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6 UNITED STATES DISTRICT COURT
 7 DISTRICT OF ARIZONA

9 **Jose Tejada**, individually, and on behalf
 10 of all others similarly situated,

11 Plaintiffs,

12 vs.

13 **Boston Market Corporation** d/b/a
 14 Boston Market, **Boston Chicken of AZ**
 15 **LLC** d/b/a Boston Market, **John Doe**
 16 **Corporations I-XX** d/b/a Boston Market,
 17 **Krupa Patel and Jane Doe Patel**, a
 married couple, and **Jignesh Pandya and**
Jane Doe Pandya, a married couple,

18 Defendants.

No.

**CLASS AND COLLECTIVE ACTION
 COMPLAINT**

19
 20 Plaintiff, Jose Tejada (“Plaintiff” or “Jose Tejada”), individually, and on behalf of
 21 all other individuals similarly situated, sues the Defendants, Boston Market Corporation,
 22 Boston Chicken of AZ LLC, John Doe Corporations I-XX, Krupa Patel and Jane Doe
 23 Patel, and Jignesh Pandya and Jane Doe Pandya, (collectively, Defendants are referred to
 24 as “Defendants” or “Boston Market”) and alleges as follows:
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PRELIMINARY STATEMENT

1
2
3 1. This lawsuit arises under the Fair Labor Standards Act (“FLSA”), 29
4 U.S.C. § 201, *et seq.*, for Defendants’ failure to pay Plaintiff and other similarly-situated
5 employees all earned minimum and overtime wages.
6

7 2. This lawsuit also arises under Arizona Minimum Wage Act (“AMWA”)
8 Arizona Revised Statutes (“ARS”) § 23-363 for Defendants’ failure to pay Plaintiff and
9 other similarly-situated employees all earned minimum wages.
10

11 3. This lawsuit also arises under the Arizona Wage Act (“AWA”) for
12 Defendants’ failure to pay Plaintiff and other similarly-situated employees all earned
13 wages.
14

15 4. Plaintiff brings this action on behalf of himself and all similarly-situated
16 current and former employees of Defendants who worked in any of Defendants’ Boston
17 Market restaurant locations in Arizona who did not receive at least the minimum wage,
18 did not receive any paycheck at all, or received late payment of a paycheck in a given
19 workweek, from May 2023 through the present.
20

21 5. Plaintiff, individually, and on behalf of all others similarly-situated, brings
22 this action against Defendants for their unlawful failure to pay minimum wage and
23 overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the
24 “FLSA”).
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27

1 6. Plaintiff, individually, and on behalf of all others similarly-situated, brings
2 this action against Defendants for their unlawful failure to pay minimum wage due and
3 owing to Plaintiff and others similarly-situated in violation of ARS § 23-363.

4 7. Plaintiff, individually, and on behalf of all others similarly-situated, brings
5 this action against Defendants for their unlawful failure to pay wages due and owing to
6 Plaintiff and others similarly-situated in violation of ARS § 23-350, et seq.

7 8. Plaintiff brings a collective action under the FLSA to recover the unpaid
8 minimum wages and overtime owed to him individually and on behalf of all other
9 similarly-situated Employees, current and former, of Defendants. Putative Members of
10 the Collective Action who work or worked as Employees in any of Defendants’ Boston
11 Market restaurant locations in Arizona, who did not receive at least the minimum wage,
12 did not receive any paycheck at all, or received late payment of a paycheck in a given
13 workweek, starting May 2023 through the present are referred to as the “Collective
14 Members.”
15
16
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18 9. Defendants’ failure to compensate Plaintiff and all similarly-situated
19 employees at a rate equal to Arizona’s required minimum wage violates ARS § 23-363.
20 Plaintiff, therefore, brings a class action pursuant to Rule 23 of the Federal Rules of Civil
21 Procedure to recover unpaid wages and other damages owed under Arizona wage laws.
22 Members of the Rule 23 Class Action who work or worked as Employees in any of
23 Defendants’ Boston Market restaurant locations in Arizona, who did not receive at least
24 the minimum wage, did not receive any paycheck at all, or received late payment of a
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1 paycheck in a given workweek, starting May 2023 through the present are referred to as
2 the “Class Members.”

