

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JOSE SANTOS ALVAREZ, on behalf of himself
and others similarly situated,

Plaintiff,

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

vs.

UNO RESTAURANT ASSOCIATES, INC. d/b/a
Prime Italian, a Florida for-profit corporation, and
MYLES CHEFETZ, an individual,

Defendants.

_____ /

CLASS AND COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiff JOSE SANTOS ALVAREZ (“Plaintiff” or “Santos”), on behalf of himself and others similarly situated, who was an employee of Defendants UNO RESTAURANT ASSOCIATES, INC. d/b/a Prime Italian (“Uno”), a Florida for-profit corporation, and MYLES CHEFETZ (“Chefetz”), an individual (collectively, “Defendants”), and files this Class and Collective Action Complaint for unpaid minimum wage compensation, unpaid overtime wage compensation, liquidated damages, retaliatory discharge, and other relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (hereinafter, the “Act” or “FLSA”), Article X, Section 24 of the Florida Constitution and Fla. Stat. § 448.110 (together, the “FMWA”), for a declaration of rights, and in addition Plaintiff Santos individually seeks relief for retaliatory discharge under 29 U.S.C. § 215(A)(3).

1. Plaintiff and the proposed collective action members (“216(b) Class”) were subjected to similar violations of the FLSA by Defendants. The class of similarly situated employees or

potential collective action members sought to be certified under 29 U.S.C. § 216(b) is defined as:

All bussers and servers (“tipped employees”) who worked for Defendants during the three (3) years preceding this lawsuit and who, as a result of Defendants’ policy of requiring them to share their tips with non-tipped employees, earned less than the applicable minimum regular and overtime wage for one or more weeks during the Relevant Time Period.

2. Plaintiff and the proposed class action members (“Rule 23 Class”) were subjected to similar violations of the FMWA by Defendants. The class of similarly situated employees or potential class action members sought to be certified under Fed. R. Civ. P. 23 is defined as:

All bussers and servers (“tipped employees”) who worked for Defendants during the five (5) years preceding this lawsuit and who, as a result of Defendants’ policy of requiring them to share their tips with non-tipped employees, earned less than the applicable minimum wage for one or more weeks during the Relevant Time Period.

3. Additionally, Plaintiff and those similarly situated seek a declaration of rights pursuant to Rule 57 of the Federal Rules of Civil Procedure and the Federal Declaratory Judgment Act (“DJA”), 28 U.S.C. § 2201.
4. Additionally, Plaintiff Santos seeks damages for retaliatory discharge under 29 U.S.C. § 215(A)(3).
5. The precise size and identity of the 216(b) Class and the Rule 23 Class can be ascertained from the business records, tax records, and/or employee or personnel records of Defendants and its related and affiliated entities.

I. JURISDICTION AND VENUE

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants transact business in this District; because all wages were earned and due to be paid in this District; because

Defendants' restaurant is situated in this District; and because most, if not all, of the operational decisions were made in this District.

7. This Court has original jurisdiction over Plaintiff's federal question claims.
8. This Court has supplemental jurisdiction to hear Plaintiff and Rule 23 Class Members' state law claims under 28 U.S.C. § 1367.

II. PARTIES

9. Plaintiff Santos is over 18 years old and was a *sui juris* resident of Miami-Dade County, Florida, at all times material. He was an hourly, non-exempt employee of Defendants, as the term "employee" is defined by 29 U.S.C. § 203(e).
10. Defendant UNO RESTAURANT ASSOCIATES, INC. d/b/a Prime Italian ("Uno") is a Florida for-profit company that owns and operates the Prime Italian Restaurant located in Miami Beach, Miami-Dade County, Florida.
11. Defendant Chefetz, an individual and *sui juris*, was the owner and manager of Uno. Chefetz acted directly and indirectly in the interest of Uno. Chefetz managed Uno and had the power to direct employees' actions. Chefetz had management responsibilities, degree of control over the corporation's financial affairs and compensation practices, and was in a position to exert substantial authority over policy relating to employee wages and whether to compensate (or not to compensate) employees of Uno in accordance with the FLSA, making Defendant Chefetz an employer pursuant to 29 USC § 203(d).

