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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Nicole Wasilishin and Felicia Hunt,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

We Begg to Differ LLC, an Arizona
Limited Liability Company, **We Begg to**
Differ DC Ranch LLC, an Arizona
Limited Liability Company, **We Begg to**
Differ Mercado LLC, an Arizona
Limited Liability Company, **We Begg to**
Differ Watermark LLC, an Arizona
Limited Liability Company, and
Prokopios Verros and Jane Doe Verros,
a married couple,

Defendants.

No.

**FLSA COLLECTIVE ACTION
COMPLAINT**

(Demand for Jury Trial)

Plaintiffs, Nicole Wasilishin (“Plaintiff Wasilishin”) and Felicia Hunt (“Plaintiff
Hunt”) (collectively, “Plaintiffs”), individually, and on behalf of all other persons
similarly situated, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action on behalf of themselves and all similarly-situated
current and former servers and bartenders of Defendants who were compensated at a rate

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1 of less than the applicable Arizona and federal minimum wage on account of receiving
2 tips in a given workweek.

3 2. Plaintiffs, individually, and on behalf of all others similarly-situated, bring
4 this action against Defendants¹ for their unlawful failure to pay minimum wage in
5 violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the “FLSA”).
6

7 3. Plaintiffs bring a collective action under the FLSA to recover the unpaid
8 minimum wages owed to them individually and on behalf of all other similarly-situated
9 employees, current and former, of Defendants. Such similarly-situated employees,
10 current and former, are referred to as the “Collective Members.”
11

12 4. The Collective Members are all current and former servers and bartenders
13 who were employed by Defendants at any time starting three years before this Complaint
14 was filed, up to the present.
15

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

18 6. The FLSA was enacted “to protect all covered workers from substandard
19 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
20 exempt employees a minimum wage of pay for all time spent working during their
21 regular 40 hour workweeks. The FLSA’s definition of the term “wage,” in turn,
22 recognizes that under certain circumstances, an employer of tipped employees may credit
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24
25

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

1 a portion of its employees' tips against its minimum wage obligation, a practice
2 commonly referred to as taking a "tip credit."

3 7. Under 29 U.S.C. § 203(m) and its supporting regulations, employers must
4 allow their tipped employees to retain all tips earned, except to the extent that they
5 require the tipped employees to participate in a valid tip pooling arrangement. A valid tip
6 pooling arrangement includes only employees who customarily and regularly receive
7 tips.
8

9 8. The Arizona Minimum Wage Act, A.R.S. § 23-363, establishes a minimum
10 wage within the State of Arizona. A.R.S. § 23-363 recognizes that, under certain
11 circumstances, employers may impose a maximum tip credit on the wages of their tipped
12 employees of \$3.00 per hour.
13

14 9. The FLSA, in turn, requires that employers comply with any State law that
15 establishes a higher minimum wage than that established by the FLSA. *See* 29 U.S.C. §
16 218(a). Therefore, federal law requires that all Arizona employers comply with the
17 minimum wage standards set forth by the Arizona Wage Act and limits the maximum
18 allowable tip credit to \$3.00 per hour. *See Hanke v. Vinot Pinot Dining LLC*, Case No.
19 2:15-cv-01873-SMM, Dkt. 51, at 4:6-11 (D. Ariz. March 21, 2018) ("both the FLSA and
20 AWA allow Arizona employers to take a maximum tip credit of \$3.00 against their
21 minimum wage obligations to "tipped" employees"); *see also Montijo v. Romulus, Inc.*,
22 2015 WL 1470128, at *5 n. 4 (D. Ariz. March 30, 2015) (same).
23
24

25 10. For example, the Arizona minimum wage in 2016 was \$8.05. If an
26 employer of tipped employees has satisfied its tip credit obligations, it may impose a tip
27

1 credit on that overtime rate of up \$3.00 per hour, for a total minimum hourly rate of
2 \$5.05.

3 11. Pursuant to the FLSA, 29 U.S.C. § 203(m), and Arizona wage and hour
4 law, employers may impose a tip credit on their tipped employees' wages, on the
5 condition that, among other requirements, such employees have been informed by the
6 employer of the provisions of 29 U.S.C. § 203(m).