3 10. Defendants own and operate a chain of Boston Market restaurants in the
4 Phoenix, Arizona Metropolitan Area which are the subject of this lawsuit.
5

6 11. The FLSA was enacted “to protect all covered workers from substandard
7 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
8 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
9 minimum wage of pay for all time spent working during their regular 40-hour
10 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
11 exempt employees one and one-half their regular rate of pay for all hours worked in
12 excess of 40 hours in a workweek. See 29 U.S.C § 207.
13

14 12. Under the FLSA, employers must pay all non-exempt employees a
15 minimum wage for all time spent working for them.
16

17 13. Under the FLSA, employers must pay all non-exempt employees one and
18 one-half times their regular rates of pay for all time spent working in excess of 40 hours
19 in a given workweek.
20

21 14. Under the AMWA, employers must pay all non-exempt employees a
22 minimum wage for all time spent working for them.

23 15. Under the AWA, employers must pay all wages due and owing to their
24 employees at their regular rate in a given workweek.
25

26 16. Under the FLSA, the workweek as a whole is the standard for determining
27 whether the employer has violated the statute. 29 C.F.R. § 776.4. Accordingly, the

1 FLSA’s minimum wage provisions are violated if the employer fails to pay on payday.
2 “The reality is that, under the FLSA, payment of minimum wages is late if not made on
3 payday.” *Mayweathers v. Iconic Results, LLC*, 2020 WL 8181700, at *2 (D. Ariz. Nov.
4 10, 2020), *citing Biggs v. Wilson*, 1 F.3d 1537, 1543 (9th Cir. 1993).

5
6 17. Defendants engaged in the regular practice of paying paychecks otherwise
7 owed to Plaintiff, the Collective Members, and the Class Members late or not at all.

8 18. Indeed, on information and belief, since approximately May 2023,
9 Defendants have failed to pay any of their employees in any of their Arizona Boston
10 Market restaurant locations any wages whatsoever for time worked in a given workweek.

11
12 19. Such a practice violates both the FLSA and AMWA’s minimum wage
13 provisions.

14 20. Such a practice violates the FLSA’s overtime provisions for Plaintiff and
15 the Collective Members who were non-exempt and worked in excess of 40 hours in a
16 given workweek without receiving an overtime premium for such time worked.

17
18 21. As a result of the aforementioned allegations, Defendants failed to pay
19 Plaintiff and the Collective Members the application federal minimum wage and
20 overtime, in violation of the FLSA, 29 U.S.C. § 201, et seq.

21
22 22. As a result of the aforementioned allegations, Defendants failed to pay
23 Plaintiff and the Class Members the applicable Arizona minimum wage, in violation of
24 the AMWA, A.R.S. § 23-363, et seq.

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1 23. As a result of the aforementioned allegations, Defendants failed to pay
2 Plaintiff and the Class Members their regular rates of pay, in violation of the AMWA,
3 A.R.S. § 23-363, et seq.
4

5 **JURISDICTION AND VENUE**

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

8 25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
9 29 U.S.C. § 201, *et seq.* because this civil action arises under the laws of the United
10 States. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1367
11 because this action contains claims arising under Arizona law that are so related to
12 Plaintiff’s claims under 29 U.S.C. § 201, *et seq.* that they form part of the same case or
13 controversy under Article III of the United States Constitution.
14
15

16 26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because
17 acts giving rise to the claims of Plaintiff, the Tipped Collective Members, the Tipped
18 Class Members, the Non-Tipped Hourly Collective Members, and the Non-Tipped
19 Hourly Class Members occurred within the District of Arizona, and Defendants regularly
20 conduct business in and have engaged in the wrongful conduct alleged herein – and, thus,
21 are subject to personal jurisdiction in – this judicial district.
22

23 **PARTIES**

24 27. Plaintiff realleges and incorporates by reference all allegations in all
25 preceding paragraphs.
26
27

1 28. Plaintiff is an individual residing in Maricopa County, Arizona, and is a
2 former employee of Defendants.

3 29. Plaintiff was employed by Defendants and worked many of Defendants’
4 Boston Market locations in Arizona at various times between 1997 until approximately
5 June 30, 2023. At all times relevant to this lawsuit, Plaintiff worked as an assistant
6 manager for Defendants, earning an hourly rate of approximately \$20.
7

8 30. Plaintiff serves in the capacity of a representative Plaintiff on behalf of the
9 Collective Members and the Class Members for the time he spent working for
10 Defendants.
11

12 31. Plaintiff has given his written consent to be Representative Plaintiff in this
13 action pursuant to 29 U.S.C. § 216(b), see Signed Consent Forms, attached as “**Exhibit**
14 **A.**”
15

16 32. At all material times, Plaintiff, in his work for Defendants as an assistant
17 manager, worked approximately between 50 and 60 hours per week.