III. COVERAGE

12. During the all material times, Defendant Uno was an enterprise covered by the FLSA and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of § 29 U.S.C. 203(s)(1) of the Act, in

that said the enterprise had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

13. During all material times, Defendant Chefetz was an employer as defined by 29 U.S.C. § 203(d).

14. During all material times, Defendant Uno was an employer as defined by 29 U.S.C. § 203(d).

15. During all material times, Defendants were employers under the Florida Constitution, Article X, Section 24.

16. Defendants are joint employers under 29 C.F.R. 791.2(b)(3) because the Defendants are not completely disassociated with respect to the employment of Plaintiff and Class Members, and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under the common control with the other employer.

17. During all material times, the enterprise has had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

18. During all material times, the enterprise employed two or more people.

IV. FACTUAL ALLEGATIONS

19. Defendants operate a restaurant known as Prime Italian, located at 101 Ocean Drive, Miami Beach, Miami-Dade County, Florida.

20. Santos worked as a tipped employee (“busser”) for Defendants from February, 2012, approximately, through October, 2017 (“Relevant Time Period”).

21. During the Relevant Time Period, the applicable Florida minimum wage was \$7.67 per hour in 2012, \$7.79 per hour in 2013, \$7.93 per hour in 2014, \$8.05 per hour in 2015 and 2016, and \$8.10 per hour in 2017.
22. During the Relevant Time Period, the applicable Florida overtime wage was \$11.895 per hour in 2014, \$12.075 per hour in 2015 and 2016, and \$12.15 per hour in 2017.
23. At Prime Italian during the Relevant Time Period, tipped employees such as bussers and servers were paid less than the minimum wage.
24. Under the FLSA, if an employer satisfies the requirements of 29 U.S.C. 203(m), it may apply a portion of a tipped employee's tips (this portion known as the "tip credit") up to a maximum of \$3.02 per hour in Florida towards satisfaction of its obligation to pay its employees the minimum wage. This tip credit may apply to both regular and overtime hours worked. The burden is on the employer to prove they are entitled to apply the tip credit.
25. To utilize the tip credit under the FLSA, the employer must pay its tipped employees the proper minimum wage for tipped employees and allow its tipped employees to retain all the tips they receive, except when there is a valid arrangement for "pooling of tips among employees who customarily and regularly receive tips." 29 U.S.C. § 203(m). If an employer fails to satisfy either requirement, it may not take advantage of the tip credit and must pay its tipped employees the full applicable minimum wage.
26. Through some or all of the Relevant Time Periods, Plaintiff and those similarly situated were required to share tips with a dishwasher assistant called a "stocker," who was not a tipped employee, in violation of the FLSA and FMWA.

27. Through some or all of the Relevant Time Periods, Plaintiff and those similarly situated were required to share tips with a “sweeper,” who was not a tipped employee, in violation of the FLSA and FMWA.
28. Through some or all of the Relevant Time Periods, Plaintiff and those similarly situated were required to spend 20% or more of their work time on non-tip-producing sidework, in violation of the FLSA and FMWA.
29. As the result of the above violations, Defendants did not satisfy the requirements of 29 U.S.C. § 203(m) and § 531.35 during the Relevant Time Period and thus cannot apply Class Members’ tips towards satisfaction of Defendants’ minimum and overtime wage obligation, and must therefore pay Plaintiff and Class Members the full minimum wage for each hour worked up to forty per workweek and full overtime wage for each hour worked in excess of forty per workweek.
30. Because of the institution and maintenance of the illegal tip-sharing violations, and excessive sidework during the Relevant Time Period, which Defendants knew of or showed reckless disregard for the matter of whether its conduct was prohibited by statute, Defendants willfully engaged in practices that denied Plaintiff and Class Members the applicable minimum and overtime wage under the FLSA and FMWA.
31. Plaintiff retained the undersigned counsel and agreed to pay a reasonable fee for all services rendered.