8 12. The Defendants paid Plaintiffs and the Collective Members a sub-minimum
9 wage, ostensibly according to the tip-credit provisions of the FLSA, which allow an
10 employer to pay an hourly wage less than the statutory minimum wage, provided that the
11 employer complies with the requirements of the tip-credit provisions of 29 U.S.C. §
12 203(m). However, the Defendants did not comply with the requirements of the tip-credit
13 provisions and thus cannot avail themselves of the tip-credit provisions of the FLSA.

16 13. For all hours for which Plaintiffs and the Collective Members were paid by
17 the Defendants, their rate of pay rate was the sub-minimum tip credit wage.

18 14. Defendants failed to inform Plaintiffs and the Collective Members of the
19 provisions of 29 U.S.C. § 203(m) at any time during the duration of their employment
20 with Defendants. As such, the Defendants were not entitled to impose any tip credit upon
21 Plaintiffs' and the Collective Members' wages, and the Defendants should have therefore
22 paid the full Arizona minimum wage to Plaintiffs and the Collective Members for all time
23 they worked during the course of their regular 40-hour workweeks.

25 15. Defendants also engaged in the regular policy and practice of deducting
26 wages from each of their tipped employees'—including Plaintiffs' and the Collective
27

1 Members'—paychecks allegedly to cover the cost of optional employee food and drink
2 allowances. Nonetheless, Defendants still charged their tipped employees—including
3 Plaintiffs and the Collective Members—for all food and drink they consumed during their
4 employment with Defendants. Such conduct by Defendants brought necessarily brought
5 Defendants' tipped employees'—including Plaintiffs' and the Collective Members'—wages
6 below the applicable minimum wage, in violation of 29 U.S.C. § 203(m).
7

8 16. Defendants also engaged in the regular policy and practice of requiring
9 Plaintiffs and the Collective Members to attend weekly, unpaid server meetings. Such
10 conduct by Defendants brought necessarily brought Defendants' tipped employees'—
11 including Plaintiffs' and the Collective Members'—wages below the applicable minimum
12 wage, in violation of 29 U.S.C. § 206(a).
13

14 17. Therefore, Defendants did not pay Plaintiffs or the Collective Members the
15 applicable federal or Arizona minimum wage, in violation of 29 U.S.C. § 206 and A.R.S.
16 § 23-363, and were precluded from exercising a tip credit against Plaintiffs' and
17 Collective Members' wages.
18

19 **JURISDICTION AND VENUE**
20

21 18. Plaintiffs reallege and incorporate by reference all allegations in all
22 preceding paragraphs.

23 19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
24 29 U.S.C. § 201, *et seq.* because this action arises under the Constitution and laws of the
25 United States.
26
27

1 25. At all material times, Plaintiff Hunt was a full-time, non-exempt employee
2 of Defendants who worked at Defendants’ Defendants’ Shea Boulevard location, located
3 at 6990 East Shea Boulevard, Scottsdale, Arizona 85254 from approximately December
4 2016 through approximately July 2017.

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

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

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

18 29. Plaintiffs bring this action on behalf of themselves and on behalf of all
19 other persons similarly situated who are current or former tipped employees of
20 Defendants, including but not limited to servers and bartenders who agree in writing to
21 join this action seeking recovery under the FLSA.
22

23 30. Plaintiffs bring this action on behalf of themselves and on behalf of all
24 other similarly situated current and former employees of Defendants—specifically, servers
25 and bartenders whose hourly wages were subject to a tip credit and whose wages,
26 therefore, were less than the applicable statutory minimum wage.
27

1 31. Defendant We Begg to Differ LLC is an Arizona limited liability company,
2 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
3 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).

4 32. Defendant We Begg to Differ LLC does business as “Eggstasy.”

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

15 34. Defendant We Begg to Differ DC Ranch LLC is an Arizona limited
16 liability company, authorized to do business in the State of Arizona and was at all
17 relevant times Plaintiffs’ and the Collective Members’ Employer as defined by 29 U.S.C.
18 § 203(d).

19 35. Defendant We Begg to Differ DC Ranch LLC does business as “Eggstasy.”

