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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

**Servando Alarcon, Gregory Garcia,
Freya O’Keefe, and Mary Pineda**
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

Angry Crab Shack Corporation, an
Arizona Corporation, **Angry Crab
Franchise LLC**, an Arizona Limited
Liability Company, **Angry Crab Shack
BBQ LLC**, an Arizona Limited Liability
Company, **AC Ahwatukee, LLC**, and
Arizona Limited Liability, **AC East
Mesa, LLC**, an Arizona Limited Liability
Company, **AC Goodyear, LLC**, an
Arizona Limited Liability Company, **AC
Peoria, LLC**, an Arizona Limited
Liability Company, **Ronald Lou and
Jane Doe Lou**, a married couple, **Dan
Sevilla and Jane Doe Sevilla**, a married
couple, **Andrew Diamond and Jane Doe
Diamond**, a married couple, **David Eng
and Jane Doe Eng**, a married couple, and
Jason Lopez and Jane Doe Lopez, a
married couple,

Defendants.

No.

**FLSA COLLECTIVE ACTION
COMPLAINT**

(Demand for Jury Trial)

Plaintiffs, Servando Alarcon (“Plaintiff Alarcon”), Gregory Garcia (“Plaintiff
Garcia”), Freya O’Keefe (“Plaintiff O’Keefe”), and Mary Pineda (“Plaintiff Pineda”)

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1 (collectively, “Plaintiffs”), individually, and on behalf of all other persons similarly
2 situated, allege as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiffs bring this action on behalf of themselves and all similarly-situated
5 current and former servers and bartenders of Defendants who were compensated at a rate
6 of less than the applicable Arizona and federal minimum wage on account of receiving
7 tips in a given workweek.
8

9 2. Plaintiffs, individually, and on behalf of all others similarly-situated, bring
10 this action against Defendants¹ for their unlawful failure to pay minimum wage in
11 violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the “FLSA”).
12

13 3. Plaintiffs bring a collective action under the FLSA to recover the unpaid
14 minimum wages and improperly withheld tips owed to them individually and on behalf
15 of all other similarly-situated employees, current and former, of Defendants. Members of
16 the Collective Action are referred to as the “Collective Members.”
17

18 4. The Collective Members are all current and former servers and bartenders
19 who were employed by Defendants at any time starting three years before this Complaint
20 was filed, up to the present.
21

22 5. This is an action for unpaid wages, liquidated damages, interest, attorneys’
23 fees, and costs under the FLSA and Arizona wage law.
24
25

26 _____
27 ¹ All Defendants to this action are collectively referred to as either “Angry Crab Shack” or “Defendants” unless specified otherwise.

1 6. The FLSA was enacted “to protect all covered workers from substandard
2 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
3 exempt employees a minimum wage of pay for all time spent working during their
4 regular 40 hour workweeks. The FLSA’s definition of the term “wage,” in turn,
5 recognizes that under certain circumstances, an employer of tipped employees may credit
6 a portion of its employees’ tips against its minimum wage obligation, a practice
7 commonly referred to as taking a “tip credit.”
8

9 7. Under 29 U.S.C. § 203(m) and its supporting regulations, employers must
10 allow their tipped employees to retain all tips earned, except to the extent that they
11 require the tipped employees to participate in a valid tip pooling arrangement. A valid tip
12 pooling arrangement includes only employees who customarily and regularly receive
13 tips.
14

15 8. The Arizona Minimum Wage Act, A.R.S. § 23-363, establishes a minimum
16 wage within the State of Arizona. A.R.S. § 23-363 recognizes that, under certain
17 circumstances, employers may impose a maximum tip credit on the wages of their tipped
18 employees of \$3.00 per hour.
19

20 9. The FLSA, in turn, requires that employers comply with any State law that
21 establishes a higher minimum wage than that established by the FLSA. *See* 29 U.S.C. §
22 218(a). Therefore, federal law requires that all Arizona employers comply with the
23 minimum wage standards set forth by the Arizona Wage Act and limits the maximum
24 allowable tip credit to \$3.00 per hour. *See Hanke v. Vinot Pinot Dining LLC*, Case No.
25 2:15-cv-01873-SMM, Dkt. 51, at 4:6-11 (D. Ariz. March 21, 2018) (“both the FLSA and
26
27

1 AWA allow Arizona employers to take a maximum tip credit of \$3.00 against their
2 minimum wage obligations to “tipped” employees”); *see also Montijo v. Romulus, Inc.*,
3 2015 WL 1470128, at *5 n. 4 (D. Ariz. March 30, 2015) (same).

4 10. For example, the Arizona minimum wage in 2016 was \$8.05. If an
5 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
6 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
7 \$5.05.

8
9 11. Defendants imposed a tip credit upon the wages of all of their servers and
10 bartenders, including Plaintiffs and the Collective Members.

11
12 12. Defendants engaged in the regular policy and practice of not allowing
13 Plaintiffs and the Collective Members to retain all tips they received. Specifically,
14 Defendants subjected Plaintiffs and the Collective Members to their policy and practice
15 of requiring participation in a tip pool that included staff who do not customarily and
16 regularly receive tips, such as cooks, dishwashers, and management, in violation of 29
17 U.S.C. § 203(m).

18
19 13. Therefore, Defendants were precluded from exercising a tip credit against
20 Plaintiffs’ and Collective Members’ wages.

21
22 14. Defendants also had a policy and practice of requiring their servers and
23 bartenders, such as Plaintiffs and the Collective Members, to contribute one dollar from
24 their earned tips for every shift they worked to a collective fund owned and maintained
25 entirely by Defendants.
26
27

1 15. Therefore, Defendants were precluded from exercising a tip credit against
2 Plaintiffs' and Collective Members' wages.

3 16. Therefore, Defendants did not pay Plaintiffs or the Collective Members the
4 applicable federal or Arizona minimum wage, in violation of 29 U.S.C. § 206 and A.R.S.
5 § 23-363, and were precluded from exercising a tip credit against Plaintiffs' and
6 Collective Members' wages.
7

8 17. The FLSA, 29 U.S.C. § 207, requires that employers pay non-exempt
9 employees one and one-half times their regular rates of pay for all time worked in excess
10 of 40 hours in a given workweek. This, in turn, means that an employer of tipped
11 employees who imposes a tip credit upon the wages of those tipped employees must pay,
12 at minimum, one and one-half times the full, applicable minimum wage, less the
13 available tip credit, to those employees for all time they spend working in excess of 40
14 hours in a given workweek.
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16

17 18. The Arizona Minimum Wage Act, A.R.S. § 23-363, establishes a minimum
18 wage within the State of Arizona. A.R.S. § 23-363 recognizes that, under certain
19 circumstances, employers may impose a maximum tip credit on the wages of their tipped
20 employees of \$3.00 per hour.
21

22 19. The FLSA, in turn, requires that employers comply with any State law that
23 establishes a higher minimum wage than that established by the FLSA. *See* 29 U.S.C. §
24 218(a). Therefore, federal law requires that all Arizona employers comply with the
25 minimum wage standards set forth by the Arizona Wage Act and limits the maximum
26 allowable tip credit to \$3.00 per hour.
27

1 20. The FLSA specifically prohibits an employer from calculating a tipped
2 employee's overtime rate at one and one-half times that employee's sub-minimum-wage
3 hourly rate of pay.

4 21. For example, the Arizona minimum wage in 2016 was \$8.05. If an
5 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
6 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
7 \$5.05.
8

9 22. In order for an employer of tipped employees to calculate the proper
10 overtime rate, such employer must multiply \$8.05 by one and one-half, for a total
11 minimum overtime wage of \$12.08. If that employer has satisfied its tip credit
12 obligations, it may impose a tip credit on that overtime rate of up \$3.00 per hour, for a
13 total minimum overtime hourly rate of \$9.08.
14

15 23. If an employer were to instead calculate its tipped employees' overtime rate
16 by multiplying the tip credit rate of pay of \$5.05 by one and one-half times, for a total
17 rate of \$7.58, such a calculation would be improper, and would have the effects of: (1)
18 increasing the tip credit imposed by the employer beyond the permissible \$3.00 to \$4.50
19 hourly, and (2) imposing two separate and distinct tip credits upon the tipped employees.
20
21

22 24. Defendants imposed a tip credit upon all of their tipped employees,
23 including Plaintiffs and the Collective Members.

24 25. Furthermore, Defendants subjected Plaintiffs and the Collective Members
25 to its policy of calculating its tipped employees' overtime rate by multiplying the
26 applicable tip credit rate of pay by one and one-half times, rather than multiplying the full
27

1 applicable minimum wage by one and one-half and then subtracting the available tip
2 credit.