FLSA COLLECTIVE ACTION ALLEGATIONS

32. Plaintiff seeks certification of collective action from this court, for himself and those similarly situated, pursuant to 29 U.S.C. 216(b).

33. A district court, under the two-tiered approach used to determine whether an FLSA collective action is appropriate, first approves conditional certification upon a minimal showing that members of the proposed class are similarly situated. Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201, *et seq.*
34. “[A]t the initial stage the district court’s decision to certify a class is based primarily on pleadings and affidavits.” *Anderson v. Cagle’s, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007), citing *Mooney v. Aramco Servs. Co.*, 54 F.3d 1207, 1213–14 (5th Cir. 1995). “Accordingly, at the initial stage, courts apply a ‘fairly lenient standard’ for determining whether the Plaintiff are truly similarly situated.” *Anderson*, at 953, citing *Mooney*, at 1214. “At the first stage (typically in response to a motion to conditionally certify made prior to discovery) the court utilizes a “fairly lenient” standard in light of the limited evidence then available.” *Epps v. Oak St. Mortg., LLC*, 2006 WL 1460273, at *3 (M.D. Fla. May 22, 2006). “[A]t the second stage Plaintiff *may*—the ultimate decision rests largely within the district court’s discretion—not succeed in maintaining a collective action under § 216(b) based solely on allegations and affidavits, depending upon the evidence presented by the party seeking decertification.” *Id.*
35. Plaintiff and those similarly situated performed the same or similar jobs as one another in that they were tipped employees (bussers and servers) in Defendants’ restaurant, servicing Defendants’ customers.
36. Plaintiff and those similarly situated were subjected to similar policies in that they were paid below the minimum wage as tipped employees and were required to share tips with non-tipped employees such as “stockers” and “sweepers.”
37. These policies or practices were applicable to Plaintiff and members of the collective action. Application of these policies or practices does not depend on the personal circumstances of

Plaintiff or those joining this lawsuit. Rather, the same policies or practices apply to all members of the collective action. Accordingly, members of the collective action are properly defined as:

All bussers and servers who worked for Defendants during the three (3) years preceding this lawsuit and who, as a result of Defendants' policy of requiring them to share their tips with non-tipped employees, earned less than the applicable minimum regular and overtime wage for one or more weeks during the Relevant Time Period.

38. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.
39. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of paying Plaintiff and Class Members as tipped employees and forcing them to share tips with non-tipped employees in violation of the law.
40. Thus, Defendants acted willfully by failing to pay Plaintiff, and Class Members, in accordance with the law.

COUNT I
FAILURE TO PAY MINIMUM WAGE IN
VIOLATION OF THE FLSA, 29 U.S.C. § 201, *et seq*

41. Plaintiff, on behalf of himself and those similarly situated, reincorporates and re-alleges paragraphs 1 through 40 as though set forth fully herein and further alleges as follows:
42. Defendants willfully and intentionally forced Plaintiff and those similarly situated to participate in an illegal tip-sharing scheme in which they were required to share their tips with non-tipped employees.

43. By requiring Plaintiff and those similarly situated to share their tips with non-tipped employees, Defendants cannot claim the tip credit and therefore owe Plaintiff and those similarly situated the full minimum wage for each hour worked up to forty per workweek.

