

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**TOBY VONGKULTRUP and
SANCHAI SOM, on behalf of themselves
and on behalf of all others
similarly situated,**

Plaintiffs,

v.

Case No.:

**TSUNAMI IN ST. PETERSBURG INC. d/b/a
TSUNAMI JAPANESE STEAKHOUSE and
GARY LIN, an individual**

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, TOBY VONGKULTRUP and SANCHAI SOM (“Plaintiffs”), by and through undersigned counsel, on behalf of themselves and on behalf of all others similarly situated, brings this action against Defendants, TSUNAMI IN ST. PETERSBURG INC. d/b/a TSUNAMI JAPANESE STEAKHOUSE (“Tsunami”) and GARY LIN, in his individual capacity (“Defendants”), and in support of their claims states as follows:

JURISDICTION AND VENUE

1. This is an action for damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* for failure to pay overtime wages under 29 U.S.C. § 215(a)(3) and to remit all tips earned, and for damages under the Internal Revenue Code, 26 U.S.C. §7434. This Complaint is filed as a collective action under 29 U.S.C. § 216(b).

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 201 et seq., and 26 U.S.C. §7434.

3. Venue is proper in the Middle District of Florida, because all of the events giving rise to these claims occurred in Pinellas County, Florida, which lies within the Middle District of Florida.

PARTIES

4. Plaintiffs are residents of Pinellas County, Florida.

5. Defendants operate a restaurant in St. Petersburg, in Pinellas County, Florida.

GENERAL ALLEGATIONS

6. Plaintiffs have satisfied all conditions precedent, or they have been waived.

7. Plaintiffs have hired the undersigned attorneys and agreed to pay them a fee.

8. Plaintiffs request a jury trial for all issues so triable.

9. At all times material hereto, Named Plaintiffs TOBY VONGKULTRUP and SANCHAI SOM were employed by Defendants as hibachi chefs.

10. The similarly situated employees consist of all other employees of Defendants within the last three years.

11. At all times material hereto, Plaintiffs and the similarly situated employees were “engaged in the production of goods” for commerce within the meaning of Sections 6 and 7 of the FLSA, and as such were subject to the individual coverage of the FLSA.

12. At all times material hereto, Plaintiffs and the similarly situated employees were “employees” of Defendants within the meaning of the FLSA.

13. At all times material hereto, Defendant Tsunami was an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d).

14. Defendant Tsunami continues to be an “employer” within the meaning of the FLSA.

15. At all times material hereto, Defendant Tsunami was and continues to be an enterprise covered by the FLSA. See 29 U.S.C. §§ 203(r) and 203(s).

16. At all times relevant to this action, Defendant Tsunami engaged in interstate commerce within the meaning of the FLSA. See 29 U.S.C. § 203(s).

17. At all times relevant to this action, the annual gross sales volume of Defendant Tsunami exceeded \$500,000 per year.

18. Defendant Gary Yin is the owner of Tsunami.

19. As part of his duties, Defendant Gary Yin supervised Plaintiffs, and exercised control over the wages, hours, and working conditions of Plaintiffs and the similarly situated employees. Defendant Gary Yin also controlled the payroll practices of Tsunami.

20. Through the exercise of dominion and control over all employee-related matters at Tsunami, in his individual capacity Gary Yin is also an “employer” within the meaning of the FLSA.

21. The INTERNAL REVENUE SERVICE (“IRS”) will be notified of this Complaint as is required under the Internal Revenue Code. In particular, 26 U.S.C. 26

§7434(d) provides that “[a]ny person bringing an action under [26 U.S.C. 26 §7434] subsection (a) shall provide a copy of the complaint to the IRS upon the filing of such complaint with the court.

FACTS

22. Named Plaintiff TOBY VONGKULTRUP began working for Defendants as a hibachi chef in May 2015.

23. Named Plaintiff SANCHAI SOM began working for Defendants as a hibachi chef in 2012 and worked in this capacity until July 2016.

24. At various times material hereto, Plaintiffs and the similarly situated employees worked hours in excess of forty (40) hours within a work week for Defendants, and they were entitled to be compensated for these overtime hours at a rate equal to one and one-half times their individual regular hourly rate.

25. Defendants failed to pay Plaintiffs and the similarly situated employees for hours worked over 40 and the overtime premium for all of their overtime hours, in violation of the FLSA.

26. By failing to accurately record all of the hours worked by Plaintiffs and The similarly situated employees, Defendants have failed to make, keep, and preserve records with respect to each of its employees in a manner sufficient to determine their wages, hours, and other conditions of employment, in violation of the FLSA. See 29 C.F.R. § 516.2

27. Defendants’ actions were willful, and showed reckless disregard for the provisions of the FLSA.

28. At various times material hereto, Defendants reported tips on Plaintiffs' paystubs that were not paid to Plaintiffs.

29. Defendants also failed to pay to Plaintiffs all tips earned.

30. By reporting tips on Plaintiffs' paystubs and W-2 that Plaintiffs did not actually receive, Defendants filed a false information return.