20 36. Under the FLSA, Defendant We Begg to Differ DC Ranch LLC is an
21 employer. The FLSA defines “employer” as any individual who acts directly or
22 indirectly in the interest of an employer in relation to an employee. Defendant We Begg
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1 to Differ DC Ranch LLC is the owner of Eggstasy. At all relevant times, Defendant We
2 Begg to Differ DC Ranch LLC had the authority to hire and fire employees, supervised
3 and controlled work schedules or the conditions of employment, determined the rate and
4 method of payment, and maintained employment records in connection with Plaintiffs’
5 and the Collective Members’ employment with Eggstasy. Having acted in the interest of
6 Eggstasy in relation to the company’s employees, including Plaintiffs and the Collective
7 Members, We Begg to Differ DC Ranch LLC is subject to liability under the FLSA.
8

9 37. Defendant We Begg to Differ Mercado LLC is an Arizona limited liability
10 company, authorized to do business in the State of Arizona and was at all relevant times
11 Plaintiffs’ and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).
12

13 38. Defendant We Begg to Differ Mercado LLC does business as “Eggstasy.”
14

15 39. Under the FLSA, Defendant We Begg to Differ Mercado LLC is an
16 employer. The FLSA defines “employer” as any individual who acts directly or
17 indirectly in the interest of an employer in relation to an employee. Defendant We Begg
18 to Differ Mercado LLC is the owner of Eggstasy. At all relevant times, Defendant We
19 Begg to Differ Mercado LLC had the authority to hire and fire employees, supervised and
20 controlled work schedules or the conditions of employment, determined the rate and
21 method of payment, and maintained employment records in connection with Plaintiffs’
22 and the Collective Members’ employment with Eggstasy. Having acted in the interest of
23 Eggstasy in relation to the company’s employees, including Plaintiffs and the Collective
24 Members, We Begg to Differ Mercado LLC is subject to liability under the FLSA.
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1 40. Defendant We Begg to Differ Watermark LLC is an Arizona limited
2 liability company, authorized to do business in the State of Arizona and was at all
3 relevant times Plaintiffs’ and the Collective Members’ Employer as defined by 29 U.S.C.
4 § 203(d).

5 41. Defendant We Begg to Differ Watermark LLC does business as
6 “Eggstasy.”
7

8 42. Under the FLSA, Defendant We Begg to Differ Watermark LLC is an
9 employer. The FLSA defines “employer” as any individual who acts directly or
10 indirectly in the interest of an employer in relation to an employee. Defendant We Begg
11 to Differ Watermark LLC is the owner of Eggstasy. At all relevant times, Defendant We
12 Begg to Differ Watermark LLC had the authority to hire and fire employees, supervised
13 and controlled work schedules or the conditions of employment, determined the rate and
14 method of payment, and maintained employment records in connection with Plaintiffs’
15 and the Collective Members’ employment with Eggstasy. Having acted in the interest of
16 Eggstasy in relation to the company’s employees, including Plaintiffs and the Collective
17 Members, We Begg to Differ Watermark LLC is subject to liability under the FLSA.
18

19 43. Defendant Prokopios Verros and Jane Doe Verros are, upon information
20 and belief, husband and wife. They have caused events to take place giving rise to the
21 claims in this Complaint as to which their marital community is fully liable. Prokopios
22 Verros is an owner of Eggstasy and was at all relevant times Plaintiffs’ and the Collective
23 Members’ employer as defined by the FLSA, 29 U.S.C. § 203(d). Jane Doe Verros is an
24 owner of Eggstasy.
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1 44. Under the FLSA, Defendants Prokopios Verros and Jane Doe Verros are
2 employers. The FLSA defines “employer” as any individual who acts directly or
3 indirectly in the interest of an employer in relation to an employee. Defendants
4 Prokopios Verros and Jane Doe Verros are the owners of Eggstasy. At all relevant times,
5 they had the authority to hire and fire employees, supervised and controlled work
6 schedules or the conditions of employment, determined the rate and method of payment,
7 and maintained employment records in connection with Plaintiffs’ and the Collective
8 Members’ employment with Eggstasy. As persons who acted in the interest of Eggstasy
9 in relation to the company’s employees, including Plaintiffs and the Collective Members,
10 Prokopios Verros and Jane Doe Verros are subject to individual liability under the FLSA.

11 45. Plaintiffs are further informed, believe, and therefore allege that each of the
12 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
13 alleged in this Complaint.
14

15 46. Defendants, and each of them, are sued in both their individual and
16 corporate capacities.
17

18 47. Defendants are jointly and severally liable for the injuries and damages
19 sustained by Plaintiffs and the Collective Members.
20

21 48. At all relevant times, Plaintiffs and the Collective Members were
22 “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*
23

24 49. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
25 Defendants.
26

27

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

3 51. Defendants individually and/or through an enterprise or agent, directed and
4 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all
5 relevant times.
6

7 52. At all relevant times, Plaintiffs and the Collective Members in their work
8 for Defendants, were engaged in commerce or the production of goods for commerce.