44. As a direct and proximate result of the above violations, Plaintiff and those similarly situated have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff JOSE SANTOS ALVAREZ demands judgment in his favor and against Defendants UNO RESTAURANT ASSOCIATES, INC. and MYLES CHEFETZ, jointly and severally, as follows:

- a) Award to Plaintiff and those similarly situated for payment of all hours worked up to forty per workweek at the full minimum wage;
- b) Award to Plaintiff and those similarly situated liquidated damages equal to the payment of all hours worked up to forty per workweek at the full minimum wage or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

COUNT II
FAILURE TO PAY OVERTIME WAGE IN
VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq

45. Plaintiff, on behalf of himself and those similarly situated, reincorporates and re-alleges paragraphs 1 through 40 as though set forth fully herein and further alleges as follows:

46. Defendants willfully and intentionally forced Plaintiff and those similarly situated to participate in an illegal tip-sharing scheme in which they were required to share their tips with non-tipped employees.

47. By requiring Plaintiff and those similarly situated to share their tips with non-tipped employees, Defendants cannot claim the tip credit and therefore owe Plaintiff and those similarly situated the full overtime wage for each hour worked in excess of forty per workweek.

48. As a direct and proximate result of the above violations, Plaintiff and those similarly situated have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff JOSE SANTOS ALVAREZ demands judgment in his favor and against Defendants UNO RESTAURANT ASSOCIATES, INC. and MYLES CHEFETZ, jointly and severally, as follows:

- a) Award to Plaintiff and those similarly situated for payment of all hours worked in excess of forty per workweek at the rate of one-and-a-half times their regular rate of pay;
- b) Award to Plaintiff and those similarly situated liquidated damages equal to the payment of all hours worked in excess of forty per workweek at the rate of one-and-a-half times their regular rate of pay or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

FLORIDA MINIMUM WAGE AMENDMENT CLASS ACTION ALLEGATIONS

49. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the named Plaintiff seeks certification and is a member of the following Rule 23 Class he seeks to represent:

All bussers and servers ("tipped employees") who worked for Defendants during the five (5) years preceding this lawsuit and who, as a result of Defendants' policy of requiring them to share their tips with

non-tipped employees, earned less than the applicable minimum wage for one or more weeks during the Relevant Time Period.

50. The class action is properly maintainable under Federal Rule of Civil Procedure 23(a) and 23(b)(3).
51. Numerosity: This action satisfies numerosity. The Rule 23 Class defined in paragraph 51 is sufficiently numerous that separate joinder of each member is impracticable as the class will be comprised of more than twenty-five (25) absent class members.
52. Commonality: The named Plaintiff's claims raise questions of law and fact common to each member of the Rule 23 Class, which include, but are not limited to:
- a. whether Rule 23 Class Members have been paid a direct hourly wage rate by Defendants that is less than the Florida minimum wage;
 - b. whether Defendants required Plaintiff and Rule 23 Class Members to share tips with non-tipped employees; and
 - c. whether Defendants' conduct willfully violated Article X, Section 24.
53. Typicality: The claims of the named Plaintiff are typical of the claims of the Rule 23 Class Members because the representative Plaintiff, like all members of the class, was an hourly tipped employee and was required to share tips with non-tipped employees.
54. Adequacy: The named Plaintiff will vigorously pursue the claims alleged herein on behalf of himself and Rule 23 Class Members. The named Plaintiff's claims have no adverse interests to the proposed absent class members because they assert the same claims under Article X, Section 24, seek the same relief as would the absent Rule 23 Class Members if each were to bring a similar action individually. The named Plaintiff will adequately protect and represent the interests of each absent class member.

55. Predominance: Pursuant to Rule 23(b)(3), class certification is appropriate because the Florida minimum wage claims alleged on behalf of the class, as described in the aforementioned paragraphs, predominate over any question of law or fact affecting only individual members of the class. The predominance questions of law or fact are clear, precise, well-defined, and applicable to the named Plaintiff as well as every absent member of the proposed class. In addition, the damages calculation in this suit is a purely mechanical act (hours worked times Florida minimum wage equals damages), class claims predominates over any individual issues.