3 26. Therefore, Defendants subjected Plaintiffs and the Collective Members to
4 their policy of not paying one and one-half times their regular rates of pay for all time
5 worked in excess of 40 hours in a given workweek, in violation of 29 U.S.C. § 207. Such
6 a practice resulted in Defendants imposing a tip credit upon Plaintiffs and the Collective
7 Members that exceeded the permissible \$3.00 per hour under Arizona law and the FLSA.
8

9 **JURISDICTION AND VENUE**

10
11 27. Plaintiffs reallege and incorporate by reference all allegations in all
12 preceding paragraphs.

13 28. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
14 29 U.S.C. § 201, *et seq.* because this action arises under the Constitution and laws of the
15 United States.
16

17 29. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)
18 because acts giving rise to the claims of Plaintiffs and the Collective Members occurred
19 within the District of Arizona, and Defendants regularly conduct business in and have
20 engaged in the wrongful conduct alleged in the Complaint – and, thus, are subject to
21 personal jurisdiction in – this judicial district.
22

23 **PARTIES**

24 30. Plaintiffs reallege and incorporate by reference all allegations in all
25 preceding paragraphs.
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1 31. At all times material to the matters alleged in this Complaint, Plaintiff
2 Alarcon was an individual residing in Maricopa County, Arizona, and is a former
3 employee of Defendants.

4 32. At all material times, Plaintiff Alarcon was a full-time, non-exempt
5 employee of Defendants who worked at Defendants' Phoenix, Arizona location, located
6 at 2808 East Indian School Road, Phoenix, Arizona 85016 from approximately October
7 at 2808 East Indian School Road, Phoenix, Arizona 85016 from approximately October
8 2014 through approximately August 2016.

9 33. At all times material to the matters alleged in this Complaint, Plaintiff
10 Garcia was an individual residing in Maricopa County, Arizona, and is a former
11 employee of Defendants.

12 34. At all material times, Plaintiff Garcia was a full-time, non-exempt
13 employee of Defendants who worked at Defendants' Phoenix, Arizona location, located
14 at 2808 East Indian School Road, Phoenix, Arizona 85016 from approximately July 2015
15 at 2808 East Indian School Road, Phoenix, Arizona 85016 from approximately July 2015
16 through the present.

17 35. At all times material to the matters alleged in this Complaint, Plaintiff
18 O'Keefe was an individual residing in Maricopa County, Arizona, and is a former
19 employee of Defendants.
20

21 36. At all material times, Plaintiff O'Keefe is a full-time, non-exempt employee
22 of Defendants who worked at Defendants' Phoenix, Arizona location, located at 2808
23 East Indian School Road, Phoenix, Arizona 85016 from approximately April 2016
24 through the present.
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1 37. At all times material to the matters alleged in this Complaint, Plaintiff
2 Pineda was an individual residing in Maricopa County, Arizona, and is a former
3 employee of Defendants.

4 38. At all material times, Plaintiff Pineda was a full-time, non-exempt
5 employee of Defendants who worked at Defendants' Phoenix, Arizona location, located
6 at 2808 East Indian School Road, Phoenix, Arizona 85016 from approximately February
7 2016 through the March 2018.

8 39. At all material times, Plaintiffs were employed by Defendants and paid as
9 tipped employees. Defendants employed Plaintiffs to perform various tipped and non-
10 tipped duties, including, but not limited to, serving drinks and food to customers, tending
11 the bar, cleaning, busing tables, and other side work required of him by Defendants.

12 40. At all material times, Plaintiffs were employees of Defendants as defined
13 by the FLSA, 29 U.S.C. § 203(e)(1) and were non-exempt employees under 29 U.S.C. §
14 213(a)(1).
15

16 41. Plaintiffs have given their written consent to be party Plaintiffs in this
17 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
18 this Complaint as "**Exhibit A.**"
19

20 42. Plaintiffs bring this action on behalf of themselves and on behalf of all
21 other persons similarly situated who are current or former tipped employees of
22 Defendants, including but not limited to servers and bartenders who agree in writing to
23 join this action seeking recovery under the FLSA.
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1 43. Plaintiffs bring this action on behalf of themselves and on behalf of all
2 other similarly situated current and former employees of Defendants—specifically, servers
3 and bartenders whose hourly wages were subject to a tip credit and whose wages,
4 therefore, were less than the applicable statutory minimum wage.
5

6 44. Defendant Angry Crab Shack Corporation is an Arizona corporation,
7 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
8 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
9

10 45. Under the FLSA, Defendant Angry Crab Shack Corporation is an
11 employer. The FLSA defines “employer” as any individual who acts directly or
12 indirectly in the interest of an employer in relation to an employee. Defendant Angry
13 Crab Shack Corporation is the owner of Angry Crab Shack. At all relevant times,
14 Defendant Angry Crab Shack Corporation had the authority to hire and fire employees,
15 supervised and controlled work schedules or the conditions of employment, determined
16 the rate and method of payment, and maintained employment records in connection with
17 Plaintiffs’ and the Collective Members’ employment with Angry Crab Shack. Having
18 acted in the interest of Angry Crab Shack in relation to the company’s employees,
19 including Plaintiffs and the Collective Members, Angry Crab Shack Corporation is
20 subject to liability under the FLSA.
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22 46. At all relevant times, Defendant Angry Crab Shack Corporation owned and
23 operated as Angry Crab Franchise, LLC; Angry Crab Shack BBQ, LLC; AC Peoria,
24 LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee, LLC.
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1 47. At all relevant times, Angry Crab Shack Corporation owned and operated
2 as Angry Crab Shack Mesa, located at 2740 South Alma School Road, Suite 13, Mesa,
3 AZ 85210.

4 48. Defendant Angry Crab Franchise, LLC is an Arizona limited liability
5 company, authorized to do business in the State of Arizona and was at all relevant times
6 Plaintiffs' and the Collective Members' Employer as defined by 29 U.S.C. § 203(d).

7 49. Under the FLSA, Defendant Angry Crab Franchise, LLC is an employer.
8 The FLSA defines "employer" as any individual who acts directly or indirectly in the
9 interest of an employer in relation to an employee. Defendant Angry Crab Franchise,
10 LLC is the owner of Angry Crab Shack. At all relevant times, Defendant Angry Crab
11 Franchise, LLC had the authority to hire and fire employees, supervised and controlled
12 work schedules or the conditions of employment, determined the rate and method of
13 payment, and maintained employment records in connection with Plaintiffs' and the
14 Collective Members' employment with Angry Crab Shack. Having acted in the interest
15 of Angry Crab Shack in relation to the company's employees, including Plaintiffs and the
16 Collective Members, Defendant Angry Crab Franchise, LLC is subject to liability under
17 the FLSA.

18 50. Defendant Angry Crab Shack BBQ, LLC is an Arizona limited liability
19 company, authorized to do business in the State of Arizona and was at all relevant times
20 Plaintiffs' and the Collective Members' Employer as defined by 29 U.S.C. § 203(d).

21 51. At all relevant times, Defendant Angry Crab Shack Corporation owned and
22 operated Angry Crab Shack BBQ, LLC.
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1 52. At all relevant times, Defendant Angry Crab Shack BBQ, LLC was a
2 wholly owned subsidiary of Defendant Angry Crab Shack Corporation.

3 53. At all relevant times, Angry Crab Shack BBQ, LLC owned and operated as
4 Angry Crab Shack & BBQ Phoenix, located at 2808 East Indian School Road, Phoenix,
5 AZ 85016.
6

7 54. Under the FLSA, Defendant Angry Crab Shack BBQ, LLC is an employer.
8 The FLSA defines “employer” as any individual who acts directly or indirectly in the
9 interest of an employer in relation to an employee. Defendant Angry Crab Shack BBQ,
10 LLC is the owner of Angry Crab Shack. At all relevant times, Defendant Angry Crab
11 Shack BBQ, LLC had the authority to hire and fire employees, supervised and controlled
12 work schedules or the conditions of employment, determined the rate and method of
13 payment, and maintained employment records in connection with Plaintiffs’ and the
14 Collective Members’ employment with Angry Crab Shack. Having acted in the interest
15 of Angry Crab Shack in relation to the company’s employees, including Plaintiffs and the
16 Collective Members, Defendant Angry Crab Shack BBQ, LLC is subject to liability
17 under the FLSA.
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20 55. Defendant AC Peoria, LLC is an Arizona limited liability company,
21 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
22 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
23

24 56. At all relevant times, Defendant Angry Crab Shack Corporation owned and
25 operated as AC Peoria, LLC.
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1 57. At all relevant times, Defendant AC Peoria, LLC was a wholly owned
2 subsidiary of Defendant Angry Crab Shack Corporation.

