

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

_____)	
JAMES WOLF and DON ALLEN,)	
on behalf of themselves)	Civil Action No.
and all others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MONSTER CHEF INC.)	
d/b/a VINES GRILLE & WINE)	
BAR and DIMITRIOS KARABINIS,)	
)	
Defendants.)	
_____)	

COLLECTIVE ACTION COMPLAINT

Plaintiffs James Wolf and Don Allen bring this collective action complaint on behalf of themselves individually and others similarly situated to recover unpaid minimum wages and other damages under federal law from Defendants Monster Chef Inc. d/b/a Vines Grille & Wine Bar and Dimitrios Karabinis (collectively, “Defendants”).

I. INTRODUCTION

1. This is a collective action brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to recover unpaid minimum wages on behalf of wait staff employees who have worked for Defendants at their Vines Grille & Wine Bar restaurant in Orlando, Florida.

2. Under Section 203(m) of the FLSA, an employer may use a portion of its tipped employees’ earned tips (not to exceed \$3.02 per hour) to meet its minimum wage obligations (“tip credit”) *if* (1) it provides its tipped employees with notice of the tip credit provisions of the FLSA in advance (including notifying them of the applicable tipped minimum wage and the applicable tip credit, *inter alia*) and (2) tipped employees are permitted to retain *all* tips they

receive with exception of a valid tip pool among employees who customarily and regularly receive tips. If an employer fails to meet either requirement, the employer may not use the tip credit and must directly pay its employees the full minimum wage for all hours worked.

3. The term “wait staff employees,” as used herein, refers to employees of Defendants who serve beverages and/or food directly to customers, who have been paid less than minimum wage, and who pay a portion of their tips to non-wait staff who are not entitled to share in tips, including management and/or band performers.

4. Pursuant to Section 216(b) of the FLSA, Named Plaintiffs James Wolf and Don Allen bring this collective action on behalf of themselves individually and all similarly situated persons employed by Defendants as wait staff employees at Defendants’ restaurant Vines Grille & Wine Bar located in Orlando, Florida during the Relevant Time Period (three years prior to the date of filing this Complaint until trial). The Named Plaintiffs seek on behalf of themselves and other similarly situated employees unpaid minimum wages of which they were deprived, an equal amount of liquidated damages, compensatory damages in the amount of the portions of tips that wait staff employees paid to non-wait staff, reasonable attorneys’ fees and costs, and all other relief that the Court deems appropriate.

II. JURISDICTION AND VENUE

5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs have asserted a claim pursuant to the FLSA.

6. Venue is proper in this Court because Defendants operate and/or reside in this District and has substantial contacts with this District.

III. PARTIES

7. Plaintiff James Wolf (“Wolf”) is an adult resident of Orlando, Florida. Wolf was an employee employed by the Defendants within the meaning of Section 203(e) of the FLSA. From approximately March 2014 to May 2015, Wolf worked for Defendants as a wait staff employee at Vines Grille & Wine Bar. As a wait staff employee, Wolf was paid a direct hourly wage that was less than the minimum wage required under federal law, and he was required to pay portions of his tips to management and/or band performers, who are not customarily and regularly tipped employees that can be included in a valid tip pool. Additionally, he was not informed by Defendants of the tip credit provisions of the FLSA in advance of Defendants taking the tip credit.

8. Plaintiff Don Allen (“Allen”) is an adult resident of Goldsboro, North Carolina. Allen was an employee employed by the Defendants within the meaning of Section 203(e) of the FLSA. From approximately 2007 to July 2012 and February 2014 to July 2015, Allen worked for Defendants as a wait staff employee at Vines Grille & Wine Bar. As a wait staff employee, Allen was paid a direct hourly wage that was less than the minimum wage required under federal law, and he was required to pay portions of his tips to management and/or band performers, who are not customarily and regularly tipped employees. Additionally, he was not informed by Defendants of the tip credit provisions of the FLSA in advance of Defendants taking the tip credit.

9. Defendants Vines Grille & Wine Bar and Dimitrios Karabinis employed Plaintiff Wolf, Allen and the putative class members within the meaning of Section 203 (d) and (g) of the FLSA.

10. Defendants have jointly owned and/or operated Vines Grille & Wine Bar during the Relevant Time Period.

11. During the Relevant Time Period, Defendants have set policies and working conditions for wait staff employees and other hourly employees at Vines Grille & Wine Bar for matters related to their pay, job duties, schedules, grooming, hiring, firing, and discipline and rules of conduct.

