

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE NO.:**

LAURA A. ANDERSON, on behalf of  
herself and others similarly situated,

Plaintiff,

v.

THE SCHMENGIE CORPORATION, d/b/a  
GRAINGER'S GRILLE, and  
TIMOTHY MCLARNEY,

Defendants.

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**WAGE THEFT COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, LAURA A. ANDERSON ("Plaintiff"), on behalf of herself and others similarly situated, hereby sues the Defendants, THE SCHMENGIE CORPORATION, d/b/a GRAINGER'S GRILLE ("GRAINGER'S"), and TIMOTHY MCLARNEY ("MCLARNEY") and alleges as follows:

**JURISDICTION, VENUE AND PARTIES**

1. This is an action brought under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) ("FLSA"). Accordingly, this Court has subject-matter jurisdiction. This Court has supplemental jurisdiction over Plaintiff's claims brought under Florida's State Minimum Wage law, Fla. Const. Art. X, Sec 24 and Fla. Stat. § 448.110 ("FMW").

2. Venue is proper within the Southern District of Florida because a substantial part of the events giving rise to this claim arose here.

3. At all times material, Plaintiff was/is a resident of Palm Beach County,

Florida.

4. At all times material, Defendant GRAINGER'S was/is a Florida Profit Corporation authorized to conduct business in the State of Florida, with its principal place of business at 802 S.E. 5<sup>th</sup> Ave, Delray Beach, Florida 33483.

5. At all times material, Defendant MCLARNEY is and was a resident of Palm Beach County.

### **GENERAL ALLEGATIONS**

6. Defendant GRAINGER'S is a company that operates a restaurant known as Grainger's Grille in Delray Beach, Florida.

7. Defendant MCLARNEY is the President and Chief Executive Officer of GRAINGER'S. In that position, MCLARNEY exercises significant control over the company's operations, has the power to hire and fire employees, the power to determine salaries, the responsibility to maintain employment records and has operational control over significant aspects of the company's day-to-day functions.

8. Defendants are employers as defined by the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b), *et seq.* ("FLSA").

9. At all material times, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s) and during all relevant times had at least two employees and had an annual dollar volume of sales or business done of at least \$500,000.

10. Plaintiff was engaged in interstate commerce during her employment with Defendants.

11. Plaintiff was employed by Defendants during the relevant time period as a

server.

12. This action is brought under the FLSA to recover unpaid overtime compensation and minimum wages owed to Plaintiff and all others similarly situated who are or were employed by Defendants and were subject to the same unlawful pay practices.

13. Plaintiff and others similarly situated were employees of Defendants under the FLSA.

14. Plaintiff was employed by Defendants from June 2016 through December 2016. During this time period, Defendants failed to pay any overtime compensation or minimum wages. Rather, Defendants paid Plaintiff and others similarly situated a total of \$10 per shift, regardless of the number of hours worked.

15. Defendants have been paying employees \$10 per shift, regardless of the number of hours worked, for more than three years.

16. Defendants pay their employees the aforesaid \$10 per shift "under the table." In other works, Defendants pay employees in cash and do not deduct or contribute any income tax, social security or other legally mandated withholdings.

17. Defendants failed to comply with the FLSA because Plaintiff, and other similarly situated employees, were regularly required to work in excess of forty (40) hours a workweek were not paid overtime compensation as required by the FLSA.

18. Defendants failed to comply with the FLSA because Plaintiff, and other similarly situated employees, were not paid the federally-mandated minimum wage, as required by the FLSA.

19. Defendants failed to comply with the FMW because Plaintiff, and other

similarly situated employees, were not paid the Florida-mandated minimum wage, as required by the FMW.

20. The additional persons who may become Plaintiffs in this action are employees similarly situated to Plaintiff and who were required to work in excess of forty (40) hours a workweek but were not paid overtime compensation as required by the FLSA and/or who were not paid minimum wage as required by Florida and federal law.

21. Defendant MCLARNEY is subject to individual liability under the FLSA because he acted directly or indirectly in the interest of the employer in relation to Plaintiff, exercised significant control over the company's operations, has the power to hire and fire employees, the power to determine salaries, the responsibility to maintain employment records and has operational control over significant aspects of the company's day-to-day functions.

