

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**AMANDA DYER on her own behalf and
on behalf of all similarly situated
individuals,**

Plaintiff,

CASE NO.:

v.

**JTNU, INC., d/b/a SKYWAY JACK’S, a
Florida Profit Corporation, and JOSEPH
TENAGLIA, individually,**

Defendants.

_____ /

COMPLAINT & DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, AMANDA DYER on her own behalf, and on behalf of all similarly situated individuals, by and through the undersigned attorney, and sues the Defendants, JTNU, INC. d/b/a SKYWAY JACK’S and JOSEPH TENAGLIA (collectively “Defendants”) for failing to pay complete minimum wages for every hour worked, pursuant to 29 U.S.C. 216(b) and Article X of the Florida Constitution.

NATURE OF CASE

1. Defendant, JTNU, Inc. d/b/a Skyway Jack’s, (hereinafter “Skyway Jack’s”) is a restaurant establishment located in St. Petersburg, Pinellas County, Florida.
2. As part of its enterprise, Defendant Skyway Jack’s hires servers to serve customers as well as additional employees not employed in a service capacity.
3. Plaintiff brings this case to address and correct the illegal pay practices conducted by Defendant Skyway Jack’s.

4. Defendants violated the FLSA by failing to pay Plaintiff at least the full minimum wage for all hours worked pursuant to 29 U.S.C. 216(b) and 29 U.S.C. § 201, et al.

PARTIES

5. Plaintiff was an hour server employed by Defendant Skyway Jack's from approximately August 2016 through December 2016.

6. Defendant Skyway Jack's is a Florida for profit corporation which operates and conducts business in, among others, Pinellas County, Florida and is therefore, within the jurisdiction of this Court.

7. Plaintiff brings this FLSA collective action individually and on behalf of others similarly situated, including present and former employees of Defendant Skyway Jack's, to recover from Defendant Skyway Jack's unpaid minimum wages, liquidated damages, and reasonable attorneys' fees and costs.

8. Defendant Joseph Tenaglia (hereinafter "Tenaglia") is the Owner and Director of JTNU, Inc. d/b/a Skyway Jack's.

JURISDICTION & VENUE

9. This action is brought under Federal law to recover from Defendants minimum wages, liquidated damages, and reasonable attorneys' fees and costs.

10. This Court has jurisdiction over Plaintiff's claims as they arise under the FLSA.

11. This Court has jurisdiction and venue over this complaint as each of Defendants' violations of the FLSA complained of took place in Pinellas County, Florida.

GENERAL FACTUAL ALLEGATIONS

12. Plaintiff worked for Skyway Jack's at its 2795 34th Street South, St. Petersburg, Florida 33711 location.

13. Plaintiff was paid pursuant to a "tip credit" method where she was paid minimum wage minus the tip credit.

14. At all material times during her employment, Defendant Skyway Jack's deducted a tip credit from Plaintiff.

15. At all material times during the last three years, Defendant Skyway Jack's was an enterprise subject to the FLSA's provision on minimum wages.

16. At all material times during the last three years, Defendant Skyway Jack's was an enterprise engaged in commerce or in the production of goods for commerce, in that said enterprise has had at least two employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

17. Defendant Skyway Jack's employees ran credit card transactions which transacted business in interstate commerce on a daily basis.

18. Defendant Skyway Jack's employees handled goods such as napkins, silverware, appliances, food items, and restaurant equipment which had traveled in interstate commerce on a daily basis.

19. At all material times during the last three years, Defendant Skyway Jack's has had an annual gross volume of sales made or business done of not less than five hundred thousand dollars (\$500,000.00) (exclusive of excise taxes at the retail level which are separately stated).

20. Additionally, Plaintiff was engaged in interstate commerce during her employment with Defendant Skyway Jack's as a result of her use of credit card machines and other restaurant equipment which transmitted communications in interstate commerce.

21. Defendant Skyway Jack's is a restaurant, providing food and drinks to the general public.

22. Specifically, Defendant Skyway Jack's operates a restaurant.

23. Plaintiff worked in the State of Florida without being paid at least the full minimum wage for all hours worked.

24. Defendant Tenaglia controlled and/or was responsible for the work of Plaintiff.

25. Defendant Tenaglia regularly supervised Plaintiff's daily activities.

26. Defendant Tenaglia created and implemented the employer's policies and practices which violated the FLSA.

27. Defendant Tenaglia knew the employer's policies and practices violated the FLSA, but continued enforcing such policies against Plaintiff and other employees.

28. Plaintiff did a specific job, i.e. serve food and drinks, which was/is an integral part of the restaurant business of Defendant Skyway Jack's.

29. Defendant Skyway Jack's utilized the tip credit and paid Plaintiff under the applicable tipped minimum wage.

30. An employer may not claim a tip credit as to an employee's wages unless the employer has provided the employee with the provisions of the FLSA provisions of the tip credit.

