

IN THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF  
FLORIDA, TAMPA DIVISION

**Cassidy Caraker, Leslie Delatorre,  
Nenetta McManus, Romona Moreno,  
and Lidia Ramirez**, on behalf of  
themselves and on behalf of all similarly  
situated individuals,  
Plaintiff(s)

Case No:

v.

**Alex of Polk County, Inc., Mihalis  
Houvardas, and Maria Guadalupe  
Arroyo Delgado**,  
Defendant(s)

2018 SEP 19 PM 12:51  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

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**COLLECTIVE ACTION COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Plaintiffs, **Cassidy Caraker, Leslie Delatorre, Nenetta McManus, Romona Moreno, and Lidia Ramirez**, for themselves and on behalf of all others similarly situated, sue Defendants, **Alex of Polk County, Inc. ("Alex"), Mihalis Houvardas, and Maria Guadalupe Arroyo Delgado** and state as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction over Count I pursuant to 28 U.S.C. § 1331, which gives this Court jurisdiction over claims arising under federal law.

2. This Court has subject matter jurisdiction over Counts II and III pursuant to 28 U.S.C. § 1331, as well as 29 U.S.C. 216(b), the jurisdictional provision of the Fair Labor Standards Act ("FLSA"), and 28 U.S.C. sec. 2201-2202, the Federal Declaratory Judgment Act.

JRA-53190  
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3. This Court has subject matter jurisdiction over the remaining counts of this Complaint, which arise under state law, pursuant to 28 U.S.C. § 1367, which authorizes supplemental jurisdiction over certain state law claims. The remaining counts form part of the same case or controversy as the federal law claims in Counts I-III.

#### PARTIES

4. At all material times, Defendant Alex was a Florida corporation with its principal place of business in Polk County, Florida.

5. Defendant Alex operates a restaurant under the trade name "SOUTHEAST EATERY" in Winter Haven, Polk County, Florida.

6. At all material times, Defendant Houvardas was and is an individual resident of Polk County, Florida.

7. At all material times, Defendant Delgado was and is an individual resident of Polk County, Florida.

8. Plaintiffs worked for Defendant Alex at Southeast Eatery as servers.

9. During the time period at issue in this lawsuit, Defendants Houvardas and Delgado had operational control over Defendant Alex's day-to-day functions, including determining compensation of servers, hiring and discharging servers, controlling servers, complying with applicable tax laws, and establishing the terms and conditions of employment.

#### COMMON ALLEGATIONS

10. Plaintiffs received a base hourly wage from the Defendants.

11. In addition, Plaintiffs would earn and retain tips from customers.

12. Tips came in two forms. Some tips were cash tips left on their tables by customers. Other tips were credit card tips, which customers charged to their credit cards.

13. Credit card tips were recorded by the point of sale (“POS”) system on a per-transaction basis as the cards were swiped.

14. Cash tips were manually recorded by each server in the POS system at the end of their shifts.

15. With respect to cash tips, Defendants would require Plaintiffs to artificially increase the amount of cash tips reported in order to give the appearance that Plaintiffs were making at least the required minimum wages, regardless of whether they actually received at least minimum wage.

16. With respect to credit card tips, the tips captured and recorded by the POS system were presumably accurate, so that customer’s cards could be accurately charged.

17. However, for accounting purposes, in addition to the inflated cash tips, Defendants would also inflate the amount of credit card tips by reporting a higher amount to the payroll service than was captured by the POS system.

18. Thus, when Plaintiffs received their pay stubs from Defendants, the amount of tip wages shown on their pay stubs would exceed the amount of tips actually received.

19. Further, when Plaintiffs received their annual IRS W-2 forms from Defendants, the amount of tip wages shown on the W-2s would exceed the amount of tips actually received.

20. This caused Plaintiffs to have to pay more in taxes than they would have owed if the tips had been accurately reported.

21. Plaintiffs have retained the undersigned attorney to represent them in this litigation and agreed to pay a reasonable fee for his services.

COUNT I – VIOLATION OF 26 U.S.C § 7434 –  
INDIVIDUAL RELIEF

22. Plaintiffs restate the allegations of paragraphs 1 through 21, above.

23. This is a claim for individual relief on behalf of each of the named Plaintiffs

24. The Defendants have violated 24 U.S.C. § 7434 by filing informational returns that over-reported Plaintiff's tips.

25. Plaintiffs have suffered damages because of Defendants' actions, including, but not limited to, excessive taxes withheld and paid, additional accounting and tax preparation costs, and attorneys' fees and costs.