18 33. At all material times, Plaintiff and the Collective Members were employees
19 of Defendants as defined in 29 U.S.C. § 203(e)(1) and were non-exempt employees under
20 29 U.S.C. § 213(a)(1).
21

22 34. At all material times, Plaintiff and the Class Members were employees of
23 Defendants as defined in ARS § 23-362(A).
24

25 35. At all material times, Defendant Boston Market Corporation was a
26 corporation duly licensed to transact business in the State of Arizona.
27

1 36. Defendant Boston Market Corporation does business, has offices, and
2 maintains agents for the transaction of its customary business in Maricopa County,
3 Arizona.

4 37. At all material times, Defendant Boston Market Corporation is Plaintiff’s
5 and the Collective Members’ “employer,” as defined by the FLSA, 29 U.S.C. § 203(d).
6

7 38. At all material times, Defendant Boston Market Corporation is Plaintiff’s
8 and the Class Members’ “employer,” as defined by the AMWA, ARS § 23-362(A).
9

10 39. Under the FLSA, Defendant Boston Market Corporation is an employer.
11 The FLSA defines “employer” as any person who acts directly or indirectly in the interest
12 of an employer in relation to an employee. At all relevant times, Defendant Boston
13 Market Corporation had the authority to hire and fire employees, supervised and
14 controlled work schedules or the conditions of employment, determined the rate and
15 method of payment, and maintained employment records in connection with Plaintiff’s
16 and the Collective Members’ employment with Defendants. Having acted in the interest
17 of Boston Market in relation to the company’s employees, including Plaintiff, the
18 Collective Members, and the Class Members, Defendant Boston Market Corporation is
19 subject to liability under the FLSA.
20
21

22 40. On information and belief, Defendant Boston Chicken of AZ LLC is an
23 Arizona limited liability company doing business as Boston Market.

24 41. On information and belief, at all material times, Defendant Boston Chicken
25 of AZ LLC was a limited liability company duly licensed to transact business in the State
26 of Arizona.
27

1 42. On information and belief, Defendant Boston Chicken of AZ LLC does
2 business, has offices, and maintains agents for the transaction of its customary business in
3 Maricopa County, Arizona.

4 43. On information and belief, at all material times, Defendant Boston Chicken
5 of AZ LLC is Plaintiff’s and the Collective Members’ “employer,” as defined by the
6 FLSA, 29 U.S.C. § 203(d).

7 44. On information and belief, at all material times, Defendant Boston Chicken
8 of AZ LLC is Plaintiff’s and the Class Members’ “employer,” as defined by the AMWA,
9 ARS § 23-362(A).

10 45. On information and belief, under the FLSA, Defendant Boston Chicken of
11 AZ LLC is an employer. The FLSA defines “employer” as any person who acts directly
12 or indirectly in the interest of an employer in relation to an employee. At all relevant
13 times, on information and belief, Defendant Boston Chicken of AZ LLC had the
14 authority to hire and fire employees, supervised and controlled work schedules or the
15 conditions of employment, determined the rate and method of payment, and maintained
16 employment records in connection with Plaintiff’s and the Collective Members’
17 employment with Defendants. On information and belief, having acted in the interest of
18 Boston Market in relation to the company’s employees, including Plaintiff, the Collective
19 Members, and the Class Members, Defendant Boston Chicken of AZ LLC is subject to
20 liability under the FLSA.

21 46. Upon information and belief, Defendant(s) John Doe Corporations I-XX
22 are and/or were, at all times relevant herein, individuals, groups, partnerships, and/or
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1 other entities which: (1) may have been owned or operated by or in conjunction with any
2 of the Defendants as a “Boston Market” restaurant location in Arizona; (2) may have
3 hired individuals, including Plaintiff, the Collective Members, or the Class Members as
4 employees of any of the named Defendants; (3) may have been involved in Plaintiff’s,
5 the Collective Members’, or the Class Members’ damages; and/or (4) are otherwise
6 proper parties to this lawsuit. The identities of Defendant(s) John Doe Corporations I-
7 XX remain unknown despite Plaintiff’s’ due diligence.