31. Defendant Skyway Jack's failed to provide employees with the provisions of the FLSA pertaining to the tip credit, and was therefore not permitted to take the tip credit.

32. Moreover, when an employer chooses to pay pursuant to a tip credit, the employees must be allowed to keep all of their tips, either individually or through a tip pool.

33. With respect to allowing an employee to keep all of their tips, an employer may not take deductions from the employee's tips.

34. When employers take unlawful deductions from an employee's tips, the employer is not permitted to take the tip credit.

35. However, Defendant Skyway Jack's had a practice of deducting monies from their employees' earned tips to offset Defendant's overhead. Specifically, Defendant charged Plaintiff a fixed fee for every shift she worked.

36. In addition, Defendants required Plaintiff to perform non-tipped work. However, Defendants paid Plaintiff the reduced tipped minimum wage even though Plaintiff was required to perform non-tipped work.

37. As a result of these common policies, Plaintiff is entitled to receive the tip credit taken for each hour worked as repayment for the tip credit improperly deducted from her wages.

38. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of Defendants.

39. Moreover, Defendants failed to pay Plaintiff for each hour she worked, requiring her to work off the clock each and every week she was employed, up to 20 hours each week.

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. §216(b)
(Failure To Pay Minimum Wages)

40. Plaintiff readopts and reincorporates all allegations contained in Paragraphs 1 – 39 above as if stated fully herein.

41. At all relevant times, Defendant Skyway Jack's has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA.

42. At all relevant times, Defendants employed Plaintiff.

43. Defendants failed to inform Plaintiff of the tip credit provisions of the FLSA.

44. As stated above, Defendants have a policy and practice paying Plaintiff the reduced tip-credit minimum wage but requiring her to pay a fee for each shift she worked to offset Defendant's overhead.

45. Additionally, Defendants required Plaintiff to work off the clock, up to 20 hours each week she was employed.

46. Such a policy and practice violates the FLSA's minimum wage provisions.

47. Defendants' failure to pay Plaintiff the full minimum wage is a violation of 29 U.S.C. §206.

48. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).

49. In addition, Defendants did not maintain and keep accurate time records as required by the FLSA for Plaintiff.

50. Also, Defendants failed to post required FLSA informational listings as required by the FLSA for Plaintiff.

51. As a result of Defendants' intentional, willful and unlawful acts in refusing to pay Plaintiff the full and complete minimum wage for each hour worked, Plaintiff has suffered damages, plus incurring reasonable attorneys' fees and costs.

52. As a result of Defendants' reckless disregard of the FLSA, Plaintiff is entitled to liquidated damages.

SECOND CAUSE OF ACTION
COLLECTIVE ACTION, VIOLATION OF THE FLSA
(Failure to Pay Minimum Wage)

53. Plaintiff readopts and reincorporates all allegations contained in Paragraphs 1 – 39 above as if stated fully herein.

54. At all times material, Defendants employed numerous individuals who were similarly situated to Plaintiff.

55. Throughout their respective employment, individuals similarly situated to Plaintiff were subject to Defendants' unlawful pay practices.

56. Specifically, Defendants took an unlawful "tip credit" from Plaintiff and those similarly situated to Plaintiff by taking unlawful deductions from tips, requiring tipped employees to share tips with non-tipped employees and paying the tip minimum wage for non-tip work.

57. Defendants' failure to pay such similarly situated individuals the required minimum wage was in reckless disregard of the FLSA.

58. As a direct and legal consequence of Defendants' unlawful acts, individuals similarly situated to Plaintiff have suffered damages and have incurred, or will incur, costs and attorneys' fees in the prosecution of this matter.

59. As a result of Defendants' intentional, willful and unlawful acts in refusing to pay

Plaintiff the full and complete minimum wage for each hour worked, Plaintiff has suffered damages, plus incurring reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff, AMANDA DYER, demands judgment against Defendants for unpaid minimum wages, an additional and equal amount of liquidated damages or if liquidated damages are not awarded then pre and post-judgment interest at the highest allowable rate, reasonable attorneys' fees and costs incurred in this action, and any and all further relief that this Court determines to be just and appropriate.

Respectfully submitted,

MORGAN & MORGAN, P.A.

/s/ Marc R. Edelman

Marc R. Edelman, Esq.

Fla. Bar No. 0096342

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Attorney for Plaintiff

JS 44 (Rev. 11/15)

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

AMANDA DYER, on her own behalf and on behalf of all similarly situated individuals,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Marc R. Edelman, Esq. - Morgan & Morgan, P.A.
201 North Franklin Street, Suite 700, Tampa, FL 33602
Telephone No: 813-223-5505

DEFENDANTS

JTNU, INC., d/b/a SKYWAY JACK'S, a Florida Profit Corporation, and JOSEPH TENAGLIA, individually,

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

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

Attorneys (If Known)

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:
Non-Payment Of Overtime And Unpaid Wages

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 3-17-17 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Skyway Jack's Facing Former Server's Minimum Wage Lawsuit](#)