9 53. At all relevant times, Plaintiffs and the Collective Members, in their work
10 for Defendants, were employed by an enterprise engaged in commerce that had annual
11 gross sales of at least \$500,000.
12

13 54. At all relevant times, all Defendants were joint employers of Plaintiffs and
14 the Collective Members. At all relevant times: (1) Defendants were not completely
15 disassociated with respect to the employment of Plaintiffs and the Collective Members;
16 and (2) Defendants were under common control. In any event, at all relevant times,
17 Defendants were joint employers under the FLSA, 29 C.F.R. § 791.2(b), and *Chao v. A-
18 One Med. Servs., Inc.*, 346 F.3d 908, 917-918 (9th Cir. 2003), and employed Plaintiffs
19 and the Collective Members.
20

21 55. Further, at all relevant times, Defendants have operated as a “single
22 enterprise” within the meaning of the FLSA, 29 U.S.C. § 203(r)(1). That is, Defendants
23 perform related activities through unified operation and common control for a common
24 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973);
25 *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914-15 (9th Cir. 2003).
26
27

1 60. Eggstasy is an enterprise that is a restaurant that serves food and drinks to
2 customers.

3 61. In approximately January 2017, Plaintiff Wasilishin began employment
4 with Defendants as a server, performing various repetitive tasks such as serving drinks
5 and food to customers, cleaning, bussing tables, and other side work.
6

7 62. In approximately December 2016, Plaintiff Hunt began employment with
8 Defendants as a server, performing various repetitive tasks such as serving drinks and
9 food to customers, cleaning, bussing tables, and other side work.
10

11 63. Rather than pay their tipped employees the applicable minimum wage, for
12 the time Plaintiffs were paid as a tipped employee, Defendants imposed a tip credit upon
13 Plaintiffs' wages at below the applicable minimum wage.

14 64. Throughout the duration of their employment, Plaintiffs were paid a rate of
15 the applicable Arizona minimum wage less a tip credit of approximately \$3.00 per hour.
16

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

19 66. Defendants failed to inform Plaintiffs and the Collective Members of the
20 provisions of 29 U.S.C. § 203(m) at any time during the duration of their employment
21 with Defendants. As such, the Defendants were not entitled to impose any tip credit upon
22 Plaintiffs' and the Collective Members' wages, and the Defendants should have therefore
23 paid the full Arizona minimum wage to Plaintiffs and the Collective Members for all time
24 they worked during the course of their regular 40-hour workweeks.
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1 67. Defendants also engaged in the regular policy and practice of deducting
2 wages from each of their tipped employees’—including Plaintiffs’ and the Collective
3 Members’—paychecks allegedly to cover the cost of optional employee food and drink
4 allowances. Nonetheless, Defendants still charged their tipped employees—including
5 Plaintiffs and the Collective Members—for all food and drink they consumed during their
6 employment with Defendants.
7

8 68. Defendants also engaged in the regular policy and practice of requiring
9 Plaintiffs and the Collective Members to attend weekly, unpaid server meetings.
10

11 69. Defendants’ failure to provide tip credit notice to Plaintiffs and the
12 Collective Members violated 29 U.S.C. § 203(m) such that Defendants were prohibited
13 from exercising any tip credit whatsoever against Plaintiffs’ and the Collective Members’
14 wages at all material times, and the manner in which Defendants paid Plaintiffs and the
15 Collective Members therefore violated 29 U.S.C. § 206(a).
16

17 70. Therefore, in a given workweek, and during each and every workweek of
18 Plaintiffs’ employment with Defendants, Plaintiffs worked for Defendants and were not
19 paid the applicable minimum wage under the FLSA 29, U.S.C. § 206(a).
20

21 71. Defendants’ policy and practice of deducting wages from each of their
22 tipped employees’—including Plaintiffs’ and the Collective Members’—paychecks
23 allegedly to cover the cost of optional employee food and drink allowances brought
24 Plaintiffs’ and the Collective Members’ wages below the applicable minimum wage and
25 as such violated 29 U.S.C. § 206(a).
26
27

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

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

8 74. Plaintiffs and the Collective Members are covered employees within the
9 meaning of the Fair Labor Standards Act ("FLSA").