56. Superiority: Class representation is superior to other available methods for the fair and efficient adjudication of the controversy for a number of reasons including, but not limited to, the following: (1) this action challenges the policy of an employer and therefore employees may be reluctant to bring claims individually for fear of retaliation; (2) many class members may have only worked for Defendants for a short period of time and their individual damages would not be substantial enough to be worth the effort of bringing individual claims; (3) class members may not have the resources to bring their claims individually; and (4) it would be an inefficient use of scarce judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

COUNT III
FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF
THE FLORIDA CONSTITUTION, ARTICLE X, SECTION 24

57. Plaintiff, on behalf of himself and those similarly situated, reincorporates and re-alleges paragraphs 1 through 31 and 49 to 56 as though set forth fully herein and further alleges as follows:

58. Defendants willfully and intentionally forced Plaintiff and those similarly situated to participate in an illegal tip-sharing scheme in which they were required to share their tips with non-tipped employees.

59. By requiring Plaintiff and those similarly situated to share their tips with non-tipped employees, Defendants cannot claim the tip credit and therefore owe Plaintiff and those similarly situated the full minimum wage for each hour worked up to forty per workweek.

60. As a direct and proximate result of the above violations, Plaintiff and those similarly situated have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff JOSE SANTOS ALVAREZ demands judgment in his favor and against Defendants UNO RESTAURANT ASSOCIATES, INC. and MYLES CHEFETZ, jointly and severally, as follows:

- a) Award to Plaintiff and those similarly situated for payment of all hours worked up to forty per workweek at the full minimum wage;
- b) Award to Plaintiff and those similarly situated liquidated damages equal to the payment of all hours worked up to forty per workweek at the full minimum wage or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

COUNT IV
DECLARATION OF RIGHTS

61. Plaintiff reincorporates and re-alleges paragraphs 1 through 31 as though set forth fully herein, and further alleges as follows:

62. Plaintiff, and those similarly situated, and Defendants have a pending dispute under the FLSA, which this Court has jurisdiction to decide pursuant to 29 U.S.C. § 1331. The Court also has jurisdiction over Plaintiff's, and those similarly situated, request for a declaration of rights pursuant to 29 U.S.C. §§ 2201, 2202.
63. Defendants did not rely on a good faith defense in suffering or permitting Plaintiff, and those similarly situated, to work as tipped employees while requiring them to share tips with non-tipped employees.
64. A declaration of rights would serve the useful purpose of clarifying and settling the legal relations at issue.
65. Many members of the proposed 216(b) Class are currently employed by Defendants.
66. The entry of a declaration of the rights of the parties herein would afford relief from uncertainty, insecurity, and controversy giving rise to this proceeding as affecting Plaintiff, and those similarly situated, from Defendants, now and in the future.

WHEREFORE, Plaintiff JOSE SANTOS ALVAREZ demands judgment in his favor and against Defendants UNO RESTAURANT ASSOCIATES, INC. and MYLES CHEFETZ, jointly and severally, as follows:

- a) Issue declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the FLSA;
- b) Enjoin Defendants from further violations of the FLSA;
- c) Award Plaintiff reasonable attorneys' fees and costs;
- d) Award such other and further relief as this Court may deem just and proper.

COUNT V
RETALIATORY DISCHARGE OF PLAINTIFF SANTOS
IN VIOLATION OF 29 U.S.C. § 215(A)(3)

67. Plaintiff reincorporates and re-alleges paragraphs 1 through 31 as though set forth fully herein, and further alleges as follows:

68. Plaintiff Santos formally complained to Defendants that he was being forced to work an excessive amount of sidework during his workweek, although he was a tipped employee.

69. As a direct result of the formal complaints made about excessive sidework as a tipped employee, Plaintiff Santos was fired.

70. Defendants' motivating factor for terminating Plaintiff Santos was retaliation for Plaintiff's complaint concerning excessive sidework he was required to work even though he was a tipped employee.

71. The actual termination of Plaintiff's employment was in direct violation of 29 U.S.C. 215(A)(3) and, as a result, Plaintiff Santos has been damaged.