22. Defendants' violations of the FLSA and the FMW were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated. Defendants did not have reasonable grounds for believing that their acts were not a violation of the FLSA.

23. Plaintiff has been required to retain the undersigned counsel to represent her in this action and is obligated to pay them a reasonable fee for their services.

**COUNT I**  
**OVERTIME – FLSA (BOTH DEFENDANTS)**

24. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 23 as if fully restated herein.

25. During the three (3) year period prior to filing this action, Defendants failed to pay Plaintiff and all other similarly situated employees overtime compensation for

hours worked over forty (40) in a workweek.

26. Defendants' failure to pay Plaintiff and all other similarly situated employees overtime compensation for hours worked over forty (40) in any workweek constitutes a violation of the FLSA, 29 U.S.C. § 207.

27. Defendants' violations of the FLSA were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

28. Count I is brought under the FLSA as a collective action to recover unpaid overtime compensation owed to Plaintiff and all others similarly situated who are or were employed by Defendants who were denied overtime compensation.

**WHEREFORE**, Plaintiff respectfully requests, on behalf of himself and all others similarly situated, that this Court issue an Order awarding damages in the amount of the unpaid overtime compensation owed, awarding liquidated damages pursuant to 29 U.S.C. § 216(b), awarding reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), awarding injunctive relief requiring Defendants to comply with the FLSA, and awarding all such other relief as the Court deems just and appropriate.

**COUNT II**  
**FLSA MINIMUM WAGE (BOTH DEFENDANTS)**

29. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 23 as if fully restated herein.

30. Defendants failed to pay Plaintiff and other similarly situated employees the Federal Minimum Wage for all hours worked in violation of the FLSA.

31. Defendants' violations of the FLSA were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

32. Plaintiff and other similarly situated employees were damaged by

Defendants' failure to pay them the Federal Minimum Wage.

33. Count II is brought under the FLSA as a collective action to recover unpaid minimum wages owed to Plaintiff and all others similarly situated who are or were employed by Defendants who were denied minimum wage.

**WHEREFORE**, Plaintiff respectfully requests, on behalf of himself and all others similarly situated, that this Court issue an Order awarding damages in the amount of the unpaid wages owed, awarding liquidated damages pursuant to 29 U.S.C. § 216(b), awarding reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), and awarding all such other relief as the Court deems just and appropriate.

**COUNT III**  
**FLORIDA MINIMUM WAGE (BOTH DEFENDANTS)**

34. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 23 as if fully restated herein.

35. Defendants failed to pay Plaintiff and other similarly situated employees the Florida Minimum Wage for all hours worked in violation of the FMW.

36. Defendants' violations of the FMW were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

37. Plaintiff and other similarly situated employees were damaged by Defendants' failure to pay them the Florida Minimum Wage.

38. Count III is brought under the FMW as a class action to recover unpaid minimum wages owed to Plaintiff and all others similarly situated who are or were employed by Defendants who were denied minimum wage.

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief: (i) Certify this case as a class action on behalf of the Class as defined

above, and appoint LAURA A. ANDERSON as class representative and undersigned counsel as lead counsel; (ii) enter judgment awarding damages in the amount of wages found to be due and owing; (iii) awarding liquidated damages in an additional amount equal to the unpaid minimum wages found to be due and owing; (iv) awarding reasonable attorneys' fees and costs pursuant to Fla. Stat. § 448.08; and (v) awarding all such other relief as the Court deems just and appropriate.

**COUNT IV**  
**CIVIL DAMAGES FOR FRAUDULENT**  
**FILING OF INFORMATION RETURNS UNDER 26 U.S.C. §7434 (a)**  
**(DEFENDANT GRAINGER'S)**

39. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 23 as if fully restated herein.

40. Defendants unlawfully paid Plaintiff and other similarly situated employees in cash "under the table" without withholding federal and state taxes.

41. Plaintiff and other similarly situated employees were employees, and not independent contractors. Pursuant to the Internal Revenue Code, their remuneration constituted wages from which Defendant was required to withhold federal income tax.