3 58. At all relevant times, AC Peoria, LLC owned and operated as Angry Crab
4 Shack, Peoria, located at 7608 West Cactus Road, Peoria, AZ 85381.

5 59. Under the FLSA, Defendant AC Peoria, LLC is an employer. The FLSA
6 defines “employer” as any individual who acts directly or indirectly in the interest of an
7 employer in relation to an employee. Defendant AC Peoria, LLC is the owner of Angry
8 Crab Shack. At all relevant times, Defendant AC Peoria, LLC had the authority to hire
9 and fire employees, supervised and controlled work schedules or the conditions of
10 employment, determined the rate and method of payment, and maintained employment
11 records in connection with Plaintiffs’ and the Collective Members’ employment with
12 Angry Crab Shack. Having acted in the interest of Angry Crab Shack in relation to the
13 company’s employees, including Plaintiffs and the Collective Members, Defendant AC
14 Peoria, LLC is subject to liability under the FLSA.
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18 60. Defendant AC East Mesa, LLC is an Arizona limited liability company,
19 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
20 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
21

22 61. At all relevant times, Defendant Angry Crab Shack Corporation owned and
23 operated as AC East Mesa, LLC.

24 62. At all relevant times, Defendant AC East Mesa, LLC was a wholly owned
25 subsidiary of Defendant Angry Crab Shack Corporation.
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1 63. At all relevant times, AC East Mesa, LLC owned and operated as Angry
2 Crab Shack & BBQ East Mesa, located at 8253 East Guadalupe Road, Mesa, AZ 85212.

3 64. Under the FLSA, Defendant AC East Mesa, LLC is an employer. The
4 FLSA defines “employer” as any individual who acts directly or indirectly in the interest
5 of an employer in relation to an employee. Defendant AC East Mesa, LLC is the owner
6 of Angry Crab Shack. At all relevant times, Defendant AC East Mesa, LLC had the
7 authority to hire and fire employees, supervised and controlled work schedules or the
8 conditions of employment, determined the rate and method of payment, and maintained
9 employment records in connection with Plaintiffs’ and the Collective Members’
10 employment with Angry Crab Shack. Having acted in the interest of Angry Crab Shack
11 in relation to the company’s employees, including Plaintiffs and the Collective Members,
12 Defendant AC East Mesa, LLC is subject to liability under the FLSA.

13 65. Defendant AC Goodyear, LLC is an Arizona limited liability company,
14 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
15 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).

16 66. At all relevant times, Defendant Angry Crab Shack Corporation owned and
17 operated as AC Goodyear, LLC.
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19 67. At all relevant times, Defendant AC Goodyear, LLC was a wholly owned
20 subsidiary of Defendant Angry Crab Shack Corporation.
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22 68. At all relevant times, AC Goodyear, LLC owned and operated as Angry
23 Crab Shack, Goodyear, located at 310 North Litchfield Road, Goodyear, AZ 85338.
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1 69. Under the FLSA, Defendant AC Goodyear, LLC is an employer. The
2 FLSA defines “employer” as any individual who acts directly or indirectly in the interest
3 of an employer in relation to an employee. Defendant AC Goodyear, LLC is the owner
4 of Angry Crab Shack. At all relevant times, Defendant AC Goodyear, LLC had the
5 authority to hire and fire employees, supervised and controlled work schedules or the
6 conditions of employment, determined the rate and method of payment, and maintained
7 employment records in connection with Plaintiffs’ and the Collective Members’
8 employment with Angry Crab Shack. Having acted in the interest of Angry Crab Shack
9 in relation to the company’s employees, including Plaintiffs and the Collective Members,
10 Defendant AC Goodyear, LLC is subject to liability under the FLSA.

13 70. Defendant AC Ahwatukee, LLC is an Arizona limited liability company,
14 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
15 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).

17 71. At all relevant times, Defendant Angry Crab Shack Corporation owned and
18 operated as AC Ahwatukee, LLC.

19 72. At all relevant times, Defendant AC Ahwatukee, LLC was a wholly owned
20 subsidiary of Defendant Angry Crab Shack Corporation.

22 73. At all relevant times, AC Ahwatukee, LLC owned and operated as Angry
23 Crab Shack & BBQ Ahwatukee, located at 3820 E. Ray Road, Suite 30, Ahwatukee, AZ
24 85044.

25 74. Under the FLSA, Defendant AC Ahwatukee, LLC is an employer. The
26 FLSA defines “employer” as any individual who acts directly or indirectly in the interest
27

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1 of an employer in relation to an employee. Defendant AC Ahwatukee, LLC is the owner
2 of Angry Crab Shack. At all relevant times, Defendant AC Ahwatukee, LLC had the
3 authority to hire and fire employees, supervised and controlled work schedules or the
4 conditions of employment, determined the rate and method of payment, and maintained
5 employment records in connection with Plaintiffs' and the Collective Members'
6 employment with Angry Crab Shack. Having acted in the interest of Angry Crab Shack
7 in relation to the company's employees, including Plaintiffs and the Collective Members,
8 Defendant AC Ahwatukee, LLC is subject to liability under the FLSA.
9

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11 75. Defendant Ronald Lou and Jane Doe Lou are, upon information and belief,
12 husband and wife. They have caused events to take place giving rise to the claims in this
13 Complaint as to which their marital community is fully liable. Ronald Lou is an owner of
14 Angry Crab Shack and was at all relevant times Plaintiffs' and the Collective Members'
15 employer as defined by the FLSA, 29 U.S.C. § 203(d). Jane Doe Lou is an owner of
16 Angry Crab Shack.
17

18 76. Under the FLSA, Defendants Ronald Lou and Jane Doe Lou are employers.
19 The FLSA defines "employer" as any individual who acts directly or indirectly in the
20 interest of an employer in relation to an employee. Defendants Ronald Lou and Jane Doe
21 Lou are the owners of Angry Crab Shack. At all relevant times, they had the authority to
22 hire and fire employees, supervised and controlled work schedules or the conditions of
23 employment, determined the rate and method of payment, and maintained employment
24 records in connection with Plaintiffs' and the Collective Members' employment with
25 Angry Crab Shack. As persons who acted in the interest of Angry Crab Shack in relation
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1 to the company's employees, including Plaintiffs and the Collective Members, Ronald
2 Lou and Jane Doe Lou are subject to individual liability under the FLSA.

3 77. Defendant Dan Sevilla and Autumn Perry-Sevilla are, upon information
4 and belief, husband and wife. They have caused events to take place giving rise to the
5 claims in this Complaint as to which their marital community is fully liable. Dan Sevilla
6 is an owner of Angry Crab Shack and was at all relevant times Plaintiffs' and the
7 Collective Members' employer as defined by the FLSA, 29 U.S.C. § 203(d). Autumn
8 Perry-Sevilla is an owner of Angry Crab Shack.
9

10 78. Under the FLSA, Defendants Dan Sevilla and Autumn Perry-Sevilla are
11 employers. The FLSA defines "employer" as any individual who acts directly or
12 indirectly in the interest of an employer in relation to an employee. Defendants Dan
13 Sevilla and Autumn Perry-Sevilla are the owners of Angry Crab Shack. At all relevant
14 times, they had the authority to hire and fire employees, supervised and controlled work
15 schedules or the conditions of employment, determined the rate and method of payment,
16 and maintained employment records in connection with Plaintiffs' and the Collective
17 Members' employment with Angry Crab Shack. As persons who acted in the interest of
18 Angry Crab Shack in relation to the company's employees, including Plaintiffs and the
19 Collective Members, Dan Sevilla and Autumn Perry-Sevilla are subject to individual
20 liability under the FLSA.
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22 79. Defendant Andrew Diamond and Jane Doe Diamond are, upon information
23 and belief, husband and wife. They have caused events to take place giving rise to the
24 claims in this Complaint as to which their marital community is fully liable. Andrew
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1 Diamond is an owner of Angry Crab Shack and was at all relevant times Plaintiffs’ and
2 the Collective Members’ employer as defined by the FLSA, 29 U.S.C. § 203(d). Jane
3 Doe Diamond is an owner of Angry Crab Shack.