12. During the Relevant Time Period, Defendants have been an “enterprise engaged in commerce or the production of goods for commerce” within the meaning of the FLSA, 29 U.S.C. § 203(s).

13. During the Relevant Time Period, Defendants have employed two or more persons, including Plaintiffs, “engaged in commerce or in the production of goods for commerce,” or has “had employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person,” as defined in § 203(s)(1)(A)(i).

14. During the Relevant Time Period, Defendant Dimitrios Karabinis has been directly or indirectly responsible for the day-to-day management and/or operations of Vines Grille & Wine Bar and has been directly or indirectly responsible for setting the pay policies and wages for all employees, including all wait staff employees.

15. During the Relevant Time Period, Defendants have achieved annual gross sales made or business done in excess of \$500,000.00 in accordance with § 203(s)(1)(A)(ii).

IV. FACTUAL ALLEGATIONS

16. During the Relevant Time Period, Defendants have utilized the tip credit to pay wait staff employees an hourly wage rate that is less than the minimum wage required under

federal law even though wait staff employees do not retain all of their tips and are required to share tips with management and/or band performers who are not customarily and regularly tipped employees, and are not engaged in service to customers.

17. During the Relevant Time Period, Plaintiffs and other wait staff employees who worked at Vines Grille & Wine Bar have not retained all their tips received from customers. Instead, wait staff employees are required to pay a portion of their tips to management and/or band performers who are not customarily and regularly tipped employees whose primary job is to serve beverages and/or food to customers and to interact with customers.

18. Despite the fact that management and/or band performers are not customarily and regularly tipped employees, wait staff employees are required to pay a portion of their tips to management and/or band performers.

19. This tip-sharing described above has not been free from coercion, has not been outside of any formalized arrangement, and/or has been a condition of the wait staff employees' employment.

20. During the Relevant Time Period, Defendants have not been entitled to take the tip credit because Plaintiffs and other wait staff employees at Vines Grille & Wine Bar have not retained all their tips and have been required to pay a portion of their tips to management and/or band performers who are not customarily and regularly tipped employees.

21. Defendants have paid Plaintiffs and other similarly situated wait staff employees an hourly rate that is less than the federal minimum wage even though Defendants have failed to inform Plaintiffs and other wait staff employees of the tip credit provisions of the FLSA in advance of taking the tip credit, as required by 29 U.S.C. § 203(m).

22. During the Relevant Time Period, Defendants have failed to inform Plaintiffs and other wait staff employees of the tip credit provisions of the FLSA in advance of taking the tip credit, as required by 29 U.S.C. § 203(m).

23. The information that Defendants have provided to wait staff employees about the tip credit provisions of the FLSA has been insufficient to satisfy the statutory and regulatory requirements.

24. For example, Defendants have not provided timely, accurate, complete, and updated information to wait staff employees about the amount of the cash wage being paid to those employees and the additional amount by which the wages of those employees have been increased because of the tip credit claimed by Defendants, as required by 29 C.F.R. § 531.59.

25. Because of Defendants' failure to inform wait staff employees of the tip credit provisions of the FLSA in advance of taking the tip credit, Defendants have failed to satisfy the requirements of 29 U.S.C. § 203(m) during the Relevant Time Period and are not eligible to take the tip credit. As a result, Defendants are required to pay wait staff employees the full minimum wage pursuant to Article X, Section 24 of the Florida Constitution.

26. During the Relevant Time Period, Defendants have not been entitled to take the tip credit because Defendants have not properly informed Plaintiffs and other wait staff employees of the tip credit provisions of the FLSA in advance of Defendants taking the tip credit.

27. During the Relevant Time Period, Defendants have willfully engaged in practices that denied Plaintiffs and other wait staff employees at Vines Grille & Wine Bar minimum wages and tips under federal law.

28. Because during the Relevant Time Period other wait staff employees at Vines Grille & Wine Bar have been subjected to the same wrongful pay practices and policies, described herein, Plaintiffs seek to bring this action as a class action.