10 75. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
11 and the Collective Members of their rights under the FLSA.

12 76. Defendants wrongfully withheld wages from Plaintiffs and the Collective
13 Members by failing to pay all wages due for hours Plaintiffs and the Collective Members.

14 77. Defendants individually and/or through an enterprise or agent, directed and
15 exercised control over Plaintiffs' and the Collective Members' work and wages at all
16 relevant times.

17 78. Due to Defendants' illegal wage practices, Plaintiffs and the Collective
18 Members are entitled to recover from Defendants compensation for unpaid minimum
19 wages, an additional amount equal amount as liquidated damages, interest, and
20 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

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26 **COLLECTIVE ACTION ALLEGATIONS**

1 79. Plaintiffs reallege and incorporate by reference all allegations in all
2 preceding paragraphs.

3 80. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
4 behalves and as representatives of individuals similarly situated who are current or
5 former servers and bartenders of Defendants.
6

7 81. At all times material, Defendants paid Plaintiffs and the Collective
8 Members at a rate of less than the full, applicable Arizona and federal minimum wage.
9

10 82. Defendants subjected Plaintiffs and the Collective Members to their
11 practice of failing to inform Plaintiffs and the Collective Members of the provisions of 29
12 U.S.C. § 203(m) at any time during the duration of their employment with Defendants.

13 83. Defendants also subjected Plaintiffs and the Collective Members to their
14 regular policy and practice of deducting wages from each of their tipped employees’–
15 including Plaintiffs’ and the Collective Members’–paychecks allegedly to cover the cost
16 of optional employee food and drink allowances.
17

18 84. Defendants also subjected Plaintiffs and the Collective Members to their
19 regular policy and practice of requiring Plaintiffs and the Collective Members to attend
20 weekly, unpaid server meetings every Sunday.
21

22 85. At all times material, Plaintiffs and the Collective Members are and have
23 been similarly situated, have had substantially similar job requirements and pay
24 provisions, and are and have been subject to Defendants’ decision, policy, plan, and
25 common programs, practices, procedures, protocols, routines, and rules.
26
27

1 86. Plaintiffs' claims stated in this complaint are essentially the same as those
2 of the Collective Members. This action is properly maintained as a collective action
3 because in all pertinent aspects the employment relationship of individuals similarly
4 situated to Plaintiffs is identical or substantially similar.

5
6 87. Plaintiffs and the Collective Members were each compensated exclusively
7 on an hourly basis for the duration of their employment with Defendants.

8 88. The Collective Members perform or have performed the same or similar
9 work as Plaintiffs.

10
11 89. Defendants' failure to pay minimum wage compensation required by the
12 FLSA results from generally applicable policies or practices, and does not depend on the
13 personal circumstances of Plaintiffs or the Collective Members.

14 90. While Plaintiffs and Defendants have described Plaintiffs' and the
15 Collective Members' job titles as servers and bartenders, the specific job titles or precise
16 job responsibilities of each Collective Member does not prevent collective treatment.

17
18 91. All Collective Members, irrespective of their particular job requirements
19 and job titles, are entitled to proper minimum wage compensation for all hours worked in
20 a given workweek.

21
22 92. Although the exact amount of damages may vary among the Collective
23 Members, the damages for the Collective Members can be easily calculated by a simple
24 formula. The claims of all Collective Members arise from a common nucleus of facts.
25 Liability is based on a systematic course of wrongful conduct by the Defendants that
26 caused harm to all of the Collective Members.
27

1 93. As such, Plaintiffs bring their FLSA minimum wage claims as a collective
2 action on behalf of the following class:

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

7 94. Defendants' unlawful conduct, as described in this Collective Action
8 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor
9 costs by refusing and/or failing to properly compensate its employees according to the
10 FLSA.

11
12 95. Defendants are aware or should have been aware that federal law required
13 them to inform Plaintiffs and the Collective Members of the provisions of 29 U.S.C. §
14 203(m) before the beginning of their employment with Defendants.

15
16 96. Defendants are aware or should have been aware that the FLSA prohibited
17 their regular policy and practice of deducting wages from each of their tipped
18 employees'—including Plaintiffs' and the Collective Members'—paychecks allegedly to
19 cover the cost of optional employee food and drink allowances.

20
21 97. Defendants' unlawful conduct has been widespread, repeated, and
22 consistent.