9 47. At all relevant times, Defendant(s) John Doe Corporations I-XX were
10 employers under the FLSA. The FLSA defines “employer” as any person who acts
11 directly or indirectly in the interest of an employer in relation to an employee. At all
12 relevant times, Defendant(s) John Doe Corporations I-XX had the authority to hire and
13 fire employees, supervised and controlled work schedules or the conditions of
14 employment, determined the rate and method of payment, and maintained employment
15 records in connection with Plaintiff’s and the Collective Members’ employment with
16 Defendants. As a person who acted in the interest of Defendants in relation to the
17 company’s employees, Defendant(s) John Doe Corporations I-XX is subject to liability
18 under the FLSA.

19 48. Upon information and belief, Defendant(s) John Doe Corporations I-XX do
20 business as “Boston Market” and have restaurant locations in Arizona.

21 49. Defendant Krupa Patel and Jane Doe Patel are, upon information and belief,
22 husband and wife. They have caused events to take place giving rise to the claims in this
23 Complaint as to which their marital community is fully liable. Krupa Patel and Jane Doe
24
25
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1 Patel are owners of the Boston Market and were at all relevant times Plaintiff’s, the
2 Collective Members’, and the Class Members’ employer as defined by the FLSA, 29
3 U.S.C. § 203(d).

4 50. Under the FLSA, Defendants Krupa Patel and Jane Doe Patel are
5 employers. The FLSA defines “employer” as any individual who acts directly or
6 indirectly in the interest of an employer in relation to an employee. Defendants Krupa
7 Patel and Jane Doe Patel are owners of Boston Market. At all relevant times, they had
8 the authority to hire and fire employees, supervised and controlled work schedules or the
9 conditions of employment, determined the rate and method of payment, and maintained
10 employment records in connection with Plaintiff’s, the Collective Members’, and the
11 Class Members’ employment with Defendants. As persons who acted in the interest of
12 Defendants in relation to Boston Market’s employees, Krupa Patel and Jane Doe Patel are
13 subject to individual liability under the FLSA and the AMWA.
14
15
16

17 51. At all material times, Defendants Krupa Patel and Jane Doe Patel are
18 Plaintiff’s and the Collective Members’ “employer,” as defined by the FLSA, 29 U.S.C. §
19 203(d).

20 52. At all material times, Defendant Krupa Patel and Jane Doe Patel are
21 Plaintiff’s and the Class Members’ “employer,” as defined by the AMWA, ARS § 23-
22 362(A).
23

24 53. Plaintiff is further informed, believe, and therefore allege that each of the
25 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
26 alleged in this Complaint.
27

1 54. Defendants, and each of them, are sued in both their individual and
2 corporate capacities.

3 55. Defendants' Arizona Boston Market restaurants all share common human
4 resources management.

5 56. Defendants' Arizona Boston Market restaurants all share a common
6 employee handbook and training materials.

7 57. Plaintiff is further informed, believes, and therefore alleges that each of the
8 Defendants herein gave consent to, ratified, and authorized the acts of all other
9 Defendants, as alleged herein.

10 58. At all material times, Defendants have operated as a "single enterprise"
11 within the meaning of Section 203(r)(1) of the FLSA. 29 U.S.C. § 203(r)(1). That is,
12 Defendants perform related activities through unified operation and common control for a
13 common business purpose; namely, the operation of a chain of restaurants in Maricopa
14 County, Arizona.

15 59. At all material times: (1) Defendants were not completely disassociated
16 with respect to the employment of Plaintiff, the Collective Members, and the Class
17 Members, and (2) Defendants were under common control. In any event, at all relevant
18 times, all Defendants were joint employers of Plaintiff, the Collective Members, and the
19 Class Members under the FLSA.

20 60. Defendants are engaged in related activities, *i.e.* all activities which are
21 necessary to the operation and maintenance of the chain of restaurants that comprise the
22 business offerings of Boston Market.

1 61. Defendants constitute a unified operation because they have organized the
2 performance of their related activities so that they are an organized business system,
3 which is an economic unit directed to the accomplishment of a common business
4 purpose.
5

6 62. Defendants are jointly and severally liable for the injuries and damages
7 sustained by Plaintiff, the Collective Members, and the Class Members.