V. COLLECTIVE ACTION ALLEGATIONS

29. Pursuant to 29 U.S.C. § 216(b), Plaintiffs bring their FLSA claim on behalf of all similarly situated individuals who have worked as wait staff employees at Defendants' restaurant Vines Grille & Wine Bar located in Orlando, Florida during the Relevant Liability Period, and who may choose to "opt in" to this case under the FLSA, 29 U.S.C. § 216(b).

30. The claims under the FLSA meet the requirements for collective action certification set forth in 29 U.S.C. § 216(b).

31. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Complaint.

32. All potential opt-in plaintiffs are similarly situated as to the claims alleged in this Complaint because they were all employed as wait staff employees in Defendants' restaurant Vines Grille & Wine Bar located in Orlando, Florida and were all subject to Defendants' policy of requiring wait staff employees to share tips with management and/or band performers.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

33. Pursuant to 29 U.S.C. 216(b), Plaintiffs James Wolf and Don Allen consent to sue as plaintiffs under the Fair Labor Standards Act. A copy of their consent to sue forms are attached hereto as Exhibit "A".

COUNT I – FAIR LABOR STANDARDS ACT

34. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 32 as if alleged fully herein.

35. During the Relevant Time Period, Defendants have willfully violated the FLSA, 29 U.S.C. § 201, *et seq.* by failing to pay wait staff employees at Vines Grille & Wine Bar the minimum wage required by federal law by claiming the “tip credit” for which they are not eligible. This claim is brought on behalf of similarly situated individuals pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter the following relief:

- a. Conditional certification of this case pursuant to the FLSA, 29 U.S.C. § 216(b);
- b. Authorization to notify similarly situated employees of their right to opt in to this action under 29 U.S.C. § 216(b);
- c. An award of all damages for unpaid wages and compensation that are due to the named Plaintiffs and all similarly situated employees under the FLSA;
- d. An award of liquidated damages pursuant to 29 U.S.C. § 216(b);
- e. A finding that Defendants’ violations of the FLSA have been willful and that, therefore, the statute of limitations is three years;
- f. Attorneys’ fees and costs;
- g. Post-judgment interest; and
- h. An award of such other and further relief as this Court may deem appropriate.

Dated: December 2, 2016

/s/ Tamra Givens
Sam J. Smith
Florida Bar No. 818593
Loren B. Donnell
Florida Bar No. 013429
Tamra Givens
Florida Bar No. 657638
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Attorneys for Plaintiffs

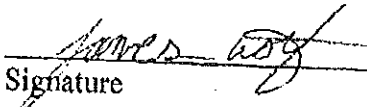
EXHIBIT A

CONSENT TO JOIN FORM

1. I, James Wolf, consent to opt-in to be a party plaintiff in a lawsuit against Defendant(s), Monster Chef Inc. d/b/a Vines Grille & Wine Bar and/or related entities and individuals, in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate Burr & Smith, LLP to represent me in this action, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by this Court as fair, adequate, and reasonable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.


Signature

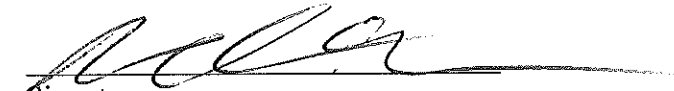
James Wolf
Print Name

CONSENT TO JOIN FORM

1. I, Don Allen, consent to opt-in to be a party plaintiff in a lawsuit against Defendant(s), Monster Chef Inc. d/b/a Vines Grille & Wine Bar and/or related entities and individuals, in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate Burr & Smith, LLP to represent me in this action, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by this Court as fair, adequate, and reasonable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.


Signature

DONALD C ALLEN
Print Name

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JAMES WOLF and DON ALLEN, on behalf of themselves and all others similarly situated

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

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

Burr & Smith, LLP, 111 2nd Ave. N.E., Suite 1100, St. Petersburg, FL 33701 (813) 253-2010

DEFENDANTS

MONSTER CHEF INC d/b/a VINES GRILLE & WINE BAR and DIMITRIOS KARABINIS

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

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

Attorneys (If Known)

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

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

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

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

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

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<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	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISON/DETENTION Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	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))	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Florida Constitution, Article X, Section 24, Fair Labor Standards, 29 U.S.C. Section 216(b)

Brief description of cause:

Failure to pay minimum wage and improper retention of tips

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
12/02/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT# 10 AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

2016 DEC -5

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wait Staff of Vines Grille & Wine Bar Sue for Unpaid Minimum Wages](#)