4 80. Under the FLSA, Defendants Andrew Diamond and Jane Doe Diamond 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 Andrew
7 Diamond and Jane Doe Diamond are the owners of Angry Crab Shack. At all relevant
8 times, they had the authority to hire and fire employees, supervised and controlled work
9 schedules or the conditions of employment, determined the rate and method of payment,
10 and maintained employment records in connection with Plaintiffs’ and the Collective
11 Members’ employment with Angry Crab Shack. As persons who acted in the interest of
12 Angry Crab Shack in relation to the company’s employees, including Plaintiffs and the
13 Collective Members, Andrew Diamond and Jane Doe Diamond are subject to individual
14 liability under the FLSA.

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18 81. Defendant David Eng and Jane Doe Eng are, upon information and belief,
19 husband and wife. They have caused events to take place giving rise to the claims in this
20 Complaint as to which their marital community is fully liable. David Eng is an owner of
21 Angry Crab Shack and was at all relevant times Plaintiffs’ and the Collective Members’
22 employer as defined by the FLSA, 29 U.S.C. § 203(d). Jane Doe Eng is an owner of
23 Angry Crab Shack.

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25 82. Under the FLSA, Defendants David Eng and Jane Doe Eng are employers.
26 The FLSA defines “employer” as any individual who acts directly or indirectly in the
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1 interest of an employer in relation to an employee. Defendants David Eng and Jane Doe
2 Eng are the owners of Angry Crab Shack. At all relevant times, they had the authority to
3 hire and fire employees, supervised and controlled work schedules or the conditions of
4 employment, determined the rate and method of payment, and maintained employment
5 records in connection with Plaintiffs' and the Collective Members' employment with
6 Angry Crab Shack. As persons who acted in the interest of Angry Crab Shack in relation
7 to the company's employees, including Plaintiffs and the Collective Members, David Eng
8 and Jane Doe Eng are subject to individual liability under the FLSA.
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11 83. Defendant Jason Lopez and Jane Doe Lopez are, upon information and
12 belief, husband and wife. They have caused events to take place giving rise to the claims
13 in this Complaint as to which their marital community is fully liable. Jason Lopez is an
14 owner of Angry Crab Shack and was at all relevant times Plaintiffs' and the Collective
15 Members' employer as defined by the FLSA, 29 U.S.C. § 203(d). Jane Doe Lopez is an
16 owner of Angry Crab Shack.
17

18 84. Under the FLSA, Defendants Jason Lopez and Jane Doe Lopez are
19 employers. The FLSA defines "employer" as any individual who acts directly or
20 indirectly in the interest of an employer in relation to an employee. Defendants Jason
21 Lopez and Jane Doe Lopez are the owners of Angry Crab Shack. At all relevant times,
22 they had the authority to hire and fire employees, supervised and controlled work
23 schedules or the conditions of employment, determined the rate and method of payment,
24 and maintained employment records in connection with Plaintiffs' and the Collective
25 Members' employment with Angry Crab Shack. As persons who acted in the interest of
26
27

1 Angry Crab Shack in relation to the company's employees, including Plaintiffs and the
2 Collective Members, Jason Lopez and Jane Doe Lopez are subject to individual liability
3 under the FLSA.

4 85. At all relevant times, Defendant Ronad Lou owned and operated Angry
5 Crab Shack Corporation; Angry Crab Shack BBQ, LLC; Angry Crab Franchise, LLC;
6 AC Peoria, LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee, LLC.

7 86. At all relevant times, Defendant Dan Sevilla owned and operated Angry
8 Crab Shack Corporation; Angry Crab Shack BBQ, LLC; Angry Crab Franchise, LLC;
9 AC Peoria, LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee, LLC.
10

11 87. At all relevant times, Defendant Andrew Diamond owned and operated
12 Angry Crab Shack Corporation; Angry Crab Shack BBQ, LLC; Angry Crab Franchise,
13 LLC; AC Peoria, LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee,
14 LLC.
15

16 88. At all relevant times, Defendant David Eng owned and operated Angry
17 Crab Shack Corporation; Angry Crab Shack BBQ, LLC; Angry Crab Franchise, LLC;
18 AC Peoria, LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee, LLC.
19

20 89. At all relevant times, Defendant Jason Lopez owned and operated Angry
21 Crab Shack Corporation; Angry Crab Shack BBQ, LLC; Angry Crab Franchise, LLC;
22 AC Peoria, LLC; AC East Mesa, LLC; AC Goodyear, LLC; and AC Ahwatukee, LLC.
23

24 90. Plaintiffs are 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 91. Defendants, and each of them, are sued in both their individual and
2 corporate capacities.

3 92. Defendants are jointly and severally liable for the injuries and damages
4 sustained by Plaintiffs and the Collective Members.

5 93. At all relevant times, Plaintiffs and the Collective Members were
6 “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

7 94. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
8 Defendants.
9

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

12 96. Defendants individually and/or through an enterprise or agent, directed and
13 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all
14 relevant times.
15

16 97. At all relevant times, Plaintiffs and the Collective Members in their work
17 for Defendants, were engaged in commerce or the production of goods for commerce.
18

19 98. At all relevant times, Plaintiffs and the Collective Members, in their work
20 for Defendants, were employed by an enterprise engaged in commerce that had annual
21 gross sales of at least \$500,000.

22 99. At all relevant times, all Defendants were joint employers of Plaintiffs and
23 the Collective Members. At all relevant times: (1) Defendants were not completely
24 disassociated with respect to the employment of Plaintiffs and the Collective Members;
25 and (2) Defendants were under common control. In any event, at all relevant times,
26
27

1 Defendants were joint employers under the FLSA, 29 C.F.R. § 791.2(b), and *Chao v. A-*
2 *One Med. Servs., Inc.*, 346 F.3d 908, 917-918 (9th Cir. 2003), and employed Plaintiffs
3 and the Collective Members.

4 100. Further, at all relevant times, Defendants have operated as a “single
5 enterprise” within the meaning of the FLSA, 29 U.S.C. § 203(r)(1). That is, Defendants
6 perform related activities through unified operation and common control for a common
7 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973);
8 *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914-15 (9th Cir. 2003).

9
10
11 101. Defendants operate a chain of restaurants under the assumed name “Angry
12 Crab Shack” and/or “Angry Crab Shack & BBQ.” They advertise themselves as such on
13 their website. The fact that they run each Angry Crab Shack and/or Angry Crab Shack &
14 BBQ identically and their customers can expect the same kind of customer service
15 regardless of the location is a significant advertising point of Defendants.
16

17 102. Defendants represent themselves to the general public as one restaurant
18 company operating at multiple locations. They share employees, have a common
19 management, have a common ownership, have common ownership of the trade name
20 “Angry Crab Shack,” pool their resources, operate from the same headquarters, share
21 common statutory agents, and have the same operating name. This is a family of
22 restaurants that advertises together on the same website, provides the same array of
23 products and services to its customers, and uses the same business model. The Angry
24 Crab Shack family of restaurants exists under the control and direction of Defendants.
25
26 This family of restaurants provides the same service product to its customers by using a
27

1 set formula when conducting its business. Part of that set formula is the wage violations
2 alleged in this Complaint. These facts represent a classic example of “corporate
3 fragmentation.”

4 **FACTUAL ALLEGATIONS**

5
6 103. Plaintiffs reallege and incorporate by reference all allegations in all
7 preceding paragraphs.

8 104. Defendants own and/or operate as Angry Crab Shack, an enterprise located
9 in Maricopa County, Arizona.

10
11 105. Angry Crab Shack is an enterprise that is a bar and restaurant that serves
12 food and drinks to customers.

13 106. On approximately October 1, 2014, Plaintiff Alarcon began employment
14 with Defendants at the Angry Crab Shack Phoenix, Arizona, location as a server,
15 performing various repetitive tasks such as serving drinks and food to customers,
16 cleaning, busing tables, and other side work.

17
18 107. On approximately July 1, 2015, Plaintiff Garcia began employment with
19 Defendants at the Angry Crab Shack Phoenix, Arizona, location as a server, performing
20 various repetitive tasks such as serving drinks and food to customers, cleaning, busing
21 tables, and other side work.

22
23 108. On approximately April 1, 2016, Plaintiff O’Keefe began employment with
24 Defendants at the Angry Crab Shack Phoenix, Arizona, location as a server, performing
25 various repetitive tasks such as serving drinks and food to customers, cleaning, busing
26 tables, and other side work.
27

1 109. On approximately February 1, 2016, Plaintiff Pineda began employment
2 with Defendants at the Angry Crab Shack Phoenix, Arizona, location as a server,
3 performing various repetitive tasks such as serving drinks and food to customers,
4 cleaning, busing tables, and other side work.

5
6 110. Rather than pay their tipped employees the applicable minimum wage, for
7 the time Plaintiffs were paid as a tipped employee, Defendants imposed a tip credit upon
8 Plaintiffs' wages at below the applicable minimum wage.