26. Pursuant to 26 U.S.C § 7434, Plaintiffs are each entitled to the greater of \$5000 or their actual damages, costs, and attorneys' fees.

COUNT II – COLLECTIVE ACTION FOR VIOLATION  
OF FLSA

27. Plaintiffs restate the allegations of paragraphs 1 through 21, above.

28. This is a collective action on behalf of the named Plaintiffs as well as all other servers who worked for Defendants in the past three years. Alternatively, the named Plaintiffs pursue this count individually.

29. At all material times, Plaintiffs were "employees" of Alex as defined by the FLSA.

30. At all material times, Defendant Alex was an "employer" of Plaintiffs as defined by the FLSA.

31. At all material times, Defendant Alex was "engaged in commerce" as defined by the FLSA.

32. At all material times, Defendant Houvardas was an "employer" as defined by the FLSA.

33. At at all material times, Defendant Delgado was an "employer" as defined by the FLSA.

34. The annual gross revenue of Defendants was in excess of \$500,000 per year during the time period at issue in this lawsuit.

35. Therefore, Defendants are subject to enterprise coverage under the FLSA pursuant to 29 U.S.C. § 203(s)(1)(B).

36. In addition, and as an alternative theory of FLSA coverage, Plaintiffs were each individually engaged in commerce within the meaning of the FLSA at all material times, because they, without limitation, served food that had moved in interstate commerce and processed credit card transactions using systems and instrumentalities of interstate commerce. Therefore, Plaintiffs were each subject to individual coverage under the FLSA.

37. The additional persons who may become plaintiffs in this action are or were also servers employed by Defendants in the past three years.

38. Plaintiffs were paid less than the applicable minimum wage because Defendants relied upon a credit for tips as described in 29 U.S.C. § 203(m)(2), a provision of the FLSA.

39. However, the tip credit authorized by the FLSA is inapplicable, in whole or in part, to Plaintiffs for several independent reasons.

40. First, during many weeks, the Plaintiffs' regular wages, plus their tips, were insufficient to meet the minimum wage requirements of either the FLSA or the Florida Constitution.

41. Second, Defendants required Plaintiffs to participate in an unlawful tip pool, which invalidates the claimed tip credit.

42. Third, as described above, Defendants routinely required Plaintiffs to keep inaccurate and inflated records of their cash tips, to give the appearance that the minimum wage requirements were satisfied when, in fact, they were not.

43. Fourth, Defendants required Plaintiffs to perform substantial duties for which they did not receive tips, such as (without limitation) cleaning, and for which the

application of a tip credit is unlawful, and for which Defendants failed to pay minimum wages required by the FLSA.

44. The Defendants have violated the FLSA by failing to pay the Plaintiffs the required minimum wages under the FLSA.

45. The Defendants have also failed to comply with the record-keeping requirements of the FLSA by failing to accurately track and record the Plaintiffs' tips.

46. Defendants actions were willful and/or showed reckless disregard for the provisions of the FLSA.

47. Defendants failed to properly disclose or apprise Plaintiffs of their rights under the FLSA.

48. Due to the willful and unlawful acts of Defendants, Plaintiff suffered damages and lost compensation.

49. Plaintiffs are also entitled to liquidated damages pursuant to the FLSA.

50. Plaintiffs are also entitled to an award of reasonable attorney's fees and costs pursuant to the FLSA.

51. At all material times, Defendants failed to comply with the FLSA with respect to all other servers. These employees are entitled to similar relief.

COUNT III – COLLECTIVE ACTION FOR  
DECLARATORY RELIEF - FLSA

52. Plaintiffs restate the allegations of paragraphs 1 through 21 and 29-51, above

53. This is a collective action on behalf of the named Plaintiffs as well as all other servers who worked for Defendants in the past three years. Alternatively, the named Plaintiffs pursue this count individually.

54. Plaintiff and Defendants have a dispute concerning violations of the FLSA over which this Court has jurisdiction.

55. The Defendants have violated the FLSA by:

- a. Failing to compensate Plaintiffs at least minimum wage;
- b. Failing to comply with the record-keeping requirements of the FLSA.

56. Plaintiffs are entitled to declaratory relief.

57. It is in the public interest to have this declaration of rights recorded.

58. A declaratory judgment serves the useful purpose of clarifying and settling the legal dispute and determining the amount of income which Plaintiffs actually received and the amounts to which they are entitled.

59. At all material times, Defendants failed to comply with the FLSA with respect to all other servers. These employees are entitled to similar relief.