8 63. At all relevant times, Plaintiff, the Collective Members, and the Class
9 Members were “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et*
10 *seq.*
11

12 64. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
13 Defendants.
14

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

17 66. At all relevant times, Defendants were and continue to be “employers” as
18 defined by AMWA, ARS § 23-362(B).

19 67. Defendants individually and/or through an enterprise or agent, directed and
20 exercised control over Plaintiff’s, the Collective Members’, and the Class Members’
21 work and wages at all relevant times.
22

23 68. At all relevant times, Plaintiff, the Collective Members, and the Class
24 Members, in their work for Defendants, were engaged in commerce or the production of
25 goods for commerce.
26
27

1 69. At all relevant times, Plaintiff, the Collective Members, and the Class
2 Members, in their work for Defendants, were employed by an enterprise engaged in
3 commerce that had annual gross sales of at least \$500,000.

4 70. At all relevant times, Plaintiff and the Collective Members, in their work
5 for Defendants, were engaged in commerce or the production of goods for commerce.
6

7 71. At all relevant times, Plaintiff and the Collective Members, in their work
8 for Defendants, were engaged in interstate commerce.

9 72. Plaintiff and the Collective Members, in their work for Defendant, regularly
10 handled goods produced or transported in interstate commerce.
11

12 **STATEMENT OF FACTS**

13 73. Plaintiff realleges and incorporates by reference all allegations in all
14 preceding paragraphs.
15

16 74. Since approximately May 2023, Defendants have engaged in the regular
17 practice of paying paychecks otherwise owed to Plaintiff, the Collective Members, and
18 the Class Members late or not at all.

19 75. Indeed, on information and belief, since approximately May 2023,
20 Defendants have failed to pay any of their employees in any of their Arizona Boston
21 Market restaurant locations any wages whatsoever for time worked in a given workweek.
22

23 76. Such a practice has resulted in Defendants having failed to pay any wages
24 whatsoever to Plaintiff, the Collective Members, or the Class Members for work
25 performed over the course of between approximately two and four biweekly pay periods.
26
27

1 77. On information and belief, Defendants have temporarily closed most or all
2 their Arizona Boston Market restaurant locations, apparently at least partially as a result
3 of their failure to pay their employees as described herein.

4 78. Such a practice violates both the FLSA and AMWA's minimum wage
5 provisions for Plaintiff, the Collective Members, and the Class Members who performed
6 work for Defendants in a given workweek and did not receive any wages whatsoever or
7 did not receive sufficient wages to bring their effective wage rate to at or above the
8 applicable federal or state minimum wage.

9 79. Such a practice violates the FLSA's overtime provisions for Plaintiff and
10 the Collective Members who were non-exempt and worked in excess of 40 hours in a
11 given workweek without receiving an overtime premium for such time worked.

12 80. As a result of the aforementioned allegations, Defendants failed to pay
13 Plaintiff and the Collective Members the application federal minimum wage and
14 overtime, in violation of the FLSA, 29 U.S.C. § 201, et seq.

15 81. As a result of the aforementioned allegations, Defendants failed to pay
16 Plaintiff and the Class Members the applicable Arizona minimum wage, in violation of
17 the AMWA, A.R.S. § 23-363, et seq.

18 82. As a result of the aforementioned allegations, Defendants failed to pay
19 Plaintiff and the Class Members their regular rates of pay, in violation of the AMWA,
20 A.R.S. § 23-363, et seq.

FLSA COLLECTIVE ACTION ALLEGATIONS

1
2 83. Plaintiff realleges and incorporates by reference all allegations in all
3 preceding paragraphs.

4 84. Plaintiff brings the FLSA claims in this action as a collective action under
5 29 U.S.C. § 216(b).
6

7 85. Plaintiff asserts those claims on behalf of themselves, and on behalf of all
8 similarly situated Employees employed by Defendants at any time three years before the
9 filing of this Complaint through the present.
10

11 86. Plaintiff seeks to notify the following class of employees of their rights
12 under 29 U.S.C. § 216(b) to join this action by filing in this Court written notice of their
13 consent to join this action:

14 **All individuals who worked at any time for Defendants in any of**
15 **Defendants' Boston Market restaurant locations in Arizona and**
16 **who did not receive at least the applicable minimum wage**
17 **and/or overtime premium as a result of not receiving at least one**
18 **paycheck on time or at all in a given workweek, beginning May**
19 **2023 through the present.**

20 87. Upon information and belief, Defendants have employed more than 100
21 employees to whom the class description applies during the period relevant to this action.