9
10 111. Throughout the duration of their employment, Plaintiffs were paid a rate of
11 the applicable Arizona minimum wage less a tip credit of approximately \$3.00 per hour.

12 112. As a result of Defendants' imposition of a tip credit, Plaintiffs were forced
13 to perform work at an hourly rate that was less than the applicable minimum wage.

14 113. At all relevant times, Defendants engaged in the regular policy and practice
15 of not allowing Plaintiffs and the Collective Members to retain all tips they received.
16 Specifically, Defendants subjected Plaintiffs and the Collective Members to their policy
17 and practice of requiring participation in a tip pool that included staff who do not
18 customarily and regularly receive tips, such as cooks, dishwashers, and management, in
19 violation of 29 U.S.C. § 203(m). Therefore, Defendants were precluded from exercising
20 a tip credit against Plaintiffs' and Collective Members' wages, and the manner in which
21 Defendants paid Plaintiffs and the Collective Members violated 29 U.S.C. § 206(a).

22 114. Specifically, at all relevant times, Defendants had a policy and practice of
23 requiring their servers and bartenders, such as Plaintiffs and the Collective Members, to
24 collectively pool all tips they earned after every shift.
25
26
27

1 115. Defendants divided these pooled tips between and among front of house
2 (“FOH”) employees, such as servers, bartenders, bussers, and hosts, and non-tipped back
3 of house (“BOH”) employees, such as kitchen staff, cooks, and dishwashers.

4 116. Defendants allowed servers and bartenders, such as the Plaintiffs and
5 Collective Members, to retrieve their portions of the tip pool on the day following each
6 shift they worked.

7 117. Defendants allowed all other employees, including all BOH employees, to
8 retrieve their portions of the tip pool once per week, on Tuesdays between 2:00 pm and
9 4:00 pm.

10 118. At all relevant times, Defendants implemented and maintained the policy
11 and practice of requiring their servers and bartenders at each and every Angry Crab
12 Shack location to contribute tips they earned into a pool that included employees who did
13 not customarily and regularly receive tips, including BOH employees.

14 119. At all relevant times, Defendants implemented and maintained the policy
15 and practice of requiring their servers and bartenders at the Angry Crab Shack Mesa
16 location to contribute tips they earned into a pool that included employees who did not
17 customarily and regularly receive tips, including BOH employees.

18 120. At all relevant times, Defendants implemented and maintained the policy
19 and practice of requiring their servers and bartenders at the Angry Crab Shack & BBQ
20 Phoenix location to contribute tips they earned into a pool that included employees who
21 did not customarily and regularly receive tips, including BOH employees.

1 21. At all relevant times, Defendants implemented and maintained the policy
2 and practice of requiring their servers and bartenders at the Angry Crab Shack Peoria
3 location to contribute tips they earned into a pool that included employees who did not
4 customarily and regularly receive tips, including BOH employees.
5

6 22. At all relevant times, Defendants implemented and maintained the policy
7 and practice of requiring their servers and bartenders at the Angry Crab Shack East Mesa
8 location to contribute tips they earned into a pool that included employees who did not
9 customarily and regularly receive tips, including BOH employees.
10

11 23. At all relevant times, Defendants implemented and maintained the policy
12 and practice of requiring their servers and bartenders at the Angry Crab Shack Goodyear
13 location to contribute tips they earned into a pool that included employees who did not
14 customarily and regularly receive tips, including BOH employees.
15

16 24. At all relevant times, Defendants implemented and maintained the policy
17 and practice of requiring their servers and bartenders at the Angry Crab Shack & BBQ
18 Ahwatukee location to contribute tips they earned into a pool that included employees
19 who did not customarily and regularly receive tips, including BOH employees.
20

21 25. Defendants also had a policy and practice of requiring their servers and
22 bartenders, such as Plaintiffs and the Collective Members, to contribute one dollar from
23 their earned tips for every shift they worked to a collective fund owned and maintained
24 entirely by Defendants.
25

26 26. Defendants allowed its employees, including Plaintiffs and the Collective
27 Members, to “borrow” from this collective fund on an as-needed basis; however, at all

1 times, Defendants required any employee who borrowed from this fund to promptly
2 reimburse the fund.

3 127. Defendants required Plaintiffs and the Collective Members to contribute
4 one dollar to this fund for each and every shift that they worked for Defendants.
5

6 128. At all relevant times, Defendants implemented and maintained the policy
7 and practice of requiring their servers and bartenders at each and every Angry Crab
8 Shack to contribute one dollar from their earned tips for each and every shift they worked
9 to a collective fund owned and maintained entirely by Defendants.
10

11 129. At all relevant times, Defendants implemented and maintained the policy
12 and practice of requiring their servers and bartenders at the Angry Crab Shack Mesa
13 location to contribute one dollar from their earned tips for every shift they worked to a
14 collective fund owned and maintained entirely by Defendants.
15

16 130. At all relevant times, Defendants implemented and maintained the policy
17 and practice of requiring their servers and bartenders at the Angry Crab Shack & BBQ
18 Phoenix location to contribute one dollar from their earned tips for every shift they
19 worked to a collective fund owned and maintained entirely by Defendants.
20

21 131. At all relevant times, Defendants implemented and maintained the policy
22 and practice of requiring their servers and bartenders at the Angry Crab Shack Peoria
23 location to contribute one dollar from their earned tips for every shift they worked to a
24 collective fund owned and maintained entirely by Defendants.
25

26 132. At all relevant times, Defendants implemented and maintained the policy
27 and practice of requiring their servers and bartenders at the Angry Crab Shack East Mesa

1 location to contribute one dollar from their earned tips for every shift they worked to a
2 collective fund owned and maintained entirely by Defendants.

3 133. At all relevant times, Defendants implemented and maintained the policy
4 and practice of requiring their servers and bartenders at the Angry Crab Shack Goodyear
5 location to contribute one dollar from their earned tips for every shift they worked to a
6 collective fund owned and maintained entirely by Defendants.

7
8 134. At all relevant times, Defendants implemented and maintained the policy
9 and practice of requiring their servers and bartenders at the Angry Crab Shack & BBQ
10 Ahwatukee location to contribute one dollar from their earned tips for every shift they
11 worked to a collective fund owned and maintained entirely by Defendants.

12
13 135. Defendants' policy and practice of requiring Plaintiffs and the Collective
14 Members to pool tips with BOH employees violated 29 U.S.C. § 203(m) such that
15 Defendants were prohibited from exercising any tip credit whatsoever against Plaintiffs'
16 and the Collective Members' wages at all material times, and the manner in which
17 Defendants paid Plaintiffs and the Collective Members therefore violated 29 U.S.C. §
18 206(a).
19

20
21 136. Therefore, in a given workweek, and during each and every workweek of
22 Plaintiffs' employment with Defendants, Plaintiffs worked for Defendants and were not
23 paid the applicable minimum wage under the FLSA 29, U.S.C. § 206(a).

24 137. Defendants' policy and practice of requiring Plaintiffs and the Collective
25 Members to contribute one dollar to this fund for each and every shift that they worked
26 for Defendants violated 29 U.S.C. § 203(m) such that Defendants were prohibited from
27

1 exercising any tip credit whatsoever against Plaintiffs' and the Collective Members'
2 wages at all material times, and the manner in which Defendants paid Plaintiffs and the
3 Collective Members violated 29 U.S.C. § 206(a).

4 138. Therefore, in a given workweek, and during each and every workweek of
5 Plaintiffs' employment with Defendants, Plaintiffs worked for Defendants and were not
6 paid the applicable minimum wage under the FLSA 29, U.S.C. § 206(a).

7 139. As such, Defendants were not entitled to impose any tip credit upon
8 Plaintiffs' wages under Federal law, and Defendants should have therefore paid the full
9 Arizona minimum wage to Plaintiffs for all time Plaintiffs and the Collective Members
10 worked during the course of their regular 40-hour workweeks. As such, the full
11 applicable minimum wage for such time is owed to Plaintiffs and the Collective Members
12 for the entire time they were employed by Defendants.

13 140. Therefore, in a given workweek, and during each and every workweek of
14 Plaintiffs' and the Collective Members' employment with Defendants, Plaintiffs and the
15 Collective Members worked for Defendants and were not paid the applicable minimum
16 wage under the FLSA 29, U.S.C. § 206(a).

17 141. Furthermore, Defendants subjected Plaintiffs and the Collective Members
18 to its policy of calculating its tipped employees' overtime rate by multiplying the
19 applicable tip credit rate of pay by one and one-half times, rather than multiplying the full
20 applicable minimum wage by one and one-half and then subtracting the available tip
21 credit.