COUNT IV – BREACH OF CONTRACT IMPLIED IN  
LAW

60. Plaintiffs restate the allegations of paragraphs 1 through 21, above.

61. This is a cause of action for breach of contract implied in law against Defendant Alex on behalf of each Plaintiff, individually.

62. Plaintiffs each gave the benefit of their services as servers to Defendant Alex.

63. Defendants knew the Plaintiffs were working as servers.

64. Defendants accepted or retained the benefit of Plaintiffs working as servers.

65. The circumstances are such that Defendant should, in all fairness, be required to accurately record and report Plaintiffs' earnings so that Plaintiffs taxes can be paid in an appropriate amount.

66. Defendant Alex failed to accurately record and report Plaintiffs' earnings.

67. Plaintiffs have suffered damages because of Defendant's actions, including, but not limited to, excessive taxes withheld and paid, additional accounting and tax preparation costs, and attorneys' fees and costs.

COUNT V – BREACH OF CONTRACT IMPLIED IN  
FACT

68. Plaintiffs restate the allegations of paragraphs 1 through 21, above.

69. This is a cause of action for breach of contract implied in fact against Defendant Alex on behalf of each Plaintiff, individually.

70. Defendant Alex hired Plaintiffs as servers to work for a base hourly wage, plus tips.

71. It can be inferred from the conduct of the parties that Defendant Alex had an obligation to accurately record and report Plaintiffs' earnings.

72. Defendant Alex failed to accurately record and report Plaintiffs' earnings.

73. Plaintiffs have suffered damages because of Defendant's actions, including, but not limited to, excessive taxes withheld and paid, additional accounting and tax preparation costs, and attorneys' fees and costs.

COUNT V – BREACH OF COVENANT OF GOOD  
FAITH AND FAIR DEALING

74. Plaintiffs restate the allegations of paragraphs 1 through 21, above.

75. This is a cause of action for breach of the covenant of good faith and fair dealing against Defendant Alex on behalf of each Plaintiff, individually.



76. Each Plaintiff and Defendant Alex entered into an express or implied contract for employment of each Plaintiff as a sever.

77. Each Plaintiff actually performed services as an employer.

78. Defendant Alex paid each Plaintiff for her services, but failed to accurately record and report each Plaintiff's wages.

79. This caused each Plaintiff to suffer damages, including, but not limited to, excessive taxes withheld and paid, additional accounting and tax preparation costs, and attorneys' fees and costs.

80. Thus, Defendant Alex's actions unfairly interfered with each Plaintiff's receipt of the contract's benefits.

81. Defendant Alex's conduct did not comport with Plaintiffs' reasonable expectations under the circumstances of the express or implied employment contract.

WHEREFORE, Plaintiffs respectfully request that a judgment be entered in their favor:

- a. Awarding Plaintiffs damages for the filing fraudulent informational tax returns, and reasonable attorneys' fees and costs, against all Defendants;
- b. Declaring that the acts and practices of all Defendants are in violation of the FLSA with respect to Plaintiffs and those similarly situated, and awarding Plaintiffs reasonable attorneys' fees and costs, against all Defendants.
- c. Awarding Plaintiffs and those similarly situated unpaid minimum wages, liquidated damages under the FLSA, and reasonable attorneys' fees and costs against all Defendants;

- d. Awarding Plaintiffs damages for Defendant Alex's breach of contract implied in fact, breach of contract implied in law, and breach of the covenant of good faith and fair dealing;
- e. Ordering any further relief the Court deems just and proper.

JURY TRIAL DEMAND

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document will be forwarded to the Internal Revenue Service upon filing with the Court as required by 26 U.S.C. 7434(d).



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Attorney for Plaintiffs

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Cassidy Caraker, Leslie Delatorre, Nenetta McManus, Ramona Moreno, and Lidia Ramirez

(b) County of Residence of First Listed Plaintiff Polk

(EXCEPT IN U.S. PLAINTIFF CASES)

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

J. Kemp Brinson
Bloodworth Law, PLLC
224 E. Marks St., Orlando, FL 32803

DEFENDANTS

Alex of Polk County, Inc., Mihalis Houvardas, and Maria Guadalupe Arroyo Delgado

County of Residence of First Listed Defendant Polk

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

26 U.S.C. Sec. 7434 and Fair Labor Standards Act.

Brief description of cause:

Recovery of damages for fraudulent tax return and associated claims.

VII. REQUESTED IN COMPLAINT:

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

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 9/13/18 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Servers Accuse Florida Restaurant Southeast Eatery of Fraudulent Payroll Practices](#)

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