22 88. The identities of these employees, as a group, are known only to
23 Defendants. Because the numerous members of this collective action are unknown to
24 Plaintiff, joinder of each member is not practicable.

25 89. Because these similarly situated tipped employees are readily identifiable
26 by Defendants and may be located through their records, they may be readily notified of
27

1 this action and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of
2 collectively adjudicating their FLSA claims.

3 90. Collective adjudication is appropriate in this case because the employees
4 whom Plaintiff wishes to notify of this action have been employed in positions similar to
5 Plaintiff; have performed work similar to Plaintiff; and have been subject to
6 compensation practices similar to those to which Plaintiff have been subjected.
7

8 **ARIZONA CLASS ACTION ALLEGATIONS**

9 91. Plaintiff realleges and incorporates by reference all allegations in all
10 preceding paragraphs.
11

12 92. Plaintiff brings his Arizona wage claims as a Rule 23 class action on behalf
13 of the following class:
14

15 **All individuals who worked at any time for Defendants in any of**
16 **Defendants' Boston Market restaurant locations in Arizona and**
17 **who did not receive at least the applicable minimum wage**
18 **and/or wages due and owing as a result of not receiving at least**
19 **one paycheck on time or at all in a given workweek, beginning**
20 **May 2023 through the present.**

21 93. Numerosity. The number of Class Action Members is believed to be over
22 one hundred. This volume makes bringing the claims of each individual Class Action
23 Member before this Court impracticable. Likewise, joining each individual Class Action
24 Member as a plaintiff in this action is impracticable. Furthermore, the identity of the
25 Class Action Members will be determined from Defendants' records, as will the
26 compensation paid to each of them. As such, a class action is a reasonable and practical
27

1 means of resolving these claims. To require individual actions would prejudice the Class
2 Action Members and Defendants.

3 94. Typicality. Plaintiff's claims are typical of both subclasses of Class Action
4 Members because like the Class Action Members, Plaintiff was subject to Defendants'
5 uniform policies and practices and were compensated in the same manner as the other
6 Class Action Members. Defendants failed to pay Plaintiff and the Class Action Members
7 on time or at all during the time period relevant to this action. As a result, Defendants
8 failed to pay Plaintiff and the Class Action Members minimum wage and/or other wages
9 for hours worked.
10

11
12 95. As a result of such policies and practices by Defendants, Defendants
13 violated the minimum wage and wage provisions of ARS §§ 23-363 and 23-350.

14 96. Adequacy. Plaintiff is a representative party who will fairly and adequately
15 protect the interests of the Class Action Members because it is in their interest to
16 effectively prosecute the claims in this Complaint in order to obtain the unpaid wages and
17 penalties required under Arizona law. Plaintiff has retained attorneys who are competent
18 in both class actions and wage and hour litigation. Plaintiff does not have any interest
19 that may be contrary to or in conflict with the claims of the Class Action Members they
20 seek to represent.
21

22 97. Commonality. Common issues of fact and law predominate over any
23 individual questions in this matter. The common issues of fact include, but are not
24 limited to:
25
26
27

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- 1 a. Whether Defendants paid Plaintiff and the Class Action Members
2 their paychecks late or at all;
- 3 b. Whether Defendants failed to pay Plaintiff and the Class Action
4 Members the minimum wage for all hours worked; and
- 5 c. Whether Defendants subjected Plaintiff and the Class Action
6 Members to the wage violations of which they complain.

8 98. Common issues of law include, but are not limited to:

- 9 a. Whether Defendants properly paid all minimum wages due and owing
10 to Plaintiff and the Class Action Members;
- 11 b. Whether Plaintiff and the Class Action Members are entitled to
12 compensatory damages;
- 13 c. The proper measure of damages sustained by Plaintiff and the Class
14 Action Members; and

15 99. Superiority. A class action is superior to other available means for the fair
16 and efficient adjudication of this lawsuit. Even in the event any of the Class Action
17 Members could afford to pursue individual litigation against companies the size of
18 Defendants, doing so would unduly burden the system. Individual litigation would
19 magnify the delay and expense to all parties and burden the court system with duplicative
20 lawsuits. Prosecution of separate actions by individual Class Action Members would
21 create the risk of inconsistent or varying judicial results and establish incompatible
22 standards of conduct for Defendants.