31. By reporting tips on Plaintiffs' paystub and W-2 that Plaintiffs did not actually receive, Plaintiffs paid taxes on money that he did not actually receive.

32. Defendants' actions were willful, and showed reckless disregard for the provisions of the Internal Revenue Code.

COLLECTIVE ACTION ALLEGATIONS

33. Plaintiffs brings this case as an "opt-in" collective action on behalf of themselves and on behalf of similarly situated employees of Defendants pursuant to 29 U.S.C. § 216(b). Plaintiffs anticipate that as this case proceeds, other individuals will sign consent forms and join as plaintiffs.

34. Therefore, notice is properly sent to: "All employees whom Defendants failed to compensate for all of the overtime hours that they worked from 2013 to the present."

35. The total number and identities of the similarly situated employees may be determined from the records of Defendants, and the similarly situated employees may easily and quickly be notified of the pendency of this action.

36. Plaintiffs are similar to the similarly situated employees because they have been unlawfully denied full payment of their overtime wages as mandated by the FLSA.

37. Plaintiffs' experiences with Defendants' payroll practices is typical of the experience of the similarly situated employees

38. Defendants' failure to pay all overtime wages due at the rates required by the personal circumstances of each employee is common to the similarly situated employees

39. Overall, Plaintiffs' experiences with Defendants is typical of the experience of the similarly situated employees

40. Specific job titles or job duties do not prevent collective treatment.

41. Although the issue of damages can be individual in character, there remains a common nucleus of operative facts concerning Defendants' liability under the FLSA in this case.

COUNT I – FLSA OVERTIME VIOLATIONS

42. Plaintiffs reallege and readopt the allegations of Paragraphs 1 through 41 of this Complaint, as fully set forth herein. Plaintiffs bring this action on behalf of themselves and all other similarly situated employees in accordance with 29 U.S.C. § 216(b). Plaintiffs anticipate that as this case proceeds, other individuals will sign consent forms and join this collective action as plaintiffs.

43. During the statutory period, Plaintiffs and the similarly situated employees worked overtime hours while employed by Defendants, and they were not properly compensated for all of these hours under the FLSA.

44. Defendants failed to compensate Plaintiffs and the similarly situated employees for all of the overtime hours that Plaintiffs and the similarly situated employees worked.

45. Defendants failed to pay Plaintiffs and the similarly situated employees the overtime premium due for hours worked over 40 in a workweek.

46. The similarly situated employees are similarly situated because they were all employed by Defendants, were compensated in the same manner, and were all subject to Defendants' common policy and practice of failing to pay its employees for all of the overtime hours that they worked, and the applicable overtime premium.

47. This reckless, willful practice violates the provisions of the FLSA, specifically 29 U.S.C. § 207(a)(1). As a result, Plaintiffs and the similarly situated employees who have opted into this action are each entitled to an amount equal to their unpaid overtime wages as liquidated damages.

48. All of Defendants' conduct, as alleged and described above, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

49. As a result of the foregoing, Plaintiffs and the similarly situated employees have suffered damages.

WHEREFORE, Plaintiffs and all similarly situated employees who join this collective action demand:

- (a) Designation of this action as a collective action on behalf of Plaintiffs and the similarly situated employees that they seek to represent, in accordance with the FLSA;

- (b) Prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated employees, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. § 216(b);
- (c) Equitable tolling of the statute of limitations from the date of the filing of this complaint until the expiration of the deadline for filing consent to sue forms under 29 U.S.C. § 216(b);
- (d) Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by this Court;
- (e) Judgment against Defendants for an amount equal to the unpaid overtime wages of Plaintiffs and all opt-in similarly situated employees at the applicable overtime rate;
- (f) A declaratory judgment stating that the practices complained of herein are unlawful under the FLSA;
- (g) Judgment against Defendants for an amount equal to the unpaid back wages of Plaintiffs and all opt-in similarly situated employees at the applicable overtime rate, as liquidated damages;
- (h) Judgment against Defendants stating that their violations of the FLSA were willful;
- (i) To the extent liquidated damages are not awarded, an award of prejudgment interest;

(j) All costs and attorney's fees incurred in prosecuting these claims;
and

(k) For such further relief as this Court deems just and equitable.

COUNT II – FRAUDULENT FILING OF INFORMATION RETURNS
UNDER 26 U.S.C. §7434(a)

50. Plaintiffs reallege and readopts the allegations of Paragraphs 1 through 41 of this Complaint, as fully set forth herein.

51. By reporting tips on Plaintiffs' paystubs and W-2 that Plaintiffs did not actually receive, Defendants filed a false information return.

52. By reporting tips on Plaintiffs' paystub and W-2 that Plaintiffs did not actually receive, Plaintiffs paid taxes on money that he did not actually receive.