23 98. This action is properly brought and maintained as an opt-in collective
24 action pursuant to 29 U.S.C. § 216(b).

25
26 99. Upon information and belief, the individuals similarly situated to Plaintiffs
27 include more than one hundred (100) employees currently and/or formerly employed by

1 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated
2 employees because that information is solely in Defendants' possession, custody, or
3 control, but it can be readily ascertained from their employment records and the records
4 of Defendants' payroll processor.

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

10
11 **DAMAGES**

12 101. Plaintiffs reallege and incorporate by reference all allegations in all
13 preceding paragraphs.

14 102. Plaintiffs and the Collective Members are entitled to recover compensation
15 for the hours they worked for which they were not paid at the federally mandated and
16 Arizona mandated minimum wage rate—i.e., Plaintiffs and the Collective Members are
17 entitled to the federally- and Arizona-mandated minimum wage rate, less hourly wages
18 paid.
19

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

22 104. Plaintiffs and the Collective Members are also entitled to recover their
23 attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).
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COUNT ONE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE (NO TIP CREDIT NOTICE)

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2
3 105. Plaintiffs reallege and incorporate by reference all allegations in all
4 preceding paragraphs.

5 106. The Defendants did not inform Plaintiffs or the Collective Members of the
6 provisions of the “tip credit” in 29 U.S.C. § 203(m).

7
8 107. As a result, the Defendants were not entitled to take a tip credit against
9 Plaintiffs’ and the Collective Members’ minimum wages.

10 108. The Defendants failed and/or refused to pay Plaintiffs and the Collective
11 Members the full minimum wage according to the provisions of the FLSA for each and
12 every workweek that Plaintiffs and the Collective Members worked for the Defendants,
13 for the duration of their employment, in violation of 29 U.S.C. § 206(a).

14
15 109. As such, full applicable minimum wage for such time Plaintiffs and the
16 Collective Members worked is owed to Plaintiffs and the Collective Members for the
17 entire time they were employed by the Defendants.

18
19 110. Defendants knew that – or acted with reckless disregard as to whether –
20 their failure to pay to Plaintiffs and the Collective Members the full minimum wage over
21 the course of their employment would violate federal and state law, and Defendants were
22 aware of the FLSA minimum wage requirements during Plaintiffs’ and the Collective
23 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
24 the FLSA.
25
26
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1 111. Plaintiffs and the Collective Members are therefore entitled to
2 compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an
3 additional equal amount as liquidated damages, together with interest, reasonable
4 attorneys' fees, and costs.

5
6 WHEREFORE, Plaintiffs, Nicole Wasilishin and Felicia Hunt, individually, and
7 on behalf of all other similarly situated persons, requests that this Court grant the
8 following relief in Plaintiffs' and the Collective Members' favor, and against Defendants:

- 9 A. For the Court to declare and find that the Defendants committed one or
10 more of the following acts:
- 11 i. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
12 by failing to pay proper minimum wages;
 - 13 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
14 § 206;
- 15 B. 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 C. For the Court to award prejudgment and post-judgment interest on any
19 damages awarded;
- 20 D. For the Court to award Plaintiffs' and the Collective Members' reasonable
21 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
22 all other causes of action set forth in this Complaint;
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- 1 E. 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 F. Such other relief as this Court deems just and proper.
5

6 **COUNT TWO: FAIR LABOR STANDARDS ACT**
7 **FAILURE TO PAY MINIMUM WAGE (IMPROPER DEDUCTIONS)**

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

10 113. Defendants also engaged in the regular policy and practice of deducting
11 wages from each of their tipped employees’—including Plaintiffs’ and the Collective
12 Members’—paychecks each and every workweek.

13 114. Such deductions were allegedly imposed to cover the cost of optional
14 employee food and drink allowances.
15

16 115. Such conduct by Defendants brought necessarily brought Defendants’
17 tipped employees’—including Plaintiffs’ and the Collective Members’—wages below the
18 applicable minimum wage, in violation of 29 U.S.C. § 203(m).
19

20 116. In a given workweek, Defendants failed to pay Plaintiffs and the Collective
21 Members one and one-half times the applicable minimum wage rate of pay for all hours
22 worked.
23

24 117. As a result of Defendants’ willful failure to pay Plaintiffs and the Collective
25 Members the applicable minimum wage rate for all hours worked in a given workweek,
26 Defendants violated 29 U.S.C. § 206.
27

1 118. As such, the full applicable minimum wage rate is owed for all hours that
2 Plaintiffs and the Collective Members worked in a given workweek.