1 100. A class action, by contrast, presents far fewer management difficulties and
2 affords the benefits of uniform adjudication of the claims, financial economy for the
3 parties, and comprehensive supervision by a single court and Judge. By concentrating
4 this litigation in one forum, judicial economy and parity among the claims of individual
5 Class Members are promoted. Additionally, class treatment in this matter will provide
6 for judicial consistency. The identities of the Class Action Members are readily
7 identifiable from Defendants’ records.
8

9 101. This type of case is well-suited for class action treatment because: (1)
10 Defendants’ practices, policies, and/or procedures were uniform; (2) the burden is on
11 each Defendant to prove it properly compensated its employees; (3) the burden is on each
12 Defendant to accurately record hours worked by employees; and (4) the burden is on each
13 Defendant to prove it properly imposed the tip credit upon its employees.
14

15 102. Ultimately, a class action is a superior forum to resolve the Arizona state
16 law claims set forth in this Complaint because of the common nucleus of operative facts
17 centered on the continued failure of Defendants to pay Plaintiff and the Class Action
18 Members according to applicable Arizona laws.
19

20 103. Nature of Notice to be Proposed. As to the Rule 23 Class Action Members,
21 it is contemplated that notice would be issued giving putative class members an
22 opportunity to opt out of the class if they so desire, *i.e.* an “opt-out notice.” Notice of the
23 pendency and resolution of the action can be provided to the Class Action Members by
24 mail, electronic mail, print, broadcast, internet, and/or multimedia publication.
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27

**COUNT ONE: FLSA COLLECTIVE MEMBERS – MINIMUM WAGE
UNPAID OR UNTIMELY PAYCHECKS**

1
2
3 104. Plaintiff realleges and incorporates by reference all allegations in all
4 preceding paragraphs.

5 105. Defendants engaged in the regular practice of paying paychecks otherwise
6 owed to Plaintiff and the Collective Members late or not at all.

7
8 106. On information and belief, since approximately May 2023, Defendants
9 have failed to pay any of their employees in any of their Arizona Boston Market
10 restaurant locations any wages whatsoever for time worked in a given workweek.

11 107. As a result of such failure, Defendants failed or refused to pay the FLSA-
12 mandated minimum wage.

13
14 108. Such failure by Defendants violated the FLSA, 29 U.S.C. § 206.

15 109. Defendant's practice of failing or refusing to pay Plaintiff and the
16 Collective Members at the required minimum wage rate violated the FLSA, 29 U.S.C. §
17 206(a).

18
19 110. Plaintiff and the Collective Members are therefore entitled to compensation
20 for the full applicable minimum wage at an hourly rate, to be proven at trial, plus
21 liquidated damages, together with interest, reasonable attorney's fees, and costs.

22 **WHEREFORE**, Plaintiff, Jose Tejada, individually, and on behalf of all other
23 similarly situated persons, respectfully requests that this Court grant relief in Plaintiff's
24 and the Collective Members' favor, and against Defendants for compensation for unpaid
25 minimum wages, plus liquidated damages, prejudgment and post-judgment interest,
26
27

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

3 **COUNT TWO: FLSA COLLECTIVE MEMBERS – OVERTIME**
4 **UNPAID OR UNTIMELY PAYCHECKS**

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

7 112. Defendants engaged in the regular practice of paying paychecks otherwise
8 owed to Plaintiff and the Collective Members late or not at all.

9 113. On information and belief, since approximately May 2023, Defendants
10 have failed to pay any of their employees in any of their Arizona Boston Market
11 restaurant locations any wages whatsoever for time worked in a given workweek.
12

13 114. As a result of such failure, Defendants failed or refused to pay the FLSA-
14 mandated overtime wage rate to Plaintiff and the Collective Members who worked in
15 excess of 40 hours in a given workweek.
16

17 115. Such a practice violates the FLSA's overtime provisions for Plaintiff and
18 the Collective Members who were non-exempt and worked in excess of 40 hours in a
19 given workweek without receiving an overtime premium for such time worked.
20

21 116. Defendant's practice of failing or refusing to pay Plaintiff and the
22 Collective Members who worked in excess of 40 hours in a given workweek at the
23 required overtime rate violated the FLSA, 29 U.S.C. § 207(a).
24
25
26
27

1 117. Plaintiff and the Collective Members are therefore entitled to compensation
2 for the full applicable overtime wage at an hourly rate, to be proven at trial, plus
3 liquidated damages, together with interest, reasonable attorney's fees, and costs.