53. Under the Internal Revenue Code, 26 U.S.C. § 7434, "[if] any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return."

WHEREFORE, Plaintiffs demand:

- (a) Costs attributable to resolving deficiencies, damages of \$5,000.00 for Plaintiffs, and damages resulting from the additional tax debt and additional time and expenses associated with any necessary correction.
- (b) That Defendants be ordered to take all the necessary steps to correct the above identified information returns.
- (c) All costs and attorney's fees incurred in prosecuting these claims;
and
- (d) For such further relief as the Court deems just and equitable.

COUNT III – FLSA UNPAID WAGES

54. Plaintiffs reallege and readopt the allegations of Paragraphs 1 through 41 of this Complaint, as fully set forth herein.

55. During the statutory period, Plaintiffs and the similarly situated employees worked for Defendants, and Defendants agreed to pay Plaintiffs and the similarly situated employees for their services.

56. Defendants withheld payment from Plaintiffs and the similarly situated employees a portion of their “tips” that Plaintiffs and the similarly situated employees had earned from Defendants’ customers.

57. Defendants’ practice of unlawfully withholding these monies from Plaintiffs’ and the similarly situated employees’ wages and tips constitutes a failure to pay the federal minimum wage to employees for hours worked, in violation of the FLSA.

58. By unlawfully deducting these monies from Plaintiffs’ and the similarly situated employees’ wages and tips, Defendants obtained “kick backs” from Plaintiffs, in violation of 29 CFR §531.35.

59. Defendants’ unlawful deduction practices violate the provisions of the FLSA. As a result, Plaintiffs and the similarly situated employees are entitled to an amount equal to their unpaid wages, as measured by the unlawful deductions made by Defendants to their weekly wages, as liquidated damages.

60. All of the foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. §255(a).

61. As a result of the foregoing, Plaintiffs and the similarly situated employees

have suffered damages.

WHEREFORE, Plaintiffs demand:

- (a) A jury trial on all issues so triable;
- (b) Judgment against Defendants that its violations of the FLSA were willful;
- (c) Judgment against Defendants for an amount equal to Plaintiffs' and the similarly situated employees' unpaid wages, as measured by Defendants' unlawful deductions, as liquidated damages;
- (d) To the extent liquidated damages are not awarded, an award of prejudgment interest;
- (e) All costs and attorney's fees incurred in prosecuting these claims; and
- (f) For such further relief as this Court deems just and equitable.

COUNT IV – UNPAID WAGES

62. Plaintiffs reallege and readopt the allegations of paragraph 1 through 41 as though fully set forth herein.

63. During the statutory period, Plaintiffs worked for Defendants and Defendants agreed to pay Plaintiffs for their services.

64. Defendants failed and refused to compensate Plaintiffs all wages owed to Plaintiffs.

65. As a result of the foregoing, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand:

- (a) A jury trial on all issues so triable;
- (b) That process issues and that this Court take jurisdiction over the case;

(c) Judgment against Defendants for an amount equal to Plaintiffs' unpaid back wages;

(d) All costs and attorney's fees incurred in prosecuting these claims, pursuant to Fla. Stat. §448.08; and

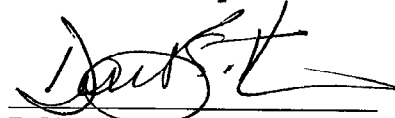
For such further relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury as to all issues so triable.

Dated this 2 day of ~~November~~ ^{December}, 2016.

Respectfully submitted,



DONNA V. SMITH

Florida Bar Number: 661201

WENZEL FENTON CABASSA, P.A.

1110 North Florida Avenue, Suite 300

Tampa, Florida 33602

Main Number: 813-224-0431

Direct Dial: 813-386-0995

Facsimile: 813-229-8712

Email: dsmith@wfclaw.com

Email: mcambronero@wfclaw.com

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TOBY VONGKULTRUP and SANCHAI SOM on behalf of themselves and on behalf of all others similarly situated

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

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

Donna V. Smith, Wenzel Fenton Cabassa, P.A. 1110 N. Florida Avenue, #300, Tampa, Florida 33602, 813-224-0431

DEFENDANTS

TSUNAMI IN ST. PETERSBURG INC. d/b/a TSUNAMI JAPANESE STEAKHOUSE and GARY LIN, an individual

County of Residence of First Listed Defendant Pinellas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

| CONTRACT | TORTS | TORTS/REMEDY/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <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 checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | IMMIGRATION | |
| <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"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | |

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
- 7 Appeal to District Judge from Magistrate Judgment

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

VI. CAUSE OF ACTION

Brief description of cause:
FLSA Fraudulent Filing of Information Returns, FLSA Unpaid Wages, FLSA Overtime Violations

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12-2-16

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tsunami Japanese Steakhouse Seared with FLSA Class Action](#)