3 119. The Defendants failed and/or refused to pay Plaintiffs and the Collective
4 Members the full minimum wage according to the provisions of the FLSA for each and
5 every workweek that Plaintiffs and the Collective Members worked for the Defendants,
6 for the duration of their employment, in violation of 29 U.S.C. § 206(a).

7 120. Defendants have and continue to willfully violate the FLSA by not paying
8 Plaintiffs and the Collective Members a wage equal to the applicable minimum wage rate
9 of pay for all time Plaintiffs and the Collective Members spent working for Defendants.
10

11 121. Defendants knew that – or acted with reckless disregard as to whether –
12 their failure to pay to Plaintiffs and the Collective Members the full minimum wage over
13 the course of their employment would violate federal and state law, and Defendants were
14 aware of the FLSA minimum wage requirements during Plaintiffs’ and the Collective
15 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
16 the FLSA.
17

18 122. Plaintiffs and the Collective Members are therefore entitled to
19 compensation for the difference between wages paid and the applicable minimum wage
20 rate for all hours worked in a given workweek, to be proven at trial, plus an additional
21 equal amount as liquidated damages, together with interest, costs, and reasonable attorney
22 fees.
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1 WHEREFORE, Plaintiffs, Nicole Wasilishin and Felicia Hunt, individually, and
2 on behalf of all other similarly situated persons, requests that this Court grant the
3 following relief in Plaintiffs' and the Collective Members' favor, and against Defendants:

- 4 A. For the Court to declare and find that the Defendants committed one or
5 more of the following acts:
6 iii. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
7 by failing to pay proper minimum wages;
8 iv. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
9 § 206;
10 B. For the Court to award compensatory damages, including liquidated
11 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
12 trial;
13 C. For the Court to award prejudgment and post-judgment interest on any
14 damages awarded;
15 D. For the Court to award Plaintiffs' and the Collective Members' reasonable
16 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
17 all other causes of action set forth in this Complaint;
18 E. For the Court to provide reasonable incentive awards for each named
19 Plaintiff to compensate them for the time they spent attempting to recover
20 wages for the Collective Members and for the risks they took in doing so;
21 F. Such other relief as this Court deems just and proper.
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COUNT THREE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE (UNPAID MEETINGS)

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2
3 123. Plaintiffs reallege and incorporate by reference all allegations in all
4 preceding paragraphs.

5 124. Defendants engaged in the regular policy and practice of requiring
6 Plaintiffs and the Collective Members to attend weekly, unpaid server meetings.

7
8 125. Such conduct by Defendants brought necessarily brought Defendants'
9 tipped employees'—including Plaintiffs' and the Collective Members'—wages below the
10 applicable minimum wage, in violation of 29 U.S.C. § 206(a).

11 126. In a given workweek, Defendants failed to pay Plaintiffs and the Collective
12 Members one and one-half times the applicable minimum wage rate of pay for all hours
13 worked.

14
15 127. As a result of Defendants' willful failure to pay Plaintiffs and the Collective
16 Members the applicable minimum wage rate for all hours worked in a given workweek,
17 Defendants violated 29 U.S.C. § 206.

18
19 128. As such, the full applicable minimum wage rate is owed for all hours that
20 Plaintiffs and the Collective Members worked in a given workweek.

21 129. The Defendants failed and/or refused to pay Plaintiffs and the Collective
22 Members the full minimum wage according to the provisions of the FLSA for each and
23 every workweek that Plaintiffs and the Collective Members worked for the Defendants,
24 for the duration of their employment, in violation of 29 U.S.C. § 206(a).
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1 130. Defendants have and continue to willfully violate the FLSA by not paying
2 Plaintiffs and the Collective Members a wage equal to the applicable minimum wage rate
3 of pay for all time Plaintiffs and the Collective Members spent working for Defendants.