4 **WHEREFORE**, Plaintiff, Jose Tejada, individually, and on behalf of all other
5 similarly situated persons, respectfully requests that this Court grant relief in Plaintiff and
6 the Collective Members' favor, and against Defendants for compensation for unpaid
7 overtime wages, plus liquidated damages, prejudgment and post-judgment interest,
8 reasonable attorneys' fees, costs, and disbursements of this action, and any additional
9 relief this Court deems just and proper.
10

11
12 **COUNT THREE: AMWA CLASS MEMBERS – MINIMUM WAGE**
13 **UNPAID OR UNTIMELY PAYCHECKS**

14 118. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 119. Defendants engaged in the regular practice of paying paychecks otherwise
17 owed to Plaintiff and the Collective Members late or not at all.

18 120. On information and belief, since approximately May 2023, Defendants
19 have failed to pay any of their employees in any of their Arizona Boston Market
20 restaurant locations any wages whatsoever for time worked in a given workweek.
21

22 121. As a result of such failure, Defendants failed or refused to pay the AMWA-
23 mandated minimum wage.
24

25 122. Such failure by Defendants violated the AMWA, A.R.S. § 23-363.
26
27

1 123. Defendant's practice of failing or refusing to pay Plaintiff and the
2 Collective Members at the required minimum wage rate violated the AMWA, A.R.S. §
3 23-363.

4 124. Plaintiff and the Collective Members are therefore entitled to compensation
5 for the full applicable minimum wage at an hourly rate, to be proven at trial, plus
6 liquidated damages, together with interest, reasonable attorney's fees, and costs.

7 **WHEREFORE**, Plaintiff, Jose Tejeda, individually, and on behalf of all other
8 similarly situated persons, respectfully requests that this Court grant relief in Plaintiff's =
9 and the Class Members' favor, and against Defendants for compensation for unpaid
10 minimum wages, plus liquidated damages, prejudgment and post-judgment interest,
11 reasonable attorneys' fees, costs, and disbursements of this action, and any additional
12 relief this Court deems just and proper.
13
14

15 **COUNT FOUR: AWA CLASS MEMBERS – UNPAID WAGES**
16 **UNPAID OR UNTIMELY PAYCHECKS**

17 125. Plaintiff realleges and incorporates by reference all allegations in all
18 preceding paragraphs.
19

20 126. As a result of the allegations contained herein, Defendants did not
21 compensate Plaintiff and the Class Members wages due and owing to them.
22

23 127. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

24 128. Defendants acted unreasonably and in bad faith in failing to pay Plaintiff
25 and the Class Members wages due and owing to them.
26
27

1 129. Defendants sought to delay payment without reasonable justification and to
2 defraud Plaintiff and the Class Members of wages earned.

3 130. As such, unpaid wages for such time Plaintiff and the Class Members
4 worked are owed to Plaintiff and the Collective Members for the workweeks at issue
5 herein.
6

7 131. Plaintiff and the Class Members are therefore entitled to compensation for
8 unpaid wages, to be proven at trial, in an amount that is treble the amount of their unpaid
9 wages, plus interest thereon, and costs incurred.
10

11 **WHEREFORE**, Plaintiff, Jose Tejada, individually, and on behalf of all other
12 similarly situated persons, respectfully requests that this Court grant relief in Plaintiff and
13 the Class Members’ favor, and against Defendants for compensation for unpaid wages,
14 trebled damages, prejudgment and post-judgment interest, reasonable attorneys’ fees,
15 costs, and disbursements of this action, and any additional relief this Court deems just
16 and proper.
17

18 **JURY TRIAL DEMAND**

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

20 RESPECTFULLY SUBMITTED this 27th Day of July, 2023.
21

22 BENDAU & BENDAU PLLC

23 By: /s/ Clifford P. Bendau, II
24 Clifford P. Bendau, II
25 Christopher J. Bendau
26 *Attorneys for Plaintiff*
27

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Boston Market Fails to Pay Arizona Employees, Class Action Claims](#)