42. As an employee of Defendant, Plaintiff was entitled to be compensated for her work. Through this employment relationship, Defendant incurred a corresponding legal obligation to accurately report Plaintiff's earnings to the IRS and the Social Security Administration for each tax year during which he worked, as well as to deduct applicable taxes from his wages.

43. Defendant had a legal duty not only to deduct applicable employment taxes from Plaintiff's wages and to accurately report these wages to the IRS, but also to file correct information returns with the IRS on Plaintiff's behalf.

44. During the past three years, Defendant filed with the IRS “information returns” for purposes of 26 U.S.C. § 7434(a). Defendant voluntarily and intentionally mischaracterized therein the wages of Plaintiff and others similarly situated in an attempt to evade paying federal income tax on such sums, in violation of its legal duty to deduct applicable employment taxes from Plaintiff’s wages and to accurately report these wages to the IRS.

45. By engaging in the aforesated conduct, Defendant filed fraudulent information returns for Plaintiff with the IRS, in violation of 26 U.S.C. § 7434(a). By doing so, Defendant breached a number of its legal duties under the Internal Revenue Code, including avoiding payment of all of the applicable employment taxes that it was obligated to pay on their behalf. See 26 U.S.C. §§ 3102(a), 3402(a) (imposing a duty on employers to deduct applicable taxes from their employees’ wages); 26 U.S.C. § 3401(d)(1) (defining “employer” under the IRC); (26 U.S.C. § 3121(a) (defining employee wages for the purpose of income taxation); 26 U.S.C. § 6051(a) (imposing a duty on employers to furnish employees with copies of their information returns); 26 U.S.C. § 6721(a)(2)(B) (prescribing penalties for failure to file correct information returns).

46. Plaintiff has suffered harm as a result of Defendant’s wrongful conduct.

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

48. For violations of 26 U.S.C. § 7434(a), the defendant shall be liable to the



plaintiff in an amount equal to the greater of \$5,000 or the sum of any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing), the costs of the action, and reasonable attorneys' fees.

**WHEREFORE**, Plaintiff demands:

- a) Costs attributable to resolving deficiencies, civil damages of \$5,000 for Plaintiff, and/or damages resulting from Plaintiff's additional tax debt, and Plaintiff's additional time and expenses associated with any necessary corrections;
- b) That Defendants be ordered to take all the necessary steps to correct the information returns identified above;
- c) All costs and attorney's fees incurred by Plaintiff in prosecuting these claims; and
- d) For such further relief as this Court deems just and equitable.

**JURY TRIAL DEMAND**

Plaintiff demands trial by jury as to all issues.

**DATED** this 31<sup>st</sup> day of July, 2017.

Respectfully submitted,  
**WHITTEL & MELTON, LLC**  
/s/ Jay P. Lechner  
Jay P. Lechner, Esq.  
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Jason M. Melton, Esq.  
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[shelley@theFLlawfirm.com](mailto:shelley@theFLlawfirm.com)  
*Attorneys for Plaintiff*

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

UNITED STATES DISTRICT COURT

for the

Southern District

LAURA A. ANDERSON

Plaintiff(s)

v.

THE SCHMENGIE CORPORATION, d/b/a GRAINGER'S GRILLE, and TIMOTHY MCLARNEY,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE SCHMENGIE CORPORATION d/b/a GRAINGER'S GRILLE
c/o Registered Agent - Timothy McLarney
802 SE 5th Avenue
Delray Beach, FL 33483

A lawsuit has been filed against you.

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

Jay P. Lechner, Esq.
200 Central Ave, Suite 400
St. Petersburg, FL 33701
727-822-1111
727-898-2001

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

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

UNITED STATES DISTRICT COURT

for the

Southern District

LAURA A. ANDERSON

Plaintiff(s)

v.

THE SCHMENGIE CORPORATION, d/b/a GRAINGER'S GRILLE, and TIMOTHY MCLARNEY,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TIMOTHY MCLARNEY
802 SE 5th Avenue
Delray Beach, FL 33483

A lawsuit has been filed against you.

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

Jay P. Lechner, Esq.
200 Central Ave, Suite 400
St. Petersburg, FL 33701
727-822-1111
727-898-2001

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

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Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
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I returned the summons unexecuted because \_\_\_\_\_ ; or

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

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