1 142. Therefore, Defendants subjected Plaintiffs and the Collective Members to
2 their policy of not paying one and one-half times their regular rates of pay for all time
3 worked in excess of 40 hours in a given workweek, in violation of 29 U.S.C. § 207.

4 143. Such a practice resulted in Defendants imposing a tip credit upon Plaintiff
5 and the Collective Members that exceeded the permissible \$3.00 per hour under Arizona
6 law and the FLSA.

7 144. On December 15, 2016, a lawsuit entitled *Owen, et al. v. Angry Crab Shack*
8 *Corporation, et al.*, Case No. 2:16-cv-04415-SMM (the “Owen Lawsuit”) was filed in the
9 District of Arizona. The Owen Lawsuit was a collective action lawsuit brought pursuant
10 to the FLSA and asserted substantially similar allegations as those asserted in this
11 complaint against Defendants.

12 145. During the pendency of the Owen Lawsuit, the parties stipulated to
13 conditional certification, and a notice of the pending lawsuit was sent to all servers and
14 bartenders who had worked for the Defendants in the three years prior to the distribution
15 of notice through the present. The parties agreed that the servers and bartenders would
16 have 60 days from August 4, 2017—the date the notice was sent—to opt-in to the Owen
17 Lawsuit (the “Opt-In Period”).

18 146. During the Opt-In Period, a significant number of then-current servers and
19 bartenders of Defendants received the notice of the pending FLSA collective action
20 lawsuit.

1 147. However, during the Opt-In period, managers and other supervisory
2 personnel of Defendants actively discouraged those servers and bartenders from joining
3 the Owen Lawsuit.

4 148. As a result of that discouragement, those servers and bartenders, including
5 Plaintiffs in this lawsuit, did not opt-in to the Owen Lawsuit, ostensibly out of fear of
6 retaliation for joining.
7

8 149. Therefore, Plaintiffs request that the Court equitably toll the statute of
9 limitations in the matter to August 4, 2014, which is three years prior to the date that
10 notice of the pending collective action was distributed in the Owen Lawsuit.
11

12 150. Plaintiffs and the Collective Members are covered employees within the
13 meaning of the Fair Labor Standards Act (“FLSA”).

14 151. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
15 and the Collective Members of their rights under the FLSA.
16

17 152. Defendants wrongfully withheld wages from Plaintiffs and the Collective
18 Members by failing to pay all wages due for hours Plaintiffs and the Collective Members.
19

20 153. Defendants wrongfully withheld tips from Plaintiffs and the Collective
21 Members.
22

23 154. Defendants individually and/or through an enterprise or agent, directed and
24 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all
25 relevant times.

26 155. Due to Defendants’ illegal wage practices, Plaintiffs and the Collective
27 Members are entitled to recover from Defendants compensation for unpaid minimum

1 wages, an additional amount equal amount as liquidated damages, interest, and
2 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

3 **COLLECTIVE ACTION ALLEGATIONS**

4 156. Plaintiffs reallege and incorporate by reference all allegations in all
5 preceding paragraphs.
6

7 157. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
8 behalves and as representatives of individuals similarly situated who are current or
9 former servers and bartenders of Defendants.
10

11 158. At all times material, Defendants paid Plaintiffs and the Collective
12 Members at a rate of less than the full, applicable Arizona and federal minimum wage.

13 159. Defendants subjected Plaintiffs and the Collective Members to their policy
14 and practice of requiring participation in a tip pool that included staff who do not
15 customarily and regularly receive tips in a given workweek and during each and every
16 workweek that Plaintiffs and the Collective Members worked for Defendants, in violation
17 of 29 U.S.C. § 206(a).
18

19 160. Defendants subjected Plaintiffs and the Collective Members to their policy
20 and practice of requiring their servers and bartenders at each and every Angry Crab
21 Shack to contribute one dollar from their earned tips for each and every shift they worked
22 to a collective fund owned and maintained entirely by Defendants, in violation of 29
23 U.S.C. § 206(a).
24

25 161. At all times material, Plaintiffs and the Collective Members are and have
26 been similarly situated, have had substantially similar job requirements and pay
27

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1 provisions, and are and have been subject to Defendants’ decision, policy, plan, and
2 common programs, practices, procedures, protocols, routines, and rules of willfully
3 subjecting Plaintiffs and the Collective Members to their policy and practice of requiring
4 participation in a tip pool that included staff who do not customarily and regularly receive
5 tips.
6

7 162. Plaintiffs’ claims stated in this complaint are essentially the same as those
8 of the Collective Members. This action is properly maintained as a collective action
9 because in all pertinent aspects the employment relationship of individuals similarly
10 situated to Plaintiffs is identical or substantially similar.
11

12 163. Plaintiffs and the Collective Members were each compensated exclusively
13 on an hourly basis for the duration of their employment with Defendants.
14

15 164. In a given workweek, and during each and every workweek, of Plaintiffs’
16 and the Collective Members’ employment with Defendants, Plaintiffs and the Collective
17 Members, pursuant to Defendants’ policy and practice, contributed a portion of their tips
18 to employees who do not customarily and regularly receive tips—namely, back of house
19 employees such as kitchen staff, cooks, and dishwashers; managers; and to a collective
20 fund owned and maintained by Defendants.
21

22 165. The Collective Members perform or have performed the same or similar
23 work as Plaintiffs.
24

25 166. Defendants’ failure to pay minimum wage compensation required by the
26 FLSA results from generally applicable policies or practices, and does not depend on the
27 personal circumstances of Plaintiffs or the Collective Members.

1 167. Defendants' failure to pay proper overtime compensation as required by the
2 FLSA results from generally applicable policies or practices, and does not depend on the
3 personal circumstances of Plaintiffs or the Collective Members.

4 168. While Plaintiffs and Defendants have described Plaintiffs' and the
5 Collective Members' job titles as servers and bartenders, the specific job titles or precise
6 job responsibilities of each Collective Member does not prevent collective treatment.
7

8 169. All Collective Members, irrespective of their particular job requirements
9 and job titles, are entitled to proper minimum wage compensation for all hours worked in
10 a given workweek.
11

12 170. Although the exact amount of damages may vary among the Collective
13 Members, the damages for the Collective Members can be easily calculated by a simple
14 formula. The claims of all Collective Members arise from a common nucleus of facts.
15 Liability is based on a systematic course of wrongful conduct by the Defendants that
16 caused harm to all of the Collective Members.
17

18 171. As such, Plaintiffs bring their FLSA minimum wage claims as a collective
19 action on behalf of the following class:

20
21 **The FLSA Collective Members are all of Defendants' current**
22 **and former servers and bartenders who were paid an hourly**
23 **rate of less than the applicable Arizona minimum wage on**
account of their receiving tips, starting three years before this
lawsuit was filed up to the present.

24 172. Defendants' unlawful conduct, as described in this Collective Action
25 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor
26
27

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1 costs by refusing and/or failing to properly compensate its employees according to the
2 FLSA.

3 173. Defendants are aware or should have been aware that federal law prohibited
4 them from requiring their servers and bartenders—namely, Plaintiffs and the Collective
5 Members—to share their tips with employees who do not customarily and regularly
6 receive tips.

7
8 174. Defendants are aware or should have been aware that federal law prohibited
9 them from retaining from their servers and bartenders—namely, Plaintiffs and the
10 Collective Members—to be contributed to a collective fund maintained and owned
11 exclusively by Defendants.

12
13 175. Defendants are aware or should have been aware that federal law required
14 them to pay one and one-half times the full, applicable minimum wage, less the available
15 tip credit, to their tipped employees, including Plaintiffs and the Collective Members, for
16 all time they spent working in excess of 40 hours in a given workweek.

17
18 176. Defendants' unlawful conduct has been widespread, repeated, and
19 consistent.

20
21 177. This action is properly brought and maintained as an opt-in collective
22 action pursuant to 29 U.S.C. § 216(b).

23 178. Upon information and belief, the individuals similarly situated to Plaintiffs
24 include more than one hundred (100) employees currently and/or formerly employed by
25 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated
26 employees because that information is solely in Defendants' possession, custody, or
27

1 control, but it can be readily ascertained from their employment records and the records
2 of Defendants' payroll processor.

3 179. Notice can be provided to the Collective Members by First Class Mail to
4 the last address known to Defendants, via email at the last known email address known to
5 Defendants, and by text message to the last known telephone number known to
6 Defendants.
7 Defendants.

