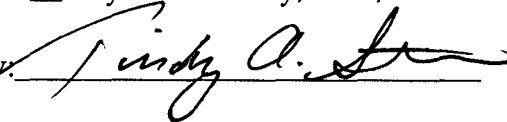
g. Award Plaintiffs and all other similarly-situated employees all recoverable costs, expenses, and attorney's fees incurred in prosecuting this action and all claims, together with all applicable interest; and

h. Grant Plaintiffs and all other similarly-situated employees all such further relief as the Court deems just and appropriate.

VII. JURY DEMAND

Plaintiffs demand a jury trial in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted
this __ day of February, 2014,

By: 

John T. Holleman - AR Bar #91056
jholleman@johnholleman.net
Maryna O. Jackson - AR Bar #2009111
maryna@johnholleman.net
Timothy A. Steadman - AR Bar #2009113
tim@johnholleman.net
HOLLEMAN & ASSOCIATES, P.A.
1008 West Second Street
Little Rock, Arkansas 72201
Tel. 501.975.5040
Fax 501.975.5041

Chalak-M&M AR2, LLC

PLAINTIFF CONSENT FORM

I hereby consent to join the action against above referenced defendant as a Plaintiff to assert claims under the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. As an employee/former employee of above referenced defendant, I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the Court.

Consented to on this 28 day of January, 2014.

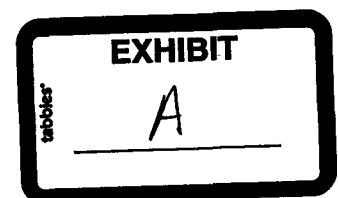
Chad Swaney
Sign Name

[Signature]
Print Name

[Redacted]
Address

[Redacted]
City, State, Zip

[Redacted]
Telephone Number



Chalak-M&M AR2, LLC

PLAINTIFF CONSENT FORM

I hereby consent to join the action against above referenced defendant as a Plaintiff to assert claims under the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. As an employee/former employee of above referenced defendant, I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the Court.

Consented to on this 28th day of January, 2014.

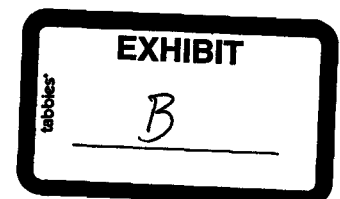
Michael Wallace
Sign Name

Michael Wallace
Print Name

[REDACTED]
Address

[REDACTED]
City, State, Zip

[REDACTED]
Telephone Number



Chalak-M&M AR2, LLC

PLAINTIFF CONSENT FORM

I hereby consent to join the action against above referenced defendant as a Plaintiff to assert claims under the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. As an employee/former employee of above referenced defendant, I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the Court.

Consented to on this 16 day of Feb, 2014.

Christina Westrich
Sign Name

Christina Westrich
Print Name

[REDACTED]
Address

[REDACTED]
City, State, Zip

[REDACTED]
Telephone Number

EXHIBIT

tabbies

C

Chalak-M&M AR2, LLC

PLAINTIFF CONSENT FORM

I hereby consent to join the action against above referenced defendant as a Plaintiff to assert claims under the Fair Labor Standards Act. If this case does not proceed collectively, I also consent to join any subsequent action to assert claims against above referenced defendant. As an employee/former employee of above referenced defendant, I consent to becoming a party Plaintiff to this lawsuit, to be represented by HOLLEMAN & ASSOCIATES, P.A. and to be bound by any settlement of this action or adjudication of the Court.

Consented to on this 20 day of February, 2014.

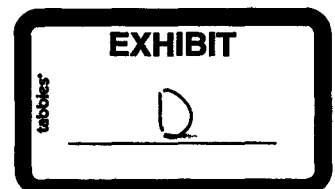
Tyler Traxler
Sign Name

Tyler Traxler
Print Name

[REDACTED]
Address

[REDACTED]
City, State, Zip

[REDACTED]
Telephone Number



Civil Action No. _____

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

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

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

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

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

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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Western District of Tennessee

Civil Action No.

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Signature of Clerk or Deputy Clerk

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CLERK OF COURT

Civil Action No. _____

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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for the

Amber McKinley, and all others similarly situated,

Plaintiff(s)

V.

Genghis Grill, et al.

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* Dr. Sanjay Patel
18900 Dallas Parkway, Ste 125
Dallas, TX 75287

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:

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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

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Date: _____

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Server's address

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Western District of Tennessee

Civil Action No.

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Genghis Grill Hit with Former Employee's Wage and Hour Suit](#)