WHEREFORE, Plaintiff JOSE SANTOS ALVAREZ demands judgment in his favor and against Defendants UNO RESTAURANT ASSOCIATES, INC. and MYLES CHEFETZ, jointly and severally, as follows:

- a) Award to Plaintiff of lost wages and liquidated damages equal to the lost wages;
- b) Award to Plaintiff of front pay;
- c) Award to Plaintiff of compensatory damages for emotional distress, humiliation, and pain and suffering;
- d) Award to Plaintiff of punitive damages;
- e) Award to Plaintiff of reasonable attorneys' fees and costs;
- f) Award of pre-judgment interest; and

g) Any other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted December 7, 2017.

By: s/Robert W. Brock II
Robert W. Brock II, Esq.
Florida Bar No. 75320
robert@kuvinlaw.com
legal@kuvinlaw.com
Law Office of Lowell J. Kivin
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Miami, Florida 33131
Tel.: 305.358.6800
Fax: 305.358.6808
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 2017, I electronically filed the foregoing document via CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the attached Service in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: s/Robert W. Brock II
Robert W. Brock II, Esq.

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS JOSE SANTOS ALVAREZ, on behalf of himself and others similarly situated, **DEFENDANTS** UNO RESTAURANT ASSOCIATES, INC. d/b/a Prime Italian, a Florida for-profit corporation, and

(b) County of Residence of First Listed Plaintiff Miami-Dade **County of Residence of First Listed Defendant** Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert W. Brock II, Esq., Law Office of Lowell J. Kuvin, LLC
17 E. Flagler St, Suite 223, Miami, FL 33131, (305) 358-6800

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

- | | | | | | | | |
|--|--|--|--------------------------------|--------------------------------|--|--------------------------------|--------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) | <input type="checkbox"/> Citizen of This State | <input type="checkbox"/> 1 PTF | <input type="checkbox"/> 1 DEF | <input type="checkbox"/> Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 PTF | <input type="checkbox"/> 4 DEF |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <input type="checkbox"/> Citizen of Another State | <input type="checkbox"/> 2 PTF | <input type="checkbox"/> 2 DEF | <input type="checkbox"/> Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 PTF | <input type="checkbox"/> 5 DEF |
| | | <input type="checkbox"/> Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 PTF | <input type="checkbox"/> 3 DEF | <input type="checkbox"/> Foreign Nation | <input type="checkbox"/> 6 PTF | <input type="checkbox"/> 6 DEF |

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

- | | | | | | |
|---|---|---|--|--|---|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 195 Contract Product Liability | | <input type="checkbox"/> 443 Housing/Accommodations | | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 196 Franchise | | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | | | <input type="checkbox"/> 890 Other Statutory Actions |
| | | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | | | <input type="checkbox"/> 891 Agricultural Acts |
| | | <input type="checkbox"/> 448 Education | | | <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 |

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO **JUDGE:** **b) Related Cases** YES NO **DOCKET NUMBER:**

VII. CAUSE OF ACTION Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 LENGTH OF TRIAL via 4-5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
 DATE December 7, 2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
 RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOSE SANTOS ALVAREZ, on behalf of himself and others similarly situated,

Plaintiff(s)

v.

UNO RESTAURANT ASSOCIATES, INC. d/b/a Prime Italian, a Florida for-profit corporation, and MYLES CHEFETZ, an individual,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) UNO RESTAURANT ASSOCIATES, INC. c/o Registered Agent, MYLES CHEFETZ 157 COLLINS AVENUE, 2ND FLOOR MIAMI BEACH, FL 33139

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert W. Brock II, Esq. The Law Office of Lowell J. Kuvin, LLC 17 East Flagler, Street, Suite 223 Miami, Florida 33131 Tel: 305.358.6800 Fax: 305358.6808

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. _____

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...

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOSE SANTOS ALVAREZ, on behalf of himself and others similarly situated,

Plaintiff(s)

v.

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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: [Miami Beach's Prime Italian Hit with Former Busser's Wage and Hour Suit](#)