8 **DAMAGES**

9 180. Plaintiffs reallege and incorporate by reference all allegations in all
10 preceding paragraphs.
11

12 181. Plaintiffs and the Collective Members are entitled to recover compensation
13 for the hours they worked for which they were not paid at the federally mandated and
14 Arizona mandated minimum wage rate—i.e., Plaintiff's are entitled to the federal
15 mandated and Arizona mandated minimum wage rate, less hourly wages paid.
16

17 182. Plaintiffs and the Collective Members are entitled to recover all tips that
18 Defendants improperly required them to contribute into a pool that contained employees
19 who do not customarily and regularly receive tips.
20

21 183. Plaintiffs and the Collective Members are entitled to recover all tips that
22 Defendants improperly required them to place into the collective fund exclusively owned
23 and maintained by Defendants.
24

25 184. Plaintiffs and the Collective Members are also entitled to recover overtime
26 compensation for the hours they worked in excess of 40 in a given workweek at the
27 applicable rate.

1 185. Plaintiffs and the Collective Members are also entitled to an amount equal
2 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

3 186. Plaintiffs and the Collective Members are also entitled to recover their
4 attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

5
6 **COUNT ONE: FAIR LABOR STANDARDS ACT**
7 **ILLEGAL TIP POOL AND TIP RETENTION**

8 187. Plaintiffs reallege and incorporate by reference all allegations in all
9 preceding paragraphs.

10 188. Defendants engaged in the regular policy and practice of not allowing
11 Plaintiffs and the Collective Members to retain all tips they received. Specifically,
12 Defendants subjected Plaintiffs and the Collective Members to their policy and practice
13 of requiring participation in a tip pool that included staff who do not customarily and
14 regularly receive tips, such as cooks, dishwashers, and management.

15 189. Defendants engaged in such conduct in direct violation of 29 U.S.C. §
16 203(m).

17
18 190. Defendants also had a policy and practice of requiring their servers and
19 bartenders, such as Plaintiffs and the Collective Members, to contribute one dollar from
20 their earned tips for every shift they worked to a collective fund owned and maintained
21 entirely by Defendants.
22

23
24 191. Therefore, Defendants were precluded from exercising a tip credit against
25 Plaintiffs' and Collective Members' wages, and the manner in which Defendants paid
26 Plaintiffs and the Collective Members violated 29 U.S.C. § 206(a).
27

1 192. Defendants therefore did not pay Plaintiffs and the Collective Members the
2 applicable minimum wage according to the provisions of the FLSA for each and every
3 workweek that Plaintiffs worked for Defendants, for the duration of their employment, in
4 violation of 29 U.S.C. § 206(a).

5
6 193. As such, full applicable minimum wage for such time Plaintiffs and the
7 Collective Members worked is owed to Plaintiffs and the Collective Members for the
8 entire time they were employed by Defendants.

9
10 194. Defendants knew that – or acted with reckless disregard as to whether –
11 their failure to pay to Plaintiffs and the Collective Members the full minimum wage as a
12 result of improperly requiring Plaintiffs and the Collective Members to participate in an
13 illegal tip pooling arrangement and retaining Plaintiffs’ and the Collective Members’ tips
14 and over the course of their employment would violate federal and state law, and
15 Defendants were aware of the FLSA minimum wage requirements during Plaintiffs’ and
16 the Collective Members’ employment. As such, Defendants’ conduct constitutes a
17 willful violation of the FLSA.
18

19 195. Plaintiffs and the Collective Members are therefore entitled to
20 compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an
21 additional equal amount as liquidated damages, together with interest, reasonable
22 attorney’s fees, and costs.
23

24 WHEREFORE, Plaintiffs, Servando Alarcon, Gregory Garcia, Freya O’Keefe, and
25 Mary Pineda, individually, and on behalf of all other similarly situated persons, requests
26
27

1 that this Court grant the following relief in Plaintiffs' and the Collective Members' favor,
2 and against Defendants:

- 3 A. For the Court to declare and find that the Defendants committed one or
4 more of the following acts:
- 5 i. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
6 by failing to pay proper minimum wages;
7
8 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
9 § 206;
- 10 B. For the Court to award damages in the amounts of all tips contributed to the
11 improper tip pooling arrangement that included employees who do not
12 customarily and regularly receive tips;
- 13 C. For the Court to award damages in the amounts of all tips contributed to the
14 collective fund owned and maintained entirely by Defendants;
- 15 D. For the Court to award compensatory damages, including liquidated
16 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
17 trial;
- 18 E. For the Court to award prejudgment and post-judgment interest on any
19 damages awarded;
- 20
21 F. For the Court to award Plaintiffs' and the Collective Members' reasonable
22 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
23 all other causes of action set forth in this Complaint;
24
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- 1 G. For the Court to provide reasonable incentive awards for each named
2 Plaintiff to compensate them for the time they spent attempting to recover
3 wages for the Collective Members and for the risks they took in doing so;
4 H. For the Court to equitably toll the statutes of limitations on Plaintiffs' and
5 the Collective Members' claims to August 4, 2014, which is three years
6 prior to the date of the mailing of the notice and consent forms in *Owen v.*
7 *Angry Crab Shack Corporation*, Case No. 2:16-cv-04415-SMM; and
8
9 I. Such other relief as this Court deems just and proper.

10
11 **COUNT TWO: FAIR LABOR STANDARDS ACT**
12 **IMPROPER OVERTIME RATE**

13 196. Plaintiffs reallege and incorporate by reference all allegations in all
14 preceding paragraphs.

15 197. Plaintiffs and the Collective Members were non-exempt employees entitled
16 to the statutorily mandated overtime wages.

17 198. In a given workweek, Defendants failed to pay Plaintiffs and the Collective
18 Members one and one-half times the applicable regular rate of pay for all hours worked
19 in excess of 40 hours per week.

20 199. As a result of Defendants' willful failure to pay Plaintiffs and the Collective
21 Members one and one-half times the applicable regular rate for all hours worked in
22 excess of 40 per week, Defendants did not pay Plaintiffs and the Collective Members the
23 applicable overtime rate for all hours worked for the duration of their employment, in
24 violation of 29 U.S.C. § 207.
25
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27

1 200. As a result of Defendants’ willful failure to compensate Plaintiffs and the
2 Collective the applicable overtime rate for all hours worked, Defendants violated the
3 FLSA.

4 201. As such, the full applicable overtime rate is owed for all hours that
5 Plaintiffs and the Collective Members worked in excess of 40 hours per week.
6

7 202. Defendants knew that – or acted with reckless disregard as to whether – its
8 failure to pay Plaintiffs and the Collective Members the proper overtime rate would
9 violate federal and state law, and Defendants were aware of the FLSA minimum wage
10 requirements during Plaintiffs and the Collective Members’ employment with
11 Defendants. As such, Defendants’ conduct constitutes a willful violation of the FLSA.
12

13 203. Defendants have and continue to willfully violate the FLSA by not paying
14 Plaintiffs and the Collective Members a wage equal to one and one-half times the
15 applicable regular rate of pay for all time Plaintiffs and the Collective Members spent
16 working for Defendants.
17

18 204. Plaintiffs and the Collective Members are therefore entitled to
19 compensation for the difference between wages paid and the applicable overtime rate for
20 all hours worked in excess of 40 per week at an hourly rate, to be proven at trial, plus an
21 additional equal amount as liquidated damages, together with interest, costs, and
22 reasonable attorney fees.
23

24 WHEREFORE, Plaintiffs, Servando Alarcon, Gregory Garcia, Freya O’Keefe, and
25 Mary Pineda, individually, and on behalf of all other similarly situated persons, requests
26
27

1 that this Court grant the following relief in Plaintiffs' and the Collective Members' favor,
2 and against Defendants:

- 3 A. For the Court to declare and find that the Defendants committed one or
4 more of the following acts:
5
6 iii. violated minimum wage provisions of the FLSA, 29 U.S.C. § 207,
7 by failing to pay proper minimum wages;
8
9 iv. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
10 § 207;
11
12 B. For the Court to award compensatory damages, including liquidated
13 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
14 trial;
15
16 C. For the Court to award prejudgment and post-judgment interest on any
17 damages awarded;
18
19 D. For the Court to award Plaintiffs' and the Collective Members' reasonable
20 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
21 all other causes of action set forth in this Complaint;
22
23 E. For the Court to provide reasonable incentive awards for each named
24 Plaintiff to compensate them for the time they spent attempting to recover
25 wages for the Collective Members and for the risks they took in doing so;
26
27 F. Such other relief as this Court deems just and proper.