4 131. Defendants knew that – or acted with reckless disregard as to whether –
5 their failure to pay to Plaintiffs and the Collective Members the full minimum wage over
6 the course of their employment would violate federal and state law, and Defendants were
7 aware of the FLSA minimum wage requirements during Plaintiffs’ and the Collective
8 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
9 the FLSA.
10

11 132. Plaintiffs and the Collective Members are therefore entitled to
12 compensation for the difference between wages paid and the applicable minimum wage
13 rate for all hours worked in a given workweek, to be proven at trial, plus an additional
14 equal amount as liquidated damages, together with interest, costs, and reasonable attorney
15 fees.
16

17 WHEREFORE, Plaintiffs, Nicole Wasilishin and Felicia Hunt, individually, and
18 on behalf of all other similarly situated persons, requests that this Court grant the
19 following relief in Plaintiffs’ and the Collective Members’ favor, and against Defendants:
20

21 A. For the Court to declare and find that the Defendants committed one or
22 more of the following acts:
23

24 v. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206,
25 by failing to pay proper minimum wages;
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BENDAU & BENDAU PLLC
P.O. Box 97066
Phoenix, AZ 85060

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vi. willfully violated minimum wage provisions of the FLSA, 29 U.S.C. § 206;

B. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at trial;

C. For the Court to award prejudgment and post-judgment interest on any damages awarded;

D. For the Court to award Plaintiffs' and the Collective Members' reasonable attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth in this Complaint;

E. For the Court to provide reasonable incentive awards for each named Plaintiff to compensate them for the time they spent attempting to recover wages for the Collective Members and for the risks they took in doing so;

F. Such other relief as this Court deems just and proper.

REQUEST FOR COLLECTIVE ACTION CERTIFICATION

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

JURY TRIAL DEMAND

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

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RESPECTFULLY SUBMITTED this 17th day of October, 2018.

BENDAU & BENDAU PLLC

By: */s/ Clifford P. Bendau, II*
Clifford P. Bendau, II
Christopher J. Bendau
Attorneys for Plaintiffs

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): Nicole Wasilishin ; Felicia Hunt

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**

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

**We Begg to Differ LLC ; We Begg
to Differ DC Ranch LLC ; We Begg
Defendant(s): to Differ Mercado LLC ; We Begg
to Differ Watermark LLC ;
Prokopios Verros ; Jane Doe Verros**

County of Residence: Maricopa

Defendant's Atty(s):

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: 10/17/2018

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

BENDAU & BENDAU PLLC

Exhibit A

BENDAU & BENDAU PLLC
Clifford P. Bendau, II (030204)
Christopher J. Bendau (032981)
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Telephone: (480) 382-5176
Fax: (480) 304-3805
Email: cliffordbendau@bendaulaw.com
chris@bendaulaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Nicole Wasilishin and Felicia Hunt,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

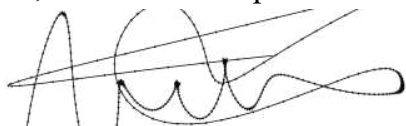
We Begg to Differ LLC, an Arizona
Limited Liability Company, **We Begg to
Differ DC Ranch LLC**, an Arizona
Limited Liability Company, **We Begg to
Differ Mercado LLC**, an Arizona
Limited Liability Company, **We Begg to
Differ Watermark LLC**, an Arizona
Limited Liability Company, and
**Prokopios Verros and Jane Doe
Verros**, a married couple,

Defendants.

No. _____

**PLAINTIFF NICOLE WASILISHIN'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

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



Nicole Wasilishin

10/17/18

Date

BENDAU & BENDAU PLLC
Clifford P. Bendau, II (030204)
Christopher J. Bendau (032981)
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chris@bendaulaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Nicole Wasilishin and Felicia Hunt,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

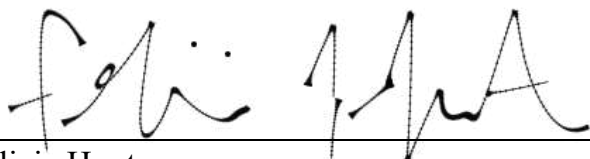
We Begg to Differ LLC, an Arizona
Limited Liability Company, **We Begg to
Differ DC Ranch LLC**, an Arizona
Limited Liability Company, **We Begg to
Differ Mercado LLC**, an Arizona
Limited Liability Company, **We Begg to
Differ Watermark LLC**, an Arizona
Limited Liability Company, and
**Prokopios Verros and Jane Doe
Verros**, a married couple,

Defendants.

No. _____

**PLAINTIFF FELICIA HUNT'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

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



Felicia Hunt

10/17/2018

Date

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arizona Restaurant Chain Eggstasy Facing Servers' Wage and Hour Suit](#)