REQUEST FOR COLLECTIVE ACTION CERTIFICATION

1
2 Plaintiffs request that the Court designate this action as a collective action on
3 behalf of the FLSA Collective Members and promptly issue a notice pursuant to 29
4 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising
5 them of the pendency of this action, and permitting them to timely assert FLSA claims in
6 this action by filing individual Consent to Sue Forms pursuant to 29 U.S.C. § 216(b).
7

JURY TRIAL DEMAND

8
9 Plaintiffs demand a trial by jury on all issues so triable.
10

11
12 RESPECTFULLY SUBMITTED this 12th day of July, 2018.

13 THE BENDAU LAW FIRM, PLLC

14
15 By: */s/ Clifford P. Bendau, II*
16 Clifford P. Bendau, II
17 Christopher J. Bendau
18 *Attorneys for Plaintiffs*
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BENDAU & BENDAU PLLC
P.O. Box 97066
Phoenix, AZ 85060

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Servando Alarcon ; Gregory Garcia ;
Freya O'Keefe ; Mary Pineda**

Defendant(s): **Angry Crab Shack Corporation ;
Angry Crab Franchise, LLC ;
Angry Crab Shack BBQ, LLC ; AC
Ahwatukee, LLC ; AC East Mesa,
LLC ; AC Goodyear, LLC ; AC
Peoria, LLC ; Ronald Lou ; Jane
Doe Lou ; Dan Sevilla ; Jane Doe
Sevilla ; Andrew Diamond ; Jane
Doe Diamond ; David Eng ; Jane
Doe Eng ; Jason Lopez ; Jane Doe
Lopez**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Clifford Phillip Bendau II, Managing Partner
Bendau & Bendau PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176**

Defendant's Atty(s):

**Christopher Jacob Bendau , Managing Partner
Bendau & Bendau PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5033**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- **N/A**

Defendant:- **N/A**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI. Cause of Action: **29 U.S.C. § 201, et seq.**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Clifford P. Bendau, II

Date: 7/12/18

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

THE BENDAU LAW FIRM, PLLC

Exhibit A

1 **BENDAU & BENDAU PLLC**
 2 Clifford P. Bendau, II (030204)
 3 Christopher J. Bendau (032981)
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 5 Phoenix, Arizona 85060
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 Facsimile: (480) 304-3805
 Email: cliffordbendau@bendaulaw.com
chris@bendaulaw.com
Attorneys for Plaintiffs

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 10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF ARIZONA
 12

13 **Servando Alarcon, Gregory Garcia,**
 14 **Freya O’Keefe, and Mary Pineda**
 15 individually, and on behalf of all others
 16 similarly situated,

17 Plaintiff,

18 v.

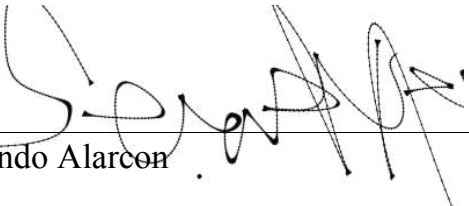
19 **Angry Crab Shack Corporation**, an
 20 Arizona Corporation, **Angry Crab**
 21 **Franchise LLC**, an Arizona Limited
 22 Liability Company, **Angry Crab Shack**
 23 **BBQ LLC**, an Arizona Limited Liability
 24 Company, **Ronald Lou and Jane Doe**
Lou, a married couple, **Dan Sevilla and**
Jane Doe Sevilla, a married couple,
Andrew Diamond and Jane Doe
Diamond, a married couple, **David Eng**
and Jane Doe Eng, a married couple, and
Jason Lopez and Jane Doe Lopez, a
 married couple,

25 Defendants.
 26
 27

No. _____

**PLAINTIFF SERVANDO ALARCON’S
 CONSENT TO JOIN COLLECTIVE
 ACTION AS NAMED PLAINTIFF**

1 I, Servando Alarcon, do hereby consent to be a party plaintiff to the above-entitled
2 action. I have read the complaint to be filed in the United States District Court for the
3 District of Arizona, Phoenix Division, and authorize my attorney, Bendau & Bendau
4 PLLC, to file the complaint on my behalf and for other employees similarly situated.
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7 _____
8 Servando Alarcon

7/11/2018
Date

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chris@bendaulaw.com
Attorneys for Plaintiffs

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 10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF ARIZONA
 12

13 **Servando Alarcon, Gregory Garcia,**
 14 **Freya O’Keefe, and Mary Pineda**
 15 individually, and on behalf of all others
 16 similarly situated,

17 Plaintiff,

18 v.

19 **Angry Crab Shack Corporation**, an
 20 Arizona Corporation, **Angry Crab**
 21 **Franchise LLC**, an Arizona Limited
 22 Liability Company, **Angry Crab Shack**
 23 **BBQ LLC**, an Arizona Limited Liability
 24 Company, **Ronald Lou and Jane Doe**
 25 **Lou**, a married couple, **Dan Sevilla and**
 26 **Jane Doe Sevilla**, a married couple,
 27 **Andrew Diamond and Jane Doe**
Diamond, a married couple, **David Eng**
and Jane Doe Eng, a married couple, and
Jason Lopez and Jane Doe Lopez, a
 married couple,

Defendants.

No. _____

**PLAINTIFF GREGORY GARCIA
 CONSENT TO JOIN COLLECTIVE
 ACTION AS NAMED PLAINTIFF**

1 I, Gregory Garcia, do hereby consent to be a party plaintiff to the above-entitled
2 action. I have read the complaint to be filed in the United States District Court for the
3 District of Arizona, Phoenix Division, and authorize my attorney, Bendau & Bendau
4 PLLC, to file the complaint on my behalf and for other employees similarly situated.
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Gregory Garica

07/11/2018

Date

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Attorneys for Plaintiffs

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 14 **Freya O’Keefe, and Mary Pineda**
 15 individually, and on behalf of all others
 16 similarly situated,

16 Plaintiff,

17 v.

18 **Angry Crab Shack Corporation**, an
 19 Arizona Corporation, **Angry Crab**
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 23 Company, **Ronald Lou and Jane Doe**
 24 **Lou**, a married couple, **Dan Sevilla and**
Jane Doe Sevilla, a married couple,
Andrew Diamond and Jane Doe
Diamond, a married couple, **David Eng**
and Jane Doe Eng, a married couple, and
Jason Lopez and Jane Doe Lopez, a
 married couple,

25 Defendants.
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No. _____

**PLAINTIFF FREYA O’KEEFE
 CONSENT TO JOIN COLLECTIVE
 ACTION AS NAMED PLAINTIFF**

1 I, Freya O'Keefe, do hereby consent to be a party plaintiff to the above-entitled
2 action. I have read the complaint to be filed in the United States District Court for the
3 District of Arizona, Phoenix Division, and authorize my attorney, Bendau & Bendau
4 PLLC, to file the complaint on my behalf and for other employees similarly situated.
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8 Freya O'Keefe

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7/11/2018

Date

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Attorneys for Plaintiffs

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 10 UNITED STATES DISTRICT COURT
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 12

13 **Servando Alarcon, Gregory Garcia,**
 14 **Freya O’Keefe, and Mary Pineda**
 15 individually, and on behalf of all others
 16 similarly situated,

16 Plaintiff,

17 v.

18 **Angry Crab Shack Corporation**, an
 19 Arizona Corporation, **Angry Crab**
 20 **Franchise LLC**, an Arizona Limited
 21 Liability Company, **Angry Crab Shack**
 22 **BBQ LLC**, an Arizona Limited Liability
 23 Company, **Ronald Lou and Jane Doe**
 24 **Lou**, a married couple, **Dan Sevilla and**
 25 **Jane Doe Sevilla**, a married couple,
 26 **Andrew Diamond and Jane Doe**
 27 **Diamond**, a married couple, **David Eng**
 and **Jane Doe Eng**, a married couple, and
Jason Lopez and Jane Doe Lopez, a
 married couple,

Defendants.

No. _____

**PLAINTIFF MARY PINEDA
 CONSENT TO JOIN COLLECTIVE
 ACTION AS NAMED PLAINTIFF**

1 I, Mary Pineda, do hereby consent to be a party plaintiff to the above-entitled
2 action. I have read the complaint to be filed in the United States District Court for the
3 District of Arizona, Phoenix Division, and authorize my attorney, Bendau & Bendau
4 PLLC, to file the complaint on my behalf and for other employees similarly situated.
5

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7 _____
8 Mary Pineda

7/12/2018
9 _____
10 Date

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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: [Angry Crab Shack Accused of Wage Violations in Arizona Federal Court](#)
